

VOLUME 2

THE WORKS OF
FRANCIS BACON

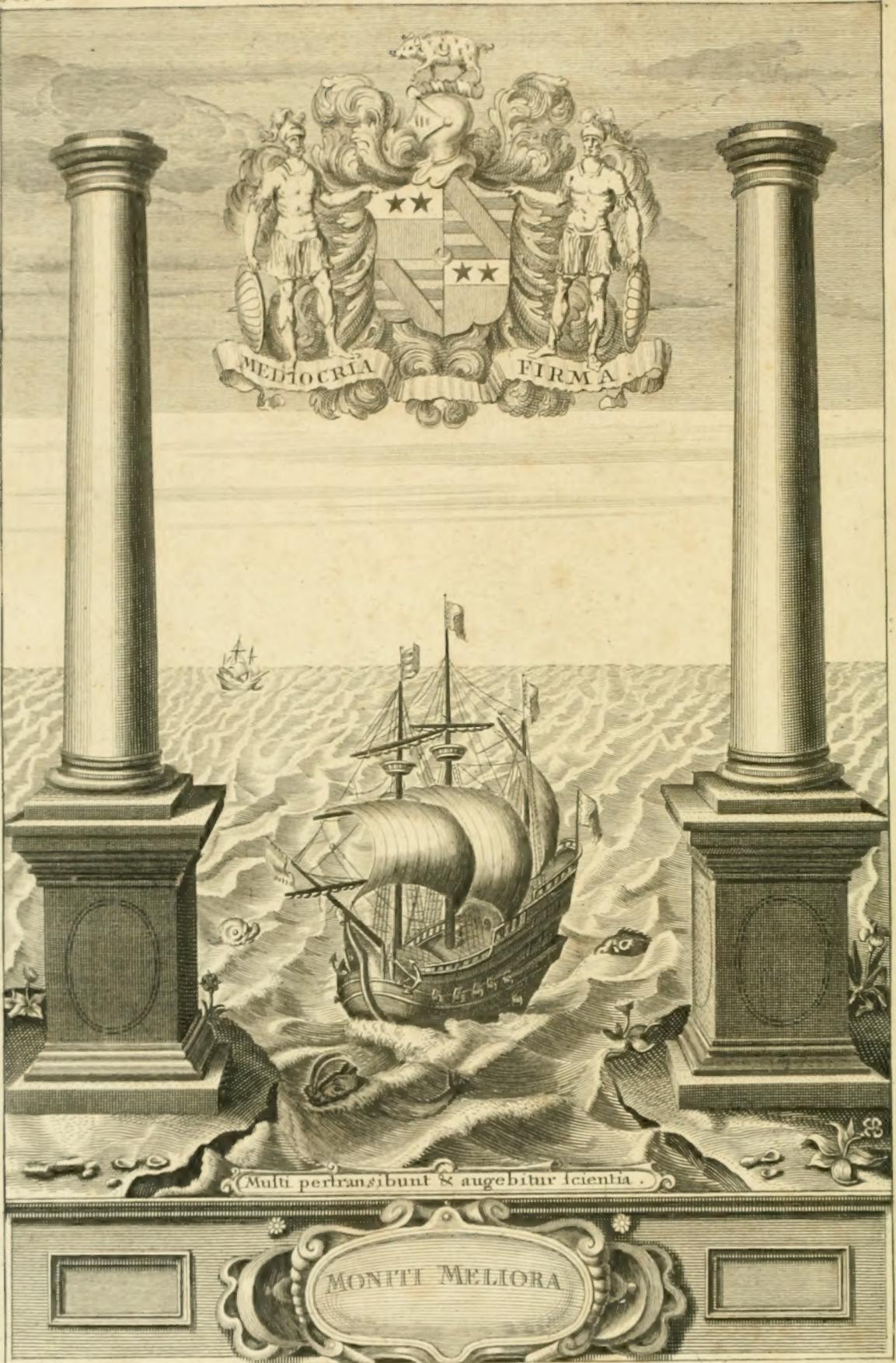


ESSAYS, SCIENTIFIC &
PHILOSOPHICAL WRITINGS



LORD VERULAM

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MONTI MELIORA

THE
W O R K S
O F
FRANCIS BACON,
BARON OF VERULAM,
VISCOUNT ST. ALBAN,
AND
Lord High Chancellor of England.

VOL. II.



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MDCCLXV.

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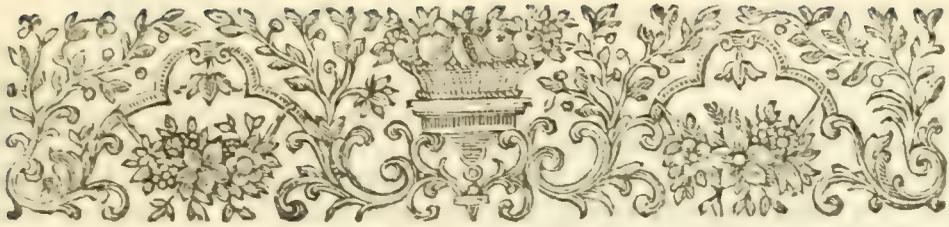
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WORKS POLITICAL

Vol. II.

B



Of the STATE of EUROPE.

[*Written about the Year 1580.*]

IN the consideration of the present state of Christendom, depending on the inclinations and qualities of the princes, governors of the same, first the person of the pope, acknowledged for supreme of the princes catholic, may be brought forth.

Gregory XIII. of the age of seventy years, by surname Boncompagno, born Pope in Bologna of the meanest state of the people, his father a shoemaker by occupation; of no great learning nor understanding, busy rather in practice, than desirous of wars, and that rather to further the advancement of his son and his house, a respect highly regarded of all the popes, than of any inclination of nature, the which, yet in these years, abhorreth not his secret pleasures. Howbeit, two things especially have set so sharp edge to him, whereby he doth bend himself so vehemently against religion. The one is a mere necessity, the other the solicitation of the king of Spain. For if we consider duly the estate of the present time, we shall find that he is not so much carried with the desire to suppress our religion, as driven with the fear of the downfall of his own, if in time it be not upheld and restored.

The reasons be these: he seeth the king of Spain already in years, and worn with labour and troubles, that there is little hope in him of long life. And he failing, there were likely to ensue great alterations of state in all his dominions, the which should be joined with the like in religion, especially in this divided time, and in Spain, already so forward, as the fury of the inquisition can scarce keep in.

In France, the state of that church seemeth to depend on the sole life of the king now reigning, being of a weak constitution, full of infirmities, not likely to have long life, and quite out of hope of any issue. Of the duke of Anjou he doth not assure himself; besides the opinion conceived of the weakness of the complexion of all that race, giving neither hope of length of life nor of children. And the next to the succession make already profession of the reformed religion, besides the increase thereof daily in France: England and Scotland are already, God be thanked, quite reformed, with the better part of Germany. And because the queen's majesty hath that reputation to be the defender of the true religion and faith; against her majesty, as the head of the faithful, is the drift of all their mischiefs.

The king of Spain having erected, in his conceit, a monarchy, wherein seeking reputation in the protection of religion, this conjunction with the pope is as neces-

sary to him for the furtherance of his purposes, as to the pope behoveful for the advancing of his house and for his authority; the king of Spain having already bestowed on the pope's son, degree of title and of office, with great revenues. To encourage the pope herein, being head of the church, they set before him the analogy of the name Gregory, saying, that we were first under a Gregory brought to the faith, and by a Gregory are again to be reduced to the obedience of Rome.

A prophecy likewise is found out that foretellet, "that the dragon sitting in the chair of Peter, great things should be brought to pass."

Thus is the king of France solicited against those of the religion in France; the emperor against those in his dominions; divisions set in Germany; the Low Countries miserably oppressed; and daily attempts against her majesty, both by force and practice; hereto serve the seminaries, where none are now admitted, but those who take the oath against her majesty.

The sect of the Jesuits are special instruments to alienate the people from her majesty, sow faction, and to absolve them of the oath of obedience, and prepare the way to rebellion and revolt.

Besides, for confirmation of their own religion they have used some reformation of the clergy, and brought in catechizing.

To go forth with the princes of Italy next in situation.

Duke of Tuscany.

The great duke of Tuscany, Francisco de Medici, son to Cosimo, and the third duke of that family and province; of the age of forty years, of disposition severe and sad, rather than manly and grave; no princely port or behaviour more than a great justicer; inclined to peace, and gathering money. All Tuscany is subject unto him, wherein were divers commonwealths; whereof the chief were Florence, Siena, and Pisa, Prato, and Pistoia, saving Lucca, and certain forts on the sea-coast held by the king of Spain.

He retaineth in his service few, and they strangers, to whom he giveth pensions. In all his citadels he hath garisons of Spaniards, except at Siena: in house-keeping spendeth little, being as it were in pension, agreeing for so much the year with a citizen of Florence for his diet: he has a small guard of Swissers, and when he rideth abroad a guard of forty light horsemen. The militia of his country amounteth to forty thousand soldiers, to the which he granteth leave to wear their weapons on the holy days, and other immunities. Besides, he entertaineth certain men of arms, to the which he giveth seven crowns the month. He also maintaineth seven galleys, the which serve under his knights, erected by his father in Pisa, of the order of St. Stephano: of these galleys three go every year in chase.

His common exercise is in distillations, and in trying of conclusions, the which he doth exercise in a house called Cassino in Florence, where he spendeth the most part of the day; giving ear in the mean season to matters of affairs, and conferring with his chief officers. His revenues are esteemed to amount to a million and a half of crowns, of the which spending half a million, he layeth up yearly one million. But certainly he is the richest prince in all Europe of coin. The form of his government is absolute, depending only of his will and pleasure, though retaining in many things the ancient offices and shew. But those magistrates resolve nothing without his express directions and pleasure. Privy council he useth none, but reposeth his trust most on sound secretaries, and conferreth chiefly with his wife, as his father did with one of his secretaries. For matters of examinations,

one Corbolo hath the especial trust; he doth favour the people more than the nobility, because they do bear an old grudge to the gentlemen, and the people are the more in number, without whom the nobility can do nothing. One thing in him giveth great contentment to the subjects, that he vouchsafeth to receive and hear all their petitions himself. And in his absence from Florence, those that have suit do resort to the office, and there exhibit their bill endorsed; whereof within three days absolute answer is returned them, unless the matter be of great importance, then have they direction how to proceed. He is a great justicer; and for the ease of the people, and to have the better eye over justice, hath built hard by his palace a fair row of houses for all offices together in one place.

Two years since he married la Signora Bianca his concubine, a Venetian of Casa Capelli, whereby he entered straiter amity with the Venetians: with the pope he had good intelligence, and some affinity by the marriage of Signor Jacomo, the pope's son, in Casa Sforza.

To the emperor he is allied, his first wife being the emperor Maximilian's sister.

With Spain he is in strait league, and his mother was of the house of Toledo; his brother likewise, D. Pietro, married in the same house. With France he standeth at this present in some misliking.

With Ferrara always at jar, as with all the dukes of Italy for the preference in some controversy.

All his revenues arise of taxes and customs; his domains are very small.

He hath by his first wife one son, of the age of four or five years, and four daughters; he hath a base child by this woman, and a base brother, D. Joanni, sixteen years of age, of great expectation.

Two brothers, D. Pietro, and the cardinal.

The duke of Ferrara, Alfonso d'Este, the fifth duke, now about forty years of Ferrara. age, his first wife Lucretia, daughter to Cosmo de Medici, whom they say he poisoned; his second, daughter to Ferdinand the emperor; his third wife now living, Anne daughter to the duke of Mantua. He hath no child. The chief cities of his state are Ferrara, Modena, and Reggio: he is rich in money, growing, as the most of Italy, of exactions; of all the princes of Italy he alone inclineth to the French; with the pope he hath some jar about the passage of a river. The Venetians and he fall in great hatred; with Florence hath enmity; with Lucca little skirmishes every year for a castle he buildeth on their confines, to raise a great toll in a strait passage, by reason of his mother a Guise.

William of the house of Gonsaga, the third duke of Mantua; his wife Barbara Mantua. daughter to the emperor Ferdinand, by whom he hath a son of twenty two years of age, and a daughter. His son is called Vincentio, his daughter Anne married of late to the duke of Ferrara; his son likewise married a year since to the prince of Parma's daughter. The duke himself very deformed and crookbacked, well in years. Montferrat likewise appertaineth to him. Divers of his house have pension always, and serve the king of Spain; his brother the duke of Nevers remaineth in France. He only seeketh to maintain his estate and enrich himself; his greatest pleasure is in horses and building.

The duke of Urbin, Francesco Maria, of the house of Roveré, the second of Urbin. that name, a prince of good behaviour and witty. In his state are seven reasonable fair cities: Pesaro, Augubio, Sinigaglia, Fossombrone, Sanleo, Cagli, Urbino; Pesaro and Sinigaglia are fortresses on the sea side, Urbin and Sanleo on the Apennine,

Apennine, well fortified. He holdeth three provinces, Montefeltro, Massa Trebaria, and Vicariato di Mondavio.

There have been good princes and valiant of that house, not so great exactors as the rest of Italy, therefore better beloved of their subjects, which love restored their house, being displaced by pope Leo X.

His wife Leonora, sister to the duke of Ferrara, by whom he hath no children, and now is divorced. He hath two sisters, the one married to the duke of Gravina, the other to the prince Bisignano, and a third is to marry, whose name is Lavinia.

Parma

Ottaviano, first duke of Castro, then of Camerino, and after of Parma and Piacenza, with great trouble restored to his estate; now is aged and liveth quietly: his wife, Marguerite daughter to Charles the fifth, first wife to Alexander de Medici first duke of Florence. He hath one son called Alexander, now general for the king of Spain in the Low Countries; his daughter Vittoria was mother to the duke of Urbin.

The cardinal Farnese his uncle, of great credit in that college, long time hath aspired to be pope, but withstood by the king of Spain; on whom though now that house depend, yet forgetteth not, as he thinketh, the death of Pier Luigi, and the loss of Parma and Piacenza, restored to their house by the French.

The young princes of Mirandola, in the government of their mother Fulvia Correggio, and under the protection of the king of France, who maintaineth there a garrison.

Savoy.

The duke of Savoy, Carlo Emanuel, a young prince of twenty one years, very little of stature, but well brought up and disposed. His territory is the greatest of any duke of Italy, having Piemont beyond the Alps, and Savoy on this side; divers fair towns and strong-holds, richly left of his father, who was accounted a very wise prince. This duke, as is thought, is advised to remain always indifferent between Spain and France, being neighbour to them both, unless some accident do counsel him to declare himself in behalf of either. Therefore both those princes go about by marriage to have him nearer allied to them. His mother was sister to king Francis the great; his father being expelled his dominions by the French, was restored by the king of Spain, with whom while he lived he had strait intelligence. As yet his inclination doth not appear; he retaineth his father's alliances with Venice, especially in Italy, and with the emperor. With Florence he hath question for pre-eminence.

His revenues are judged to be a million of crowns yearly; now he is in arms against Geneva, and guarded against Bern.

Lucca.

Of free estates, Lucca the least, is under the protection of the king of Spain: small in territory; the city itself well fortified and provided, because of the doubt they have of the duke of Florence.

Genoa.

Genoa is recommended to the king of Spain, their galleys serve under him, and the chiefest of their city are at his devotion. Though there is a faction for the French, whereto he doth hearken so weakly, that the Spaniard is there all in all; by whom that state in few years hath made a marvellous gain. And the king of Spain hath great need of their friendship, for their ports, where embark and land all men, and whatsoever is sent between Spain and Milan.

They hold Corsica an island, and Savona a fair city, and the goodliest haven in Italy, until it was destroyed by the Genevois; the which now make no profession but of merchandise.

There is a dangerous faction amongst them, between the ancient houses and the new, which were admitted into the ancient families.

St. George is their treasure-house and receiver, as at Venice St. Mark.

Venice retaining still the ancient form of government, is always for itself in like Venice. estate and all one; at this time between the Turk and the king of Spain in continual watch, seeming to make more account of France, not so much in hope of any great alliance at this present to be had in him, but for the reputation of that nation, and the amity always they have had with the same, and behoving them so to do. They use it with good foresight and speedy preventing, sparing for no charge to meet as they may with every accident. Of late they have had some jar with the pope, as well about the inquisition as title of land. With Ferrara and the Venetians is ancient enmity, specially because he receiveth all their banished and fugitives. They make most account of the duke of Savoy amongst the princes of Italy. They maintain divers ambassadors abroad, with the Turk, the emperor, France, Spain, and at Rome: with them is an ambassador of France and Savoy always resident, and an agent of Spain, because they gave the preference to France.

In this it seemeth all the potentates of Italy do agree to let all private grudges give place to foreign invasion, more for doubt of alteration in religion, than for any other civil cause.

There is none among them at this day in any likelihood to grow to any greatness. For Venice is bridled by the Turk and Spain. The duke of Tuscany seeketh rather title than territory, otherwise than by purchasing.

Savoy is yet young; the rest of no great force of themselves. France hath greatly lost the reputation they had in Italy, by neglecting the occasions offered, and suffering the king of Spain to settle himself.

The emperor Adolphe of the house of Austria, son to Maximilian, about Emperor. thirty years of age; no strong constitution of body, and greatly weakened by immoderate pleasure; no great quickness of spirit. In fashion and apparel all Spanish, where he had his education in his youth. He was most governed by his mother while she remained with him; and yet altogether by his steward Dyetrifan, and his great chamberlain Romphe, both pensionaries of Spain, and there with him maintained.

Of the empire he hath by the last imperial diet one million of dollars towards the maintenance of the garisons of Hungary; and, besides, his guards are paid of the empire.

To the Turk he payeth yearly tribute for Hungary 40000 dollars, besides the charge of the presents and his ambassadors, amounting to more than the tribute; in all 100,000 dollars.

The ordinary garisons in Hungary are to the number of but badly paid at this time.

The revenues and subsidies of Hungary do not pass 100,000 florins. The last emperor affirmed solemnly, that the charge of Hungary amounted to one million and a half.

The revenues of Bohemia, ordinary and extraordinary, amount to 50000 dollars.

In the absence of the emperor, the baron of Rosenberg is governor of Bohemia, who possesseth almost a fourth part of that country, and is a papist; neither he nor his brother have children: he beareth the emperor in hand to make him his heir.

Of Silesia and Moravia, the emperor yearly may have 200,000 florins.

Out

Out of Austria of subsidy and tribute 100,000 florins, for his domains are all sold away and engaged.

Thus all his revenues make half a million of florins.

To his brothers Maximilian and Ernest he alloweth yearly, by agreement made between them, 45000 florins apiece, as well for Austria, as that might hereafter fall unto them by the decease of the archduke Ferdinand in Tyrol, the which shall come to the emperor.

The emperor altogether dependeth on Spain, as well in respect of his house, as the education he received there, and the rule his mother hath over him with the chief of his council. He is utter enemy to religion, having well declared the same in banishing the ministers out of Vienna, and divers other towns, where he goeth about to plant Jesuits.

Of his subjects greatly disliked, as his house is hateful to all Germany.

The archduke Charles holdeth Stiria and Carinthia; his chief abode is at Gratz; his wife is sister to the duke of Bavaria, by whom he hath children.

The archduke Ferdinand hath Tyrol, and retaineth the most part of Ilzburg. For his eldest son he hath bought in Germany a pretty state, not far from Ulms; the second is a cardinal. Now he is a widower, and said, that he shall marry a daughter of the duke of Mantua.

These are uncles to the emperor: besides Maximilian and Ernest, he hath two brothers, the archduke Matthias, that hath a pension of the estates of the Low Countries, and a cardinal archbishop of Toledo.

Germany. In Germany there are divers princes diversly affected. The elector palatine Ludovic, a Lutheran; his chief abode is at Heidelberg.

His brother, John Casimir, a Calvinist, at Keisers-lautern, or Nieuftadt.

Richard their uncle at Symyers.

During the life of the last elector, Ludovic dwelt at Amberg in the Higher Palatinate.

Philip Ludovic dwelt at Norbourgh on the Danube, and is commonly called duke thereof.

John dwelleth at Rypont, or Sweybourgh, or in Bergesfaber; the other three brethren have no certain dwelling-place. George John, son of Rupert, count Palatine, dwelleth at Lyffelsteyn.

Princes of Germany. Augustus, duke and elector of Saxony, remaineth the most part at Dresden on the Elbe; sometimes at Torge on Elbe, a goodly castle fortified by John Frederick. This elector is a Lutheran, and a great enemy to our profession; of sixty years of age, half frantic, severe, governed much by his wife, a greater exactor than the German princes are wont to be, and retaineth in his service divers Italians; his eldest son married of late the daughter of the duke of Brandebourg.

The sons of John Frederick, captive, and yet in prison, remain at Coburge in East Franconia, near the forest of Turingia.

The sons of John William abide at Vinaria in Turingia.

Joachim Frederick, son of John George elector of Brandebourg, at Hala in Saxony on the river of Sala, as administrator of the archbishoprick of Magdebourgh.

George Frederick, son of George, dwelleth at Orsbuche in East Franconia, or at Bassenbourge, the which was the mansion of his uncle Albert the warrior.

The elector of Brandebourg, John George, remaineth at Berlin on the river of Spree: his uncle John dwelleth at Catryne beyond Odera, very strong both by the situation, and fortified.

William

William duke of Bavaria, a papist, at Munich in Bavaria, married the daughter of the duke of Lorrain.

His second brother Ferdinand remaineth most at Landshutt.

The third, Ernest, is bishop of Frisinghen and Hildesheim, and late of Liege.

Julius duke of Brunfwick, at the strong castle of Wolfenbuttel on Oder.

Ericke of Brunfwick, son to Magnus, uncle to Julius, remaineth at Mynda, or where the rivers of Werra and Fulda do join, making the river of Visurgis navigable.

William duke of Lunenburgh hath his being at Cella, on the river Albera.

Henry his brother at Gryforn, where, before, their uncle Francis was wont to dwell.

Otho their cousin, duke of Lunenburg, inhabiteth Harbourg on this side the Elbe, over-right against Hamburg.

The duke of Pomerania, John Frederic, dwelleth at Stetin.

Bugeslaus at Campena, sometime an abbey in the county of Bardruse.

Ernest Ludovic at Wolgast on the river of Panis that runneth into the Baltic sea

Barmin at Ragenwald in Further Pomerania, on the borders of Poland and Prussia.

Casimire at Camyn, which bishoprick he holdeth, either as administrator, or in his own possession and right.

Ulricke duke of Meckelbourg, remaineth most at Gustrow; his brother John Albert dwelleth at Swerin, whose two sons are in the court of the duke of Saxony.

Adolph duke of Holst and Dytmarch; his chief feat is at Gottorp in the duchy of Sleswick.

John his elder brother, unmarried, hath his abode at Hadersberge; John, son to Christiern king of Denmark, and brother to the duke of Holst, and to Frederick now king of Denmark, bishop of Oeselya and Courland in Livonia.

William duke of Juliers, Cleve, and Bergen, hath his court at Duffeldorp in the dukedom of Bergense.

William landgrave of Hesse dwelleth at Cassel on Fulda.

Ludovic at Marpurg.

Philip at Brubache on the Rhine.

George at Darmstadt.

Ludovic duke of Wirtenberge, his chief house at Stutgard.

Frederic at Montbelgard.

The marquises of Bathe: the elder Ernest, the second Jacob, the third brother yet younger; their chief dwelling-place is at Forshheim, or at Durlach.

The sons of Philip at the Bath called Baden.

Ernest Joachim, prince of Anhalt, at Zerbest, in the midway between Magdebourg and Wittemberg; his other mansion is at Dessau on Mylda, where he was born, new built and fortified by his grandfather Ernest: he hath besides the castle of Cathenen, the which was the habitation of Wolfgan prince of Anhalt his great uncle; Ernest favoureth religion.

George Ernest, prince and earl of Henneberg, at Schlewfsing, by the forest called Turing.

George duke of Silesia and Brieke, of the family of the kings of Poland, dwelleth at Brieke; his eldest son, Joachim Frederick, hath married the daughter of the prince of Anhalt; his second son, John George.

OF THE STATE OF EUROPE.

Henry duke of Silesia and Lignitz, son to the brother of George, dwelleth at Lignitz; he hath no children alive.

Frederic, brother to Henry, unmarried.

Charles duke of Munsterberg and Olffe, his wife the countess of Sternberg in Bohemia, where he maketh his abode.

Henry, brother to Charles, remained at Olffe.

John Frederic duke of Teschen.

Charles duke of Lorrain, his chief court at Nancy.

His eldest son Henry of man's estate.

Charles cardinal archbishop of Mets.

A daughter in the French court.

Besides, there are in Germany three electors bishops, and divers bishops of great livings.

The free towns of greatest importance are Noremberg, Auspurg, Ulmes, and Strasburg: then the cantons of the Swisses, the Grisons, and Valois.

The greatest trouble in Germany at this time is about the concordate, furthered by the duke of Saxony, and the count Palatine.

There is at this present no prince in Germany greatly toward or redoubted.

The duke Casimir's credit is greatly impaired, and his ability small.

The dyet imperial shortly should be held, where the concordate shall be urged, collection for Hungary made, and a king of the Romans named.

France.

The French king, Henry the third, of thirty years of age, of a very weak constitution, and full of infirmities; yet extremely given over to his wanton pleasures, having only delight in dancing, feasting and entertaining ladies, and chamber-pleasures: no great wit, yet a comely behaviour and goodly personage, very poor, though exacting inordinately by all devices of his subjects; greatly repining that revenge and hungry government, abhorring wars and all action, yet daily worketh the ruin of those he hateth, as all of the religion and the house of Bourbon; doting fondly on some he chooseth to favour extremely, without any virtue or cause or desert in them, to whom he giveth prodigally. His chief favourites now about him are the duke Joyeuse, la Valette, and monsieur D'Au. The queen mother ruleth him rather by policy and fear he hath of her, than by his good will; yet he always doth shew great reverence towards her. The Guise is in as great favour with him as ever he was; the house is now the greatest of all France, being allied to Ferrara, Savoy, Lorrain, Scotland, and favoured of all the papists; the French king having his kinswoman to wife, and divers great personages in that realm of his house.

The chiefest at this present in credit in court, whose counsel he useth, are, Villeroi, Villaquier, Believre, the chancellor and lord keeper, Birague and Chiverny.

He greatly entertaineth no amity with any prince, other than for form; neither is his friendship otherwise respected of others, save in respect of the reputation of so great a kingdom.

The pope beareth a great sway, and the king of Spain by means of his pension; and of the queen-mother with the Guise; she for her two daughters, he for other regard, can do what he list there, or hinder what he would not have done.

The division in his country for matters of religion and state, through discontentment of the nobility to see strangers advanced to the greatest charges of the realm,

realm, the offices of justice sold, the treasury wasted, the people polled, the country destroyed, hath bred great trouble, and like to see more. The faction between the house of Guise against that of Montmorancy, hath gotten great advantage.

At this present the king is about to restore Don Antonio king of Portugal, whereto are great levies and preparation.

Francis duke of Anjou and of Brabant, for his calling and quality greatly to be considered as any prince this day living, being second person to the king his brother, and in likelihood to succeed him. There is noted in the disposition of this prince a quiet mildness, giving satisfaction to all men; facility of access and natural courtesy; understanding and speech great and eloquent; secrecy more than commonly is in the French; from his youth always desirous of action, the which thing hath made him always followed and respected. And though hitherto he hath brought to pass no great purpose, having suffered great wants and resistance both at home and abroad, yet by the intermeddling is grown to good experience, readiness and judgment, the better thereby able to guide and govern his affairs, both in practice, in treaty, and action. Moreover, the diseased state of the world doth so concur with this his active forwardness, as it giveth him matter to work upon: and he is the only man to be seen of all them in distress, or desirous of alteration. A matter of special furtherance to all such as have achieved great things, when they have found matter disposed to receive form.

And there is to be found no other prince in this part of the world so towards and forward as the duke, towards whom they in distress may turn their eyes. We do plainly see in the most countries of Christendom so unsound and shaken an estate, as desireth the help of some great person, to set together and join again the pieces asunder and out of joint. Wherefore the presumption is great, that if this prince continue this his course, he is likely to become a mighty potentate: for, one enterprise failing, other will be offered, and still men evil at ease and desirous of a head and captain, will run to him that is fittest to receive them. Besides, the French, desirous to shake off the civil wars, must needs attempt somewhat abroad. This duke first had intelligence with the count Ludovic in king Charles's days, and an enterprise to escape from the court, and in this king's time joined with them of the religion and malcontents: after was carried against them; seeketh the marriage with her majesty, so mighty a princess, as it were to marry might with his activity.

He hath had practice in Germany to be created king of the Romans, made a sudden voyage with great expedition into the Low Countries, now is there again with better success than so soon was looked for.

The king of Spain, Philip son to Charles the fifth, about sixty years of age, a prince of great understanding, subtle and aspiring, diligent and cruel. This king especially hath made his benefit of the time, where his last attempt on Portugal delivereth exact consideration, thereby as by the workmanship to know the master.

The first success he had was at St. Quintin, where he got a notable hand of the French; he fought to reduce the Low Countries to an absolute subjection.

He hath kept France in continual broil, where, by his pensions and the favour of the house of Guise, by means of the queen-mother in contemplation of her neices, he beareth great sway. With the pope he is so linked, as he may do what him list, and dispose of that authority to serve his purposes: as he has gotten great authority in pretending to protect the church and religion.

He possiſſeth the one half of Italy, comprehending Sicily and Sardinia, with Naples and Milan; the which eſtates do yield him little other profit, ſave the maintenance of ſo many Spaniards as he keepeth there always.

The duke of Florence relyeth greatly upon him, as well in reſpect of the ſtate of Siena, as of the ports he holdeth, and of his greatneſs. Lucca is under his protection. Genoa, the one faction at his devotion, with their galleys: at his penſion is moſt of the greateſt there.

Befides the Low Countries, he holdeth the French Comté, the beſt uſed of all his ſubjects, and Luxembourg: the Weſt-Indies furniſh him gold and ſilver, the which he conſumeth in the wars of the Low Countries, and in penſions, and is greatly indebted, while he worketh on the foundation his father laid, to erect a monarchy, the which if he ſucceed in the conqueſt of Portugal, he is likely to achieve, unleſs death do cut him off.

He hath one ſon of the years of five by his laſt wife, two daughters by the French king's ſiſter, two baſe ſons.

He hath greatly fought the marriage of the queen's daughter of France, ſiſter to his laſt wife, and couſin german removed.

His revenues are reckoned to amount to ſixteen millions.

The chief in credit with him of martial men and for counſel are

He maketh account to have in continual pay 50000 ſoldiers.

He maintaineth galleys to the number of 140, whereof there are ſixty in Portugal, the reſt are at Naples, and other places. Now is on league with the Turk.

D. Antonio, elect king of Portugal, thruſt out by the king of Spain, of forty-five years of age, a mild ſpirit, ſober and diſcreet: he is now in France, where he hath levied ſoldiers, whereof part are embarked, hoping by the favour of that king, and the good-will the Portugals do bear him, to be reſtored again. He holdeth the Torges, and the Eaſt-Indians yet remain well affected to him, a caſe of itſelf deſerving the conſidering and relief of all other princes. Befides in his perſon, his election to be noted with the title he claimeth very ſingular, and ſeldom the like ſeen, being choſen of all the people; the great dangers he hath eſcaped likewiſe at ſundry times.

The king of Poland, Stephen Batoaye, a baron of Hungary, by the favour of the Turk choſen king of the Pollacks, after the eſcape made by the French king; a prince of the greateſt value and courage of any at this day, of competent years, ſufficient wiſdom, the which he hath ſhewed in the ſiege of Danſke, and the wars with the Muſcovite.

The Hungarians could be content to exchange the emperor for him. The Bohemians likewiſe wiſh him in the ſtead of the other. He were like to attain to the empire, were there not that mortal enmity between thoſe two nations as could not agree in one ſubjection.

Straight upon his election he married the Infant of Poland, ſomewhat in years and crooked, only to content the Pollacks, but never companied with her. He doth tolerate there all religions, himſelf heareth the maſs, but is not thought to be a papill: he had a great part of his education in Turkey, after ſerved the laſt emperor.

Frederick the ſecond, of forty-eight years, king of Denmark and Norway; his wife Sophia, daughter to Ulricke duke of Mechelebourg, by whom he hath fix children

The Turks
revenues are
thought to be
equal with
his.

Portugal.

Poland.

Denmark.

children, four daughters and two sons, Christianus and Ulricus, the eldest of five years of age.

The chiefest about him, Nicolas Cose his chancellor, in whose counsel he doth much repose.

He hath always 800 horse about his court, to whom he giveth ten dollars the month.

His father deceased in the year 1559, after which he had wars ten years space with the Swede, which gave him occasion to arm by sea. His navy is six great ships of 1500 ton, and fifteen smaller, ten gallies which sail to pass the Straits.

His revenues grow chiefly in customs, and such living as were in the hands of the abbeyes, and bishops, whereby he is greatly enriched: his chief haven is Copenhagen, where always his navy lieth.

His brother John, duke of Holst in Jutland, married to the daughter of the duke of Inferior Saxony.

Magnus his other brother, bishop of Courland, married the daughter of the Muscovite's brother.

The chiefest wars that the king of Denmark hath is with Sweden, with whom now he hath peace. The duke of Holst is uncle to the king now reigning; they make often alliances with Scotland.

John king of Sweden, son of Gustavus. Sweden.

This Gustavus had four sons, Erick, John, Magnus, and Charles.

Erick married a soldier's daughter, by whom he had divers children, and died in prison.

John, now king, married the sister of Sigismond late king of Poland.

Magnus bestraught of his wits.

Charles married a daughter of the Palsgrave.

Five daughters of Gustavus.

Catharine married to the earl of East-Friseland.

Anne to one of the Palsgraves.

Cicilia to the marquis of Baden.

Sophia to the duke of Inferior Saxony.

Elizabeth to the duke of Meclenburg.

This prince is of no great force nor wealth, but of late hath increased his navigation by reason of the wars between him and the Dane, the which, the war ceasing, they hardly maintain.

The Muscovite emperor of Ruffia, John Basil, of threescore years of age, in Muscovy. league and amity with no prince; always at wars with the Tartarians, and now with the Pollake.

He is advised by no council, but governeth altogether like a tyrant. He hath one son of thirty years of age. Not long since this prince deposed himself, and set in his place a Tartar, whom he removed again. Of late he sent an ambassador to Rome, giving some hope to submit himself to that see. Their religion is nearest the Greek church, full of superstition and idolatry.

Mr. B A C O N's

DISCOURSE in the praise of his SOVEREIGN.

NO praise of magnanimity, nor of love, nor of knowledge, can intercept her praise, that planteth and nourisheth magnanimity by her example, love by her person, and knowledge by the peace and serenity of her times. And if these rich pieces be so fair unset, what are they set, and set in all perfection? Magnanimity no doubt consisteth in contempt of peril, in contempt of profit, and in meriting of the times wherein one liveth. For contempt of peril, see a lady that cometh to a crown after the experience of some adverse fortune, which for the most part extenuateth the mind, and maketh it apprehensive of fears. No sooner she taketh the scepter into her sacred hands, but she putteth on a resolution to make the greatest, the most important, the most dangerous that can be in a state; the alteration of Religion. This she doth, not after a sovereignty established and continued by sundry years, when custom might have bred in her people a more absolute obedience; when trial of her servants might have made her more assured whom to employ; when the reputation of her policy and virtue might have made her government redoubted: but at the very entrance of her reign, when she was green in authority, her servants scarce known unto her, the adverse party not weakened, her own party not confirmed. Neither doth she reduce or reunite her realm to the religion of the states about her, that the evil inclination of the subject might be countervailed by the good correspondence in foreign parts: but contrariwise, she introduceth a religion exterminated and persecuted both at home and abroad. Her proceeding herein is not by degrees and by stealth, but absolute and at once. Was she encouraged thereto by the strength she found in leagues and alliances with great and potent confederates? No, but she found her realm in wars with her nearest and mightiest neighbours. She stood single and alone, and in league only with one, that after the people of her nation had made his wars, left her to make her own peace; one that could never be by any sollicitation moved to renew the treaties; and one that since hath proceeded from doubtful terms of amity to the highest acts of hostility. Yet, notwithstanding the opposition so great, the support so weak, the season so improper; yet, I say, because it was a religion wherein she was nourished and brought up; a religion that freed her subjects from pretence of foreign powers, and indeed the true religion; she brought to pass this great work with success worthy so noble a resolution. See a queen that, when a deep and secret conspiracy was plotted against her sacred person, practised by subtle instruments, embraced by violent and desperate humours, strengthened and bound by vows and sacraments, and the same was revealed unto her, and yet the nature of the affairs required further ripening before the apprehension of any of the parties, was content to put herself into the guard of the divine providence, and her own prudence, to have some of the conspirators in her eyes, to suffer them to approach to her person, to take a petition of the hand that was conjured for her

her death ; and that with such majesty of countenance, such mildness and serenity of gesture, such art and impression of words, as had been sufficient to have repress'd and bound the hand of a conspirator, if he had not been discovered. Lastly, see a queen, that when her realm was to have been invaded by an army, the preparation whereof was like the travel of an elephant, the provisions were infinite, the setting forth whereof was the terror and wonder of Europe ; it was not seen that her cheer, her fashion, her ordinary manner was any thing altered : not a cloud of that storm did appear in that countenance wherein peace doth ever shine ; but with excellent assurance, and advised security, she inspired her council, animated her nobility, redoubled the courage of her people, still having this noble apprehension, not only that she would communicate her fortune with them, but that it was she that would protect them, and not they her : which she testified by no less demonstration than her presence in camp. Therefore, that magnanimity that neither feareth greatness of alteration, nor the views of conspirators, nor the power of an enemy, is more than heroical.

For contempt of profit, consider her offers, consider her purchases. She hath reigned in a most populous and wealthy peace, her people greatly multiplied, wealthily appointed, and singularly devoted. She wanted not the example of the power of her arms in the memorable voyages and invasions prosperously made and achieved by sundry her noble progenitors. She had not wanted pretences, as well of claim and right, as of quarrel and revenge. She hath reigned during the minority of some of her neighbouring princes, and during the factions and divisions of their people upon deep and irreconcilable quarrels, and during the embracing greatness of some one that hath made himself so weak through too much burden, as others are through decay of strength ; and yet see her sitting as it were within the compass of her sands. Scotland, that doth as it were eclipse her island ; the United Provinces of the Low Countries, which for wealth, commodity of traffick, affection to our nation, were most meet to be annexed to this crown ; she left the possession of the one, and refused the sovereignty of the other : so that notwithstanding the greatness of her means, the justness of her pretences, and the rareness of her opportunity ; she hath continued her first mind, she hath made the possessions which she received the limits of her dominions, and the world the limits of her name, by a peace that hath stained all victories.

For her merits, who doth not acknowledge, that she hath been as a star of most fortunate influence upon the age wherein she hath shined ? Shall we speak of merit of clemency ? or merit of beneficence ? Where shall a man take the most proper and natural trial of her royal clemency ? Will it best appear in the injuries that were done unto her before she attained the crown ? or after she is seated in her throne ? or that the commonwealth is incorporated in her person ? Then clemency is drawn in question, as a dangerous encounter of justice and policy. And therefore, who did ever note, that she did relent, after that she was established in her kingdom, of the wrongs done unto her former estate ? Who doth not remember how she did revenge the rigour and rudeness of her jailor by a word, and that no bitter but salt, and such as shewed rather the excellency of her wit than any impression of her wrong ? Yea, and further, is it not so manifest, that since her reign, notwithstanding the principle that princes should not neglect, " That the " Commonwealth's wrong is included in themselves ;" yet when it is question of drawing the sword, there is ever a conflict between the justice of her place, joined
with

with the necessity of her state and her royal clemency, which as a sovereign and precious balm continually distilleth from her fair hands, and falleth into the wounds of many that have incurred the offence of her law.

Now, for her beneficence, what kind of persons have breathed during her most happy rege, but have had the benefit of her virtues conveyed unto them? Take ye now, and consider, whether they have not extended to subjects, to neighbours, to remote strangers, yea, to her greatest enemies. For her subjects, where shall we begin in such a maze of benefits as presenteth itself to remembrance? Shall we speak of the purging away of the dross of religion, the heavenly treasure; or that of money, the earthly treasure? The greater was touched before, and the latter deserveth not to be forgotten. For who believeth not, that knoweth any thing in matter of estate, of the great absurdities and frauds that arise of divorcing the legal estimation of moneys from the general, and, as I may term it, natural estimation of metals, and again of the uncertainty and wavering values of coins, a very labyrinth of coufenages and abuse, yet such as great princes have made their profit of towards their own people. Pass on from the mint to the revenue and receipts: there shall you find no raising of rents, notwithstanding the alteration of paces and the usage of the times; but the over-value, besides a reasonable fine left for the relief of tenants and reward of servants; no raising of customs, notwithstanding her continual charges of setting to the sea; no extremity taken of forfeiture and penal laws, means used by some kings for the gathering of great treasures. A few forfeitures indeed, not taken to her own purse, but set over to some others for the trial only, whether gain could bring those laws to be well executed, which the ministers of justice did neglect. But after it was found, that only compassions were used, and the law never the nearer the execution, the course was straight suppressed and discontinued. Yea, there have been made laws more than one in her time for the restraint of the vexation of informers and promoters: nay, a course taken by her own direction for the repealing of all heavy and snared laws, if it had not been crossed by those to whom the benefit should have redounded. There shall you find no new taxes, impositions, nor devices; but the benevolence of the subject freely offered by assent of parliament, according to the ancient rates, and with great moderation in assentment; and not so only, but some new forms of contribution offered likewise by the subject in parliament; and the demonstration of their devotion only accepted, but the thing never put in use. There shall you find loans, but honourably answered and paid, as it were the contract of a private man. To conclude, there shall you find moneys levied upon faults of lands, alienation, though not of the ancient patrimony, yet of the rich and commodious purchases and perquisites of the crown only, because she will not be grievous and burdensome to the people. This treasure, so innocently levied, so honourably gathered and raised, with such tenderness to the subject, without any balenels or dryness at all; how hath it been expended and employed? Where be the wasteful buildings, and the exorbitant and prodigal donatives, the sumptuous dissipations in pleasures, and vain ostentations which we find have exhausted the coffers of so many kings? It is the honour of her house, the royal remunerating of her servants, the preservation of her people and state, the protection of her suppliants and allies, the encounter, breaking, and defeating the enemies of her realm, that hath been the only pores and pipes whereby the treasure hath issued. Hath it been the sinews of a blessed and prosperous peace? Hath she bought her peace? Hath she

she lent the king of Spain money upon some cavillation not to be repeated, and so bought his favour? And hath she given large pensions to corrupt his council? No, but she hath used the most honourable diversion of troubles that can be in the world. She hath kept the fire from her own walls by seeking to quench it in her neighbours. That poor brand of the state of Burgundy, and that other of the crown of France that remaineth, had been in ashes but for the ready fountain of her continual benignity. For the honour of her house it is well known, that almost the universal manners of the times doth incline to a certain parsimony and dryness in that kind of expence; yet that she retaineth the ancient magnificence, the allowance as full, the charge greater than in time of her father, or any king before; the books appear, the computation will not flatter. And for the remunerating and rewarding of her servants, and the attendance of the court, let a man cast and sum up all the books of gifts, fee-farms, leases and custodies that have passed her bountiful hands. Let him consider again what a number of commodious and gainful offices heretofore bestowed upon men of other education and profession, have been withdrawn and conferred upon her court. Let him remember what a number of other gifts disguised by other names, but in effect as good as money given out of her coffers, have been granted by her; and he will conclude, that her royal mind is far above her means. The other benefits of her politic, clement, and gracious government towards the subjects are without number; the state of justice good, notwithstanding the great subtilty and humourous affections of these times; the security of peace greater than can be described by that verse;

*Tutus bos etenim rura perambulat :
Nutrit rura Ceres, almaque Faustitas.*

Or that other,

Condit quique diem collibus in suis.

The opulency of the peace such, as if you have respect, to take one sign for many, to the number of fair houses that have been built during her reign, as Augustus said, "that he had received the city of brick, and left it of marble;" so she may say, she received it a realm of cottages, and hath made it a realm of palaces: the state of traffic great and rich: the customs, notwithstanding these wars and interruptions, not fallen: many profitable trades, many honourable discoveries: and lastly, to make an end where no end is, the shipping of this realm so advanced and made so mighty and potent, as this island is become, as the natural site thereof deserved, the lady of the sea; a point of so high consequence, as it may be truly said, that the commandment of the sea is an abridgement or quintessence of an universal monarchy.

This and much more hath she merited of her subjects: now to set forth the merit of her neighbours and the states about her. It seemeth the things have made themselves purveyors of continual, new, and noble occasions for her to shew them benignity, and that the fires of troubles abroad have been ordained to be as lights and tapers to make her virtue and magnanimity more apparent. For when that one, stranger born, the family of Guise, being as a hatty weed sprung up in a night, had spread itself to a greatness, not civil but seditious; a greatness, not of encounter of the ancient nobility, not of preeminency in the favour of kings, and not remis of affairs from kings; but a greatness of innovation in state, of usurpations of authority, of affecting of crowns; and that accordingly, under colour of consanguinity and religion, they had brought French forces into Scot-

land, in the absence of their king and queen being within their usurped tutelage; and that the ancient nobility of this realm, seeing the imminent danger of reducing that kingdom under the tyranny of foreigners and their faction, had, according to the good intelligence betwixt the two crowns, prayed her neighbourly succours: she undertook the action, expelled the strangers, and restored the nobility to their degree. And lest any man should think her intent was to unneighbourly ill neighbours, and not to aid good neighbours, or that she was readier to restore what was invaded by others than to render what was in her own hands; see if the time provided not a new occasion afterwards, when through their own divisions, without the intermixture of strangers, her forces were again fought and required; she forsook them not, prevailed so far as to be possessed of the castle of Edinburgh, the principal strength of that kingdom, with peace, incontinently, without cunctations or cavillations, the preambles of a wavering faith, she rendered with all honour and security; and his person to safe and faithful hands; and so ever after during his minority continued his principal guardian and protector. In the time and between the two occasions of Scotland, when the same faction of Guise, covered still with pretence of religion, and strengthened by the desire of retaining government in the queen-mother of France, had raised and moved civil wars in that kingdom, only to extirpate the ancient nobility, by shocking them one against another, and to waste that realm as a candle which is lighted at both ends: and that those of the religion, being near of the blood royal, and otherwise of the greatest house in France, and great officers of the crown opposed themselves only against their insolency, and to their supports called in her aid, giving unto them Newhaven for a place of security: see with what alacrity, in tender regard towards the fortune of that young king, whose name was used to the supplicants of his strength, she embraced the enterprise; and by their support and reputation the same party suddenly made great proceedings, and in conclusion made their peace as they would themselves: and although they joined themselves against her, and performed the parts rather of good patriots than of good confederates, and that after great demonstration of valour in her subjects. For as the French will to this day report, especially by the great mortality by the hand of God, and the rather because it is known she did never much affect the holding of that town to her own use; it was left, and her forces withdrawn, yet did that nothing diminish her merit of the crown, and namely of that party who recovered by it such strength, as by that and no other thing they subsisted long after: and lest that any should sinisterly and maliciously interpret that she did nourish those divisions; who knoweth not what faithful advice, continual and earnest solicitation she used by her ambassadors and ministers to the French kings successively, and to their mother, to move them to keep their edicts of pacification, to retain their own authority and greatness by the union of her subjects? Which counsel, if it had been as happily followed, as it was prudently and sincerely given; France at this day had been a most flourishing kingdom, which now is a theatre of misery. And now at last, when the said house of Guise, being one of the whips of God, whereof themselves are but the cords, and Spain the stock, had by their infinite aspiring practices wrought the miracles of states, to make a king in possession long established to play again for his crown, without any title of a competitor, without any invasion of a foreign enemy, yea, without any combination in substance of a blood royal or nobility; but only by furring in audacious

dacious persons into sundry governments, and by making the populace of towns drunk with seditious preachers: and that king Henry the third, awaked by those pressing dangers, was compelled to execute the duke of Guise without ceremony; and yet nevertheless found the despair of so many persons embarked and engaged in that conspiracy, so violent, as the flame thereby was little assuaged; so that he was enforced to implore her aids and succours. Consider how benign care and good correspondence she gave to the distressed requests of that king; and he soon after being, by the sacrilegious hand of a wretched Jacobin lifted up against the sacred person of his natural sovereign, taken away, not wherein the criminous blood of Guise, but the innocent blood which he hath often spilled by instigation of him and his house was revenged, and that this worthy gentleman who reigneth come to the crown; it will not be forgotten by so grateful a king, nor by so observing an age, how ready, how opportune and reasonable, how royal and sufficient her succours were, whereby she enlarged him at that time, and preferred him to his better fortune: and ever since in those tedious wars, wherein he hath to do with a Hydra, or a monster with many heads, she hath supported him with treasure, with forces, and with imployment of one that she favoureth most. What shall I speak of the offering of Don Anthony to his fortune; a devoted catholic, only commended unto her by his oppressed state? What shall I say of the great storm of a mighty invasion, not of preparation, but in act, by the Turk upon the king of Poland, lately dissipated only by the beams of her reputation: which with the Grand Signor is greater than that of all the states of Europe put together? But let me rest upon the honourable and continual aid and relief she hath gotten to the distressed and desolate people of the Low Countries; a people recommended unto her by ancient confederacy and daily intercourse, by their cause so innocent, and their fortune so lamentable. And yet notwithstanding, to keep the conformity of her own proceeding never stained with the least note of ambition or malice, she refused the sovereignty of divers of those goodly provinces offered unto her with great instance, to have been accepted with great contentment both of her own people and others, and justly to be derived either in respect of the hostility of Spain, or in respect of the conditions, liberties and privileges of those subjects, and without charge, danger, and offence to the king of Spain and his partisans. She hath taken upon her their defence and protection without any further avail or profit unto herself, than the honour and merit of her benignity to the people that hath been pursued by their natural king only upon passion and wrath, in such sort that he doth consume his means upon revenge. And, having to verify that which I said, that her merits have extended to her greatest enemies; let it be remembered what hath passed in that matter between the king of Spain and her: how in the beginning of the troubles there, she gave and imparted to him faithful and friendly advice touching the course that was to be taken for quieting and appeasing of them. Then she interposed herself to most just and reasonable capitulations, wherein always should have been preserved unto him as ample interest, jurisdiction, and superiority in those countries as he in right could claim, or a prince well-minded would seek to have: and, which is the greatest point, she did by her advice, credit and policy, and all good means, interrupt and appeach, that the same people by despair should not utterly alien and distract themselves from the obedience of the king of Spain, and cast themselves into the arms of a stranger: inso-much, that it is most true, that she did ever persuade the duke of Anjou from that

A DISCOURSE IN PRAISE

action, notwithstanding the affection she bare to that duke, and the obstinacy which she saw daily growing in the king of Spain. Lastly, to touch the mighty general merit of this queen, bear in mind, that her benignity and beneficence hath been as large as the oppression and ambition of Spain. For to begin with the church of Rome, that pretended apostolic see is become but a donative cell of the king of Spain; the vicar of Christ is become the king of Spain's chaplain; he parteth the coming in of the new pope, for the treasure of the old: he was wont to exclude but some two or three cardinals, and to leave the election of the rest; but now he doth include, and present directly some small number, all incapable and incompatible with the conclave, put in only for colour, except one or two. The states of Italy, they be like little quillets of freehold being intermixt in the midst of a great honour or lordship: France is turned upside down, the subject against the king, cut and mangled infinitely, a country of Rodamonts and Royetelets, farmers of the ways: Portugal usurped by no other title than strength and vicinity: the Low Countries warred upon, because he seeketh, not to possess them, for they were possessed by him before, but to plant there an absolute and martial government, and to suppress their liberties: the like at this day attempted upon Arragon: the poor Indies, whereas the christian religion generally brought enfranchisement of slaves in all places where it came, in a contrary courte are brought from freemen to be slaves, and slaves of most miserable condition: sundry trains and practices of this king's ambition in Germany, Denmark, Scotland, the east towns, are not unknown. Then it is her government, and her government alone, that hath been the sence and fort of all Europe, which hath lett this proud nation from over-running all. If any state be yet free from his factions erected in the bowels thereof; if there be any state wherein this faction is erected, that is not yet fired with civil troubles; if there be any state under his protection upon whom he usurpeth not; if there be any subject to him that enjoyeth moderate liberty, upon whom he tyrannizeth not: let them all know, it is by the mercy of this renowned queen, that standeth between them and their misfortunes. There be some of the beams of noble and radiant magnanimity, in contempt of peril which so manifestly, in contempt of profit which so many admire, and in merit of the world which so many include in themselves; set forth in my simplicity of speech with much loss of lustre, but with near approach of truth; as the sun is seen in the water.

A p. 622.

Now to pass to the excellencies of her person: the view of them wholly and not severally, do make so sweet a wonder, as I fear to divide them. Again, nobility extracted out of the royal and victorious line of the kings of England; yea, both roses, white and red, do as well flourish in her nobility as in her beauty, as health, such as was like she should have that was brought forth by two of the most goodly princes of the world, in the strength of their years, in the heat of their love; that hath been injured neither with an over-liberal nor over-curious diet, that hath not been sustained by an umbratile life still under the roof, but strengthened by the use of the pure and open air, that still retaineth flower and vigour of youth. For the beauty and many graces of her presence, what colours are fine enough for such a portraiture? let no light poet be used for such a description, but the chasteil and the royalett:

Of

Of her gait; *Et vera incessu patuit Dea.*
 Of her voice; *Nec vox hominem sonat.*
 Of her eye; *Et laetos oculis afflavit honores.*
 Of her colour; *Indum sanguineo veluti violaverit ostro*
 Si quis ebur.
 Of her neck; *Et rosea cervice refulsit.*
 Of her breast; *Veste sinus collecta fluentes.*
 Of her hair; *Ambrosiaeque comae divinum vertice odorem*
 Spiravere.

If this be presumption, let him bear the blame that owneth the verses. What shall I speak of her rare qualities of compliment; which as they be excellent in the things themselves, so they have always besides somewhat of a queen: and as queens use shadows and veils with their rich apparel; methinks in all her qualities there is somewhat that flieth from ostentation, and yet inviteth the mind to contemplate her more?

What should I speak of her excellent gift of speech, being a character of the greatness of her conceit, the height of her degree, and the sweetness of her nature? What life, what edge is there in those words and glances wherewith at pleasure she can give a man long to think; be it that she mean to daunt him, to encourage him, or to amaze him! How admirable is her discourse, whether it be in learning, state, or love! what variety of knowledge; what rareness of conceit; what choice of words; what grace of utterance! Doth it not appear, that though her wit be as the adamant of excellencies, which draweth out of any book ancient or new, out of any writing or speech, the best; yet she refineth it, she enricheth it far above the value wherein it is received? And is her speech only that language which the child learneth with pleasure, and not those which the studious learn with industry? Hath she not attained, beside her rare eloquence in her own language, infinitely polished since her happy times, changes of her languages both learned and modern? so that she is able to negotiate with divers ambassadors in their own languages; and that with no disadvantage unto them, who I think cannot but have a great part of their wits distracted from their matters in hand to the contemplation and admiration of such perfections. What should I wander on to speak of the excellencies of her nature, which cannot endure to be looked on with a discontented eye: of the constancy of her favours, which maketh service as a journey by land, whereas the service of other princes is like an embarking by sea. For her royal wisdom and policy of government, he that shall note and observe the prudent temper she useth in admitting access; of the one side maintaining the majesty of her degree, and on the other side not prejudicing herself by looking to her estate through too few windows: her exquisite judgment in choosing and finding good servants, a point beyond the former, her profound discretion in assigning and appropriating every of them to their aptest employment: her penetrating sight in discovering every man's ends and drifts: her wonderful art in keeping servants in satisfaction, and yet in appetite: her inventing wit in contriving plots and overturns: her exact caution in censuring the propositions of others for her service: her foreseeing events: her usage of occasions: he that shall consider of these, and other things that may not well be touched, as he shall never cease to wonder at such a queen, so he shall wonder the less, that in so dangerous times, when wits are so cunning, humours extravagant, passions so violent, the corrup-
tions

tions so great, the dissimulations so deep, factions so many; she hath notwithstanding done such great things, and reigned in felicity.

To speak of her fortune, that which I did reserve for a garland of her honour; and that is, that she liveth a virgin, and hath no children: so it is that which maketh all her other virtues and acts more sacred, more august, more divine. Let them leave children that leave no other memory in their times: *Brutorum aeternitas, soboles*. Revolve in histories the memories of happy men, and you shall not find any of rare felicity but either he died childless, or his line spent soon after his death; or else was unfortunate in his children. Should a man have them to be slain by his vassals, as the posthumus of Alexander the great was? or to call them his impostumes, as Augustus Cæsar called his? Peruse the catalogue: Cornelius Sylla, Julius Cæsar, Flavius Vespasianus, Severus, Constantinus the great, and many more. *Generare et liberi, humana: creare et operari, divina*. And therefore, this objection removed, let us proceed to take a view of her felicity.

A mate of fortune she never took: only some adversity she passed at the first, to give her a quicker sense of the prosperity that should follow, and to make her more reposed in the divine providence. Well, she cometh to the crown: It was no small fortune to find at her entrance some such servants and counsellors as she then found. The French king, who at this time, by reason of the peace concluded with Spain, and of the interest he had in Scotland, might have proved a dangerous neighbour: by how strange an accident was he taken away? The king of Spain, who, if he would have inclined to reduce the Low Countries by lenity, considering the goodly revenues which he drew from those countries, the great commodity to annoy her state from thence, might have made mighty and perilous matches against her repose; putteth on a resolution not only to use the means of those countries, but to spend and consume all his other means, the treasure of his Indies, and the forces of his ill-compacted dominions there and upon them. The Charles that rebelled in the North, before the duke of Norfolk's plot, which indeed was the strength and seal of that commotion, was fully ripe, broke forth, and prevented their time. The king Sebastian of Portugal, whom the king of Spain would fain have persuaded that it was a devouter enterprise to purge Christendom, than to enlarge it, though I know some think that he did artificially nourish him in that voyage, is cut to pieces with his army in Africa: then hath the king of Spain work cut out to make all things in readiness during the old cardinal's time for the conquest of Portugal; whereby his desire of invading of England was slackened and put off some years, and by that means was put in execution at a time for some respects much more to his disadvantage. And the same invasion, like and as if it had been attempted before, it had the time much more proper and favourable; so likewise had it in true discourse a better season afterwards: for, if it had been dissolved till time that the League had been better confirmed in France; which no doubt would have been, if the duke of Guise, who was the only man of worth on that side, had lived; and the French king durst never have laid hand upon him, had he not been animated by the English victory against the Spaniards precedent. And then, if some maritime town had been gotten into the hands of the League, it had been a great surety and strength to the enterprise. The popes, to consider of them whole course and policy it had been, knowing her majesty's natural clemency, to have temporized and dispensed with the Papists coming to church, that through the mask of their hypocrisy they might

might have been brought into places of government in the state and in the country: these, contrariwise, by the instigation of some fugitive scholars that advised him, not that was best for the see of Rome, but what agreed best with their eager humours and desperate states; discover and declare themselves so far by sending most seminaries, and taking of reconcilements, as there is now severity of laws introduced for the repressing of that sort, and men of that religion are become the suspect. What should I speak of so many conspiracies miraculously detected? the records shew the treasons: but it is yet hidden in many of them how they came to light. What should I speak of the opportune death of her enemies, and the wicked instruments towards her estate? Don Juan died not amiss: Darnleigh, duke of Lenox, who was used as an instrument to divorce Scotland from the amity of England, died in no ill season: a man withdrawn indeed at that time to France; but not without great help. I may not mention the death of some that occur to mind: but still methinks, they live that should live, and they die that should die. I would not have the king of Spain die yet; he is *seges gloriae*: but when he groweth dangerous, or any other besides him; I am persuaded they will die. What should I speak of the fortunes of her armies, which, notwithstanding the inward peace of this nation, were never more renowned? What should I recount Leith and Newhaven for the honourable skirmishes and services? they are no blemish at all to the militia of England.

In the Low Countries; the Lammas day, the retreat of Ghent, the day of Zutphen, and the prosperous progress of this summer: the bravado in Portugal, and the honourable exploits in the aid of the French king, besides the memorable voyages in the Indies; and lastly, the good entertainment of the invincible navy, which was chased till the chasers were weary, after infinite loss, without taking a cock-boat, without firing a sheep-cot, sailed on the mercies of the wind, and the discretion of their adventures, making a perambulation or pilgrimage about the northern seas, and ignobling many shores and points of land by shipwreck: and so returned home with scorn and dishonour much greater, than the terror and expectation of their setting forth.

These virtues and perfections, with so great felicity, have made her the honour of her times, the admiration of the world, the suit and aspiring of greatest kings and princes, who yet durst never have aspired unto her, but as their minds were raised by love.

But why do I forget, that words do extenuate and embase matters of so great weight? Time is her best commender, which never brought forth such a prince, whose imperial virtues contend with the excellency of her person: both virtues contend with her fortune: and both virtue and fortune contend with her fame.

*Orbis amor, famae carmen, coelique pupilla:
Tu decus omne tuis, tu decus ipsa tibi!*

CERTAIN

CERTAIN OBSERVATIONS

Made upon a libel published this present year, 1592,

INTITLED,

A declaration of the true causes of the great troubles, presupposed to be intended against the realm of England.

IT were just and honourable for princes being in wars together, that howsoever they prosecute their quarrels and debates by arms and acts of hostility; yea, though the wars be such, as they pretend the utter ruin and overthrow of the forces and states one of another, yet they so limit their passions as they preserve two things sacred and inviolable; that is, the life and good name each of other. For the wars are no massacres and confusions; but they are the highest trials of right; when princes and states, that acknowledge no superior upon earth, shall put themselves upon the justice of God for the deciding of their controversies by such success, as it shall please him to give on either side. And as in the process of particular pleas between private men, all things ought to be ordered by the rules of civil laws; so in the proceedings of the war nothing ought to be done against the law of nations, or the law of honour; which laws have ever pronounced these two sorts of men; the one, conspirators against the persons of princes; the other, libellers against their good fame; to be such enemies of common society as are not to be cherished, no not by enemies. For in the examples of times, which were less corrupted, we find that when in the greatest heats and extremities of wars, there have been made offers of murderous and traitorous attempts against the person of a prince to the enemy, they have been not only rejected, but also revealed: and in like manner, when dishonourable mention hath been made of a prince before an enemy prince, by some that have thought therein to please his humour, he hath shewed himself, contrariwise, utterly distasteth therewith, and been ready to contest for the honour of an enemy.

According to which noble and magnanimous kind of proceeding, it will be found, that in the whole course of her majesty's proceeding with the king of Spain, since the amity interrupted, there was never any project by her majesty, or any of her ministers, either moved or assented unto, for the taking away of the life of the said king: neither hath there been any declaration or writing of estate, no nor book allowed, wherein his honour hath been touched or taxed, otherwise than for his ambition; a point which is necessarily interlaced with her majesty's own justification. So that no man needeth to doubt, but that those wars are grounded, upon her majesty's part, upon just and honourable causes, which have so just and honourable a prosecution; considering it is a much harder matter when a prince is entered into wars, to hold respect then, and not to be transported with passion, than to make moderate and just resolutions in the beginnings.

But

But now if a man look on the other part, it will appear that, rather, as it is to be thought, by the solicitation of traitorous subjects, which is the only poison and corruption of all honourable war between foreigners, or by the presumption of his agents and ministers, than by the proper inclination of that king, there hath been, if not plotted and practised, yet at the least comforted, conspiracies against her majesty's sacred person; which nevertheless God's goodness hath used and turned, to shew by such miraculous discoveries into how near and precious care and custody it hath pleased him to receive her majesty's life and preservation. But in the other point it is strange what a number of libellous and defamatory books and writings, and in what variety, with what art and cunning handled, have been allowed to pass through the world in all languages against her majesty and her government; sometimes pretending the gravity and authority of church stories to move belief; sometimes formed into remonstrances and advertisements of estate to move regard; sometimes presented as it were in tragedies of the persecutions of catholics to move pity; sometimes contrived into pleasant pasquils and satires to move sport: so as there is no shape whereinto these fellows have not transformed themselves; nor no humour nor affection in the mind of man to which they have not applied themselves; thereby to insinuate their untruths and abuses to the world. And indeed let a man look into them, and he shall find them the only triumphant lyes that ever were confuted by circumstances of time and place; confuted by contrariety in themselves, confuted by the witness of infinite persons that live yet, and have had particular knowledge of the matters; but yet avouched with such asseveration, as if either they were fallen into that strange disease of the mind, which a wise writer describeth in these words, *fingunt simul creduntque*; or as if they had received it as a principal precept and ordinance of their seminaries, *audacter calumniari, semper aliquid haeret*; or as if they were of the race which in old time were wont to help themselves with miraculous lyes. But when the cause of this is entered into, namely, that there passeth over out of this realm a number of eager and unquiet scholars, whom their own turbulent and humorous nature presseth out to seek their adventures abroad; and that, on the other side, they are nourished rather in listening after news and intelligences, and in whisperings, than in any commendable learning; and after a time, when either their necessitous estate, or their ambitious appetites importune them, they fall on devising how to do some acceptable service to that side which maintaineth them; so as ever when their credit waxeth cold with foreign princes, or that their pensions are ill paid, or some preferment is in sight at which they level, straightways out cometh a libel, pretending thereby to keep in life the party, which within the realm is contrary to the state, wherein they are as wise as he that thinketh to kindle a fire by blowing the dead ashes; when, I say, a man looketh into the cause and ground of this plentiful yield of libels, he will cease to marvel, considering the concurrence which is, as well in the nature of the seed, as in the travel of tilling and dressing; yea, and in the fitness of the season for the bringing up of those infectious weeds.

But, to verify the saying of our Saviour, *non est discipulus super magistrum*; as they have sought to deprave her majesty's government in herself, so have they not forgotten to do the same in her principal servants and counsellors; thinking, belike, that as the immediate investives against her majesty do best satisfy the malice of the foreigner, so the slander and calumny of her principal counsellors agreed

best with the humours of some malecontents within the realm; imagining also, that it was like they should be more scattered here, and freelier dispersed; and also should be less odious to those foreigners which were not merely partial and passionate, who have for the most part in detestation the traiterous libellings of subjects directly against their natural prince.

Amongst the rest in this kind, there hath been published this present year of 1592, a libel that giveth place to none of the rest in malice and untruths; though inferior to most of them in penning and stile; the author having chosen the vein of a Lucianist, and yet being a counterfeit even in that kind. This libel is intitled, *A declaration of the true causes of the great troubles presupposed to be intended against the realm of England*; and hath a semblance as if it were bent against the doings of her majesty's ancient and worthy counsellor the lord Burleigh; whose carefulness and pains her majesty hath used in her counsels and actions of this realm for these thirty-four years space, in all dangerous times, and amidst many and mighty practices; and with such success, as our enemies are put still to their paper-shot of such libels as these; the memory of whom will remain in this land, when all these libels shall be extinct and forgotten; according to the Scripture, *Memoria justi cum laudibus, at impiorum nomen putrescet*. But it is more than evident, by the parts of the same book, that the author's malice was to her majesty and her government, as may especially appear in this, that he charged not his lordship with any particular actions of his private life, such power had truth, whereas the libels made against other counsellors have principally insisted upon that part: but hath only wrested and detorted such actions of state, as in times of his service have been managed; and depraving them, hath ascribed and imputed to him the effects that have followed; indeed, to the good of the realm, and the honour of her majesty, though sometimes to the provoking of the malice, but abridging of the power and means of desperate and incorrigible subjects.

All which slanders, as his lordship might justly despise, both for their manifest untruths, and for the baseness and obscurity of the author; so nevertheless, according to the moderation which his lordship useth in all things, never claiming the privilege of his authority, when it is question of satisfying the world, he hath been content that they be not passed over altogether in silence; whereupon I have, in particular duty to his lordship, amongst others that do honour and love his lordship, and that have diligently observed his actions, and in zeal of truth, collected, upon the reading of the said libel, certain observations, not in form of a just answer, lest I should fall into the error whereof Solomon speaketh thus, *Answer not a fool in his own kind, lest thou also be like him*; but only to discover the malice, and to reprove and convict the untruths thereof.

The points that I have observed upon the reading of this libel, are these following.

- I. Of the scope or drift of the libeller.
- II. Of the present estate of this realm of England, whether it may be truly avouched to be prosperous or afflicted.
- III. Of the proceedings against the pretended catholics, whether they have been violent, or moderate, and necessary.
- IV. Of the disturbance of the quiet of Christendom, and to what causes it may be justly imputed.

V. Of the cunning of the libeller, in palliation of his malicious invective against her majesty and the state, with pretence of taxing only the actions of the lord Burleigh.

VI. Certain true general notes upon the actions of the lord Burleigh.

VII. Of divers particular untruths and abuses dispersed through the libel.

VIII. Of the height of impudency that these men are grown unto, in publishing and avouching untruths; with a particular recital of some of them for an assay.

I. Of the scope or drift of the libeller.

It is good advice, in dealing with cautelous and malicious persons, whose speech is ever at distance with their meanings, *non quid dixerint, sed quo spectarint, videndum*: a man is not to regard what they affirm, or what they hold; but what they would convey under their pretended discovery, and what turn they would serve. It soundeth strangely in the ears of an Englishman, that the miseries of the present state of England exceed them of former times whatsoever. One would straightway think with himself, doth this man believe what he saith? Or, not believing it, doth he think it possible to make us believe it? Surely, in my conceit, neither of both; but his end, no doubt, was to round the pope and the king of Spain in the ear, by seeming to tell a tale to the people of England. For such books are ever wont to be translated into divers languages; and, no doubt, the man was not so simple as to think he could persuade the people of England the contrary of what they taste and feel. But he thought he might better abuse the states abroad, if he directed his speech to them who could best convict him, and disprove him if he said untrue; so that as Livy saith in the like case, *Ætolos magis, coram quibus verba facerent, quam ad quos, pensi habere*; That the Ætolians, in their tale, did more respect those who did overhear them, than those to whom they directed their speech: so in this matter this fellow cared not to be counted a liar by all English, upon price of deceiving of Spain and Italy; for it must be understood, that it hath been the general practice of this kind of men many years, of the one side, to abuse the foreign estates, by making them believe that all is out of joint and ruinous here in England, and that there is great part ready to join with the invader; and on the other side, to make the evil subjects of England believe of great preparations abroad, and in great readiness to be put in act, and so to deceive on both sides: and this I take to be his principal drift. So again, it is an extravagant and incredible conceit, to imagine that all the conclusions and actions of estate which have passed during her majesty's reign, should be ascribed to one counsellor alone; and to such an one as was never noted for an imperious or over-ruling man; and to say, that though he carried them not by violence, yet he compassed them by device: there is no man of judgment that looketh into the nature of these times, but will easily descry that the wits of these days are too much refined for any man to walk invisible, or to make all the world his instruments; and therefore, no not in this point assuredly, the libeller spake as he thought; but this he foresaw, that the imputation of cunning doth breed suspicion, and the imputation of greatness and sway doth breed envy; and therefore finding where he was most wrong, and by whose policy and experience their plots were most crossed, the mark he shot at was to see whether he could heave at his lordship's authority, by making him suspected to the queen, or generally odious to the realm; knowing well enough for the one point, that there are not only jealous-

ties, but certain revolutions in princes minds: so that it is a rare virtue in the rarest princes, to continue constant to the end in their favours and employments. And knowing for the other point, that envy ever accompanieth greatness, though never so well deserved: and that his lordship hath always marched a round and a real course in service; and as he hath not moved envy by pomp and ostentation, so hath he never extinguished it by any popular or insinuating carriage of himself: and this no doubt was his second drift.

A third drift was, to assay if he could supplant and weaken, by this violent kind of libelling, and turning the whole imputation upon his lordship, his resolution and courage; and to make him proceed more cautelously, and not so thoroughly and strongly against them; knowing his lordship to be a politic man, and one that hath a great stake to lose.

Lastly, lest, while I discover the cunning and art of this fellow, I should make him wiser than he was, I think a great part of this book was passion; *difficile est tacere, cum doleas*. The humours of these men being of themselves eager and fierce, have, by the abortion and blating of their hopes, been blinded and enraged. And surely this book is, of all that sort that have been written, of the meanest workmanship; being fraught with sundry base scoffs, and cold amplifications, and other characters of despite; but void of all judgment or ornament.

II. Of the present estate of this realm of England, whether it may be truly accounted to be prosperous or afflicted.

The benefits of almighty God upon this land, since the time that in his singular providence he led as it were by the hand, and placed in the kingdom, his servant our queen Elizabeth, are such, as not in boasting, or in confidence of ourselves, but in praise of his holy name, are worthy to be both considered and confessed, yea, and registered in perpetual memory: notwithstanding, I mean not after the manner of a panegyric to extol the present time: it shall suffice only that those men, that through the gall and bitterness of their own heart have lost their taste and judgment, and would deprive God of his glory, and us of our senses, in affirming our condition to be miserable, and full of tokens of the wrath and indignation of God, be reproved.

If then it be true, that *nemo est miser, aut felix, nisi comparatus*; whether we shall, keeping ourselves within the compass of our own island, look into the memories of times past, or at this present time take a view of other states abroad in Europe, we shall find that we need not give place to the happiness either of ancestors or neighbours. For if a man weigh well all the parts of state and religion, laws, administration of justice, policy of government, manners, civility, learning and liberal sciences, industry and manual arts, arms and provisions of wars for sea and land, treasure, traffic, improvement of the soil, population, honour and reputation, it will appear that, taking one part with another, the state of this nation was never more flourishing.

It is easy to call to remembrance, out of histories, the kings of England which have in more ancient times enjoyed greatest happiness; besides her majesty's father and grandfather, that reigned in rare felicity, as is fresh in memory. They have been king Henry I. king Henry II. king Henry III. king Edward I. king Edward III. king Henry V. All which have been princes of royal virtue, great felicity, and famous memory. But it may be truly affirmed, without derogation

to any of these worthy princes, that whatsoever we find in libels, there is not to be found in the English chronicles, a king that hath, in all respects laid together, reigned with such felicity as her majesty hath done. For as for the first three Henries, the first came in too soon after a conquest; the second too soon after an usurpation; and the third too soon after a league, or barons war, to reign with security and contentation. King Henry I. also had unnatural wars with his brother Robert, wherein much nobility was consumed: he had therewithal tedious wars in Wales; and was not without some other seditions and troubles; as namely the great contention of his prelates. King Henry II. his happiness was much deformed by the revolt of his son Henry, after he had associated him, and of his other sons. King Henry III. besides his continual wars in Wales, was after forty four years reign unquieted with intricate commotions of his barons; as may appear by the mad parliament held at Oxford, and the acts thereupon ensuing. His son Edward I. had a more flourishing time than any of the other; came to his kingdom at ripe years, and with great reputation, after his voyage into the Holy Land, and was much loved and obeyed, contrived his wars with great judgment: first having reclaimed Wales to a settled allegiance, and being upon the point of uniting Scotland. But yet I suppose it was more honour for her majesty to have so important a piece of Scotland in her hand, and the same with such justice to render up, than it was for that worthy king to have advanced in such forwardness the conquest of that nation. And for king Edward III. his reign was visited with much sickness and mortality; so as they reckoned in his days three several mortalities; one in the 22d year, another in the 35th year, and the last in the 43d year of his reign; and being otherwise victorious and in prosperity, was by that only cross more afflicted, than he was by the other prosperities comforted. Besides, he entered hardly; and again, according to the verse, *cedebant ultima primis*, his latter times were not so prosperous. And for King Henry V. as his success was wonderful, so he wanted continuance; being extinguished after ten years reign in the prime of his fortunes.

Now for her majesty, we will first speak of the blessing of continuance, as that which wanted in the happiest of these kings; and is not only a great favour of God unto the prince, but also a singular benefit unto the people; for that sentence of the Scripture, *miseram natio cum multi sunt principes ejus*, is interpreted not only to extend to divisions and distractions in government, but also to frequent changes in succession: considering, that the change of a prince bringeth in many changes, which are harsh and unpleasant to a great part of the subjects. It appeareth then, that of the line of five hundred and fourscore years, and more, containing the number of twenty-two kings, God hath already prolonged her majesty's reign to exceed sixteen of the said two and twenty; and by the end of this present year, which God prosper, she shall attain to be equal with two more: during which time there have deceased four Emperors, as many French kings; twice so many bishops of Rome. Yea, every state in Christendom, except Spain, have received sundry successions. And for the king of Spain, he is waxed so infirm, and thereby so retired, as the report of his death serveth for every year's news: whereas her majesty, thanks be given to God, being nothing decayed in vigour of health and strength, was never more able to supply and sustain the weight of her affairs, and is, as far as standeth with the dignity of her majesty's royal state, continually to be seen, to the great comfort and heart-ease of her people.

Secondly,

2. Health. Secondly, we will mention the blessing of health: I mean generally of the people, which was wanting in the reign of another of these kings; which else deserved to have the second place in happiness, which is one of the great favours of God towards any nation. For as there be three scourges of God, war, famine, and pestilence; so are there three benedictions, peace, plenty, and health. Whereas therefore this realm hath been visited in times past with sundry kinds of mortalities, as pestilences, sweats, and other contagious diseases, it is so, that in her majesty's times, being of the continuance aforesaid, there was only, towards the beginning of her reign, some sickness, between June and February, in the city; but not dispersed into any other part of the realm, as was noted; which we call yet the great plague; because that though it was nothing so grievous and so sweeping as it hath been sundry times heretofore, yet it was great in respect of the health which hath followed since; which hath been such, especially of late years, as we began to dispute and move questions of the causes whereunto it should be ascribed, until such time as it pleased God to teach us that we ought to ascribe it only to his mercy, by touching us a little this present year, but with a very gentle hand; and such as it hath pleased him since to remove. But certain it is, for so many years together, notwithstanding the great peustering of people in houses, the great multitude of strangers, and the sundry voyages by seas, all which have been noted to be causes of pestilence, the health universal of the people was never so good.

3. Peace. The third blessing is that which all the politic and fortunate kings before recited have wanted; that is, peace: for there was never foreigner since her majesty's reign, by invasion or incursion of moment, that took any footing within the realm of England. One rebellion there hath been only, but such an one as was repressed within the space of seven weeks, and did not waste the realm so much as by the destruction or depopulation of one poor town. And for wars abroad, taking in those of Leith, those of Newhaven, the second expedition into Scotland, the wars of Spain, which I reckon from the year 86, or 87, before which time neither had the king of Spain withdrawn his ambassadors here residing; neither had her majesty received into protection the United Provinces of the Low-Countries, and the aid of France; they have not occupied in time a third part of her majesty's reign; nor consumed past two of any noble house; whereof France took one, and Flanders another; and very few besides of quality or appearance. They have scarce mowed down the overcharge of the people within the realm. It is therefore true, that the kings aforesaid, and others her majesty's progenitors, have been victorious in their wars, and have made many famous and memorable voyages and expeditions into sundry parts; and that her majesty, contrariwise, from the beginning, put on a firm resolution to content herself within those limits of her dominions which she received, and to entertain peace with her neighbour princes; which resolution she hath ever since, notwithstanding she hath had rare opportunities, just claims and pretences, and great and mighty means, sought to continue. But if this be objected to be the less honourable fortune; I answer, that ever amongst the heathen, who held not the expence of blood so precious as christians ought to do, the peaceable government of Augustus Cæsar was ever as highly esteemed as the victories of Julius his uncle; and that the name of *pater patriæ* was ever as honourable as that of *propagator imperii*. And this I add further, that during this inward peace of so many years in the actions of war before mentioned,

which her majesty, either in her own defence or in just and honourable aids, hath undertaken, the service hath been such as hath carried no note of a people, whose militia were degenerated through long peace; but hath every way answered the ancient reputation of the English arms.

The fourth blessing is plenty and abundance: and first for grain and all victuals, ⁴ Plenty and there cannot be more evident proof of the plenty than this; that whereas England ^{wealth.} was wont to be fed by other countries from the east, it sufficeth now to feed other countries; so as we do many times transport and serve sundry foreign countries: and yet there was never the like multitude of people to eat it within the realm. Another evident proof thereof may be, that the good yields of corn which have been, together with some toleration of vent, hath of late time invited and enticed men to break up more ground, and to convert it to tillage, than all the penal laws for that purpose made and enacted could ever by compulsion effect. A third proof may be, that the prices of grain and victual were never of late years more reasonable. Now for arguments of the great wealth in all other respects, let the points following be considered.

There was never the like number of fair and stately houses as have been built and set up from the ground since her majesty's reign; insomuch, that there have been reckoned in one shire that is not great, to the number of thirty three, which have been all new built within that time; and whereof the meanest was never built for two thousand pounds.

There were never the like pleasures of goodly gardens and orchards, walks, pools, and parks, as do adorn almost every mansion-house.

There was never the like number of beautiful and costly tombs and monuments which are erected in sundry churches, in honourable memory of the dead.

There was never the like quantity of plate, jewels, sumptuous moveables, and stuff, as now within the realm.

There was never the like quantity of waste and unprofitable ground, in need, reclaimed, and improved.

There was never the like husbanding of all sorts of grounds by fencing, manuring, and all kinds of good husbandry.

The towns were never better built nor peopled; nor the principal fairs and markets ever better customed or frequented.

The commodities and ease of rivers cut by hand, and brought into a new channel; of piers that have been built; of waters that have been forced and brought against the ground, were never so many.

There was never so many excellent artificers, nor so many new handy-crafts used and exercised; nor new commodities made within the realm; sugar, paper, glafs, copper, divers silks, and the like.

There was never such complete and honourable provison of horse, armour, weapons, ordnance of the war.

The fifth blessing hath been the great population and multitude of families in- ^{5.} Increase of created within her majesty's days: for which point I refer myself to the proclama- ^{people.} tions of restraint of building in London, the inhibition of inmates of sundry cities, the restraint of cottages by act of parliament, and sundry other tokens of record of the surcharge of people.

Besides these parts of a government, blessed from God, wherein the condition of ^{6.} Reforma- the people hath been more happy in her majesty's times, than in the times of her ^{tion in reli- progenitors,} gion.

progenitors, there are certain singularities and particulars of her majesty's reign; wherein I do not say, that we have enjoyed them in a more ample degree and proportion than in former ages, as it hath fallen out in the points before mentioned, but such as were in effect unknown and untasted heretofore. As first, the purity of religion, which is a benefit inestimable, and was in the time of all former princes, until the days of her majesty's father of famous memory, unheard of. Out of which purity of religion have since ensued, beside the principal effect of the true knowledge and worship of God, three points of great consequence unto the civil estate.

The first I
len in sta-
be and in
to be the pe-
ret of reli-
gion.

One, the stay of a mighty treasure within the realm, which in foretimes was drawn forth to Rome. Another, the dispersing and distribution of those revenue, amounting to a third part of the land of the realm, and that of the goodliest and the richest sort, which heretofore was unprofitably spent in monasteries, into such hands as by whom the realm receiveth, at this day, service and strength; and many great houses have been set up and augmented. The third, the managing and enfranchising of the regal dignity from the recognition of a foreign superior. All which points, though begun by her father, and continued by her brother, were yet nevertheless, after an eclipse or intermission, restored and re-established by her majesty's self.

Secondly of
money.

Secondly, the fineness of money: for as the purging away of the dross of religion, the heavenly treasure, was common to her majesty with her father and her brother, so the purging of the base money, the earthly treasure, hath been altogether proper to her majesty's own times; whereby our moneys bearing the natural estimation of the stamp or mark, both every man resteth assured of his own value, and free from the losses and deceits which fall out in other places upon the rising and falling of moneys.

The might of
the navy.

Thirdly, the might of the navy, and augmentation of the shipping of the realm; which, by politic constitutions for maintenance of fishing, and the encouragement and assistance given to the undertakers of new discoveries and trades by sea, is so advanced, as this island is become, as the natural site thereof deserveth, the lady of the sea.

Now, to pass from the comparison of time to the comparison of place, we may find in the states abroad cause of pity and compassion in some; but of envy or emulation in none; our condition being, by the good favour of God, not inferior to any.

Comparison
of the state of
England & of
the Low Coun-
tries.

The kingdom of France, which, by reason of the feat of the empire of the west, was wont to have the precedence of the kingdoms of Europe, is now fallen into those calamities, that, as the prophet saith, *From the crown of the head to the sole of the feet, there is no whole place.* The divisions are so many, and so intricate, of protestants and catholics, royalists and leaguers, Bourbonists and Lorainists, patriots and Spanish; as it seemeth God hath some great work to bring to pass upon that nation: yea, the nobility divided from the third estate, and the towns from the field. All which miseries, truly to speak, have been wrought by Spain and the Spanish faction.

The Low Coun-
tries.

The Low Countries, which were, within the age of a young man, the richest, the best peopled, and the best built plots of Europe, are in such estate, as a country is like to be in, that hath been the seat of thirty years war: and although the sea-
provinces

provinces be rather increased in wealth and shipping than otherwise; yet they cannot but mourn for their distraction from the rest of their body.

The Kingdom of Portugal, which of late times, through their merchandising and places in the East Indies, was grown to be an opulent kingdom, is now at the last, after the unfortunate journey of Afric, in that state as a country is like to be that is reduced under a foreigner by conquest; and such a foreigner as hath his competitor in title, being a natural Portugal and no stranger; and having been once in possession, yet in life; whereby his jealousy must necessarily be increased, and through his jealousy their oppression: which is apparent, by the carrying of many noble families out of their natural countries to live in exile, and by putting to death a great number of noblemen, naturally born to have been principal governors of their countries. These are three afflicted parts of Christendom; the rest of the states enjoy either prosperity or tolerable condition. Portugal.

The kingdom of Scotland, though at this present, by the good regimen and wise proceeding of the king, they enjoy good quiet; yet since our peace it hath passed through no small troubles, and remaineth full of boiling and swelling humours; but like, by the maturity of the said king every day increasing, to be repressed. Prosperous,
as Scotland.

The kingdom of Poland is newly recovered out of great wars about an ambiguous election. And besides, is a state of that composition, that their king being elective, they do commonly choose rather a stranger than one of their own country: a great exception to the flourishing estate of any kingdom. Poland.

The kingdom of Swedeland, besides their foreign wars upon their confines, the Muscovites and the Danes, hath been also subject to divers intestine tumults and mutations, as their stories do record. Sweden.

The kingdom of Denmark hath had good times, especially by the good government of the late king, who maintained the profession of the gospel; but yet greatly giveth place to the kingdom of England, in climate, wealth, fertility, and many other points both of honour and strength. Denmark.

The estates of Italy, which are not under the dominion of Spain, have had peace equal in continuance with ours, except in regard to that which hath passed between them and the Turk, which hath sorted to their honour and commendation; but yet they are so bridled and over-awed by the Spaniard, that possesseth the two principal members thereof, and that in the two extreme parts, as they be like quillets of freehold, being intermixed in the midst of a great honour or lordship; so as their quiet is intermingled, not with jealousy alone, but with restraint. Italy.

The states of Germany have had for the most part peaceable times; but yet they yield to the state of England; not only in the great honour of a great kingdom, they being of a mean stile and dignity, but also in many other respects both of wealth and policy. Germany.

The state of Savoy having been in the old duke's time governed in good prosperity, hath since (notwithstanding their new great alliance with Spain, whereupon they waxed so insolent, as to design to snatch up some piece of France, after the dishonourable repulse from the siege of Geneva) been often distressed by a particular gentleman of Dauphiny; and at this present day the duke feeleth, even in Piedmont beyond the mountains, the weight of the same enemy; who hath lately shut up his gates and common entries between Savoy and Piedmont. Savoy.

So as hitherto I do not see but that we are as much bound to the mercies of God as any other nation; considering that the fires of dissension and oppression in some parts of Christendom, may serve us for lights to shew us our happiness; and the good estates of other places, which we do congratulate with them for, is such, nevertheless, as doth not stain and exceed ours; but rather doth still leave somewhat, wherein we may acknowledge an ordinary benediction of God.

Spain.

Lastly, we do not much emulate the greatness and glory of the Spaniards; who having not only excluded the purity of religion, but also fortified against it, by their device of the inquisition, which is a bulwark against the entrance of the truth of God; having, in recompence of their new purchase of Portugal, lost a great part of their ancient patrimonies of the Low Countries, being of far greater commodity and value, or at the least holding part thereof in such sort as most of their other revenues are spent there upon their own; having lately, with much difficulty, rather smoothed and skinned over, than headed and extinguished the commotions of Aragon; having rather sowed troubles in France, than reaped assured fruit thereof unto themselves; having from the attempt of England received scorn and disreputation; being at this time with the states of Italy rather suspected than either loved or feared; having in Germany, and elsewhere, rather much practice, than any sound intelligence or amity; having no such clear succession as they need object, and reproach the uncertainty thereof unto another nation; have in the end won a reputation rather of ambition than justice; and, in the pursuit of their ambition, rather of much enterprising than of fortunate atchieving; and in their enterprising, rather of doing things by treasure and expence, than by forces and valour.

Now that I have given the reader a taste of England respectively, and in comparison of the times past, and of the states abroad, I will descend to examine the libeller's own divisions, whereupon let the world judge how easily and clean this ink, which he hath cast in our faces, is washed off.

The first branch of the pretended calamities of England, is the great and wonderful confusion which, he saith, is in the state of the church; which is subdivided again into two parts: the one, the prosecutions against the catholics; the other, the discords and controversies amongst ourselves: the former of which two parts I have made an article by itself; wherein I have set down a clear and simple narration of the proceedings of state against that sort of subjects; adding this by the way, that there are two extremities in state concerning the causes of faith and religion; that is to say, the permission of the exercises of more religions than one, which is a dangerous indulgence and toleration; the other is the entering and sifting into mens consciences when no overt scandal is given, which is a rigorous and straiten'd inquisition; and I avouch the proceedings towards the pretended catholics to have been a mean between these two extremities, referring the demonstration thereof unto the aforesaid narration in the articles following.

Concerning
the division
of the
church.

Touching the division in our church, the libeller affirmeth that the protestantical Calvinism, for so it pleaseth him with very good grace to term the religion with us established, is grown contemptible, and detested of idolatry, heresy, and many other superstitious abuses, by a purified sort of preachers of the same gospel. And this contention is yet grown to be more intricate, by reason of a third kind of gospellers called Brownists: who, being directed by the great fervour of the unholy ghost, do expressly affirm, that the protestantical church of England is not

gathered

gathered in the name of Christ, but of Antichrist; and that if the prince or magistrate under her do refuse or defer to reform the church, the people may, without her consent, take the reformation into their own hands: and hereto he addeth the fanatical pageant of Hacket. And this is the effect of this accusation in this point.

For answer whereunto, first, it must be remembered that the church of God hath been in all ages subject to contentions and schisms: the tares were not sown but where the wheat was sown before. Our Saviour Christ delivered it for an ill note to have outward peace; saying, *when a strong man is in possession of the house, meaning the devil, all things are in peace.* It is the condition of the church to be ever under trials; and there are but two trials; the one of persecution, the other of scandal and contention; and when the one ceaseth, the other succeedeth: nay, there is scarce any one epistle of St. Paul's unto the churches, but containeth some reprehension of unnecessary and schismatical controversies. So likewise in the reign of Constantine the great, after the time that the church had obtained peace from persecution, straight entered sundry questions and controversies, about no less matters than the essential parts of the faith, and the high mysteries of the Trinity. But reason teacheth us, that in ignorance and implied belief it is easy to agree, as colours agree in the dark: or if any country decline into atheism, then controversies wax dainty, because men do think religion scarce worth the falling out for; so as it is weak divinity to account controversies an ill sign in the church.

It is true that certain men, moved with an inconsiderate detestation of all ceremonies or orders, which were in use in the time of the Roman religion, as if they were without difference superstitious or polluted, and led with an affectionate imitation of the government of some protestant churches in foreign states; have fought by books and preaching, indiscreetly, and sometimes undutifully, to bring in an alteration in the external rites and policy of the church; but neither have the grounds of the controversies extended unto any point of faith; neither hath the pressing and prosecution exceeded, in the generality, the nature of some inferior contempts: so as they have been far from heresy and sedition, and therefore rather offensive than dangerous to the church or state.

And as for those which we call Brownists, being, when they were at the most, a very small number of very silly and base people, here and there in corners dispersed, they are now, thanks be to God, by the good remedies that have been used, suppressed and worn out; so as there is scarce any news of them. Neither had they been much known at all, had not Brown their leader written a pamphlet, wherein, as it came into his head, he inveighed more against logic and rhetoric, than against the state of the church, which writing was much read; and had not also one Barrow, being a gentleman of a good house, but one that lived in London at ordinaries, and there learned to argue in table-talk, and so was very much known in the city and abroad, made a leap from a vain and libertine youth, to a preciseness in the highest degree; the strangeness of which alteration made him very much spoken of; the matter might long before have breathed out. And here I note an honesty and discretion in the libeller, which I note no where else; in that he did forbear to lay to our charge the sect of the Family of love; for, about twelve years since, there was creeping in, in some secret places of the realm, indeed a very great heresy, derived from the Dutch, and named as was before said; which since, by the good blessing of God, and by the good strength of our church,

is banished and extinct. But so much we see, that the diseases wherewith our church hath been visited, whatsoever these men say, have either not been malign and dangerous, or else they have been as blisters in some small ignoble part of the body, which have soon after fallen and gone away. For such also was the phrenetical and fanatical, for I mean not to determine it, attempt of Hacket, who must needs have been thought a very dangerous heretic, that could never get but two disciples; and those, as it should seem, perished in their brain; and a dangerous commotioner, that in so great and populous a city as London is, could draw but those same two fellows, whom the people rather laughed at as a may-game, than took any heed of what they did or said: so as it was very true that an honest poor woman said when she saw Hacket out of a window pass to his execution; said she to herself, "It was foretold that in the latter days there should come those that have deceived many; but in faith thou hast deceived but few."

But it is a manifest untruth which the libeller setteth down, that there hath been no punishment done upon those which in any of the foresaid kinds have broken the laws, and disturbed the church and state; and that the edge of the law hath been only turned upon the pretended catholics: for the examples are very many, where, according to the nature and degree of the offence, the correction of such offenders hath not been neglected.

These be the great confusions whereof he hath accused our church, which I refer to the judgment of an indifferent and understanding person, how true they be: my meaning is not to blanch or excuse any fault of our church; nor on the other side, to enter into commemoration, how flourishing it is in great and learned divines, or painful and excellent preachers; let men have the reproof of that which is amiss, and God the glory of that which is good. And so much for the first branch.

Concerning
the foreign
enemies of
this state.

In the second branch, he maketh great musters and shews of the strength and multitude of the enemies of this state; declaring in what evil terms and correspondence we stand with foreign states, and how desolate and destitute we are of friends and confederates; doubting belike, how he should be able to prove and justify his assertion touching the present miseries, and therefore endeavouring at the least to maintain, that the good estate which we enjoy, is yet made somewhat bitter by reason of many terrors and fears. Whereupon entering into consideration of the security, wherein not by our own policy, but by the good providence and protection of God, we stand at this time, I do find it to be a security of that nature and kind, which Iphicrates the Athenian did commend; who being a commissioner to treat with the state of Sparta upon conditions of peace, and hearing the other side make many propositions touching security, interrupted them and told them, **there was but one manner of security whereupon the Athenians could rest;** which was, if the duties of the Lacedaemonians could make it plain unto them, that, after these and these things parted withal, the Lacedaemonians should not be able to hurt them though they would. So it is with us, as we have not justly provoked the hatred or enmity of any other state, so howsoever that be, I know not at this time the enemy that hath the power to offend us though he had the will.

And whether we have given just cause of quarrel or offence, it shall be afterwards touched in the fourth article, touching the true causes of the disturbance of the quiet of Christendom, as far as it is fit to justify the actions of so high a prince

prince upon the occasion of such a libel as this. But now concerning the power and forces of any enemy, I do find that England hath sometimes apprehended with jealousy the confederation between France and Scotland; the one being upon the same continent that we are, and breeding a foldier of puiffance and courage, not much differing from the English: the other a kingdom very opulent, and thereby able to sustain wars, though at very great charge; and having a brave nobility; and being a near neighbour. And yet of this conjunction there never came any offence of moment: but Scotland was ever rather used by France as a diversion of an English invasion upon France, than as a commodity of a French invasion upon England. I confess also, that since the unions of the kingdom of Spain, and during the time the kingdom of France was in his entire, a conjunction of those two potent kingdoms against us might have been of some terror to us. But now it is evident, that the state of France is such as both those conjunctions are become impossible: it resteth that either Spain with Scotland should offend us, or Spain alone. For Scotland, thanks be to God, the amity and intelligence is so sound and secret between the two crowns, being strengthened by consent in religion, nearness of blood, and continual good offices reciprocally on either side, as the Spaniard himself, in his own plot, thinketh it easier to alter and overthrow the present state of Scotland, than to remove and divide it from the amity of England. So as it must be Spain alone that we should fear, which should seem, by reason of its spacious dominions, to be a great overmatch. The conceit whereof maketh me call to mind the resemblance of an ancient writer in physic; who, labouring to persuade that a physician should not doubt sometimes to purge his patient, though he seem very weak, entereth into a distinction of weakness; and saith, there is a weakness of spirit, and a weakness of body; the latter whereof he compareth unto a man that were otherwise very strong, but had a great pack on his neck, so great as made him double again, so as one might thrust him down with his finger: which similitude and distinction both may be fitly applied to matter of state; for some states are weak through want of means, and some weak through excess of burden; in which rank I do place the state of Spain, which having out-compassed itself in embracing too much; and being itself but a barren seed-plot of soldiers, and much decayed and exhausted of men by the Indies, and by continual wars; and as to the state of their treasure, being indebted and engaged before such times as they waged so great forces in France, and therefore much more since, is not in brief an enemy to be feared by a nation seated, manned, furnished, and policed as is England.

Neither is this spoken by guess, for the experience was substantial enough, and of fresh memory in the late enterprise of Spain upon England: what time all that goodly shipping, which in that voyage was consumed, was complete; what time his forces in the Low-Countries were also full and entire, which now are wasted to a fourth part; what time also he was not intangled with the matters of France, but was rather like to receive assistance than impediment from his friends there, in respect of the great vigour wherein the league then was, while the duke of Guise then lived; and yet nevertheless this great preparation passed away like a dream. The invincible navy neither took any one barque of ours, neither yet once offered to land; but after they had been well beaten and chafed, made a perambulation about the northern seas; ennobling many coasts with wrecks of mighty ships; and so returned home with greater derision than they set forth with expectation.

So

So as we shall not need much confederacies and succours, which he saith we want for breaking of the Spanish invasion; no, though the Spaniards should settle in Britain, and supplant the French, and get some port-towns into their hands there, which is yet far off, yet shall he never be so commotionously fainted to annoy us, as if he had kept the Low-Countries: and we shall rather fear him as a wrangling neighbour, that may trespass now and then upon some straggling ships of ours, than as an invader. And as for our confederacies, God hath given us both means and minds to tender and relieve the states of others: and therefore our confederacies are rather of honour than such as we depend upon. And yet nevertheless the apostates and huguenots of France on the one part, for so he termeth the whole nobility in a manner of France, among the which a great part is of his own religion; which maintain the clear and unblemished title of their lawful and natural king against the seditious populace, and the beer-brewers and basket-makers of Holland and Zealand, as he also terms them, on the other, have almost banded away between them all the duke of Parma's forces: and I suppose the very mines of the Indies will go low, or ever the one be ruined, or the other recovered. Neither again desire we better confederacies and leagues than Spain itself hath provided for us: *Non enim verbis foedera confirmantur, sed ipsam utilitatibus*. We know to how many states the king of Spain is odious and suspected; and for ourselves we have incensed none by our injuries, nor made any jealous of our ambition: these are in rules of policy the firmest contracts.

Let thus much be said in answer of the second branch, concerning the number of exterior enemies: wherein my meaning is nothing less than to attribute our felicity to our policy; or to nourish ourselves in the humour of security. But I hope we shall depend upon God and be vigilant; and then it will be seen to what end these false alarms will come.

In the third branch of the miseries of England, he taketh upon him to play the prophet, as he hath in all the rest played the poet; and will needs divine or prognosticate the great troubles whereunto this realm shall fall after her majesty's times; as if he that hath so singular a gift in lying of the present time and times past, had nevertheless an extraordinary grace in telling truth of the time to come; or, as if the effect of the pope's curses of England were upon better advice adjourned to those days. It is true, it will be misery enough for this realm, whensoever it shall be, to lose such a sovereign: but for the rest, we must repose ourselves upon the good-pleasure of God. So it is an unjust charge in the libeller to impute an accident of state to the fault of the government.

It pleaseth God sometimes, to the end to make men depend upon him the more, to hide from them the clear sight of future events; and to make them think that full of uncertainties which proveth certain and clear: and sometimes, on the other side, to cross mens expectations, and to make them full of difficulty and perplexity in that which they thought to be easy and assured. Neither is it any new thing for the titles of succession in monarchies to be at times less or more declared. King Sebastian of Portugal, before his journey into Afric, declared no successor. The cardinal, though he were of extreme age, and were much importuned by the king of Spain, and knew directly of six or seven competitors to that crown, yet he rather established I know not what interims, than decided the titles, or designed any certain successor. The dukedom of Ferrara is at this day, after the death of the prince that now liveth, uncertain in the point of succession: the kingdom of
Scotland

Scotland hath declared no successor. Nay, it is very rare in hereditary monarchies, by any act of state, or any recognition or oath of the people in the collateral line, to establish a successor. The duke of Orleans succeeded Charles VIII. of France, but was never declared successor in his time. Monsieur d'Anguleme also succeeded him, but without any designation. Sons of kings themselves oftentimes, through desire to reign and to prevent their time, wax dangerous to their parents: how much more cousins in a more remote degree? It is lawful, no doubt, and honourable, if the case require, for princes to make an establishment: but, as it was said, it is rarely practised in the collateral line. Trajan, the best emperor of Rome, of an heathen, that ever was, at what time the emperors did use to design successors, not so much to avoid the uncertainty of succession, as to the end, to have *participes curarum* for the present time, because their empire was so vast; at what time also adoptions were in use, and himself had been adopted; yet never designed a successor, but by his last will and testament, which also was thought to be suborned by his wife Plotina in the favour of her lover Adrian.

You may be sure that nothing hath been done to prejudice the right; and there can be but one right. But one thing I am persuaded of, that no king of Spain, nor bishop of Rome, shall umpire, or promote any beneficiary, or feodatory king, as they designed to do; even when the Scots queen lived, whom they pretended to cherish. I will not retort the matter of succession upon Spain, but use that modesty and reverence, that belongeth to the majesty of so great a king, though an enemy. And so much for this third branch.

The fourth branch he maketh to be touching the overthrow of the nobility and the oppression of the people: wherein though he may perchance abuse the simplicity of any foreigner; yet to an Englishman, or any that heareth of the present condition of England, he will appear to be a man of singular audacity, and worthy to be employed in the defence of any paradox. And surely if he would needs have defaced the general state of England, at this time, he should in wisdom rather have made some frierly declamation against the excess of superfluity and delicacy of our times, than to have insisted upon the misery and poverty and depopulation of the land; as may sufficiently appear by that which hath been said.

But nevertheless, to follow this man in his own steps: first, concerning the nobility; it is true, that there have been in ages past, noblemen, as I take it, both of greater possessions and of greater command and sway than any are at this day. One reason why the possessions are less, I conceive to be, because certain sumptuous veins and humours of expence, as apparel, gaming, maintaining of a kind of followers, and the like, do reign more than they did in times past. Another reason is, because noblemen now-a-days do deal better with their younger sons than they were accustomed to do heretofore, whereby the principal house receiveth many abatements. Touching the command, which is not indeed so great as it hath been, I take it rather to be a commendation of the time, than otherwise: for men were wont factiously to depend upon noblemen, whereof ensued many partialities and divisions, besides much interruption of justice, while the great ones did seek to bear out those that did depend upon them. So as the kings of this realm, finding long since that kind of commandment in noblemen unsafe unto their crown, and inconvenient unto their people, thought meet to restrain the same by provision of laws; whereupon grew the statute of retainers; so as men now depend upon the prince and the laws, and upon no other: a mat-

Concerning
the state of
the nobility.

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ter which hath also a congruity with the nature of the time, as may be seen in other countries; namely, in Spain, where their grandees are nothing so potent and so absolute as they have been in times past. But otherwise, it may be truly affirmed, that the rights and preeminencies of the nobility were never more duly and exactly preserved unto them, than they have been in her majesty's time; the precedence of knights given to the younger sons of barons; no *subpoenas* awarded against the nobility out of the chancery, but letters; no answer upon oath, but upon honour: besides a number of other privileges in parliament, court and country. So likewise for the countenance of her majesty and the state, in lieutenantancies, commissions, offices, and the like, there was never a more honourable and graceful regard had of the nobility; neither was there ever a more faithful remembrancer and exacter of all these particular preeminencies unto them; nor a more diligent searcher and register of their pedigrees, alliances, and all memorials of honour, than that man, whom he chargeth to have overthrown the nobility; because a few of them by immoderate expence are decayed, according to the humour of the time, which he hath not been able to resist, no not in his own house. And as for attainders, there have been in thirty five years but five of any of the nobility, whereof but two came to execution; and one of them was accompanied with restitution of blood in the children: yea all of them, except Westmoreland, were such, as, whether it were by favour of law or government, their heirs have, or are like to have, a great part of their possessions. And so much for the nobility.

Touching the oppression of the people, he mentioneth four points.

1. The consumption of people in the wars.
2. The interruption of traffick.
3. The corruption of justice.
4. The multitude of taxations.

Concerning the state of the common subject.

Unto all which points there needeth no long speech. For the first, thanks be to God, the benediction of *Crescite et Multiplicamini*, is not so weak upon this realm of England, but the population thereof may afford such loss of men as were sufficient for the making our late wars, and were in a perpetuity, without being seen either in city or country. We read, that when the Romans did take cense of their people, whereby the citizens were numbered by the poll in the beginning of a great war; and afterwards again at the ending, there sometimes wanted a third part of the number: but let our muster books be perused, those, I say, that certify the number of all fighting men in every shire, of *vicesimo* of the queen; at what time, except a handfull of soldiers in the Low-Countries, we expended no men in the wars; and now again, at this present time, and there will appear small diminution. There be many tokens in this realm rather of press and surcharge of people, than of want and depopulation, which were before recited. Besides, it is a better condition of inward peace to be accompanied with some exercise of no dangerous war in foreign parts, than to be utterly without apprenticeship of war, whereby people grow stimate and unpractised when occasion shall be. And it is no small strength unto the realm, that in these wars of exercise and not of peril, so many of our people are trained, and so many of our nobility and gentlemen have been made excellent leaders both by sea and land. As for that he objecteth, we have no provision for soldiers at their return; though that point hath not been altogether neglected, yet I wish with all my heart, that it were more ample than it is; though I have read and

and heard, that in all estates, upon casheering and disbanding of soldiers, many have endured necessity.

For the stopping of traffick, as I referred myself to the muster-books for the first, so I refer myself to the custom-books upon this, which will not lye, and do make demonstration of no abatement at all in these last years, but rather of rising and increase. We know of many in London and other places that are within a small time greatly come up and made rich by merchandising: and a man may speak within his compals, and affirm, that our prizes by sea have countervailed any prizes upon us.

And as to the justice of this realm, it is true, that cunning and wealth have bred many suits and debates in law. But let those points be considered: the integrity and sufficiency of those which supply the judicial places in the queen's courts; the good laws that have been made in her majesty's time against informers and promoters, and for the bettering of trials; the example of severity which is used in the Star-Chamber, in oppressing forces and frauds; the diligence and stoutness that is used by justices of assizes, in encountering all countenancing and bearing of causes in the country by their authorities and wisdom; the great favours that have been used towards copy-holders and customary tenants, which were in ancient times merely at the discretion and mercy of the lord, and are now continually relieved from hard dealing, in chancery and other courts of equity: I say, let these and many other points be considered, and men will worthily conceive an honourable opinion of the justice of England.

Now to the points of levies and distributions of money, which he calleth exactions. First, very coldly, he is not abashed to bring in the gathering for Paul's steeple and the lottery trifles: whereof the former, being but a voluntary collection of that men were freely disposed to give, never grew to so great a sum as was sufficient to finish the work for which it was appointed: and so I imagine, it was converted into some other use; like to that gathering which was for the fortifications of Paris; save that the gathering for Paris came to a much greater, though, as I have heard, no competent sum. And for the lottery, it was but a novelty devised and followed by some particular persons, and only allowed by the state, being as a gain of hazard: wherein if any gain was, it was because many men thought scorn, after they had fallen from their greater hopes, to fetch their odd money. Then he mentioneth loans and privy seals: wherein he sheweth great ignorance and indiscretion, considering the payments back again have been very good and certain, and much for her majesty's honour. Indeed, in other princes times it was not wont to be so. And therefore, though the name be not so pleasant, yet the use of them in our times have been with small grievance. He reckoneth also new customs upon cloths, and new imposts upon wines. In that of cloths he is deceived; for the ancient rate of custom upon cloths was not raised by her majesty, but by queen Mary, a catholic queen: and hath been commonly continued by her majesty; except he mean the computation of the odd yards, which in strict duty was ever answerable, though the error were but lately looked into, or rather the toleration taken away. And to that of wines, being a foreign merchandise, and but a delicacy, and of those which might be forborn, there hath been some increase of imposition, which can rather make the price of wine higher, than the merchant poorer. Lastly, touching the number of subsidies, it is true, that her majesty, in respect of the great charges of her wars, both by sea and land,

against such a lord of treasure as is the king of Spain; having for her part no Indies nor mines, and the revenues of the crown of England being such, as they less grate upon the people than the revenues of any crown or state in Europe, hath, by the assent of parliament, according to the ancient customs of this realm, received divers subsidies of her people, which as they have been employed upon the defence and preservation of the subject, not upon excessive buildings, nor upon immoderate donatives, nor upon triumphs and pleasures; or any the like veins of dissipation of treasure, which have been familiar to many kings: so have they been yielded with great good-will and cheerfulness, as may appear by other kinds of benevolence, presented to her likewise in parliament; which her majesty nevertheless hath not put in use. They have been taxed also and assessed with a very light and gentle hand; and they have been spared as much as may be, as may appear in that her majesty now twice, to spare the subject, hath sold of her own lands. But he that shall look into other countries, and consider the taxes, and talliages, and impositions, and assizes, and the like, that are every where in use, will find that the Englishman is the most master of his own valuation, and the least bitten in his purse of any nation of Europe. Nay even at this instant in the kingdom of Spain, notwithstanding the pioneers do still work in the Indian mines, the Jesuits most play the pioneers, and mine into the Spaniards purses; and, under the colour of a ghostly exhortation, contrive the greatest exaction that ever was in any realm.

Thus much, in answer of these calumniation, I have thought good to note touching the present state of England; which state is such, that whosoever hath been an architect in the frame thereof, under the blessing of God, and the virtues of our sovereign, needed not to be ashamed of his work.

III. Of the proceedings against the pretended catholics, whether they have been violent, or moderate and necessary.

I find her majesty's proceedings generally to have been grounded upon two principles: the one,

That consciences are not to be forced, but to be won and reduced by the force of truth, by the aid of time, and the use of all good means of instruction or persuasion: the other,

That causes of conscience when they exceed their bounds, and prove to be matter of faction, lose their nature; and that sovereign princes ought distinctly to punish the practice or contempt, though coloured with the pretences of conscience and religion.

According to these two principles, her majesty, at her coming to the crown, utterly disliking of the tyranny of the church of Rome, which had used by terror and rigour to seek commandment over mens faiths and consciences; although, as a prince of great wisdom and magnanimity, she suffered but the exercise of one religion, yet her proceedings towards the papists were with great lenity, expecting the good effects which time might work in them.

And therefore her majesty revived not the laws made in 28, and 35, of her father's reign, whereby the oath of supremacy might have been offered at the king's pleasure to any subject, though he kept his conscience never so modestly to himself; and the refusal to take the same oath, without farther circumstance, was made treason: but contrariwise, her majesty not liking to make windows into mens hearts and secret thoughts, except the abundance of them did overflow into overt
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and exprefs acts and affirmations, tempered her law fo, as it restraineth only manifelt difobedience in impugning and impeaching advifedly and ambitioufly her majefty's fupreme power, and maintaining and extolling a foreign jurifdiction. And as for the oath, it was altered by her majefty into a more grateful form; the harfhnefs of the name, and appellation of fupreme head was removed; and the penalty of the refusal thereof turned into a difablement to take any promotion, or to exercife any charge; and yet that with a liberty of being reverted therein, if any man fhall accept thereof during his life.

But after many years toleration of a multitude of factious papifts, when Pius Quintus had excommunicated her majefty, and the bill of excommunication was publifhed in London, whereby her majefty was in a fort proferibed, and all her fubjects drawn upon pain of damnation from her obedience; and that thereupon, as upon a principal motive or preparative, followed the rebellion in the north; yet notwithstanding, becaufe many of thofe evil humours were by that rebellion partly purged, and that fhe feared at that time no foreign invasion, and much lefs the attempts of any within the realm not backed by fome foreign fuccours from without; fhe contented herfelf to make a law againft that fpecial cafe of bringing in, or publifhing of bulls or the like instruments; whereunto was added a prohibition, not upon pain of treason, but of an inferior degree of punifhment, againft bringing in of *Agnus Dei's*, hallowed beads, and fuch other merchandife of Rome, as are well known not to be any effential part of the Roman religion, but only to be ufed in practice as love-tokens, to inchant and bewitch the peoples affections from their allegiance to their natural fovereign. In all other points her majefty continued her former lenity.

But when, about the twentieth year of her reign, fhe had difcovered in the king of Spain an intention to invade her dominions, and that a principal point of the plot was to prepare a party within the realm that might adhere to the foreigner; and that the feminaries began to bloffom and to fend forth daily priests and profefled men, who fhould by vow, taken at fhrift, reconcile her fubjects from her obedience; yea, and bind many of them to attempt againft her majefty's f acred perfon; and that, by the poifon they fpread, the humours of moft papifts were altered, and that they were no more papifts in cuftom, but papifts in treasonable faction: then were there new laws made for the punifhment of fuch as fhould fubmit themfelves to reconcilements or renunciations of obedience. For it is to be underftood, that this manner of reconciliation in confeffion, is of the fame nature and operation that the bull itfelf was of, with this only difference, that whereas the bull aifoiled the fubjects from their obedience at once, the other doth it one by one. And therefore it is both more fecret, and more infinuative into the confcience, being joined with no lefs matter than an abfolution from mortal fin. And becaufe it was a treason carried in the clouds, and in wonderful fecret, and came feldom to light; and that there was no prefumption thereof fo great as the recufants to come to divine fervice, becaufe it was fet down by their decrees, that to come to church before reconciliation, was to live in fchifm; but to come to church after reconciliation, was abfolutely heretical and damnable: therefore there were added new laws, containing a punifhment pecuniary againft the recufants, not to enforce confciences, but to enfeeble thofe of whom it refted indifferent and ambiguous, whether they were reconciled or no? For there is no doubt, but if the law of recufancy, which is challenged to be fo extreme and rigorous, were thus

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qualified, that any recusant that shall voluntarily come in and take his oath, that he or she were never reconciled, should immediately be discharged of the penalty and forfeiture of the law; they would be so far from liking well of that mitigation, as they would cry out it was made to intrap them. And when, notwithstanding all this provision, this poison was dispersed so secretly, as that there were no means to stay it, but to restrain the merchants that brought it in; then was there lastly added a law, whereby such seditious priests of the new erection were exiled; and those that were at that time within the land shipped over, and so commanded to keep hence upon pain of treason.

This hath been the proceeding with that sort, though intermingled not only with sundry examples of her majesty's grace towards such as in her wisdom she knew to be papists in conscience, and not in faction; but also with an extraordinary mitigation towards the offenders in the highest degree convicted by law, if they would protest, that in case this realm should be invaded with a foreign army, by the pope's authority, for the catholic cause, as they term it, they would take part with her majesty, and not adhere to her enemies.

And whereas he saith no priest dealt in matter of state, Ballard only excepted; it appeareth by the records of the confession of the said Ballard, and sundry other priests, that all priests at that time generally were made acquainted with the invasion then intended, and afterwards put in act; and had received instructions not only to move an expectation in the people of a change, but also to take their vows and promises in shrift to adhere to the foreigner; insomuch that one of their principal heads vaunted himself in a letter of the device, saying, that it was a point the council of England would never dream of, who would imagine that they should practise with some nobleman to make him head of their faction; whereas they took a course only to deal with the people, and them so severally, as any one apprehended should be able to appeal no more than himself, except the priests, who he knew would reveal nothing that was uttered in confession: so innocent was this princely priestly function, which this man taketh to be but a matter of conscience, and thinketh it reason it should have free exercise throughout the land.

IV. Of the disturbance of the quiet of Christendom; and to what causes it may be justly assigned.

It is indeed a question, which those that look into matters of state do well know to fall out very often; though this libeller seemeth to be more ignorant thereof, whether the ambition of the more mighty state, or the jealousy of the less mighty state, is to be charged with breach of amity. Hereof as there may be many examples, so there is one so proper unto the present matter, as though it were many years since, yet it seemeth to be a parable of these times, and namely of the proceedings of Spain and England.

The states then, which answered to these two now, were Macedon and Athens. Consider therefore the resemblance between the two Philips, of Macedon and Spain: he of Macedon aspired to the monarchy of Greece, as he of Spain doth of Europe; but more apparently than the first, because that design was discovered in his father Charles V. and so left him by descent; whereas Philip of Macedon was the first of the kings of that nation which fixed so great conceits in his breast. The course which this king of Macedon held was not so much by great armies and invasions, though these wanted not when the case required, but by practice, by sowing
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of factions in states, and by obliging sundry particular persons of greatness. The state of opposition against his ambitious proceedings was only the state of Athens, as now is the state of England against Spain. For Lacedæmon and Thebes were both low, as France is now; and the rest of the states of Greece were, in power and territories, far inferior. The people of Athens were exceedingly affected to peace, and weary of expence. But the point which I chiefly make the comparison, was that of the orators, which were as counsellors to a popular state; such as were sharpest sighted, and looked deepest into the projects and spreading of the Macedonians, doubting still that the fire, after it licked up the neighbouring states, and made itself opportunity to pass, would at last take hold of the dominions of Athens with so great advantages, as they should not be able to remedy it, were ever charged both by the declarations of the king of Macedon, and by the imputation of such Athenians as were corrupted to be of his faction, as the kindlers of troubles, and disturbers of the peace and leagues: but as that party was in Athens too mighty, so as it discountenanced the true counsels of the orators, and so bred the ruin of that state, and accomplished the ends of that Philip: so it is to be hoped that in a monarchy, where there are commonly better intelligences and resolutions than in a popular state, those plots as they are detected already, so they will be resisted and made frustrate.

But to follow the libeller in his own course; the sum of that which he delivereth concerning the imputation, as well of the interruption of the amity between the crowns of England and of Spain, as the disturbance of the general peace of Christendom unto the English proceedings, and not to the ambitious appetites of Spain, may be reduced into three points.

1. Touching the proceeding of Spain and England towards their neighbouring states.

2. Touching the proceeding of Spain and England between themselves.

3. Touching the articles and conditions which it pleaseth him, as it were in the behalf of England, to pen and propose for the treating and concluding of an universal peace.

In the first he discovereth how the king of Spain never offered molestation neither unto the states of Italy, upon which he confineth by Naples and Milan; neither unto the states of Germany, unto whom he confineth by a part of Burgundy and the Low Countries; nor unto Portugal, till it was devolved to him in title, upon which he confineth by Spain: but contrariwise, as one that had in precious regard the peace of Christendom, he designed from the beginning to turn his whole forces upon the Turk. Only he confesseth, that agreeable to his devotion, which apprehended as well the purging of Christendom from heresies, as the enlarging thereof upon the infidels, he was ever ready to give succours unto the French kings against the Huguenots, especially being their own subjects: whereas, on the other side, "England, as he affirmeth, hath not only sowed troubles and dissensions in France and Scotland, the one their neighbour upon the continent, the other divided only by the narrow seas, but also hath actually invaded both kingdoms. For as for the matters of the Low Countries, they belong to the dealings which have passed by Spain."

In answer whereof, it is worthy the consideration how it pleased God in that king to cross one passion by another; and namely, that passion which might have proved dangerous unto all Europe, which was his ambition, by another which was

was only hurtful to himself and his own, which was wrath and indignation towards his subjects of the Netherlands. For after that he was settled in his kingdom, and freed from some fear of the Turk, revolving his father's design in aspiring to the monarchy of Europe, casting his eye principally upon the two potent kingdoms of France and England; and remembering how his father had once promised unto himself the conquest of the one; and how himself by marriage had lately had some possession of the other; and seeing that diversity of religion was entered into both these realms; and that France was fallen unto princes weak, and in minority; and England unto the government of a lady, in whom he did not expect that policy of government, magnanimity, and felicity, which since he hath proved, concluded, as the Spaniards are great waiters upon time, and ground their plots deep, upon two points; the one to profess an extraordinary patronage and defence of the Roman religion, making account thereby to have factions in both kingdoms: in England a faction directly against the state; in France a faction that did consent indeed in religion with the king, and therefore at first shew should seem improper to make a party for a foreigner. But he foresaw well enough that the king of France should be forced, to the end to retain peace and obedience, to yield in some things to those of the religion, which would undoubtedly alienate the fiery and more violent sort of papists; which preparation in the people, added to the ambition of the family of Guise, which he nourished for an instrument, would in the end make a party for him against the state, as since it proved, and might well have done long before, as may well appear by the mention of leagues and associations, which is above twenty-five years old in France.

The other point he concluded upon, was, that his Low Countries was the aptest place both for ports and shipping, in respect of England, and for situation in respect of France, having goodly frontier towns upon that realm, and joining also upon Germany, whereby they might receive in at pleasure any forces of Alman, to annoy and offend either kingdom. The impediment was the inclination of the people, which, receiving a wonderful commodity of trades out of both realms, especially of England; and having been in ancient league and confederacy with our nation, and having been also homagers unto France, he knew would be in no wise disposed to either war: whereupon he resolved to reduce them to a martial government, like unto that which he had established in Naples and Milan; upon which suppression of their liberties ensued the defection of those provinces. And about the same time the reformed religion found entrance in the same countries; so as the king, inflamed with the resistance he found in the first part of his plots, and also because he might not dispense with his other principle in yielding to any toleration of religion; and withal expecting a shorter work of it than he found, became passionately bent to reconquer those countries; wherein he hath consumed infinite treasure and forces. And this is the true cause, if a man will look into it, that hath made the king of Spain so good a neighbour; namely, that he was so intangled with the wars of the Low Countries as he could not intend any other enterprise. Besides, in enterprising upon Italy, he doubted first the displeasure of the see of Rome, with whom he meant to run a course of strait conjunction; also he doubted it might invite the Turk to return. And for Germany, he had a fresh example of his father, who, when he had annexed unto the dominions which he now possesseth, the empire of Alman, nevertheless sunk in that enterprise; whereby he perceived that the nation was of too strong a complexion for him to deal withal:

withal: though not long since, by practice, he could have been contented to snatch up in the East the country of Embden. For Portugal, first, the kings thereof were good sons to the see of Rome; next, he had no colour of quarrel or pretence; thirdly, they were officious unto him: yet if you will believe the Genoese, who otherwise writeth much to the honour and advantage of the kings of Spain, it seemeth he had a good mind to make himself a way into that kingdom, seeing that for that purpose, as he reporteth, he did artificially nourish the young king Sebastian in the voyage of Afric, expecting that overthrow which followed.

As for his intention to war upon the Infidels and Turks, it maketh me think what Francis Guicciardine, a wise writer of history, speaketh of his great grandfather, making a judgment of him as historiographers use; "that he did always mask and veil his appetites with a demonstration of a devout and holy intention to the advancement of the church and the public good." His father also, when he received advertisement of the taking of the French king, prohibited all ringings, and bonfires, and other tokens of joy; and said, those were to be reserved for victories upon infidels: on whom he meant never to war. Many a cruzado hath the bishop of Rome granted to him and his predecessors upon that colour, which all have been spent upon the effusion of christian blood: and now this year the levies of Germans, which should have been made underhand for France, were coloured with the pretence of war upon the Turk; which the princes of Germany descrying, not only broke the levies, but threatened the commissioners to hang the next that should offer the like abuse: so that this form of dissembling is familiar, and as it were hereditary to the king of Spain.

And as for his succours given to the French king against the protestants, he could not choose but accompany the pernicious counsels which still he gave to the French kings, of breaking their edicts, and admitting of no pacification, but pursuing their subjects with mortal war, with some offer of aids; which having promised, he could not but in some small degree perform; whereby also the subject of France, namely the violent papist, was inured to depend upon Spain. And so much for the king of Spain's proceedings towards other states.

Now for ours: and first touching the point wherein he chargeth us to be the authors of troubles in Scotland and France; it will appear to any that have been well informed of the memoirs of these affairs, that the troubles of those kingdoms were indeed chiefly kindled by one and the same family of the Guise: a family, as was partly touched before, as particularly devoted now for many years together to Spain, as the order of the Jesuits is. This house of Guise having of late years extraordinarily flourished in the eminent virtue of a few persons, whose ambition nevertheless was nothing inferior to their virtue; but being of a house, notwithstanding, which the princes of the blood of France reckoned but as strangers, aspired to a greatness more than civil and proportionable to their cause, wheresoever they had authority: and accordingly, under colour of consanguinity and religion, they brought into Scotland in the year 1559, and in the absence of the king and queen, French forces in great numbers; whereupon the ancient nobility of that realm, seeing the imminent danger of reducing that kingdom under the tyranny of strangers, did pray, according to the good intelligence between the two crowns, her majesty's neighbourly forces. And so it is true that the action being very just and honourable, her majesty undertook it, expelled the strangers, and restored the nobility to their degrees, and the state to peace.

After, when certain noblemen of Scotland of the same faction of Guise had, during the minority of the king, possessed themselves of his person, to the end to abuse his authority many ways; and namely, to make a breach between Scotland and England; her majesty's forces were again, in the year 1582, by the king's best and truest servants fought and required: and with the forces of her majesty prevailed so far, as to be possessed of the castle of Edinburgh, the principal part of that kingdom; which nevertheless her majesty incontinently with all honour and sincerity restored, after she had put the king into good and faithful hands: and so, ever since, in all the occasions of intestine troubles, whereunto that nation hath been ever subject, she hath performed unto the king all possible good offices, and such as he doth with all good affection acknowledge.

The same house of Guise, under colour of alliance, during the reign of Francis the second, and by the support and practice of the queen-mother; who, desiring to retain the regency under her own hands during the minority of Charles the ninth, used those of Guise as a counterpoise to the princes of the blood, obtained also great authority in the kingdom of France: whereupon, having raised and moved civil wars under pretence of religion, but indeed to enfeeble and depress the ancient nobility of that realm; the contrary part, being compounded of the blood royal and the greatest officers of the crown, opposed themselves only against their insolency; and to their aids called in her majesty's forces, giving them for security the town of Newhaven: which, nevertheless, when as afterwards, having by the reputation of her majesty's confederation made their peace in effect as they would themselves, they would, without observing any conditions that had passed, have had it back again; then indeed it was held by force, and so had been long, but for the great mortality which it pleased God to send amongst our men. After which time, so far was her majesty from seeking to sow or kindle new troubles, as continually, by the solicitation of her ambassadors, she still persuaded the kings, both Charles IX. and Henry III. to keep and observe their edicts of pacification, and to preserve their authority by the union of their subjects: which counsel, if it had been as happily followed as it was prudently and sincerely given, France had been at this day a most flourishing kingdom, which is now a theatre of misery: and now in the end, after that the ambitious practices of the same house of Guise had grown to that ripeness, that gathering farther strength upon the weakness and mis-government of the said king Henry III. he was fain to execute the duke of Guise without ceremony at Blois. And yet, nevertheless, so many men were embarked and engaged in that conspiracy, as the flame thereof was nothing assuaged; but, contrariwise, that king Henry grew distressed, so as he was enforced to implore the succours of England from her majesty, though no way interessed in that quarrel, nor any way obliged for any good offices she had received of that king, yet she accorded to the same: before the arrival of which forces, the king being by a sacrilegious Jacobine murdered in his camp near Paris, yet they went on and came in good time for the assistance of the king which now reigneth; the justice of whose quarrel, together with the long continued amity and good intelligence, which her majesty had with him, hath moved her majesty from time to time to supply with great aids; and yet she never, by any demand, urged upon him the putting into her hands of any town or place: so as upon this that hath been said let the reader judge, whether hath been the more just and honourable proceeding, and the more free from ambition and passion towards
other

other states; that of Spain, or that of England. Now let us examine the proceedings reciprocal between themselves.

Her majesty, at her coming to the crown, found her realm intangled with the wars of France and Scotland, her nearest neighbours; which wars were grounded only upon the Spaniard's quarrel; but in the pursuit of them had lost to England the town of Calais: which, from the twenty-first of king Edward III. had been possessed by the kings of England. There was a meeting near Bourdeaux, towards the end of queen Mary's reign, between the commissioners of France, Spain, and England, and some overture of peace was made; but broke off upon the article of the restitution of Calais. After queen Mary's death, the king of Spain, thinking himself discharged of that difficulty, though in honour he was no less bound to it than before, renewed the like treaty, wherein her majesty concurred: so as the commissioners for the said princes met at Chateau Cambraisi, near Cambray. In the proceedings of which treaty, it is true, that at the first the commissioners of Spain, for form and in demonstration only, pretended to stand firm upon the demand of Calais: but it was discerned, indeed, that the king's meaning was, after some ceremonies and perfunctory insisting thereupon, to grow apart to a peace with the French, excluding her majesty, and so to leave her to make her own peace, after her people had made his wars. Which covert dealing being politicly looked into, her majesty had reason, being newly invested in her kingdom, and of her own inclination being affected to peace, to conclude the same with such conditions as she might: and yet the king of Spain in his dissimulation had so much advantage as she was fain to do it in a treaty apart with the French; whereby to one that is not informed of the counsels and treaties of state, as they passed, it should seem to be a voluntary agreement of her majesty, whereto the king of Spain would not be party: whereas indeed he left her no other choice; and this was the first assay or earnest penny of that king's good affection to her majesty.

About the same time, when the king was solicted to renew such treaties and leagues as had passed between the two crowns of Spain and England, by the lord Cobham, sent unto him, to acquaint him with the death of queen Mary; and afterwards by Sir Thomas Chaloner and Sir Thomas Chamberlain, successively ambassadors resident in his Low Countries; who had order, divers times, during their charge, to make overtures thereof, both unto the king, and certain principal persons about him; and lastly, those former motions taking no effect, by Viscount Montacute and Sir Thomas Chamberlain, sent into Spain in the year 1560; no other answer could be had or obtained of the king, but that the treaties did stand in as good force to all intents as a new ratification could make them. An answer strange at that time, but very conformable to his proceedings since: which belike even then were closely smothered in his own breast. For had he not at that time had some hidden alienation of mind, and design of an enemy towards her majesty, so wise a king could not be ignorant, that the renewing and ratifying of treaties between princes and states do add great life and force, both of assurance to the parties themselves, and countenance and reputation to the world besides; and have for that cause been commonly and necessarily used and practised.

In the message of Viscount Montacute, it was also contained, that he should crave the king's counsel and assistance, according to amity and good intelligence, upon a discovery of certain pernicious plots of the house of Guise, to annoy this realm by the way of Scotland: wherunto the king's answer was so dark and so

cold, that nothing could be made of it, till he had made an exposition of it himself by effects, in the express restraint of munition to be carried out of the Low-Countries unto the siege of Leith; because our nation was to have supply thereof from thence. So as in all the negotiations that passed with that king, still her majesty received no satisfaction, but more and more suspicious and bad tokens of evil affection.

Soon after, when upon that project, which was disclosed before the king had resolved to disannul the liberties and privileges unto his subjects of the Netherlands anciently belonging; and to establish amongst them a martial government, which the people, being very wealthy, and inhabiting towns very strong and defensible, by fortifications both of nature and the hand, could not endure, there followed the defection and revolt of those countries. In which action, being the greatest of all those which have passed between Spain and England, the proceeding of her majesty hath been so just, and mingled with so many honourable regards, as nothing doth so much clear and acquit her majesty, not only from passion, but also from all dishonourable policy. For first, at the beginning of the troubles, she did impart unto him faithful and sincere advice of the course that was to be taken for the quieting and appeasing them; and expressly forewarned both himself and such as were in principal charge in those countries, during the wars, of the danger like to ensue if he held so heavy a hand over that people; lest they should cast themselves into the arms of a stranger. But finding the king's mind so exulcerated as he rejected all counsel that tended to mild and gracious proceeding, her majesty nevertheless gave not over her honourable resolution, which was, if it were possible, to reduce and reconcile those countries unto the obedience of their natural sovereign the king of Spain; and if that might not be, yet to preserve them from alienating themselves to a foreign lord, as namely unto the French, with whom they much treated; and amongst whom the enterprise of Flanders was ever propounded as a mean to unite their own civil dissensions, but patiently temporising, expected the good effect which time might breed. And whensoever the states grew into extremities of despair, and thereby ready to embrace the offer of any foreigner, then would her majesty yield them some relief of money, or permit some supply of forces to go over unto them; to the end, to interrupt such violent resolution: and still continued to mediate unto the king some just and honourable capitulations of grace and accord, such as whereby always should have been preserved unto him such interest and authority as he in justice could claim, or a prince moderately minded would seek to have. And this course she held interchangeably, seeking to mitigate the wrath of the king, and the despair of the countries, till such time as after the death of the duke of Anjou, into whose hands, according to her majesty's prediction, but against her good liking, they had put themselves, the enemy pressing them, the United Provinces were received into her majesty's protection: which was after such time, as the king of Spain had discovered himself, not only an implacable lord to them, but also a professed enemy unto her majesty; having actually invaded Ireland, and designed the invasion of England. For it is to be noted, that the like offers which were then made unto her majesty, had been made to her long before: but as long as her majesty conceived any hope, either of making their peace, or entertaining her own with Spain, she would never hearken thereunto. And yet now, even at last, her majesty retained a singular and evident proof to the world of her justice and moderation, in that she refused the inheritance

ritance and sovereignty of those goodly provinces; which by the states, with much instance, was pressed upon her; and being accepted, would have wrought greater contentment and satisfaction both to her people and theirs, being countries for the site, wealth, commodity of traffick, affection to our nation, obedience of the subjects, well used, most convenient to have been annexed to the crown of England, and with all one charge, danger, and offence of Spain; only took upon her the defence and protection of their liberties: which liberties and privileges are of that nature, as they may justly esteem themselves but conditional subjects to the king of Spain, more justly than Arragon: and may make her majesty as justly esteem the ancient confederacies and treaties with Burgundy to be of force rather with the people and nation, than with the line of the duke; because it was never an absolute monarchy. So as, to sum up her majesty's proceedings in this great action, they have but this, that they have fought first to restore them to Spain, then to keep them from strangers, and never to purchase them to herself.

But during all that time, the king of Spain kept one tenor in his proceedings towards her majesty, breaking forth more and more into injuries and contempts: her subjects trading into Spain have been many of them burned; some cast into the galleys; others have died in prison, without any other crimes committed, but upon quarrels picked upon them for their religion here at home. Her merchants, at the sack of Antwerp, were divers of them spoiled and put to their ransoms, though they could not be charged with any part-taking; neither, upon the complaint of Doctor Wilfon and Sir Edward Horsey, could any redress be had. A general arrest was made by the duke of Alva of Englishmens both goods and persons, upon pretence that certain ships, stayed in this realm laden with goods and money of certain merchants of Genoa, belonged to that king: which money and goods was afterwards, to the uttermost value, restored and payed back; whereas our men were far from receiving the like justice on their side. Dr. Man, her majesty's ambassador, received, during his legation, fundry indignities; himself being removed out of Madrid, and lodged in a village, as they are accustomed to use the ambassadors of Moors: his son and steward forced to assist at a mass with tapers in their hands; besides fundry other contumelies and reproaches. But the spoiling or damnifying of a merchant, vexation of a common subject, dishonour of an ambassador, were rather but demonstrations of ill disposition, than effects, if they be compared with actions of state, wherein he and his ministers have sought the overthrow of this government. As in the year 1569, when the rebellion in the north part of England broke forth; who but the duke of Alva, then the king's lieutenant in the Low-Countries, and Don Guerres of Espes, then his ambassador lieger here, were discovered to be chief instruments and practisers; having conspired with the duke of Norfolk at the same time, as was proved at the same duke's condemnation, that an army of twenty thousand men should have landed at Harwich, in aid of that party which the said duke had made within the realm, and the said duke having spent and employed one hundred and fifty thousand crowns in that preparation.

Not contented thus to have comforted and assisted her majesty's rebels in England, he procured a rebellion in Ireland; arming and sending thither in the year 1579 an arch-rebel of that country, James Fitz-Morrice, which before was dead. And truly to speak, the whole course of molestation, which her majesty hath received in that realm by the rising and keeping on of the Irish, hath been nourish-

ed and fomented from Spain; but afterwards most apparently, in the year 1570, he invaded the same Ireland with Spanish forces, under an Italian colonel, by name San Josepho, being but the forerunners of a greater power; which by treaty between him and the pope should have followed, but that by the speedy defeat of those former, they were discouraged to pursue the action: which invasion was proved to be done by the king's own orders, both by the letters of secretary Escovedo, and of Guerres to the king; and also by divers other letters, wherein the particular conferences were set down concerning this enterprize between cardinal Kiarrio the pope's legate, and the king's deputy in Spain, touching the general, the number of men, the contribution of money, and the manner of the prosecuting of the action, and by the confession of some of the chiefest of those that were taken prisoners at the fort; which act being an act of apparent hostility, added unto all the injuries aforesaid, and accompanied with a continual receipt, comfort, and countenance, by audiences, pensions, and employments, which he gave to traitors and fugitives, both English and Irish; as Westmoreland, Paget, Englefield, Baltinglass, and numbers of others; did sufficiently justify and warrant that pursuit of revenge, which, either in the spoil of Carthagen and San Domingo in the Indies, by Mr. Drake, or in the undertaking the protection of the Low-Countries when the earl of Leicester was sent over, afterwards followed. For before that time her majesty, though she stood upon her guard in respect of the just cause of jealousy, which the sundry injuries of that king gave her; yet had entered into no offensive action against him. For both the voluntary forces which Don Antonio had collected in this realm, were by express commandment restrained, and offer was made of restitution to the Spanish ambassador of such treasure as had been brought into this realm, upon proof that it had been taken by wrong; and the duke of Anjou was, as much as could stand with the near treaty of a marriage which then was very forward between her majesty and the said duke, diverted from the enterprize of Flanders.

But to conclude this point: when that, some years after, the invasion and conquest of this land, intended long before, but through many crosses and impediments, which the king of Spain found in his plots, deferred, was in the year 1588 attempted; her majesty, not forgetting her own nature, was content at the same instant to treat of a peace; not ignorantly, as a prince that knew not in what forwardness his preparations were, for she had discovered them long before, nor fearfully, as may appear by the articles whereupon her majesty in that treaty stood, which were not the demands of a prince afraid; but only to spare the shedding of Christian blood, and to shew her constant desire to make her reign renowned, rather by peace than victories: which peace was on her part treated sincerely, but on his part, as it should seem, was but an abuse; thinking thereby to have taken us more unprovided: so that the duke of Parma, not liking to be used as an instrument in such a case, in regard of his particular honour, would sometimes in treating interlace, that the king his master meant to make his peace with his sword in his hand. Let it then be tryed, upon an indifferent view of the proceedings of England and Spain, who it is that fisheth in troubled waters, and hath disturbed the peace of Christendom, and hath written and described all his plots in blood.

There follow the articles of an universal peace, which the libeller, as a commissioner for the estate of England, hath propounded, and are these:

First,

First, that the king of Spain should recall such forces, as, of great compassion to the natural people of France, he hath sent thither to defend them against a relapsed Huguenot.

Secondly, that he suffer his rebels of Holland and Zealand quietly to possess the places they hold, and to take unto them all the rest of the Low-Countries also; conditionally, that the English may still keep the possession of such port towns as they have, and have some half a dozen more annexed unto them.

Thirdly, that the English rovers might peaceably go to his Indies, and there take away his treasure and his Indies also.

And these articles being accorded, he saith, might follow that peace which passeth all understanding, as he calleth it in a scurrile and prophane mockery of the peace which Christians enjoy with God, by the atonement which is made by the blood of Christ, whereof the Apostle saith *that it passeth all understanding*. But these his articles are surely mistaken, and indeed corrected are briefly these:

1. That the king of France be not impeached in reducing his rebels to obedience.

2. That the Netherlands be suffered to enjoy their ancient liberties and privileges, and so forces of strangers to be withdrawn, both English and Spanish.

3. That all nations may trade into the East and West Indies; yea, discover and occupy such parts as the Spaniard doth not actually possess, and are not under civil government, notwithstanding any donation of the pope.

V. Of the cunning of the libeller, in palliation of his malicious invectives against her majesty and the state, with pretence of taxing only the actions of the lord Burleigh.

I cannot rightly call this point cunning in the libeller, but rather good will to be cunning; without skill indeed or judgment: for finding that it hath been the usual and ready practice of seditious subjects to plant and bend their invectives and clamours, not against the sovereigns themselves, but against some such as had grace with them, and authority under them, he put in use his learning in a wrong and improper case. For this hath some appearance to cover undutiful invectives, when it is used against favourites or new upstarts, and sudden-risen counsellors: but when it shall be practised against one that hath been counsellor before her majesty's time, and hath continued longer counsellor than any other counsellor in Europe; one that must needs have been great if it were but by surviving alone, though he had no other excellency; one that hath passed the degrees of honour with great travel and long time, which quencheth always envy, except it be joined with extreme malice; then it appeareth manifestly to be but a brick-wall at tennis to make the defamation and hatred rebound from the counsellor upon the prince. And assuredly they be very simple to think to abuse the world with those shifts; since every child can tell the fable, that the wolf's malice was not to the shepherd, but to his dog. It is true, that these men have altered their tune twice or thrice: when the match was in treating with the duke of Anjou, they spake honey as to her majesty; all the gall was uttered against the earl of Leicester: but when they had gotten heart upon expectation of the invasion, they changed stile, and disclosed all the venom in the world immediately against her majesty: what new hope hath made them return to their Sinon's note, in teaching Troy how to save itself, I cannot tell. But in the mean time they do his lordship much honour: for the
more

more despitefully they inveigh against his lordship, the more reason hath her majesty to trust him, and the realm to honour him. It was wont to be a token of scarce a good liegeman when the enemy spoiled the country, and left any particular mens houses or fields unwasted.

VI. Certain true general notes upon the actions of the lord Burleigh.

But above all the rest, it is a strange fancy in the libeller that he maketh his lordship to be the *primum mobile* in every action without distinction; that to him her majesty is accountant of her resolutions; that to him the earl of Leicester and Mr. Secretary Walsingham, both men of great power, and of great wit and understanding, were but as instruments: whereas it is well known, that as to her majesty, there was never a counsellor of his lordship's long continuance that was so applicable to her majesty's princely resolutions; endeavouring always, after faithful propositions and remonstrances, and these in the best words, and the most grateful manner, to rest upon such conclusions, as her majesty in her own wisdom determineth, and them to execute to the best: so far hath he been from contestation, or drawing her majesty into any of his own courses. And as for the forenamed counsellors and others, with whom his lordship hath conformed in her majesty's service, it is rather true that his lordship, out of the greatness of his experience and wisdom, and out of the coldness of his nature, hath qualified generally all hard and extreme courses, as far as the service of her majesty, and the safety of the state, and the making himself compatible with those with whom he served, would permit: so far hath his lordship been from inciting others, or running a full course with them in that kind. But yet it is more strange that this man should be so absurdly malicious, as he should charge his lordship, not only with all actions of state, but also with all the faults and vices of the times; as, if curiosity and emulation have bred some controversies in the church; though, thanks be to God, they extend but to outward things; as, if wealth, and the cunning of wits have brought forth multitudes of suits in law; as, if excess in pleasures, and in magnificence, joined with the unfaithfulness of servants, and the greediness of moneyed men, have decayed the patrimony of many noblemen, and others; that all these, and such like conditions of the time, should be put on his lordship's account; who hath been, as far as to his place appertaineth, a most religious and wise moderator in church-matters to have unity kept; who with great justice hath dispatched infinite causes in law that have orderly been brought before him: and for his own example, may say that which few men can say; but was sometimes said by Cephalus, the Athenian so much renowned in Plato's works; who having lived near to the age of an hundred years, and in continual affairs and business, was wont to say of himself; "That he never sued any, neither had been sued by any:" who by reason of his office hath preserved many great houses from overthrow, by relieving sundry extremities towards such as in their minority have been circumvented; and towards all such as his lordship might advise, did ever persuade sober and limited expence. Nay, to make proof farther of his contented manner of life, free from suits and covetousness; as he never sued any man, so did he never raise any rent, or put out any tenant of his own: nor ever gave consent to have the like done to any of the queen's tenants; matters singularly to be noted in this age.

But

But however, by this fellow, as in a false artificial glass, which is able to make the best face deformed, his lordship's doings be set forth; yet let his proceedings, which be indeed his own, be indifferently weighed and considered; and let men call to mind, that his lordship was never a violent and transported man in matters of state, but ever respectful and moderate; that he was never man in his particular a breaker of necks; no heavy enemy, but ever placable and mild; that he was never a brewer of holy water in court; no dallier, no abuser, but ever real and certain; that he was never a bearing man, nor carrier of causes, but ever gave way to justice and course of law; that he was never a glorious wilful proud man, but ever civil and familiar, and good to deal withal; that in the course of his service, he hath rather sustained the burden, than sought the fruition of honour or profit; scarcely sparing any time from his cares and travels to the sustentation of his health; that he never had, nor sought to have for himself and his children, any pennyworth of lands or goods that appertained to any attainted of any treason, felony, or otherwise; that he never had, or sought any kind of benefit by any forfeiture to her majesty; that he was never a factious commender of men, as he that intended any ways to besiege her, by bringing in men at his devotion; but was ever a true reporter unto her majesty of every man's deserts and abilities; that he never took the course to unquiet or offend, no nor exasperate her majesty, but to content her mind, and mitigate her displeasure; that he ever bare himself reverently and without scandal in matters of religion, and without blemish in his private course of life. Let men, I say, without passionate malice, call to mind these things; and they will think it reason, that though he be not canonized for a saint in Rome, yet he is worthily celebrated as *Pater patriae* in England; and though he be libelled against by fugitives, yet he is prayed for by a multitude of good subjects; and lastly, though he be envied whilst he liveth, yet he shall be deeply wanted when he is gone. And assuredly many princes have had many servants of trust, name, and sufficiency: but where there have been great parts, there hath often wanted temper of affection; where there have been both ability and moderation, there have wanted diligence and love of travail; where all three have been, there have sometimes wanted faith and sincerity; where some few have had all these four, yet they have wanted time and experience: but where there is a concurrence of all these, there is no marvel, though a prince of judgment be constant in the employment and trust of such a servant.

VII. Of divers particular untruths and abuses dispersed through the libel.

The order which this man keepeth in his libel, is such, as it may appear, that he meant but to empty some note-book of the matters of England, to bring in, whatsoever came of it, a number of idle jests, which he thought might fly abroad; and intended nothing less than to clear the matters he handled by the light of order and distinct writing. Having therefore in the principal points, namely, the second, third, and fourth articles, ranged his scattering and wandering discourse into some order, such as may help the judgment of the reader, I am now content to gather up some of his by-matters and straggling untruths, and very briefly to censure them.

Page 9. he saith, that his lordship could neither by the greatness of his beads, creeping to the cross, nor exterior shew of devotion before the high altar, find his entrance into high dignity in queen Mary's time. All which is a mere fiction at
pleasure;

pleasure; for queen Mary bore that respect unto him, in regard of his constant standing for her title, as she desired to continue his service; the refusal thereof growing from his own part: he enjoyed nevertheless all other liberties and favours of the time; save only that it was put into the queen's head that it was dangerous to permit him to go beyond the sea, because he had a great wit of action, and had served in so principal a place; which nevertheless after, with cardinal Pool, he was suffered to do.

Page *etiam* he saith, Sir Nicholas Bacon, that was lord keeper, was a man of exceeding crafty wit; which sheweth that this fellow in his slanders is no good marksman, but throweth out his words of defaming without all level. For all the world noted Sir Nicholas Bacon to be a man plain, direct, and constant, without all finesse and doubleness; and one that was of the mind that a man in his private proceedings and estate, and in the proceedings of state, should rest upon the soundness and strength of his own courses, and not upon practice to circumvent others; according to the sentence of Solomon, *Vir prudens advertit ad gradus suos, stultus autem divertit ad dolos*: infomuch that the bishop of Rois, a subtle and observing man, said of him, that he could fasten no words upon him, and that it was impossible to come within him, because he offered no play: and the queen-mother of France, a very politic princess, said of him, That he should have been of the council of Spain, because he despised the occurents, and rested upon the first plot; so that if he were crafty, it is hard to say who is wise.

Page 10. he saith, That the lord Burleigh, in the establishment of religion, in the beginning of the queen's time, prescribed a composition of his own invention; whereas the same form, not fully six years before, had been received in this realm in king Edward's time: so as his lordship being a Christian politic counsellor, thought it better to follow a precedent, than to innovate; and chose the precedent rather at home than abroad.

Page 41. he saith, that catholics never attempted to murder any principal person of her majesty's court, as did Burchew, whom he calleth a puritan, in wounding of a gentleman instead of Sir Christopher Hatton; but by their great virtue, modesty, and patience, do manifest in themselves a far different spirit from the other sort. For Burchew, it is certain he was mad; as appeareth not only by his mad mistaking, but by the violence that he offered afterwards to his keeper, and most evidently by his behaviour at his execution: but of catholics, I mean the traitorous sort of them, a man may say as Cato said sometimes of Cæsar, *cum ad evertendam rempublicam sobrii accessisse*: they came sober and well advised to their treasons and conspiracies; and commonly they look not so low as the counsellors, but have bent their murderous attempts immediately against her majesty's sacred person, which God have in his precious custody! as may appear by the conspiracy of Somerville, Barry, Savage, the six, and others; nay, they have defended it *in itself*, to be a lawful act.

Page 43. he saith, That his lordship, whom he calleth the arch-politic, hath fraudulently provided, that when any party is an oppressor, the law is altered with many odious matters: wherein he sheweth great ignorance, if it be not malice; for the law permitteth not the ancient forms of indictments to be altered; like as in an action of trespass, although a man take away another's goods in the peaceablest manner in the world, yet the writ hath *quare vi et armis*; and if a man enter upon another's ground and do no more, the plaintiff mentioneth *quod hec terra*
placet,

suam, ibidem crescentem, cum equis, bobus, porcis, et bidentibus, depastus sit, conculcavit et consumpsit. Neither is this any absurdity, for in the practice of all law the formularies have been few and certain; and not varied according to every particular case. And in indictments also of treason, it is not so far fetched as in that of trespass; for the law ever presumeth in treason an intention of subverting the state, and impeaching the majesty royal.

Page 45. and in other places, speaking of the persecuting of the catholics, he still mentioneth bowelings and consuming mens entrails by fire; as if this were a torture newly devised: wherein he doth cautelously and maliciously suppress, that the law and custom of this land from all antiquity hath ordained that punishment in case of treason, and permitteth no other. And a punishment surely it is, though of great terror, yet by reason of the quick dispatching, of less torment far than either the wheel or forcipation, yea than simple burning.

Page 48. he saith, England is confederate with the great Turk: wherein if he mean it because the merchants have an agent in Constantinople, how will he answer for all the kings of France since Francis the first, which were good catholics? For the Emperor? for the king of Spain himself? For the senate of Venice, and other states, that have had long time ambassadors liegers in that court? If he mean it because the Turk hath done some special honour to our ambassador, if he be so to be termed, we are beholden to the king of Spain for that: for that the honour, we have won upon him by opposition, hath given us reputation through the world: if he mean it because the Turk seemeth to affect us for the abolishing of images; let him consider then what a scandal the matter of images hath been in the church as having been one of the principal branches whereby Mahometism entered.

Page 65. he saith, Cardinal Allen was of late very near to have been elected pope. Whereby he would put the catholics here in some hope, that once within five or six years, for a pope commonly sitteth no longer, he may obtain that which he missed narrowly. This is a direct abuse, for it is certain in all the conclaves since Sixtus Quintus, who gave him his hat, he was never in possibility; nay, the king of Spain, that hath patronized the church of Rome so long, as he is become a right patron of it, in that he seeketh to present to that see whom he liketh, yet never durst strain his credit to so desperate a point as once to make a canvass for him: no, he never nominated him in his inclusive narration. And those that know any thing of the respects of conclaves, know that he is not papable: first, because he is an ultramontane, of which sort there hath been none these fifty years. Next, because he is a cardinal of alms of Spain, and wholly at the devotion of that king. Thirdly, because he is like to employ the treasure and favours of the popedom upon the enterprizes of England, and the relief and advancement of English fugitives, his necessitous countrymen. So as he presumed much upon the simplicity of the reader in this point, as in many more.

Page 55, and again p. 70, he saith, his lordship, meaning the lord Burleigh, intendeth to match his grandchild Mr. William Cecil with the lady Arabella. Which being a mere imagination, without any circumstance at all to induce it, more than that they are both unmarried, and that their years agree well, needeth no answer. It is true that his lordship, being no stoical unnatural man, but loving towards his children, for *charitas reipublicae incipit a familia*, hath been glad to match them into honourable and good blood: and yet not so, but that a private

gentleman of Northamptonshire, that lived altogether in the country, was able to bestow his daughters higher than his lordship hath done. But yet it is not seen by any thing past, that his lordship ever thought or affected to match his children in the blood royal. His lordship's wisdom, which hath been so long of gathering, teacheth him to leave to his posterity rather surety than danger. And I marvel where be the combinations which have been with great men; and the popular and plausible courses, which ever accompany such designs, as the libeller speaketh of: and therefore this match is but like unto that which the same fellow concluded between the same lady Arabella and the earl of Leicester's son, when he was but a twelvemonth old.

Page 70. he saith, He laboureth incessantly with the queen to make his eldest son deputy of Ireland; as if that were such a catch, considering all the deputies since her majesty's time, except the earl of Suffex and the lord Grey, have been persons of meaner degree than Sir Thomas Cecil is; and the most that is gotten by that place, is but the saving and putting up of a man's own revenues, during those years that he serveth there; and this perhaps to be saved with some displeasure at his return.

Page *eadem* he saith, He hath brought in his second son Sir Robert Cecil to be of the council, who hath neither wit nor experience; which speech is as notorious an untruth as is in all the libel: for it is confessed by all men that know the gentleman, that he hath one of the rarest and most excellent wits of England, with a singular delivery and application of the same; whether it be to use a continued speech, or to negotiate, or to couch in writing, or to make report, or discreetly to consider of the circumstances, and aptly to draw things to a point; and all this joined with a very good nature and a great respect to all men, as is daily more and more revealed. And for his experience, it is easy to think that his training and helps hath made it already such, as many, that have served long prentishood for it, have not attained the like: so as if that be true, *qui beneficium digno dat, omnes obligat*, not his father only, but the state is bound unto her majesty, for the choice and employment of so sufficient and worthy a gentleman.

There be many other follies and absurdities in the book; which, if an eloquent scholar had it in hand, he would take advantage thereof, and justly make the author not only odious, but ridiculous and contemptible to the world: but I pass them over, and even this which hath been said hath been vouchsafed to the value and worth of the matter, and not the worth of the writer, who hath handled a theme above his compass.

VIII. Of the height of impudency that these men are grown unto in publishing and avouching untruths, with a particular recital of some of them for an assay.

These men are grown to a singular spirit and faculty in lying and abusing the world; such as, it seemeth, although they are to purchase a particular dispensation for all other sins, yet they have a dispensation dormant to lye for the catholic cause; which moveth me to give the reader a taste of their untruths, such as are written, and are not merely gross and palpable; desiring him out of their own writings, when any shall fall into his hands, to increase the roll at least in his own memory.

We retain in our calendars no other holidays but such as have their memorials in the Scriptures: and therefore in the honour of the blessed Virgin, we only receive the feasts of the annunciation and the purification; omitting the other of the

The first copy of my discourse touching the safety of the Queen's person.*

THESE be the principal remedies, I could think of, for extirpating the principal cause of those conspiracies, by the breaking the nest of those fugitive traitors, and the filling them full of terror, despair, jealousy, and revolt. And it is true, I thought of some other remedies, which, because in mine own conceit I did not so well allow, I therefore do forbear to express. And so likewise I have thought, and thought again, of the means to stop and divert as well the attempts of violence, as poison, in the performance and execution. But not knowing how my travel may be accepted, being the unwarranted wishes of a private man, I leave; humbly praying her Majesty's pardon, if in the zeal of my simplicity I have roved at things above my aim.

The first fragments of a discourse, touching intelligence, and the safety of the Queen's person †.

THE first remedy, in my poor opinion, is that, against which, as I conceive, least exception can be taken, as a thing, without controversy, honourable and politic; and that is reputation of good intelligence. I say not only *good intelligence*, but the *reputation* and *fame* thereof. For I see, that where booths are set for watching thievish places, there is no more robbing: and though no doubt the watchmen many times are asleep, or away; yet that is more than the thief knoweth; so as the empty booth is strength and safeguard enough. So likewise, if there be sown an opinion abroad, that her Majesty hath much secret intelligence, and that all is full of spies and false brethren; the fugitives will grow into such a mutual jealousy and suspicion one of another, as they will not have the confidence to conspire together, not knowing whom to trust; and thinking all practice bootless, as that which is assured to be discovered. And to this purpose, to speak reverently, as becometh me, as I do not doubt but those honourable counsellors, to whom it doth appertain, do carefully and sufficiently provide and take order that her Majesty receive good intelligence; so yet, under correction, methinks it is not done with that glory and note of the world, which was in Mr. Secretary Walsingham's ‡ time: and in this case, as was said, *opinio veritate major*.

The second remedy I deliver with less assurance, as that which is more removed from the compass of mine understanding: and that is, to treat and negotiate with the King of Spain, or Archduke Ernest §, who resides in the place where these conspiracies are most forged, upon the point of the law of nations, upon which kind of points princes enemies may with honour negotiate, viz. that, contrary to the same law of nations, and the sacred dignity of kings, and the honour of arms, certain of her Majesty's subjects, if it be not thought meet to impeach any of his ministers, refused in his dominions, have conspired and practised assassination against her Majesty's person.

* From the original in the Lambeth Library.

† From the original in the Lambeth Library.

‡ Who died April 6, 1596. After his death the business of the secretary of state appears to be chiefly done by Mr. Robert Cecil, who was knighted by Queen Elizabeth at Theobald's, about the beginning of June 1591, and in August following sworn of the privy-council; but not actually appointed secretary of state till July 5, 1596. BIRCH.

§ Ernest, Archduke of Austria, son of the Emperor Maximilian II. and governor of the Low Countries, upon which government he entered in June 1592, but held it only a short time, dying February 11 following. It was probably in pursuance of

the advice of Mr. Francis Bacon in this paper, that Queen Elizabeth sent to the Archduke in 1594, to complain of the designs, which had been formed against her life by the Count de Fuentes, and Don Diego de Ibarra, and other Spanish ministers concerned in governing the Low Countries after the death of Alexander Duke of Parma in December 1592, and by the English fugitives there; and to desire him to signify those facts to the king of Spain, in order that he might vindicate his own character, by punishing his ministers, and delivering up to her such fugitives as were parties in such designs. *Camden Annals Eliz. Reginae*, p. 625. Edit. Lugduni Bat. 1625. BIRCH.

A
T R U E R E P O R T
 O F T H E
DETESTABLE TREASON,
 I N T E N D E D B Y
 D O C T O R R O G E R L O P E Z,
 A physician attending upon the person of the
Q U E E N ' s M A J E S T Y,

Which he, for a sum of money promised to be paid to him by the king of Spain, did undertake to have destroyed by poison; with certain circumstances both of the plotting and detecting of the said treason.

[Drawn up in 1594.]

THE king of Spain, having found, by the enterprize of 1588, the difficulty of an invasion of England; and having also since that time embraced the matters of France, being a design of a more easy nature, and better prepared to his hand, hath of necessity for a time laid aside the prosecution of his attempts against this realm by open forces, as knowing his means unable to wield both actions at once, as well that of England as that of France: and therefore, casting at the fairest, hath, in a manner, bent his whole strength upon France, making, in the mean time, only a defensive war in the Low Countries. But finding again, that the supports and aids which her majesty hath continued to the French king, are a principal impediment and retardation to his prevailing there according to his ends, he hath, now of late, by all means, projected to trouble the waters here, and to cut us out some work at home; that by practice, without diverting and employing any great forces, he might nevertheless divert our succours from France.

According to which purpose, he first proved to move some innovation in Scotland, not so much in hope to alienate the king from the amity of her majesty, as practising to make a party there against the king himself, whereby he should be compelled to use her majesty's forces for his assistance. Then he solicited a subject within

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within this realm, being a person of great nobility, to rise in arms and levy war against her majesty; which practice was by the said nobleman loyally and prudently revealed. And lastly, rather, as it is to be thought, by the instigation of our traitorous fugitives in foreign parts, and the corrupter sort of his countellurs and ministers, than of his own nature and inclination, either himself, or his said counsellors and ministers using his name, have descended to a course against all honour, all society and humanity, odious to God and man, detested by the heathen themselves, which is, to take away the life of her majesty, which God have in his precious custody! by violence or poison. A matter which might be proved to be not only against all Christianity and Religion, but against nature, the law of nations, the honour of arms, civil law, the rules of morality and policy; finally, to be the most condemned, barbarous, savage, and ferine act that can be imagined; yea, supposing the quarrels and hostility between the princes to be never so declared and so mortal, yet were it not that it would be a very reproach unto the age, that the matter should be once disputed or called in question. And therefore I leave it to the censure which Titus Livius giveth in the like case upon Perseus, the last king of the Macedons, afterwards overthrown, taken with his children, and led in triumph by the Romans; *Quem non justum parare bellum regio animo, sed per omnia clandestina grassari scelera, latrociniorum ac veneficiorum, cernebant.*

But to proceed: certain it is, that even about this present time there have been suborned and sent into this realm divers persons, some English, some Irish, corrupted by money and promises, and resolved and conjured by priests in confession, to have executed that most wretched and horrible fact; of which number certain have been taken, and some have suffered, and some are spared because they have with great sorrow confessed these attempts, and detested their suborners. And if I should conjecture what the reason is why this cursed enterprise was at this time so hotly and with such devilish diligence pursued, I take it to be chiefly because the matters of France wax ripe, and the king of Spain made himself ready to unmask himself, and to reap that in France, which he had been long in sowing, in regard that, there being like to be a divulsion in the league by the reconciliation of some of the heads to the king, the more passionate sort, being destituted by their associates, were like to cast themselves wholly into the king of Spain's arms, and to dismember some important piece of that crown; though now upon this fresh accident of receiving the king into Paris, it is to be thought that both the worst affected of the league will submit themselves upon any tolerable conditions to their natural king, thus advanced in strength and reputation; and the King of Spain will take a second advice ere he embark himself too far in any new attempt against France. But taking the affairs as they then stood before, this accident unexpected, especially of the council of Spain; during this his supposed harvest in France, his council had reason to wish that there were no disturbance from hence, where they make account that if her majesty were removed, upon whose person God continue his extraordinary watch and providence! here would be nothing but confusion, which they do not doubt but with some no great treaure, and forces from without, may be nourished till they can more fully intend the ruin of this state, according to their ancient malice.

But howsoever that be, amongst the number of these execrable undertakers, there was none so much built and relied upon by the great ones of the other side, as was this physician Lopez; nor, indeed, none so dangerous; whether you con- sider

REPORT OF LOPEZ'S TREASON.

sider the aptness of the instrument, or the subtlety and secrecy of those that practised with him, or the shift and evasion which he had provided for a colour of his doings, if they should happen to come into question. For first, whereas others were to find and encounter infinite difficulties, in the very obtaining of an opportunity to execute this horrible act; and, besides, cannot but see present and most assured death before their eyes, and therefore must be, as it were, damnable votaries if they undertake it: this man, in regard of his faculty, and of his private access to her majesty, had both means to perpetrate, and means to conceal, whereby he might reap the fruit of his wicked treason without evident peril. And for his complices that practised with him, being Portuguese, and of the retinue of king Antonio, the king of Spain's mortal enemy, they were men thereby freed and discharged from suspicion, and might send letters and receive letters out of Spain without jealousy; as those which were thought to entertain intelligences there for the good of their master. And for the evasion and mask that Lopez had prepared for this treason, if it had not been searched and sifted to the bottom, it was, that he did intend but to cozen the king of Spain, without ill meaning; somewhat in the nature of that stratagem which Parry, a most cunning and artificial traitor, had provided for himself.

Nevertheless this matter, by the great goodness of God, falling into good hands, of those honourable and sufficient persons which dealt therein, was by their great and worthy industry so handled and followed, as this Proteus of a disguised and transformed treason did at last appear in his own likeness and colours, which were as foul and monstrous as have been known in the world. For some of her majesty's honourable council long since entered into consideration that the retinue of king Antonio, I mean some of them, were not unlike to hatch these kinds of treasons, in regard they were needy strangers, entered into despair of their master's fortune, and like enough to aspire to make their peace at home by some such wicked services as these; and therefore grew to have an extraordinary vigilant eye upon them: which prudent and discreet presumption, or conjecture, joined with some advertisements of espials abroad, and some other industry, was the first cause, next under the great benediction of God, which giveth unto princes zealous counsellors, and giveth to counsellors policy, and discerning thoughts, of the revealing and discovering of these treasons, which were contrived in order and form, as hereafter is set down.

This Lopez, of nation a Portuguese, and suspected to be in sect secretly a Jew, though here he conformed himself to the rites of the Christian religion, had for a long time professed physic in this land, by occasion whereof, being withal a man very observant and officious, and of a pleasing and applicable behaviour; in that regard, rather than for any great learning in his faculty, he grew known and favoured in court, and was some years since sworn physician of her majesty's household; and by her majesty's bounty, of whom he had received divers gifts of good commodity, was grown to good estate of wealth.

This man had insinuated himself greatly, in regard he was of the same nation, with the king Antonio, whose causes he pretended to solicit at the court; especially while he supposed there was any appearance of his fortune; of whom also he had obtained, as one that referred all his doings to gain, an assignation of 50000 crowns to be levied in Portugal. But being a person wholly of a corrupt and mercenary nature, and finding his hopes cold from that part; he cast his eyes upon

a more

a more able paymaster, and secretly made offer long since of his service to the king of Spain : and accordingly gave sundry intelligences of that which passed here, and imported most for the king of Spain to know, having no small means, in regard of his continual attendance at court, nearness, and access, to learn many particulars of great weight : which intelligences he entertained with Bernardine Mendoza, Antonio Vega, Roderigo Marquez, and divers others.

In the conveyance of which his intelligences, and in the making known of his disposition to do the king of Spain service, he did use, amongst others, one Manuel Andrada a Portuguesé, revolted from Don Antonio to the king of Spain ; one that was discovered to have practised the death of the said Don Antonio, and to have betrayed him to Bernardine Mendoza. This man coming hither, was, for the same, his practice appearing by letters intercepted, apprehended and committed to prison. Before which time also, there had been by good diligence intercepted other letters, whereby the said Andrada advertised Mendoza, that he had won Dr. Lopez to the king's service : but Lopez having understanding thereof, and finding means to have secret conference with Andrada before his examination, persuaded with him to take the matter upon himself, as if he had invented that advertisement touching Lopez, only to procure himself credit with Mendoza ; and to make him conceive well of his industry and service. And to move him hereto, Lopez set before Andrada, that if he did excuse him, he should have credit to work his delivery ; whereas, if he did impeach him, he was not like to find any other means of favour. By which subtle persuasion Andrada, when he came to be examined, answered according to the direction and lessening which Lopez had given him. And having thus acquitted himself of this suspicion, became suitor for Andrada's delivery, craftily suggesting, that he was to do some notable service to Don Antonio ; in which his suit he accordingly prevailed. When Lopez had thus got Andrada out of prison, he was suffered to go out of the realm into Spain ; in pretence, as was said, to do some service to Don Antonio ; but in truth, to continue Lopez's negotiations and intelligences with the king of Spain ; which he handled so well, as at his return hither, for the comforting of the said Lopez, he brought to him from the king, besides thanks and words of encouragement, and an Abrazo, which is the complement of favour, a very good jewel garnished with sundry stones of good value. This jewel, when Lopez had accepted, he cunningly cast with himself, that if he should offer it to her majesty first, he was assured she would not take it : next, that thereby he should lay her asleep, and make her secure of him for greater matters, according to the saying, *Fraus sibi fidem in parvis praestruit ut in magnis opprimat* ; which accordingly he did, with protestations of his fidelity : and her majesty, as a princess of magnanimity, not apt to fear or suspicion, returned it to him with gracious words.

After Lopez had thus abused her majesty, and had these trials of the fidelity of Andrada, they fell in conference, the matter being first moved by Andrada, as he that came freshly out of Spain, touching the empoisoning of the queen : which Lopez, who saw that matter of intelligence, without some such particular service, would draw no great reward from the king of Spain ; such as a man that was not needy, but wealthy as he was, could find any taste in, assented unto. And to that purpose procured again this Andrada to be sent over, as well to advertise and assure this matter to the king of Spain and his ministers, namely, to the count de Fuentes, assistant to the general of the king of Spain's forces in the Low Countries,

as also to capitulate and contract with him about the certainty of his reward. Andrada having received those instructions, and being furnished with money, by Lopez's procurement, from Don Antonio, about whose service his employment was believed to be, went over to Calais, where he remained to be near unto England and Flanders, having a boy that ordinarily passed to and fro between him and Lopez: by whom he did also, the better to colour his employment, write to Lopez intelligence, as it was agreed he should between him and Lopez; who bad him send such news as he should take up in the streets. From Calais he writeth to count de Fuentes of Lopez's promise and demands. Upon the receipt of which letters, after some time taken to advertise this proposition into Spain, and to receive direction thereupon, the comte de Fuentes associated with Stephano Ibarra, secretary of the council of the wars in the Low-Countries, calleth to him one Manuel Louis Tinoco, a Portuguese, who had also followed king Antonio, and of whose good devotion he had had experience, in that he had conveyed unto him two several packets, wherewith he was trusted by the king Antonio for France. Of this Louis they first received a corporal oath, with solemn ceremony, taking his hands between their hands, that he should keep secret that which should be imparted to him, and never reveal the same, though he should be apprehended and questioned here. This done, they acquaint him with the letters of Andrada, with whom they charge him to confer at Calais in his way, and to pass to Lopez into England, addressing him farther to Stephano Ferrera de Gama, and signifying unto the said Louis withal, as from the king, that he gave no great credence to Andrada, as a person too slight to be used in a cause of so great weight: and therefore marvelled much that he heard nothing from Ferrera of this matter, from whom he had in former time been advertised in generality of Lopez's good affection to do him service. This Ferrera had been sometimes a man of great livelihood and wealth in Portugal, which he did forego in adhering to Don Antonio, and appeareth to be a man of a capacity and practice; but hath some years since been secretly won to the service of the king of Spain, not travelling nevertheless to and fro, but residing as his lieger in England.

Manuel Louis dispatched with these instructions, and with all affectionate commendation from the comte to Lopez, and with letters to Ferrera, took his journey first to Calais, where he conferred with Andrada; of whom receiving more ample information, together with a short ticket of credence to Lopez, that he was a person whom he might trust without scruple, came over into England, and first repaired to Ferrera, and acquainted him with the state of the business, who had before that time given some light unto Lopez, that he was not a stranger unto the practice between him and Andrada, wherewith, indeed, Andrada had in a sort acquainted him. And now upon this new dispatch and knowledge given to Lopez, of the choice of Ferrera to continue that which Andrada had begun: he, to conform himself the better to the satisfaction of the king of Spain, and his ministers abroad, was content more fully to communicate with Ferrera, with whom, from that time forward, he meant singly and apart to deal; and therefore cunningly forbore to speak with Manuel Louis himself; but concluded, that Ferrera should be his only trunk, and all his dealings should pass through his hands, thinking thereby to have gone invisible.

Whereupon he cast with himself, that it was not so safe to use the mediation of Manuel Louis, who had been made privy to the matter, as some base carrier

of letters; which letters also should be written in a cipher, not of alphabet, but of words; such as might, if they were opened, import no vehement suspicion. And therefore Manuel Louis was sent back with a short answer, and Lopez purveyed himself of a base fellow, a Portuguese called Gomez d'Avila, dwelling hard by Lopez's house, to convey his letters. After this messenger provided, it was agreed between Lopez and Ferrera, that letters should be sent to the comte de Fuentes and secretary Juarra, written and signed by Ferrera, for Lopez cautiously did forbear to write himself, but directed and indeed dictated word by word by Lopez himself. The contents thereof were, that Lopez was ready to execute that service to the king, which before had been treated, but required for his recompence the sum of 50000 crowns, and assurance for the same.

These letters were written obscurely, as was touched, in terms of merchandise; to which obscurity when Ferrera excepted, Lopez answered, they knew his meaning by that which had passed before. Ferrera wrote also to E. Manuel Louis, but charged this Gomez to deliver the same letters unto him in the presence of Juarra; as also the letter to Juarra in the presence of Manuel Louis. And these letters were delivered to Gomez d'Avila to be carried to Brussels, and a passport procured, and his charges defrayed by Lopez. And Ferrera, the more to approve his industry, writ letters two several times, the one conveyed by Emanuel Pallacios, with the privity of Lopez, to Christophero Moro, a principal counsellor of the king of Spain, in Spain; signifying that Lopez was won to the king of Spain, and that he was ready to receive his commandments; and received a letter from the same Christophero Moro, in answer to one of these which he shewed unto Lopez. In the mean time Lopez, though a man in semblance of a heavy wit, yet indeed subtle of himself, as one trained in practice, and besides, as wily as fear and covetousness could make him, thought to provide for himself, as was partly touched before, as many starting holes and evasions as he could devise, if any of these matters should come to light. And first he took his time to cast forth some general words afar off to her majesty, as asking her the question, Whether a deceiver might not be deceived? Whereof her majesty, not imagining these words tended to such end, as to warrant him colourably in this wretched conspiracy, but otherwise, of her own natural disposition to integrity and sincerity, uttered dislike and disallowance. Next, he thought he had wrought a great mystery in demanding the precise sum of 50,000 crowns, agreeing just with the sum of assignation or donation from Don Antonio; idly, and in that grossly imagining, that, if afterwards he should accept the same sum, he might excuse it, as made good by the king of Spain, in regard he had desisted to follow and favour Don Antonio; whereupon the king of Spain was in honour tied not to see him a loser. Thirdly, in his conferences with Ferrera, when he was apposed upon the particular manner how he would poison her majesty, he purposely named unto him a syrup, knowing that her majesty never useth syrup; and therefore thinking that would prove an high point for his justification, if things should come in any question.

But all this while desirous after his prey, which he had in hope devoured, he did instantly importune Ferrera for the answering of his last dispatch, finding the delay strange, and reiterating the protestations of his readiness to do the service, if he were assured of his money.

Now before the return of Gomez d'Avila into England, this Stephen Ferrera was discovered to have intelligence with the enemy; but so, as the particular of his traffic and overtures appeared not, only it seemed there was great account made of that he managed: and thereupon he was committed to prison. Soon after arrived Gomez d'Avila, and brought letters only from Manuel Louis, by the name of Francisco de Thores; because, as it seemeth, the great persons on the other side had a contrary discretion to Lopez, and liked not to write by so base a messenger, but continued their course to trust and employ Manuel Louis himself, who in likelihood was retained till they might receive a full conclusion from Spain; which was not till about two months after. This Gomez was apprehended at his landing, and about him were found the letters aforesaid, written in jargon, or verbal cipher, but yet somewhat suspicious, in these words: "This bearer will tell you the price in which your pearls are esteemed, and in what resolution we rest about a little musk and amber, which I am determined to buy." Which words the said Manuel Louis afterwards voluntarily confessed to be deciphered in this sort; That by the allowance of the pearls he meant, that the count de Fuentes, and the secretary, did gladly accept the offer of Lopez to poison the queen, signified by Ferrera's letter; and for the provision of amber and musk, it was meant, that the comte looked shortly for a resolution from the king of Spain concerning a matter of importance, which was for burning of the queen's ships; and another point tending to the satisfaction of their vindictive humour.

But while the sense of this former letter rested ambiguous, and that no direct particular was confessed by Ferrera, nor sufficient light given to ground any rigorous examination of him, cometh over Manuel Louis with the resolution from Spain; who first understanding of Ferrera's restraint, and therefore doubting how far things were discovered, to shadow the matter, like a cunning companion, gave advertisement of an intent he had to do service, and hereupon obtained a passport: but after his coming in, he made no haste to reveal any thing, but thought to dally and abuse in some other sort. And while the light was thus in the clouds, there was also intercepted a little ticket which Ferrera in prison had found means to write, in care to conceal Lopez, and to keep him out of danger, to give a caveat of staying all farther answers and advertisements in these causes. Whereupon Lopez was first called in question.

But in conclusion, this matter being with all assiduity and policy more and more pierced and mined into, first, there was won from Manuel Louis his letters from the comte de Fuentes and secretary Juarra to Ferrera, in both which mention is made of the queen's death; in that of the comte's, under the term of a commission; and in that of the secretary's, under the term of the great service, whereof should arise an universal benefit to the whole world. Also the letters of credit written by Gonfalo Gomez, one to Pedro de Carrera, and the other to Juan Palacio, to take up a sum of money by F. Manuel Louis, by the foresaid false name of Fr. de Thores; letters so large, and in a manner without limitation, as any sum by virtue thereof might be taken up: which letters were delivered to Louis by the count de Fuentes's own hands, with directions to shew them to Lopez for his assurance; a matter of God's secret working in staying the same, for thereupon rested only the execution of the fact of Lopez. Upon so narrow a point consisted the safety of her majesty's life, already sold by avarice to malice and ambition, but

extraordinarily preserved by that watchman which never slumbereth. This same E. Manuel Louis, and Stephen Ferrera also, whereof the one managed the matter abroad, and the other resided here to give correspondence, never meeting after Manuel had returned, severally examined without torture or threatenng, did in the end voluntarily and clearly confess the matters above-mentioned, and in their confessions fully consent and concur, not only in substance, but in all points, particularities, and circumstances; which confessions appear expressed in their own natural language, testified and subscribed with their own hands; and in open assembly, at the arraignment of Lopez in the Guild-hall, were by them confirmed and avouched to Lopez his face; and therewithal are extant, undefaced, the original letters from count de Fuentes, secretary Juarra, and the rest.

And Lopez himself, at his first apprehension and examination, did indeed deny, and deny with deep and terrible oaths and execrations, the very conferences and treatures with Ferrera, or Andrada, about the empoisonment. And being demanded, if they were proved against him what he would say? he answered, That he would yield himself guilty of the fact intended. Nevertheless, being afterwards confronted by Ferrera, who constantly maintained to him all that he had said, reducing him to the times and places of his said conferences, he confessed the matter, as by his confession in writing, signed with his own hand, appeareth. But then he fell to that slender evasion, as his last refuge, that he meant only to cozen the king of Spain of the money: and in that he continued at his arraignment, when, notwithstanding, at the first he did retract his own confession: and yet being asked, whether he was drawn either by means of torture, or promise of life, to make the same confession? he did openly testify that no such means were used towards him.

But the falshood of this excuse, being an allegation that any traitor may use and provide for himself, is convicted by three notable proofs. The first, that he never opened this matter, neither unto her majesty, unto whom he had ordinary access, nor to any counsellor of state, to have permission to toll on, and inveigle these parties with whom he did treat, if it had been thought so convenient; wherein, perhaps, he had opportunity to have done some good service, for the farther discovery of their secret machinations against her majesty's life. The second, that he came too late to this shift; having first bewrayed his guilty conscience, in denying those treaties and conferences till they were evidently and manifestly proved to his face. The third, that in conferring with Ferrera about the manner of his assurance, he thought it better to have the money in the hands of such merchants as he should name in Antwerp, than to have it brought into England; declaring his purpose to be, after the fact done speedily to fly to Antwerp, and there to tarry some time, and so to convey himself to Constantinople; where it is affirmed, that Don Salomon, a Jew in good credit, is Lopez his near kinsman, and that he is greatly favoured by the said Don Salomon: whereby it is evident that Lopez had cast his reckonings upon the supposition of the fact done.

Thus may appear, both how justly this Lopez* is condemned for the highest treason that can be imagined; and how, by God's marvellous goodness, her majesty hath been preserved. And surely, if a man do duly consider, it is hard to say, whether God hath done greater things by her majesty or for her:

* Lopez was executed 7th June 1594.

if you observe on the one side, how God hath ordained her government to break and cross the unjust ambition of the two mighty potentates, the king of Spain and the bishop of Rome, never so straitly between themselves combined: and on the other side, how mightily God hath protected her, both against foreign invasion and inward troubles, and singularly against the many secret conspiracies that have been made against her life; thereby declaring to the world that he will indeed preserve that instrument which he hath magnified. But the corruptions of these times are wonderful, when that wars, which are the highest trials of right between princes, that acknowledge no superior jurisdiction, and ought to be prosecuted with all honour, shall be stained and infamed with such foul and inhuman practices. Wherein if so great a king hath been named, the rule of the civil law, which is a rule of common reason, must be remembered; *Frustra legis auxilium implorat, qui in legem committit*. He that hath sought to violate the majesty royal, in the highest degree, cannot claim the preeminence thereof to be exempted from just imputation.



THE
* P R O C E E D I N G S
OF THE
E A R L of E S S E X.

The points of form worthy to be observed.

THE fifth of June in Trinity term, upon Thursday, being no Starchamber day, at the ordinary hour when the courts sit at Westminster, were assembled together at the lord Keeper's house in the great chamber, her majesty's privy-council, enlarged and assisted for that time and cause by the special call and associating of certain select persons, *viz.* four earls, two barons, and four judges of the law, making in the whole a council or court of eighteen persons, who were attended by four of her majesty's learned counsel for charging the earl; and two clerks of the council, the one to read, the other as a register; and an auditory of persons, to the number, as I could guess, of two hundred, almost all men of quality, but of every kind or profession; nobility, court, law, country, city. The upper end of the table left void for the earl's appearance, who, after the commissioners had sat a while, and the auditory was quiet from the first throng to get in, and the doors shut, presented himself and kneeled down at the board's end, and so continued till he was licensed to stand up.

The names of the commissioners.

Lord Archbishop,
Lord Keeper, *etc.*

*A declaration
of her majesty's
proceedings.*

IT was opened, that her majesty being imperial, and immediate under God, was not holden to render account of her actions to any; howbeit, because she had chosen ever to govern, as well with satisfaction as with sovereignty, and the rather, to command down the winds of malicious and seditious rumours wherewith mens conceits may have been tossed to and fro, she was pleased to call the world to an understanding of her princely course held towards the earl of Essex, as well in heretofore **protracting** as in now **proceeding**.

The earl repairing from his government into this realm in August last, contrary to her majesty's express and most judicial commandment, though the contempt were in that point visible, and her majesty's mind prepared to a just and high displeasure, in regard of that realm of Ireland set at hazard by his former disobedience

• At York-House, in June 1600, prepared for queen Elizabeth by her command, and read to her by Mr. Bacon, but never published.

to her royal directions, yet kept that stay, as she commanded my lord only to his chamber in court, until his allegations might by her privy-council be questioned and heard; which account taken, and my lord's answers appearing to be of no defence, that shadow of defence which was offered consisted of two parts, the one his own conceit of some likelihood of good effects to ensue of the course held, the other a vehement and over-ruling persuasion of the council there, though he were indeed as absolutely freed from opinion of the council of Ireland, as he was absolutely tied to her majesty's trust and instructions. Nevertheless her majesty not unwilling to admit any extenuation of his offence; and considering the one point required advertisement out of Ireland, and the other further expectation of the event and sequel of the affairs there, and so both points asked time and protraction; her majesty proceeded still with reservation, not to any restraint of my lord according to the nature and degree of his offence, but to a commitment of him, *sub libera custodia*, in the lord Keeper's house.

After, when both parts of this defence plainly failed my lord, yea and proved utterly adverse to him, for the council of Ireland in plain terms disavowed all those his proceedings, and the event made a miserable interpretation of them, then her majesty began to behold the offence in nature and likeness, as it was divested from any palliation or cover, and in the true proportion and magnitude thereof, importing the peril of a kingdom: which consideration wrought in her majesty a strange effect, if any thing which is heroical in virtue can be strange in her nature; for when offence was grown unmeasurably offensive, then did grace superabound; and in the heat of all the ill news out of Ireland, and other advertisements thence to my lord's disadvantage, her majesty entered into a resolution, out of herself and her inscrutable goodness, not to overthrow my lord's fortune irreparably, by public and proportionable justice: notwithstanding, inasmuch as about that time there did fly about in London streets and theatres divers seditious libels; and Powles and ordinaries were full of bold and factious discourses, whereby not only many of her majesty's faithful and zealous counsellors and servants were taxed, but withal the hard estate of Ireland was imputed to any thing rather than unto the true cause, the earl's defaults, though this might have made any prince on earth to lay aside straightways the former resolution taken, yet her majesty in her moderation persisted in her course of clemency, and bethought herself of a mean to right her own honour, and yet spare the earl's ruin; and therefore taking a just and most necessary occasion upon these libels, of an admonition to be given seasonably, and as is oft accustomed; the last Star-chamber day of Michaelmas term, was pleased, that declaration should be made, by way of testimony, of all her honourable privy-council, of her majesty's infinite care, royal provisions, and prudent directions for the prosecutions in Ireland, wherein the earl's errors, by which means so great care and charge was frustrated, were incidently touched.

But as in bodies very corrupt, the medicine rather stirreth and exasperateth the humour than purgeth it, so some turbulent spirits laid hold of this proceeding in so singular partiality towards my lord, as if it had been to his disadvantage, and gave out that this was to condemn a man unheard, and to wound him on his back, and to leave Justice her sword, and take away her balance, which consisted of an accusation and a defence; and such other seditious phrases; whereupon her majesty seeing herself interested in honour, which she hath ever sought to preserve as her eye, clear and without mote, was enforced to relolve of a judicial hearing
of

of the cause, which was accordingly appointed in the end of Hilary term. At the which time, warning being given to my lord to prepare himself, he falling, as it seemed, in a deep consideration of his estate, made unto her majesty by letter an humble and effectual submission, beseeching her that that bitter cup of justice might pass from him, for those were his words; which wrought such an impression in her majesty's mind, that it not only revived in her her former resolution to forbear any public hearing, but it fetched this virtue out of mercy by the only touch, as few days after my lord was removed to further liberty in his own house, her majesty hoping that these bruits and malicious imputations would of themselves wax old and vanish: but finding it otherwise in proof, upon taste taken by some intermission of time, and especially beholding the humour of the time in a letter presumed to be written to her majesty herself by a lady, to whom, though nearest in blood to my lord, it appertained little to intermeddle in matters of this nature, otherwise than in courtesie of humility to have solicited her grace and mercy; in which letter, in a certain violent and mineral spirit of bitterness, remonstrance and representation is made to her majesty, as if my lord suffered under passion and faction, and not under justice mixed with mercy; which letter, though written to her sacred majesty, and therefore unfit to pass in vulgar hands, yet was first divulged by copies every where, that being, as it seemeth, the newest and finest form of libelling, and since committed to the press: her majesty in her wisdom seeing manifestly these rumours thus nourished had got too great a head to be repressed without some hearing of the cause, and calling my lord to answer; and yet on the other side being still informed touching my lord himself of his continuance of penitence and submission, did in conclusion resolve to use justice, but with the edge and point taken off and rebated; for whereas nothing leaveth that teint upon honour, which in a person of my lord's condition is hardliest repaired, in question of justice, as to be called to the ordinary and open place of offenders and criminals, her majesty had ordered that the hearing should be *intra domesticos parietes*, and not *luce forensis*. And whereas again in the Star-chamber there be certain formalities, not fit in regard of example to be dispensed with, which would strike deeper both into my lord's fortune and reputation; as the fine which is incident to a sentence there given, and the imprisonment of the Tower, which in case of contempts that touch the point of estate doth likewise follow; her majesty turning this course, hath directed that the matters should receive, before a great, honourable, and selected council, a full and deliberate, and yet in respect, a private, mild, and gracious hearing.

All this was not spoken in one undivided speech, but partly by the first that spake of the learned council, and partly by some of the commissioners: for in this and the rest I keep order of matter, and not of circumstance.

The matters laid to my Lord's charge.

The charge.

The matters wherewith my lord was charged were of two several natures; of an higher, and of an inferior degree of offence.

The former kind purported great and high contempts and points of misgovernment in his office of her majesty's lieutenant and governor of her realm of Ireland; and in the trust and authority thereby to him committed.

The latter contained divers notorious errors and neglects of duty, as well in his government as otherwise.

The

The great contempts and points of misgovernment and malversation in his office, were articulated into three heads.

- I. The first was the journey into Munster, whereby the prosecution in due time upon Tyrone in Ulster was overthrown: wherein he proceeded contrary to his directions, and the whole design of his employment; whereof ensued the consumption of her majesty's army, treasure and provisions, and the evident peril of that kingdom. The three principal articles.
- II. The second was the dishonourable and dangerous treaty held, and cessation concluded with the same arch-rebel Tyrone.
- III. The third was his contemptuous leaving his government, contrary to her majesty's absolute mandate under her hand and signet, and in a time of so imminent and instant danger.

For the first, it had two parts; that her majesty's resolution and direction was precise and absolute for the northern prosecution, and that the same direction was by my lord, in regard of the journey to Munster, wilfully and contemptuously broken. That her majesty's direction was precise and absolute for the northern prosecution.

It was therefore delivered, that her majesty, touched with a true and princely sense of the torn and broken estate of that kingdom of Ireland, entered into a most christian and magnanimous resolution to leave no faculty of her regal power or policy unimployed for the reduction of that people, and for the suppressing and utter quenching of that flame of rebellion, wherewith that country was and is wasted: whereupon her majesty was pleased to take knowledge of the general conceit, how the former making and managing of the actions there had been taxed, upon two exceptions; the one, that the proportions of forces which had been there maintained and continued by supplies, were not sufficient to bring the prosecutions to a period: the other, that the prosecutions had been also intermixed and interrupted with too many temporizing treaties, whereby the rebel did not only gather strength, but also find his strength more and more, so as ever such smothers broke forth again into greater flames. Which kind of discourses and objections, as they were entertained in a popular kind of observation, so were they ever chiefly patronized and apprehended by the earl, both upon former times and occasions, and now last when this matter was in deliberation. So as her majesty, to acquit her honour and regal function, and to give this satisfaction to herself and others, that she had left no way untried, resolved to undertake the action with a royal army and puissant forces, under the leading of some principal nobleman; in such sort, that, as far as human discourse might discern, it might be hoped, that by the expedition of a summer things might be brought to that state, as both realms may feel some ease and respiration; this from charge and levies, and that from troubles and perils. Upon this ground her majesty made choice of my lord of Essex for that service, a principal peer and officer of her realm, a person honoured with the trust of a privy counsellor, graced with the note of her majesty's special favour, infallibly betokening and redoubling his worth and value, enabled with the experience and reputation of former services, and honourable charges in the wars; a man every way eminent, select and qualified for a general of a great enterprize, intended for the recovery and reduction of that kingdom, and not only or merely as a lieutenant or governor of Ireland.

THE PROCEEDINGS OF

My lord, after that he had taken the charge upon him, fell straightways to make propositions answerable to her majesty's ends, and answerable to his own former discourses and opinions; and chiefly did set down one full and distinct resolution, that the design and action, which of all others was most final and summary towards an end of those troubles, and which was worthy her majesty's enterprize with great and puissant forces, was a prosecution to be made upon the arch-traitor Tyrone in his own strengths within the province of Ulster, whereby both the inferior rebels which rely upon him, and the foreigner upon whom he relieth, might be discouraged, and so to cut asunder both dependences: and for the proceeding with greater strength and policy in that action, that the main invasion and impression of her majesty's army should be accompanied and corresponded unto by the plantation of strong garrisons in the north, as well upon the river of Loughfoile as a portern of that province, as upon the hither frontiers, both for the distracting and bridling of the rebels forces during the action, and again, for the keeping possession of the victory, if God should send it.

This proposition and project moving from my lord, was debated in many consultations. The principal men of judgment and service in the wars, as a council of war to assist a council of state, were called at times unto it; and this opinion of my lord was by himself fortified and maintained against all contradiction and opposite argument: and in the end, *ex unanimi consensu*, it was concluded and resolved that the ax should be put to the root of the tree: which resolution was ratified and confirmed by the binding and royal judgment of her sacred majesty, who vouchsafed her royal presence at most of those consultations.

According to a proposition and enterprize of this nature, were the proportions of forces and provisions thereunto allotted. The first proportion set down by my lord was the number of 12000 foot and 1200 horse; which being agreed unto, upon some other accident out of Ireland the earl propounded to have it made 14000 foot, and 1300 horse, which was likewise accorded: within a little while after the earl did newly insist to have an augmentation of 2000 more, using great persuasions and confident significations of good effect, if those numbers might be yielded to him, as which he also obtained before his departure; and besides the supplies of 2000 arriving in July, he had authority to raise 2000 Irish more, which he procured by his letters out of Ireland, with pretence to further the northern service; so as the army was raised in the conclusion and list to 16000 foot, and 1300 horse, supplied with 2000 more at three months end, and increased with 2000 Irish upon this new demand; whereby her majesty at that time paid 18000 foot and 1300 horse in the realm of Ireland. Of these forces, divers companies drawn out of the experienced bands of the Low Countries; special care taken that the new levies in the country should be of the ablest, and most disposed bodies; the army also animated and encouraged with the service of divers brave and valiant noblemen and gentlemen voluntaries; in sum, the most flourishing and complete troops that have been known to have been sent out of our nation in any late memory. A great mass of treasure provided and issued, amounting to such a total, as the charge of that army, all manner of ways, from the time of the first provisions and setting forth, to the time of my lord's returning into England, was verified to have drawn out of the coffers, besides the charge of the country, the quantity of 300000*l.* and so ordered, as he carried with him three months pay beforehand, and likewise victual, munition, and all habiliments of war whatsoever,

soever, with attendance of shipping allowed and furnished in a fortable proportion, and to the full of all my lord's own demands. For my lord being himself a principal counsellor for the preparations, as he was to be an absolute commander in the execution, his spirit was in every conference and conclusion in such sort, as when there happened any points of difference upon demands, my lord using the forcible advantages of the toleration and liberty which her majesty's special favour did give unto him, and the great devotion and forwardness of his fellow-counsellors to the general cause, and the necessity of his then present service, he did ever prevail and carry it; insomuch as it was objected and laid to my lord's charge as one of his errors and presumptions, that he did oftentimes, upon their propositions and demands, enter into contestations with her majesty, more a great deal than was fit. All which propositions before mentioned being to the utmost of my lord's own askings, and of that height and greatness, might really and demonstratively express and intimate unto him, besides his particular knowledge which he had, as a counsellor of estate, of the means both of her majesty and this kingdom, that he was not to expect to have the commandment of 16000 foot and 1300 horse, as an appurtenance to his lieutenancy of Ireland, which was impossible to be maintained; but contrariwise, that in truth of intention he was designed as general for one great action and expedition, unto which the rest of his authority was but necessary and accommodated.

It was delivered further, that in the authority of his commission, which was more ample in many points than any former lieutenant had been vested with, there were many direct and evident marks of his designation to the northern action, as principally a clause whereby *merum arbitrium belli et pacis* was reposed in his sole trust and discretion, whereas all the lieutenants were ever tied unto the peremptory assistance and admonition of a certain number of voices of the council of Ireland. The occasion of which clause so passed to my lord, doth notably disclose and point unto the precise trust committed to my lord for the northern journey; for when his commission was drawn at first according to former precedents, and on the other side my lord insisted strongly to have this new and *prima facie* vast and exorbitant authority, he used this argument; that the council of Ireland had many of them livings and possessions in or near the province of Leinster and Munster; but that Ulster was abandoned from any such particular respects, whereby it was like, the council there would be glad to use her majesty's forces for the clearing and assuring of those territories and countries where their fortunes and estates were planted: so as, if he should be tied to their voices, he were like to be diverted from the main service intended: upon which reason that clause was yielded unto.

So as it was then concluded, that all circumstances tended to one point, that there was a full and precise intention and direction for Ulster, and that my lord could not descend into the consideration of his own quality and value; he could not muster his fair army; he could not account with the treasurer, and take consideration of the great mass of treasure issued; he could not look into the ample and new clause of his letters patents; he could not look back, either to his own former discourses, or to the late propositions whereof himself was author, nor to the conferences, consultations, and conclusions thereupon, nor principally to her majesty's royal direction and expectation, nor generally to the conceit both of subjects of this realm, and the rebels themselves in Ireland; but which way soever he

turned, he must find himself trusted, directed, and engaged wholly for the northern expedition.

The parts of this that was charged were verified by three proofs: the first, the most authentical but the least pressed, and that was her majesty's own royal affirmation, both by her speech now and her precedent letters; the second, the testimony of the privy council, who upon their honours did avouch the substance of that was charged, and referred themselves also to many of their lordships letters to the same effect; the third, letters written from my lord after his being in Ireland, whereby the resolution touching the design of the north is often acknowledged.

The proofs.

There follow some clauses both of her majesty's letters and of the lords of her council, and of the earl's and the council of Ireland, for the verification of this point.

Her majesty, in her letter of the 19th of July to my lord of Essex, upon the lingering of the northern journey, doubting my lord did value service, rather by the labour he endured, than by the advantage of her majesty's royal ends, hath these words:

Her majesty to the earl of Essex 19th of July, immediately after the Munster journey.

“ You have in this dispatch given us small light, either when or in what order you intend particularly to proceed to the northern action; wherein if you compare the time that is run on, and the excessive charges that are spent, with the effects of any thing wrought by this voyage, howsoever we remain satisfied with your own particular cares and travails of body and mind, yet you must needs think that we, that have the eyes of foreign princes upon our actions, and have the hearts of people to comfort and cherish, who groan under the burden of continual levies and impositions, which are occasioned by these late actions, can little please ourself hitherto with any thing that hath been effected.”

In another branch of the same letter, reflecting her royal regard upon her own honour interested in this delay, hath these words:

A second clause of the same letter.

“ Whereunto we will add this one thing that doth more displease us than any charge or offence that happens, which is, that it must be the queen of England's fortune, who hath held down the greatest enemy she had, to make a base bush-kern to be accounted so famous a rebel, as to be a perion against whom so many thousands of foot and horse, besides the force of all the nobility of that kingdom, must be thought too little to be employed.”

In another branch, discovering, as upon the vantage ground of her princely wisdom, what would be the issue of the courses then held, hath these words:

A third clause of the same letter.

“ And therefore, although by your letter we found your purpose to go northwards, on which depends the main good of our service, and which we expected long since should have been performed; yet because we do hear it bruited, besides the words of your letter written with your own hand, which carries some such sense, that you who alledge such sickness in your army by being travelled with you, and find so great and important affairs to digest at Dublin, will yet engage yourself personally into Ophalie, being our lieutenant, when you have there so many inferiors able, might victual a fort, or seek revenge against those who have lately prospered against our forces. And when we call to mind how far the sun hath run his course, and what dependeth upon the timely plantation of garisons in the North, and how great scandal it would be to our honour to leave that proud rebel unassayed, when we have with so great an expectation of our enemies engaged ourselves so far in the action; so that, without

“ that

“ that be done, all those former courses will prove like *via navis in mari*; besides
 “ that our power, which hitherto hath been dreaded by potent enemies, will now
 “ even be held contemptible amongst our rebels: we must plainly charge you,
 “ according to the duty you owe to us, so to unite soundness of judgment to the
 “ zeal you have to do us service, as with all speed to pass thither in such sort, as
 “ the ax might be put to the root of that tree, which hath been the treasonable
 “ stock from whom so many poisoned plants and grafts have been derived; by
 “ which proceedings of yours, we may neither have cause to repent of our im-
 “ ployment of yourself for omitting those opportunities to shorten the wars, nor
 “ receive in the eye of the world imputation of so much weakness in ourself, to
 “ begin a work without better foresight what would be the end of our excessive
 “ charge, the adventure of our peoples lives, and the holding up of our own
 “ greatness against a wretch whom we have raised from the dust, and who could
 “ never prosper, if the charges we have been put to were orderly employed.”

Her majesty in her particular letter written to my lord the 30th of July, bindeth, still expressly upon the northern prosecution, my lord *ad principalia rerum*, in these words:

Her majesty to my lord of Essex, 30th July.

“ First, you know right well, when we yielded to this excessive charge, it was
 “ upon no other foundation than to which yourself did ever advise us as much as
 “ any, which was, to assail the northern traitor, and to plant garrisons in his coun-
 “ try; it being ever your firm opinion, amongst other our council, to conclude
 “ that all that was done in other kind in Ireland, was but waste and consumption.”

Her majesty in her letter of the 9th of August to my lord of Essex and the council of Ireland, when, after Munster journey, they began in a new time to dissuade the northern journey in her excellent ear, quickly finding a discord of men from themselves, chargeth them in these words:

“ Observe well what we have already written, and apply your counsels to that
 “ which may shorten, and not prolong the war; seeing never any of you was of
 “ other opinion, than that all other courses were but consumptions, except we
 “ went on with the northern prosecution.”

Her majesty to my lord and the council of Ireland, 9th August.

The lords of her majesty's council, in their letter of the 10th of August to my lord of Essex and the council of Ireland, do in plain terms lay before them the first plot, in these words:

“ We cannot deny but we did ground our counsels upon this foundation, That
 “ there should have been a prosecution of the capital rebels in the North, whereby
 “ the war might have been shortened; which resolution, as it was advised by your-
 “ self before your going, and assented to by most part of the council of war that were
 “ called to the question, so must we confess to your lordship, that we have all this
 “ while concurred with her majesty in the same desire and expectation.”

The lords of the council to my lord and the council of Ireland, 10th August.

My lord of Essex, and the council of Ireland, in their letter of the 5th of May to the lords of the council before the Munster journey, write *in haec verba*.

“ Moreover, in your lordships great wisdom, you will likewise judge what pride
 “ the rebels will grow to, what advantage the foreign enemy may take, and what
 “ loss her majesty shall receive, if this summer the arch-traitor be not assailed, and
 “ garrisons planted upon him.”

My lord of Essex and the council of Ireland to the lords, 5th May.

My lord of Essex, in his particular letter of the 11th of July, to the lords of the council, after Munster journey, writeth thus:

“ As.

The earl to
the lords,
11th July.

“ As fast as I can call these troops together, I will go look upon yonder proud rebel, and if I find him on hard ground, and in an open country, though I should find him in horse and foot three for one, yet will I by God’s grace dislodge him, or put the council to the trouble of,” *etc.*

The earl of Essex, in his letter of the 14th of August to the lords of the council, writeth out of great affection, as it seemeth, in these words :

The earl to
the lords,
14th August.

“ Yet must these rebels be assailed in the height of their pride, and our base clowns must be taught to fight again; else will her majesty’s honour never be recovered, nor our nation valued, nor this kingdom reduced.”

Besides it was noted, that whereas my lord and the council of Ireland, had, by theirs of the 15th of July, desired an increase of 2000 Irish purposely for the better setting on foot of the northern service; her majesty, notwithstanding her proportions, by often gradations and risings, had been raised to the highest elevation, yet was pleased to yield unto it.

1. The first part concerneth my lord’s ingress into his charge, and that which passed here before his going hence; now followeth an order, both of time and matter, what was done after my lord was gone into Ireland, and had taken upon him the government by her majesty’s commission.

That my lord
did wilfully
and contemptuously
violate
her majesty’s
direction
touching the
northern pro-
secution.

2. The second part then of the first article was to shew, that my lord did wilfully and contemptuously, in this great point of estate, violate and infringe her majesty’s direction before remembered.

In delivering of the evidence and proofs of this part, it was laid down for a foundation, that there was a full performance on her majesty’s part of all the points agreed upon for this great prosecution, so as there was no impediment or cause of interruption from hence.

This is proved by a letter from my lord of Essex and the council of Ireland to the lords of the council here, dated 9th May, which was some three weeks after my lord had received the sword, by which time he might well and thoroughly inform himself whether promises were kept in all things or no, and the words of the letter are these :

The earl of
Essex and the
council of
Ireland to the
lords of the
council, 9th
May.

“ As your lordships do very truly set forth, we do very humbly acknowledge her majesty’s chargeable magnificence and royal preparations and transportations of men, munition, apparel, money and victuals, for the recovery of this distressed kingdom;” where note, the transportations acknowledged as well as the preparations.

Next, it was set down for a second ground, that there was no natural nor accidental impediment in the estate of the affairs themselves, against the prosecution upon Tyrone, but only culpable impediments raised by the journey of Munster.

This act of
Essex and the
council of
Ireland to the
lords of the
council, 28th
April.

This appeared by a letter from my lord and the council of Ireland to the lords of the council here, dated the 28th of April, whereby they advertise, that the prosecution of Ulster, in regard of lack of grafs and forage, and the poorness of cattle at that time of year, and such like difficulties of the season, and not of the matter, will in better time, and with better commodity for the army, be fully executed about the middle of June or beginning of July; and signify, that the earl intended a present prosecution should be set on foot in Lemster: to which letters the lords make answer by theirs of the 8th of May, signifying her majesty’s toleration of the delay.

A D E C L A

A
D E C L A R A T I O N
 O F T H E
P R A C T I C E S and **T R E A S O N S,**

Attempted and committed by

R O B E R T late Earl of Effex and his Complices,

A G A I N S T

Her **M A J E S T Y** and her Kingdoms ;

A N D O F

The Proceedings as well at the Arraignments and Convictions
 of the said late Earl, and his Adherents, as after :

T O G E T H E R W I T H

The very Confessions, and other Parts of the Evidences themselves, word
 for word, taken out of the Originals.

Imprinted *anno* 1601*.

THOUGH public justice passed upon capital offenders, according to the
 laws, and in course of an honourable and ordinary trial, where the case

* Our author has abundantly vouched this DE-
 CLARATION, etc. to be penned by himself in the
 following passage of his *Apology* :

“ It is very true also, about that time, her ma-
 jesty taking a liking of my pen, upon that which
 I had formerly done concerning the Proceeding
 at York-House, and likewise upon some other
 DECLARATIONS, which in former times by her
 appointment I put in writing, commanded me
 to pen that book, which was published for
 the better satisfaction of the world ; which I did,
 but so, as never secretary had more particular and
 express directions and instructions in every point
 how to guide my hand in it : and not only so,
 but after I had made a first draught thereof, and
 propounded it to certain principal counsellors by
 her majesty’s appointment, it was perused, weigh-
 ed, censured, altered, and made almost a new
 writing, according to their lordships better con-

sideration ; wherein their lordships and myself
 both were as religious and curious of truth, as de-
 sirous of satisfaction : and myself indeed gave
 only words and form of stile in pursuing their di-
 rection. And after it had passed their allowance,
 it was again exactly perused by the queen herself,
 and some alterations made again by her appoint-
 ment : nay, and after it was set to print, the
 queen, who, as your lordship knoweth, as she was
 excellent in great matters, so she was exquisite in
 small ; and noted that I could not forget my an-
 cient respect to my lord of Effex, in terming him
 ever, *my lord of Effex, my lord of Effex*, almost
 in every page of the book ; which she thought
 not fit, but would have it made *Effex, or the late*
earl of Effex ; whereupon, of force, it was printed
de novo, and the first copies suppressed by her
 peremptory commandment.”

would

DECLARATION OF THE TREASONS

would have born and required the severity of martial law to have been speedily used, do in itself carry a sufficient satisfaction towards all men, specially in a merciful government, such as her majesty's is approved to be: yet because there do pass abroad in the hands of many men divers false and corrupt collections and relations of the proceedings at the arraignment of the late earls of Essex and Southampton; and again, because it is requisite that the world do understand as well the precedent practices and inducements to the treasons, as the open and actual treasons themselves, though in a case of life it was not thought convenient to insist at the trial upon matter of inference or presumption, but chiefly upon matter of plain and direct proofs; therefore it hath been thought fit to publish to the world a brief declaration of the practices and treasons attempted and committed by Robert late earl of Essex and his complices against her majesty and her kingdoms, and of the proceedings at the convictions of the said late earl and his adherents upon the same treasons: and not so only, but therewithal, for the better warranting and verifying of the narration, to set down in the end the very confessions and testimonies themselves word for word, taken out of the originals, whereby it will be most manifest that nothing is obscured or disguised, though it do appear by divers most wicked and seditious libels thrown abroad, that the dregs of these treasons which the late earl of Essex himself, a little before his death, did term a leprosy, that had infected far and near, do yet remain in the hearts and tongues of some misaffected persons.

THE most partial will not deny, but that Robert late earl of Essex was, by her majesty's manifold benefits and graces, besides oath and allegiance, as much tied to her majesty, as the subject could be to the sovereign; her majesty having heaped upon him both dignities, offices, and gifts, in such measure, as within the circle of twelve years, or more, there was scarcely a year of rest, in which he did not obtain at her majesty's hands some notable addition either of honour or profit.

But he on the other side making these her majesty's favours nothing else but wings for his ambition, and looking upon them not as her benefits, but as his advantages, supposing that to be his own metal which was but her mark and impression, was so given over by God, who often punisheth ingratitude by ambition, and ambition by treason, and treason by final ruin, as he had long ago plotted it in his heart to become a dangerous supplanter of that seat, whereof he ought to have been a principal supporter; in such sort as now every man of common sense may discern not only his last actual and open treasons, but also his former more secret practices and preparations towards those his treasons, and that without any gloss or interpreter, but himself and his own doings.

For first of all, the world can now expound why it was that he did aspire, and had almost attained unto a greatness, like unto the ancient greatness of the *praefectus praetorio* under the emperors of Rome, to have all men of war to make their sole and particular dependence upon him; that with such jealousy and watchfulness he sought to discountenance any one that might be a competitor to him in any part of that greatness, that with great violence and bitterness he sought to suppress and keep down all the worthiest martial men, which did not appropriate their respects and acknowledgments only towards himself. All which did manifestly detect and distinguish, that it was not the reputation of a famous leader in the wars which he fought, as it was construed a great while, but only power and
greatness

greatness to serve his own ends, considering he never loved virtue nor valour in another, but where he thought he should be proprietary and commander of it, as referred to himself.

So likewise those points of popularity which every man took notice and note of, as his affable gestures, open doors, making his table and his bed so popularly places of audience to suitors, denying nothing when he did nothing, feeding many men in their discontentments against the queen and the state, and the like; as they were ever since Absalom's time the forerunners of treasons following, so in him were they either the qualities of a nature disposed to disloyalty, or the beginnings and conceptions of that which afterwards grew to shape and form.

But as it were a vain thing to think to search the roots and first motions of treasons, which are known to none but God that discerns the heart, and the devil that gives the instigation; so it is more than to be presumed, being made apparent by the evidence of all the events following, that he carried into Ireland a heart corrupted in his allegiance, and pregnant of those or the like treasons which afterwards came to light.

For being a man by nature of an high imagination, and a great promiser to himself as well as to others, he was confident that if he were once the first person in a kingdom, and a sea between the queen's seat and his, and Wales the nearest land from Ireland, and that he had got the flower of the English forces into his hands, which he thought so to intermix with his own followers, as the whole body should move by his spirit, and if he might have also absolutely into his own hands *potestatem vitæ et necis, et arbitrium belli et pacis*, over the rebels of Ireland, whereby he might entice and make them his own, first by pardons and conditions, and after by hopes to bring them in place where they should serve for hope of better booties than cows, he should be able to make that place of lieutenancy of Ireland as a rise or step to ascend to his desired greatness in England.

And although many of these conceits were windy, yet neither were they the less like to his; neither are they now only probable conjectures or comments upon these his last treasons, but the very preludes of actions almost immediately subsequent, as shall be touched in due place.

But first, it was strange with what appetite and thirst he did affect and compass the government of Ireland, which he did obtain. For although he made some formal shews to put it from him; yet in this, as in most things else, his desires being too strong for his dissimulations, he did so far pass the bounds of decorum, as he did in effect name himself to the queen by such description and such particularities as could not be applied to any other but himself; neither did he so only, but farther he was still at hand to offer and urge vehemently and peremptorily exceptions to any other that was named.

Then after he once found that there was no man but himself, who had other matters in his head, so far in love with that charge, as to make any competition or opposition to his pursuit, whereby he saw it would fall upon him, and especially after himself was resolved upon; he began to make propositions to her majesty by way of taxation of the former course held in managing the actions of Ireland, especially upon three points; the first, that the proportions of forces which had been there maintained and continued by supplies, were not sufficient to bring the prosecutions there to a period. The second, that the ax had not been put to the root of the tree, in regard there had not been made a main prosecution upon the arch-

The conf. f.
of Blunt,
3.

traitor Tyrone in his own strength, within the province of Ulster. The third, that the prosecutions before time had been intermixed and interrupted with too many temporizing treaties, whereby the rebel did ever gather strength and reputation to renew the war with advantage. All which goodly and well-sounding discourtes, together with the great vaunts, that he would make the earth tremble before him, tended but to this, that the queen should increase the list of her army, and all proportions of treasure and other furniture, to the end his commandment might be the greater. For that he never intended any such prosecution, may appear by this, that even at the time before his going into Ireland he did open himself so far in speech to Blunt, his inwardest countellor, "That he did assure himself that many of the rebels in Ireland would be advised by him:" so far was he from intending any prosecution towards those in whom he took himself to have interest. But his ends were two; the one, to get great forces into his hands; the other, to oblige the heads of the rebellion unto him, and to make them of his party. These two ends had in themselves a repugnancy; for the one imported prosecution, and the other treaty: but he that meant to be too strong to be called to account for any thing, and meant besides, when he was once in Ireland, to engage himself in other journeys that should hinder the prosecution in the North, took things in order as they made for him; and so first did nothing, as was said, but trumpet a final and utter prosecution against Tyrone in the North, to the end to have his forces augmented.

But yet he forgot not his other purpose of making himself strong by a party amongst the rebels, when it came to the scanning of the clauses of his commission. For then he did insist, and that with a kind of contestation, that the pardoning, no not of Tyrone himself, the capital rebel, should be excepted and reserved to her majesty's immediate grace: being infinitely desirous that Tyrone should not look beyond him for his life or pardon, but should hold his fortune as of him, and account for it to him only.

So again, whereas in the commission of the earl of Suffex, and of all other lieutenants or deputies, there was ever in that clause, which giveth unto the lieutenant or deputy, that high or regal point of authority to pardon treasons and traitors, an exception contained of such cases of treason as are committed against the person of the king: it was strange, and suspiciously strange even at that time, with what importunity and instance he did labour, and in the end prevailed to have that exception also omitted; glossing then, that because he had heard that by strict exposition of law, a point in law that he would needs forget at his arraignment, but could take knowledge of it before, when it was to serve his own ambition, all treasons of rebellion did tend to the destruction of the king's person, it might breed a buz in the rebels heads, and so discourage them from coming in: whereas he knew well that in all experience passed, there was never rebel made any doubt or scruple upon that point to accept of pardon from all former governors, who had their commissions penned with that limitation, their commissions being things not kept secretly in a box, but published and recorded: so as it appeared manifestly that it was a mere device of his own out of the secret reaches of his heart then not revealed; but it may be shrewdly expounded since, what his drift was, by those pardons which he granted to Blunt the marshal, and Thomas Lee, and others, that his care was no less to secure his own instruments than the rebels of Ireland.

Yet

Yet was there another point for which he did contend and contest, which was, that he might not be tied to any opinion of the council of Ireland, as all others in certain points, as pardoning traitors, concluding war and peace, and some other principal articles, had been before him; to the end he might be absolute of himself, and be fully master of opportunities and occasions for the performing and executing of his own treasonable ends.

But after he had once, by her majesty's singular trust and favour toward him, obtained his patent of commission as large, and his list of forces as full as he desired, there was an end in his course of the prosecution in the North. For being arrived into Ireland, the whole carriage of his actions there was nothing else but a cunning defeating of that journey, with an intent, as appeared, in the end of the year to pleasure and gratify the rebel with a dishonourable peace, and to contract with him for his own greatness.

Therefore not long after he had received the sword, he did voluntarily engage himself in an unseasonable and fruitless journey into Munster, a journey never propounded in the council there, never advertised over hither while it was past: by which journey her majesty's forces, which were to be preserved intire both in vigor and number for the great prosecution, were harassed and tired with long marches together, and the Northern prosecution was indeed quite dashed and made impossible.

But yet still doubting he might receive from her majesty some quick and express commandment to proceed; to be sure he pursued his former device of wrapping himself in other actions, and so set himself on work anew in the county of Ophaley, being resolved, as is manifest, to dally out the season, and never to have gone that journey at all: that setting forward which he made in the very end of August being but a mere play and a mockery, and for the purposes which now shall be declared.

After he perceived that four months of the summer, and three parts of the army were wasted, he thought now was a time to set on foot such a peace as might be for the rebels advantage, and so to work a mutual obligation between Tyrone and himself; for which purpose he did but seek a commodity. He had there with him in his army one Thomas Lee, a man of a seditious and working spirit, and one that had been privately familiar and intirely beloved of Tyrone, and one that afterwards, immediately upon Essex' open rebellion, was apprehended for a desperate attempt of violence against her majesty's person; which he plainly confessed, and for which he suffered. Wherefore judging him to be a fit instrument, he made some signification to Lee of such an employment, which was no sooner signified than apprehended by Lee. He gave order also to Sir Christopher Blunt, marshal of his army, to license Lee to go to Tyrone, when he should require it. But Lee thought good to let slip first unto Tyrone, which was nevertheless by the marshal's warrant, one James Knowld, a person of wit and sufficiency, to sound in what terms and humours Tyrone then was. This Knowld returned a message from Tyrone to Lee, which was, That if the earl of Essex would follow Tyrone's plot, he would make the earl of Essex the greatest man that ever was in England: and farther, that if the earl would have conference with him, Tyrone would deliver his eldest son in pledge for his assurance. This message was delivered by Knowld to Lee, and by Lee was imparted to the earl of Essex, who after

this message employed Lee himself to Tyrone, and by his negotiating, whatsoever passed else, prepared and disposed Tyrone to the parley.

And this employment of Lee was a matter of that guiltiness in my lord, as, being charged with it at my lord Keeper's only in this nature, for the message of Knowld was not then known, that when he pretended to assail Tyrone, he had before underhand agreed upon a parley, my lord utterly denied it that he ever employed Lee to Tyrone at all, and turned it upon Blunt, whom he afterwards required to take it upon him, having before sufficiently provided for the security of all parts, for he had granted both to Blunt and Lee pardons of all treasons under the great seal of Ireland, and so, himself disclaiming it, and they being pardoned, all was safe.

But when that Tyrone was by these means, besides what others, God knows, prepared to demand a parley, now was the time for Essex to acquit himself of all the queen's commandments, and his own promises and undertakings for the Northern journey; and not so alone, but to have the glory at the disadvantage of the year, being but 2500 strong of foot, and 300 of horse, after the fresh disaster of Sir Conyers Clifford, in the height of the rebels pride, to set forth to assail, and then that the very terror and reputation of my lord of Essex person was such, as did daunt him and make him stoop to seek a parley; and this was the end he shot at in that September journey, being a mere abuse and bravery, and but inducements only to the treaty, which was the only matter he intended. For Essex drawing now towards the catastrophe, or last part of that tragedy, for which he came upon the stage in Ireland, his treasons grew to a farther ripeness. For knowing how unfit it was for him to communicate with any English, even of those whom he trusted most, and meant to use in other treasons, that he had an intention to grow to an agreement with Tyrone, to have succours from him for the usurping upon the state here: not because it was more dangerous than the rest of his treasons, but because it was more odious, and in a kind monstrous, that he should conspire with such a rebel, against whom he was sent; and therefore might adventure to alienate mens affections from him; he drave it to this, that there might be, and so there was, under colour of treaty, an interview and private conference between Tyrone and himself only, no third person admitted. A strange course, considering with whom he dealt, and especially considering what message Knowld had brought, which should have made him rather call witnesses to him, than avoid witnesses. But he being only true to his own ends, easily dispensed with all such considerations. Nay, there was such careful order taken, that no person should overhear one word that passed between them two, as, because the place appointed and used for the parley was such, as there was the depth of a brook between them, which made them speak with some loudness, there were certain horsemen appointed by order from Essex, to keep all men off a great distance from the place.

It is true, that the secrecy of that parley, as it gave to him the more liberty of treason, so it may give any man the more liberty of surmise, what was then handled between them, inasmuch as nothing can be known, but by report from one of them two, either Essex or Tyrone.

But although there were no proceeding against Essex upon these treasons, and that it were a needless thing to load more treasons upon him then, whose burden was so great after; yet, for truth's sake, it is fit the world know what is testified

fixed

In the confession of Blunt at the bar, he did not deny that he had Essex in particular warrant to send Lee, and that he was to be desired by Essex to take it upon himself, and that they were to be pardoned.

fied touching the speeches, letters, and reports of Tyrone, immediately following this conference, and observe also what ensued likewise in the designs of Essex himself.

On Tyrone's part it fell out, that the very day after that Essex came to the court of England, Tyrone having conference with Sir William Warren at Armagh, by way of discourse told him, and bound it with an oath, and iterated it two or three several times; That within two or three months he should see the greatest alterations and strangest that ever he saw in his life, or could imagine: and that he the said Tyrone hoped ere long to have a good share in England. With this concurred fully the report of Richard Bremingham, a gentleman of the pale, having made his repair about the same time to Tyrone, to right him in a cause of land; saying that Bremingham delivers the like speech of Tyrone to himself; but not what Tyrone hoped, but what Tyrone had promised in these words, That he had promised, it may be thought to whom, ere long to shew his face in England, little to the good of England.

The relation of Sir William Warren certified under his hand, from the council of Ireland to the lords of the council here. The report of Richard Bremingham to the council of estate in Ireland.

These generalities coming immediately from the report of Tyrone himself, are drawn to more particularity in a conference had between the lord Fitz-Morrice baron of Likinaw in Munster, and one Thomas Wood, a person well reputed of, immediately after Essex coming into England. In which conference Fitz-Morrice declared unto Wood, that Tyrone had written to the traitorous titular earl of Desmond to inform him, that the condition of that contract between Tyrone and Essex was, That Essex should be king of England; and that Tyrone should hold of him the honour and state of viceroy of Ireland; and that the proportion of soldiers which Tyrone should bring or send to Essex, were 8000 Irish. With which concurrerth fully the testimony of the said James Knowd, who, being in credit with Owny Mac Roory, chief of the Omoores in Lemster, was used as a secretary for him, in the writing of a letter to Tyrone, immediately after Essex coming into England. The effect of which letter was, To understand some light of the secret agreement between the earl of Essex and Tyrone, that he the said Owny might frame his course accordingly. Which letter, with farther instructions to the same effect, was in the presence of Knowd delivered to Turlagh Macdaury, a man of trust with Owny, who brought an answer from Tyrone: the contents whereof were, That the earl of Essex had agreed to take his part, and that they should aid him towards the conquest of England.

The confession of James Knowd.

Besides, very certain it is, and testified by divers credible persons, that immediately upon this parley there did fly abroad, as sparkles of this fire, which it did not concern Tyrone so much to keep secret, as it did Essex, a general and received opinion, that went up and down in the mouths both of the better and meaner sort of rebels; That the earl of Essex was theirs, and they his; and that he would never leave the one sword, meaning that of Ireland, till he had gotten the other in England; and that he would bring them to serve, where they should have other manner of booties than cows; and the like speeches. And Thomas Lee himself, who had been, as was before declared, with Tyrone two or three days, upon my lord's sending, and had founded him, hath left it confessed under his hand; That he knew the earl of Essex and Tyrone to be one, and to run the same courses.

The declaration of Daniel Fitzherbert, James Knowd, and others.

Confession of Thomas Lee.

And certain it is also, that immediately upon that parley, Tyrone grew into a strange and unwonted pride, and appointed his progresses and visitations to receive
congratulations

congratulations and honours from his confederates, and behaved himself in all things as one that had some new spirit of hope and courage put into him.

But on the earl of Essex his part ensued immediately after this parley a strange motion and project, which though no doubt he had harboured in his breast before; yet, for any thing yet appeareth, he did not utter and break with any in it, before he had been confirmed and fortified in his purpose, by the combination and correspondence which he found in Tyrone upon their conference. Neither is this a matter gathered out of reports, but confessed directly by two of his principal friends and associates, being witnesses upon their own knowledge, and of that which was spoken to themselves: the substance of which confession is this; That a little before my lord's coming over into England, at the castle of Dublin, where Sir Christopher Blunt lay hurt, having been lately removed thither from Rheban, a castle of Thomas Lee's, and placed in a lodging that had been my lord of Southampton's; the earl of Essex took the earl of Southampton with him to visit Blunt, and there being none present but they three, my lord of Essex told them, he found it now necessary for him to go into England, and would advise with them of the manner of his going, since to go he was resolved. And thereupon propounded unto them, that he thought it fit to carry with him of the army in Ireland as much as he could conveniently transport, at least the choice of it, to the number of two or three thousand, to secure and make good his first descent on shore, purposing to land them at Milford-Haven in Wales, or thereabouts: not doubting, but that his army would so increase within a small time, by such as would come in to him, as he should be able to march with his power to London, and make his own conditions as he thought good. But both Southampton and Blunt dissuaded him from this enterprise; Blunt alledging the hazard of it, and that it would make him odious: and Southampton utterly disliking of that course, upon the same and many other reasons. Howbeit, thereupon Blunt advised him rather to another course, which was to draw forth of the army some 200 resolute gentlemen, and with those to come over, and so to make sure of the court, and so to make his own conditions. Which confessions it is not amiss to deliver, by what a good providence of God they came to light: for they could not be used at Essex' arraignment to charge him, because they were uttered after his death.

But Sir Christopher Blunt at his arraignment, being charged that the earl of Essex had set it down under his hand, that he had been a principal instigator of him to his treason, in passion brake forth into these speeches; That then he must be forced to disclose what farther matters he had held my lord from, and desired for that purpose, because the present proceeding should not be interrupted, to speak with the Lord Admiral and Mr. Secretary after his arraignment, and to fall most naturally and most volentarily into this his confession, which, if it had been thought fit to have required of him at that time publicly, he had delivered before his conviction. And the same confession he did after, at the time of his execution, constantly and fully confirm, discourse particularly, and take upon his death, where never any man shewed less fear, nor a greater resolution to die.

And the same matter so by him confessed, was likewise confessed with the same circumstances of time and place by Southampton, being severally examined there-
upon.

So as now the world may see how long since my lord put off his vizard, and disclosed the secrets of his heart to two of his most confident friends, falling

upon

The earl of Southampton and Sir Christopher Blunt. The substance of that which was confessed by Southampton and Blunt, touching the purpose of Essex' coming into England, and of the manner of his going, and of the number of the army which he thought fit to carry with him, and of the reasons which he gave for the same, and of the reasons which Southampton and Blunt gave for their dissuading him from the same.

The speech of Sir Christopher Blunt at his arraignment, and of the confession which he made at the time of his execution, touching the same matter.

upon that unnatural and detestable treason, whereunto all his former actions in his government in Ireland, and God knows how long before, were but introductions.

But finding that these two persons, which of all the rest he thought to have found forwardest, Southampton, whose displacing he had made his own discontentment, having placed him, no question to that end, to find cause of discontentment, and Blunt, a man so enterprising and prodigal of his own life, as himself termed himself at the bar, did not applaud to this his purpose, and thereby doubting how coldly he should find others minded, that were not so near to him; and therefore condescending to Blunt's advice to surprize the court, he did pursue that plot accordingly, and came over with a selected company of captains and voluntaries, and such as he thought were most affectionate unto himself, and most resolute, though not knowing of his purpose. So as even at that time every man noted and wondered what the matter should be, that my lord took his most particular friends and followers, from their companies, which were countenance and means unto them, to bring them over. But his purpose, as in part was touched before, was this; that if he held his greatness in court, and were not committed, which, in regard of the miserable and deplored estate he left Ireland in, whereby he thought the opinion here would be that his service could not be spared, he made full account he should not be, then, at the first opportunity, he would execute the surprize of her majesty's person. And if he were committed to the Tower or to prison for his contempts, for, besides his other contempts, he came over expressly against the queen's prohibition under her signet, it might be the care of some of his principal friends, by the help of that choice and resolute company which he brought over, to rescue him.

The place of general of the horse in the army of Ireland was conferred by letters upon Southampton, contrary to her majesty's express commandment.

But the pretext of his coming over was, by the efficacy of his own presence and persuasion to have moved and drawn her majesty to accept of such conditions of peace as he had treated of with Tyrone in his private conference; which was indeed somewhat needful, the principal article of them being, That there should be a general restitution of rebels in Ireland to all their lands and possessions, that they could pretend any right to before their going out into rebellion, without reservation of such lands as were by act of parliament passed to the crown, and so planted with English, both in the time of queen Mary, and since; and without difference either of time of their going forth, or nature of their offence, or other circumstance: tending in effect to this, that all the queen's good subjects, in most of the provinces, should have been displanted, and the country abandoned to the rebels.

When this man was come over, his heart thus fraught with treasons, and presented himself to her majesty; it pleased God, in his singular providence over her majesty, to guide and hem in her proceeding towards him in a narrow way of safety between two perils. For neither did her majesty leave him at liberty, whereby he might have commodity to execute his purpose; nor restrain him in any such nature, as might signify or betoken matter of despair of his return to court and favour. And so the means of the present mischief being taken away, and the humours not stirred, this matter fell asleep, and the thread of his purposes was cut off. For coming over about the end of September, and not denied access and conference with her majesty, and then being commanded to his chamber at court for some days, and from thence to the lord Keeper's house, it was conceived

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ceived that there were no ill signs. At my lord Keeper's house he remained till some few days before Easter, and then was removed to his own house, under the custody of Sir Richard Barkley, and in that sort continued till the end of Trinity term following.

For her majesty, all this while looking into his faults with the eye of her princely favour, and loth to take advantage of his great offences, in other nature than as contempts, resolved so to proceed against him, as might, to use her majesty's own words, tend *ad correctionem, et non ad ruinam*.

Nevertheless afterwards, about the end of Trinity term following, for the better satisfaction of the world, and to repress seditious bruits and libels which were dispersed in his justification, and to observe a form of justice before he should be set at full liberty; her majesty was pleased to direct, that there should be associate unto her privy council some chosen persons of her nobility, and of her judges of the law; and before them his cause, concerning the breaking of his instructions for the Northern prosecution, and the manner of his treating with Tyrone, and his coming over, and leaving the kingdom of Ireland contrary to her majesty's commandment, expressed as well by signification thereof, made under her royal hand and signet, as by a most binding and effectual letter written privately to himself, to receive a hearing; with limitation, nevertheless, that he should not be charged with any point of disloyalty: and with like favour directed, that he should not be called in question in the open and ordinary place of offenders, in the Star Chamber, from which he had likewise, by a most penitent and humble letter, desired to be raised, as that which would have wounded him for ever, as he affirmed, but in a more private manner at my lord Keeper's house. Neither was the effect of the sentence, that there passed against him, any more than a suspension of the exercise of some of his places: at which time also, Essex, that could vary himself into all shapes for a time, infinitely desirous, as by the sequel now appeareth, to be at liberty to practise and revive his former purposes, and hoping to set into them with better strength than ever, because he conceived the peoples hearts were kindled to him by his troubles, and that they had made great demonstrations of as much; he did transform himself into such a strange and dejected humility, as if he had been no man of this world, with passionate protestations that he called God to witness, That he had made an utter divorce with the world; and he desired her majesty's favour not for any worldly respect, but for a preparative for a *Nunc dimittis*; and that the tears of his heart had quenched in him all humours of ambition. All this to make her majesty secure, and to lull the world asleep, that he was not a man to be held any ways dangerous.

Not many days after, Sir Richard Barkley his keeper was removed from him, and he set at liberty with this admonition only; That he should not take himself to be altogether discharged, though he were left to the guard of none but his own discretion. But he felt himself no sooner upon the wings of his liberty, but, notwithstanding his former shews of a mortified estate of mind, he began to practise afresh as busily as ever, reviving his former resolution; which was the surprising and possessing the queen's person and the court. And that it may appear how early after his liberty he set his engines on work, having long before entertained into his service, and during his government in Ireland drawn near unto him in the place of his chief secretary, one Henry Cullie, a base fellow by birth, but
a great

a great scholar, and indeed a notable traitor by the book, being otherwise of a turbulent and mutinous spirit against all superiors.

This fellow, in the beginning of August, which was not a month after Essex had liberty granted, fell of practising with Sir Henry Nevil, that served her majesty as legier ambassador with the French king, and then newly come over into England from Bulloign, abusing him with a false lie and mere invention, that his service was blamed and misliked, and that the imputation of the breach of the treaty of peace held at Bulloign was like to light upon him, when there was no colour of any such matter, only to dilate him of others, and fasten him to my lord, though he did not acquaint him with any particulars of my lord's designs till a good while after.

The declaration of Sir Henry Nevil.

But my lord having spent the end of the summer, being a private time, when every body was out of town and dispersed, in digesting his own thoughts, with the help and conference of Mr. Cuffe, they had soon set down between them the ancient principle of traitors and conspirators, which was, to prepare many, and to acquaint few; and, after the manner of miners, to make ready their powder, and place it, and then give fire but in the instant. Therefore, the first consideration was of such persons as my lord thought fit to draw to be of his party; singling out both of nobility and martial men, and others, such as were discontented or turbulent, and such as were weak of judgment, and easy to be abused, or such as were wholly dependents and followers, for means or countenance, of himself, Southampton, or some other of his greatest associates.

And knowing there were no such strong and drawing cords of popularity as religion, he had not neglected, both at this time and long before, in a profane policy to serve his turn, for his own greatness, of both forts and factions, both of catholics and puritans, as they term them, turning his outside to the one, and his inside to the other; and making himself pleasing and gracious to the one sort by professing zeal, and frequenting sermons, and making much of preachers, and secretly underhand giving assurance to Blunt, Davis, and divers others, that, if he might prevail in his desired greatness, he would bring in a toleration of the catholic religion.

The confession of Blunt and Davis.

Then having passed the whole Michaelmas term in making himself plausible, and in drawing concourse about him, and in affecting and alluring men by kind provocations and usage, wherein, because his liberty was qualified, he neither forgot exercise of mind nor body, neither sermon nor tennis-court, to give the occasion and freedom of access and concourse unto him, and much other practice and device; about the end of that term, towards Christmas, he grew to a more framed resolution of the time and manner, when and how he would put his purpose in execution. And first, about the end of Michaelmas term, it passed as a kind of cypher and watch-word amongst his friends and followers, That my lord would stand upon his guard: which might receive construction, in a good sense, as well guard of circumspection, as guard of force: but to the more private and trusty persons he was content it should be expounded that he would be cooped up no more, nor hazard any more restraints or commandments.

The declaration of Sir H. Nevil, and confession of Sir Ferdinando Gorge.

But the next care was how to bring such persons, as he thought fit for his purpose, into town together, without vent or suspicion, to be ready at the time, when he should put his design in execution; which he had concluded should be some time in Hilary term; wherein he found many devices to draw them up, some for

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The confel-
tion of court.

suits in law, and some for suits in court, and some for assurance of land: and one friend to draw up another, it not being perceived that all moved from one head. And it may be truly noted, that in the catalogue of those persons that were the eighth of February in the action of open rebellion, a man may find almost out of every county of England some; which could not be by chance or constellation: and in the particularity of examinations, too long to be rehearsed, it was easy to trace in what sort many of them were brought up to town, and held in town upon several pretences. But in Candlemas-term, when the time drew near, then was he content consultation should be had by certain choice persons, upon the whole matter and course which he should hold. And because he thought himself and his own house more observed, it was thought fit that the meeting and conference should be at Drury-house, where Sir Charles Davers lodged. There met at this council, the earl of Southampton, with whom in former times he had been at some emulations and differences in court; but after, Southampton having married his kinswoman, and plunged himself wholly into his fortune, and being his continual associate in Ireland, he accounted of him as most assured unto him, and had long ago in Ireland acquainted him with his purpose, as was declared before: Sir Charles Davers, one exceedingly devoted to the earl of Southampton, upon affection begun first upon the deserving of the same earl towards him, when he was in trouble about the murder of one Long: Sir Ferdinando Gorge, one that the earl of Essex had of purpose sent for up from his government at Plymouth by his letter, with particular assignation to be here before the second of February: Sir John Davis, one that had been his servant, and raised by him, and that bare office in the Tower, being surveyor of the ordnance, and one that he greatly trusted: and John Littleton, one they respected for his wit and valour.

The confel-
tion of court.
The confel-
tion of court.

The consultation and conference rested upon three parts: the perusal of a list of these persons, whom they took to be of their party; the consideration of the action itself which they should set a-foot, and how they should proceed in it; and the distribution of the persons, according to the action concluded on, to their several employments.

The list contained the number of sixscore persons, noblemen, and knights, and principal gentlemen, and was, for the more credit's sake, of the earl of Essex own hand-writing.

For the action itself, there was proposition made of two principal articles: the one of assaulting the Tower of London; the other of surprizing her majesty's person and the court; in which also deliberation was had, what course to hold with the city, either towards the effecting of the surprize, or after it was effected.

For the Tower, was alledged the giving a reputation to the action, by getting into their hand the principal fort of the realm, with the stores and provisions thereunto appertaining, the bridling of the city by that place, and commodity of entrance in and possessing it by the means of Sir John Davis. But this was by opinion of all rejected, as that which would distract their attempt from the more principal, which was the court, and as that which they made a judgment would follow incidently, if the court were once possessed.

But the latter, which was the ancient plot, as was well known to Southampton, was in the end, by the general opinion of them all, insisted and rested upon.

And the manner how it should be ordered and disposed was this: That certain selected persons of their number, such as were well known in court, and might have

have access, without check or suspicion, into the several rooms in court, according to the several qualities of the persons, and the differences of the rooms, should distribute themselves into the presence, the guard-chamber, the hall, and the outer court and gate, and some one principal man undertaking every several room with the strength of some few to be joined with him, every man to make good his charge, according to the occasion. In which distribution, Sir Charles Davers was then named to the presence, and to the great chamber, where he was appointed, when time should be, to seize upon the halberds of the guard; Sir John Davis to the hall; and Sir Christopher Blunt to the outer gate; these seeming to them the three principal wards of consideration: and that things being within the court in a readiness, a signal should be given and sent to Essex, to set forward from Essex-house, being no great distance off. Whereupon Essex, accompanied with the noblemen of his party, and such as should be prepared and assembled at his house for that purpose, should march towards the court: and that the former conspirators already entered should give correspondence to them without, as well by making themselves masters of the gates to give them entrance, as by attempting to get into their hand upon the sudden the halberds of the guard, thereby hoping to prevent any great resistance within, and by filling all full of tumult and confusion.

This being the platform of their enterprize, the second act of this tragedy was also resolved, which was, that my lord should present himself to her majesty, as prostrating himself at her feet, and desire the remove of such persons as he called his enemies from about her. And after that my lord had obtained possession of the queen, and the state, he should call his pretended enemies to a trial upon their lives, and summon a parliament, and alter the government, and obtain to himself and his associates such conditions as seemed to him and them good.

There passed a speech also in this conspiracy of possessing the city of London, which Essex himself, in his own particular and secret inclination, had ever a special mind unto: not as a departure or going from his purpose of possessing the court, but as an inducement and preparative to perform it upon a surer ground: an opinion bred in him, as may be imagined, partly by the great overweaning he had of the love of the citizens; but chiefly, in all likelihood, by a fear, that although he should have prevailed in getting her majesty's person into his hands for a time, with his two or three hundred gentlemen, yet the very beams and graces of her majesty's magnanimity and prudent carriage in such disaster, working with the natural instinct of loyalty, which of course, when fury is over, doth ever revive in the hearts of subjects of any good blood or mind, such as his troop for the more part was compounded of, though by him seduced and bewitched, would quickly break the knot, and cause some disunion and separation amongst them, whereby he might have been left destitute, except he should build upon some more popular number, according to the nature of all usurping rebels, which do ever trust more in the common people, than in persons of sort or quality. And this may well appear by his own plot in Ireland, which was to have come with the choice of the army, from which he was diverted, as before is shewed. So as his own courses inclined ever to rest upon the main strength of the multitude, and not upon surprisings, or the combinations of a few.

But to return: These were the resolutions taken at that consultation, held by these five at Drury-house, some five or six days before the rebellion, to be reported to Essex, who ever kept in himself the binding and directing voice:

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which he did to prevent all differences that might grow by dissent or contradiction. And besides he had other persons, which were Cuffe and Blunt, of more inwardness and confidence with him than these, Southampton only excepted, which managed that consultation. And, for the day of the enterprize, which is that must rise out of the knowledge of all the opportunities and difficulties, it was referred to Essex his own choice and appointment: it being nevertheless resolved, that it should be some time before the end of Candlemas term.

Henry
Essex's decla-
ration.

But this council and the resolutions thereof, were in some points refined by Essex, and Cuffe, and Blunt: for, first it was thought good, for the better making lure of the outer gate of the court, and the greater celerity and suddenness, to have a troop at receipt to a competent number, to have come from the Mews, where they should have been assembled without suspicion in several companies, and from thence cast themselves in a moment upon the court-gate, and join with them which are within, while Essex with the main of his company were making forward.

It was also thought fit, that because they would be commonwealth's men, and foresee, that the business and service of the public state should not stand still; they should have ready at court, and at hand, certain other persons to be offered, to supply the offices and places of such of her majesty's counsellors and servants, as they should demand to be removed and displaced.

Consequence of
Essex's.

But chiefly it was thought good, that the assembling of their companies together should be upon some plausible pretext: both to make divers of their company, that understood not the depth of their practices, the more willing to follow them; and to engage themselves, and to gather them together the better without peril of detecting or interrupting: and again, to take the court the more unprovided, without any alarm given. So as now there wanted nothing but the assignation of the day: which nevertheless was resolved indefinitely to be before the end of the term, as was said before, for the putting in execution of this most dangerous and execrable treason. But God, who had in his divine providence long ago curst this action with the curse that the psalm speaketh of, *That it should be like the untimely fruit of a woman, brought forth before it came to perfection*, so disposed above, that her majesty, understanding by a general charm and muttering of the great and universal resort to Essex-house, contrary to her princely admonition, and somewhat differing from his former manner, as there could not be so great fire without some smoke, upon the seventh of February, the afternoon before this rebellion, sent to Essex-house Mr. Secretary Herbert, to require him to come before the lords of her majesty's council, then sitting in council at Salisbury-court, being the lord Treasurer's house: where it was only intended, that he should have received some reprehension, for exceeding the limitations of his liberty, granted to him in a qualified manner, without any intention towards him of restraint; which he, under colour of not being well, excused to do: but his own guilty conscience applying it, that his trains were discovered, doubting peril in any farther delay, determined to hasten his enterprize, and to set it on foot the next day.

But then again, having some advertisement in the evening, that the guards were doubled at court, and laying that to the message he had received over-night; and so concluding that alarm was taken at court, he thought it to be in vain to think of the enterprize of the court, by way of surprize: but that now his only way

way was, to come thither in strength, and to that end first to attempt the city: wherein he did but fall back to his own former opinion, which he had in no sort neglected, but had formerly made some overtures to prepare the city to take his part; relying himself, besides his general conceit that himself was the darling and minion of the people, and specially of the city, more particularly upon assurance given of Thomas Smith, then sheriff of London, a man well beloved amongst the citizens, and one that had some particular command of some of the trained forces of the city, to join with him. Having therefore concluded upon this determination, now was the time to execute in fact all that he had before in purpose digested.

First, therefore, he concluded of a pretext which was ever part of the plot, and which he had meditated upon and studied long before. For finding himself, thanks be to God, to seek, in her majesty's government, of any just pretext in matter of state, either of innovation, oppression, or any unworthiness: as in all his former discontentments he had gone the beaten path of traitors, turning their imputation upon counsellors, and persons of credit with their sovereign; so now he was forced to descend to the pretext of a private quarrel, giving out this speech, how that evening, when he should have been called before the lords of the council, there was an ambuscade of musketeers placed upon the water, by the device of my lord Cobham and Sir Walter Raleigh, to have murdered him by the way as he passed: a matter of no probability; those persons having no such desperate estates or minds, as to ruin themselves and their posterity, by committing so odious a crime.

But contrariwise, certain it is, Sir Ferdinando Gorge accused Blunt, to have persuaded him to kill, or at least apprehend Sir Walter Raleigh; the latter whereof Blunt denieth not, and asked Sir Walter Raleigh forgiveness at the time of his death.

Confession of
Sir Ferdinan-
do Gorge.

But this pretext, being the best he had, was taken: and then did messages and warnings fly thick up and down to every particular nobleman and gentleman, both that evening and the next morning, to draw them together in the forenoon to Essex-house, dispersing the foresaid fable, That he should have been murdered; save that it was sometime on the water, sometime in his bed, varying according to the nature of a lie. He sent likewise the same night certain of his instruments, as namely, one William Temple his secretary, into the city to disperse the same tale, having increased it some few days before by an addition, That he should have been likewise murdered by some Jesuits to the number of four: and to fortify this pretext, and to make the more buz of the danger he stood in, he caused that night a watch to be kept all night long, towards the street, in his house. The next morning, which was Sunday, they came unto him of all hands, according to his messages and warnings: of the nobility, the earls of Rutland, Southampton, and the lord Sands, and Sir Henry Parker, commonly called the lord Mountegle; besides divers knights and principal gentlemen and their followers, to the number of some three hundred. And also it being Sunday, and the hour when he had used to have a sermon at his house, it gave cause to some and colour to others to come upon that occasion. As they came, my lord saluted and embraced, and to the generality of them gave to understand, in as plausible terms as he could, That his life had been sought, and that he meant to go to the court and declare his griefs to the queen, because his enemies were mighty, and used her majesty's name

and

DECLARATION OF THE TREASONS

The confes-
sion of the
earl of Essex.

and commandment; and desired their help to take his part: but unto the more special persons, he spake high and in other terms, telling them, That he was sure of the city, and would put himself into that strength that her majesty should not be able to stand against him, and that he would take revenge of his enemies.

All the while after eight of the clock in the morning, the gates to the street and water were strongly guarded, and men taken in and let forth by discretion of those that held the charge, but with special caution of receiving in such as came from court, but not suffering them to go back without my lord's special direction, to the end no particularity of that which passed there might be known to her majesty.

About ten of the clock, her majesty having understanding of this strange and tumultuous assembly at Essex-house, yet in her princely wisdom and moderation thought to cast water upon this fire before it brake forth to farther inconvenience: and therefore using authority before she would use force, sent unto him four persons of great honour and place, and such as he ever pretended to reverence and love, to offer him justice for any griefs of his, but yet to lay her royal commandment upon him to disperse his company, and upon them to withdraw themselves.

The declara-
tion of the
lord Keeper,
the earl of
Worcester,
the lord Chief
Justice, and of
their cause.
The oath of
the lord Chief
Justice, and
the declara-
tion of the
earl of Wor-
cester.

These four honourable persons, being the lord Keeper of the great seal of England, the earl of Worcester, the Comptroller of her majesty's household, and the lord Chief Justice of England, came to the house, and found the gates shut upon them. But after a little stay, they were let in at the wicket; and as soon as they were within, the wicket was shut, and all their servants kept out, except the bearer of the seal. In the court they found the earls with the rest of the company, the court in a manner full, and upon their coming towards Essex, they all flocked and thronged about them; whereupon the lord Keeper in an audible voice delivered to the earl the queen's message, That they were sent by her majesty to understand the cause of this their assembly, and to let them know that if they had any particular cause of griefs against any persons whatsoever, they should have hearing and justice.

Whereupon the earl of Essex in a very loud and furious voice declared, That his life was sought, and that he should have been murdered in his bed, and that he had been perfidiously dealt withal; and other speeches to the like effect. To which the lord Chief Justice said, If any such matter were attempted or intended against him, it was fit for him to declare it, assuring him both a faithful relation on their part, and that they could not fail of a princely indifferency and justice on her majesty's part.

To which the earl of Southampton took occasion to object the assault made upon him by the lord Gray: which my lord Chief Justice returned upon him, and said, That in that case justice had been done, and the party was in prison for it.

Then the lord Keeper required the earl of Essex, that if he would not declare his griefs openly, yet that then he would impart them privately; and then they doubted not to give him or procure him satisfaction.

Upon this there arose a great clamour among the multitude: "Away, my lord, they abuse you, they betray you, they undo you, you lose time." Whereupon my lord Keeper put on his hat, and said with a louder voice than before, "My lord, let us speak with you privately, and understand your griefs; and I do

" command

“ command you all upon your allegiance, to lay down your weapons and to depart.” Upon which words the earl of Essex and all the rest, and disdainful commandment, put on their hats; and Essex somewhat abruptly went from him into the house, and the counsellors followed him, thinking he would have private conference with them as was required.

And as they passed through the several rooms, they might hear many of the disordered company cry, “ Kill them, kill them;” and others crying, “ Nay, but thop them up, keep them as pledges, cast the great seal out at the window;” and other such audacious and traitorous speeches. But Essex took hold of the occasion and advantage, to keep in deed such pledges if he were distressed, and to have the countenance to lead them with him to the court, especially the two great magistrates of justice, and the great seal of England, if he prevailed, and to deprive her majesty of the use of their counsel in such a strait, and to engage his followers in the very beginning by such a capital act, as the imprisonment of counsellors carrying her majesty’s royal commandment for the suppressing of a rebellious force.

And after that they were come up into his book-chamber, he gave order they should be kept fast, giving the charge of their custody principally to Sir John Davis, but adjoined unto him a warder, one Owen Salisbury, one of the most seditious and wicked persons of the number, having been a notorious robber, and one that served the enemy under Sir William Stanley, and that bare a special spleen unto my lord Chief Justice; who guarded these honourable persons with muskets charged and matches ready fired at the chamber door.

This done, the earl, notwithstanding my lord Keeper still required to speak with him, left the charge of his house with Sir Gilly Merick; and, using these words to my lord Keeper, “ Have patience for a while, I will go take order with the mayor and sheriffs for the city, and be with you again within half an hour;” issued with his troop into London, to the number of two hundred, besides those that remained in the house, choice men for hardiness and valour, unto whom some gentlemen and one nobleman did after join themselves.

But from the time he went forth, it seems God did strike him with the spirit of amazement, and brought him round again to the place whence he first moved.

For after he had once by Ludgate entered into the city, he never had so much as the heart or assurance to speak any set or confident speech to the people, but repeated only over and over his tale as he passed by, that he should have been murdered, nor to do any act of foresight or courage; but he that had vowed he would never be cooped up more, cooped himself first within the walls of the city, and after within the walls of an house, as arrested by God’s justice as an example of disloyalty. For passing through Cheapside, and so towards Smith’s house, and finding though some came about him, yet none joined or armed with him, he provoked them by speeches as he passed to arm, telling them, They did him hurt and no good, to come about him with no weapons.

The confession of the earl of Rutland.
The lord Sandys.

But there was not in so populous a city, where he thought himself held so dear, one man, from the chiefest citizen to the meanest artificer or prentice, that armed with him: so as being extremely appalled, as divers that happened to see him then might visibly perceive in his face and countenance, and almost moulten with sweat, though without any cause of bodily labour but only by the perplexity and

horror

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horror of his mind, he came to Smith's house the sheriff, where he refreshed himself a little and shifted him.

But the mean while it pleased God, that her majesty's directions at court, though in a case so strange and sudden, were judicial and sound. For first there was commandment in the morning given unto the city, that every man should be in a readines both in person and armour, but yet to keep within his own door, and to expect commandment; upon a reasonable and politic consideration, that had they armed suddenly in the streets, if there were any ill disposed persons, they might arm on the one side and turn on the other, or at least, if armed men had been seen to and fro, it would have bred a greater tumult and more blood-shed; and the nakedness of Essex's troop would not have so well appeared.

The confession
of the earl
of Rutland.
Essex's confes-
sion at the
law.

And soon after, direction was given that the lord Burghley, taking with him the king of heralds, should declare him traitor in the principal parts of the city; which was performed with good expedition and resolution, and the loss and hurt of some of his company. Besides that, the earl of Cumberland, and Sir Thomas Gerard knight-marshal, rode into the city, and declared and notified to the people that he was a traitor: from which time divers of his troop withdrawing from him, and none other coming in to him, there was nothing but despair. For having stayed a while, as is said, at sheriff Smith's house, and there changing his pretext of a private quarrel, and publishing, that the realm should have been sold to the Infanta, the better to spur on the people to rise, and called, and given commandment to have arms brought and weapons of all sorts, and being soon after advertised of the proclamation, he came forth in a hurry.

So having made some stay in Gracechurch-street, and being dismayed upon knowledge given to him that forces were coming forwards against him under the conduct of the lord Admiral, the lieutenant of her majesty's forces; and not knowing what course to take, he determined in the end to go back towards his own house; as well in hope to have found the counsellors there, and by them to have served some turn, as upon trust that towards night his friends in the city would gather their spirits together, and rescue him, as himself declared after to the lieutenant of the Tower.

But for the counsellors, it had pleased God to make one of the principal offenders his instrument for their delivery; who seeing my lord's case desperate, and contriving how to redeem his fault and save himself, came to Sir John Davis, and Sir Gilly Merick, as sent from my lord; and so procured them to be released.

But the earl of Essex, with his company that was left, thinking to recover his house, made on by land towards Ludgate; where being resisted by a company of pikemen and other forces, gathered together by the wife and diligent care of the bishop of London, and commanded by Sir John Luson, and yet attempting to clear the passage, he was with no great difficulty repulsed. At which encounter Sir Christopher Blunt was fore wounded, and young Tracy slain on his part; and one Waits on the queen's part, and some others. Upon which repulse he went back and fled towards the water-side, and took boat at Queenhithe, and so was received into Essex-house at the water-gate, which he fortified and barricado'd; but instantly the lord Lieutenant so disposed his companies, as all passage and issue forth was cut off from him both by land and by water, and all succours that

that he might hope for were discouraged: and leaving the earl of Cumberland, the earl of Lincoln, the lord Thomas Howard, the lord Gray, the lord Burghley, and the lord Compton, Sir Walter Raleigh, Sir Thomas Gerard, with divers others, before the house to landward, my lord Lieutenant himself thought good, taking with him the lord of Effingham, lord Cobham, Sir John Stanhope, Sir Robert Sidney, M. Foulk Grevill, with divers others, to assail the garden and banqueting house on the water-side, and presently forced the garden, and won to the walls of the house, and was ready to have assailed the house; but out of a christian and honourable consideration, understanding that there were in the house the countess of Essex and the lady Rich, with their gentlewomen, let the earl of Essex know by Sir Robert Sidney, that he was content to suffer the ladies and gentlewomen to come forth. Whereupon Essex returning the lord Lieutenant thanks for the compassion and care he had of the ladies, desired only to have an hour's respite to make way for their going out, and an hour after to barricado the place again: which because it could make no alteration to the hindrance of the service, the lord Lieutenant thought good to grant. But Essex, having had some talk within of a sally, and despairing of the success, and thinking better to yield himself, sent word, that upon some conditions he would yield.

But the lord Lieutenant utterly refusing to hear of capitulation, Essex desired to speak with my lord, who thereupon went up close to the house; and the late earls of Essex and Southampton, with divers other lords and gentlemen their partakers, presented themselves upon the leads; and Essex said, he would not capitulate, but intreat; and made three petitions. The first, that they might be civilly used: whereof the lord Lieutenant assured them. The second, that they might have an honourable trial: whereof, the lord Lieutenant answered, they need not to doubt. The third, that he might have Ashton a preacher with him in prison for the comfort of his soul: which the lord Lieutenant said he would move to her majesty, not doubting of the matter of his request, though he could not absolutely promise him that person. Whereupon they all, with the ceremony amongst martial men accustomed, came down and submitted themselves, and yielded up their swords, which was about ten of the clock at night; there having been slain in holding of the house by musket-shot Owen Salisbury, and some few more on the part of my lord, and some few likewise slain and hurt on the queen's part: and presently, as well the lords as the rest of their confederates of quality, were severally taken into the charge of divers particular lords and gentlemen, and by them conveyed to the Tower and other prisons.

So as this action, so dangerous in respect of the person of the leader, the manner of the combination, and the intent of the plot, brake forth and ended within the compass of twelve hours, and with the loss of little blood, and in such sort as the next day all courts of justice were open, and did sit in their accustomed manner, giving good subjects and all reasonable men just cause to think, not the less of the offender's treason, but the more of her majesty's princely magnanimity and prudent foresight in so great a peril, and chiefly of God's goodness, that hath blessed her majesty in this, as in many things else, with so rare and divine felicity.

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The effect of the evidence given at the several arraignments of the late earls of ESSEX and SOUTHAMPTON, before the lord Steward; and of SIR CHRISTOPHER BLUNT, and SIR CHARLES DAVERS, and others, before great and honourable Commissioners of Oyer and Terminer: and of the answers and defences which the said offenders made for themselves; and the replies made upon such their defences: with some other circumstances of the proceedings, as well at the same arraignments as after.

The evidence
was made by
the earl of
Essex, who
there might
of the peers?
But whether
was made by
the judges,
that the earl
had the repre-
sents of the
peers, that it
tried them
both without
consent and
order.

THE two late earls of Essex and Southampton were brought to their trial the nineteenth of February, eleven days after the rebellion. At which trial there passed upon them twenty five peers, a greater number than hath been called in any former precedent. Amongst whom her majesty did not forbear to use many that were of near alliance and blood to the earl of Essex, and some others, that had their sons and heirs apparent that were of his company, and followed him in the open action of rebellion. The lord Steward then in commission, according to the solemnity in such trials received, was the lord Buckhurst, lord High Treasurer, who with gravity and temperance directed the evidence, and moderated, and gave the judgment. There was also an assistance of eight judges, the three chief, and five others. The hearing was with great patience and liberty: the ordinary course not being held, to silence the prisoners till the whole state of the evidence was given in; but they being suffered to answer articulately to every branch of the evidence, and sometimes to every particular deposition, whensoever they offered to speak: and not so only, but they were often spared to be interrupted, even in their digressions and speeches not much pertinent to their cause. And always when any doubt in law was moved, or when it was required either by the prisoners or the peers, the lord Steward required the judges to deliver the law; who gave their opinions severally, not barely yea or no, but at large with their reasons.

In the indictment were not laid or charged the treasons of Ireland, because the greatest matter, which was the design to bring over the army of Ireland, being then not confessed nor known; it was not thought convenient to stuff the indictment with matters which might have been conceived to be chiefly gathered by curious inquisition, and grounded upon report or presumption, when there was other matter so notorious. And besides, it was not unlikely that in his case, to whom many were so partial, some, who would not consider how things came to light by degrees, might have reported that he was twice called in question about one offence. And therefore the late treasons of his rebellion and conspiracy were only comprehended in the indictment, with the usual clauses and consequents in law, of compassing the queen's death, destruction, and deprivation, and levying war, and the like.

The evidence consisted of two parts: the plot of surprizing her majesty's person in court, and the open rebellion in the city.

THE plot was opened according to the former narration, and proved by the several confessions of four witnesses, fully and directly concerning in the point;

Sir Christopher Blunt, Sir Charles Davers, Sir John Davis, and Sir Ferdinando Gorge. Of which number, though Sir Christopher Blunt were not at the council held at Drury-house, no more than Essex himself was; yet he was privy to that which passed. Sir Ferdinando Gorge being prisoner in the Gatehouse, near the place of trial, was, at the request of the earl of Essex, brought thither, and avouched *viva voce* his confession in all things.

And these four proved all particularities of surprising the court, and the manner of putting the same in execution, and the distributing and naming of the principal persons and actors to their several charges; and the calling of my lord's pretended enemies to trial for their lives, and the summoning of a parliament, and the altering of the government. And Sir Christopher Blunt, and Sir John Davis from Sir Christopher Blunt, did speak to the point of bringing in a toleration of the catholic religion.

For the overt rebellion in the city itself, it was likewise opened, according to the former narration, and divided itself naturally into three parts.

FIRST, the imprisonment of the counsellors, bringing her majesty's royal commandment to them, upon their allegiance to disperse their forces. Secondly, the entering the city, and the stirring of the people to rise, as well by provoking them to arm, as by giving forth the flanders that the realm was sold to the Spaniard, and the assailing of the queen's forces at Ludgate. And thirdly, the resistance and keeping of the house against her majesty's forces under the charge and conduct of the lord Lieutenant.

And albeit these parts were matters notorious, and within almost every man's view and knowledge; yet, for the better satisfaction of the peers, they were fully proved by the oath of the lord Chief Justice of England, being there present, *viva voce*, and the declaration of the earl of Worcester, being one of the peers likewise, *viva voce*, touching so much as passed about the imprisonment of themselves and the rest; and by the confessions of the earl of Rutland, the lord Sandys, the lord Cromwell, and others.

The defence of the late earl of Essex, touching the plot and consultation at Drury-house, was: That it was not proved that he was at it; and that they could shew nothing, proving his consent or privy under his hand.

Touching the action in the city, he justified the pretext of the danger of his life to be a truth. He said that his speech, that the realm should have been sold to the Infanta of Spain, was grounded upon a report he had heard, that Sir Robert Cecil should say privately, That the Infanta's title to the crown, after her majesty, was as good as any other. He excused the imprisonment of the counsellors to have been against his mind, forced upon him by his unruly company. He protested he never intended in his heart any hurt to her majesty's person; that he did desire to secure his access to her, for which purpose he thought to pray the help of the city, and that he did not arm his men in warlike fort, nor struck up drum, nor the like.

The defence of the late earl of Southampton to his part in the plot, and consultation at Drury-house, was: That it was a matter debated, but not resolved nor concluded; and that the action which was executed, was not the action which was consulted upon. And for the open action in the city, he concurred with

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Essex, with protestation of the clearness of his mind for any hurt to the queen's person: and that it was but his affection to my lord of Essex that had drawn him into the cause. This was the substance and best of both their defences. Unto which the reply was:

Defence. To the point, that the late earl of Essex was not at the consultation at Drury-house:

Reply. It was replied, that it was proved by all the witnesses, that that consultation was held by his special appointment and direction, and that both the list of the names and the principal articles were of his own hand-writing. And whereas he said, they could not be shewed extant under his hand; it was proved by the confession of my lord of Rutland, and the lord Sands, that he had provided for that himself. For after he returned out of the city to his own house, he burned divers papers which he had in a cabinet, because, as himself said, they should tell no tales.

Defence. To the point which Southampton alledged, That the consultation at Drury-house, upon the list and articles in writing, was not executed:

Reply. It was replied, that both that consultation in that manner held, if none other act had followed, was treason: and that the rebellion following in the city, was not a desisting from the other plot, but an inducement and pursuance of it; their meaning being plain on all parts, that after they had gotten the aid of the city, they would have gone and possessed the court.

Defence. To the point, that it was a truth that Essex should have been assailed by his private enemies:

Reply. First, he was required to deliver who it was that gave him the advertisement of it; because otherwise it must light upon himself, and be thought his own invention: whereunto he said, that he would name no man that day.

Then it was shewed how improbable it was, considering that my lord Cobham and Sir Walter Raleigh were men whose estates were better settled and established, than to overthrow their fortunes by such a crime.

Besides, it was shewed how the tale did not hang together, but varied in itself, as the tale of the two judges did, when one said, under the mulberry-tree, and another said, under the fig-tree. So sometimes it was, that he should have been murdered in his bed, and sometimes upon the water, and sometimes it should have been performed by Jesuits some days before.

Thirdly, it was asked what reference the going into the city for succour against any of his private enemies had to the imprisoning of the lord Keeper, and the lord Chief Justice, persons that he pretended to love and respect; and the earl of Worcester his kinsman, and Master Comptroller his uncle, and the publishing to the people, that the realm should have been sold to the Spaniard.

And lastly, it was said, that these were the ancient footsteps of former traitors, to make their quarrel as against their private enemies, because God unto lawful kings did ever impart such beams of his own glory, as traitors could not look straight upon them, but ever turned their pretences against some about them; and that this action of his resembled the action of Pissistratus of Athens, that proceeded so far in this kind of fiction and dissimulation, as he lanced his own body, and came hurt and wounded before the people, as having been assailed by his private enemies; and by colour thereof obtained a guard about his person, by help of whom he after usurped upon the state.

Defence. To the point, that he heard it reported Mr. Secretary should say, That the infanta's title to the crown, after her majesty, was as good as any other :

Reply. Upon this his allegation, Mr. Secretary standing out of sight in a private place, only to hear, being much moved with so false and foul an accusation, came suddenly forth, and made humble request to the lord Steward, that he might have the favour to answer for himself. Which being granted him in respect of the place he carrieth, after a bitter contestation on his part with the earl, and a serious protestation of his alienation of heart from the Spanish nation in any such condition, he still urged the earl to name the reporter, that all the circumstances might be known. But the earl still warily avoiding it, Mr. Secretary replied, That seeing he would alledge no author, it ought to be reputed his own fiction. Whereupon the earl of Essex said, Though his own conscience was a sufficient testimony to himself that he had not invented any untruth, yet he would affirm thus much for the world's farther satisfaction in that behalf, that the earl of Southampton also had heard so much reported of Mr. Secretary ; but said still that he, for his part, would name nobody. Whereupon Mr. Secretary adjured the earl of Southampton, by all former friendship, which had been indeed very great between them, that he would declare the person ; which he did presently, and said it was Mr. Comptroller. At which speech Mr. Secretary straight took hold and said, That he was glad to hear him named of all others ; for howsoever some malicious person might peradventure have been content to give credit to so injurious a conceit of him, especially such as were against the peace wherein he was employed, and for which the earl of Essex had ever hated him, being ever desirous to keep an army on his own dependency, yet he did think no man of any understanding would believe that he could be so senseless, as to pick out the earl of Essex his uncle to lay open to him his affection to that nation, in a matter of so odious and pernicious consequence ; and so did very humbly crave it at the hands of the lord Steward, and all the peers, that Mr. Comptroller might be sent for to make good his accusation.

Thereupon the lord Steward sent a serjeant at arms for Mr. Comptroller, who presently came thither, and did freely and sincerely deliver, that he had only said, though he knew not well to whom, that Mr. Secretary and he walking in the garden at court one morning about two years since, and talking casually of foreign things, Mr. Secretary told him, That one Doleman had maintained in a book, not long since printed, that the infanta of Spain had a good title to the crown of England : which was all, as Mr. Comptroller said, that ever he heard Mr. Secretary speak of that matter. And so the weak foundation of that scandal being quickly discerned, that matter ended ; all that could be proved being no other, than that Mr. Comptroller had told another, who had told the earl of Essex, that Mr. Secretary said to him, that such a book said so ; which every man could say that hath read it, and no man better knew than the earl himself, to whom it was dedicated.

Defence. To the point of both their protestations, that they intended no hurt to her majesty's person :

Reply. First, the judges delivered their opinions for matter in law upon two points : the one, that in case where a subject attempteth to put himself into such strength as the king shall not be able to resist him, and to force and compel the king to govern otherwise than according to his own royal authority and direction,

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it is manifest rebellion. The other, that in every rebellion the law intendeth as a consequent, the compassing the death and deprivation of the king, as foreseeing that the rebel will never suffer that king to live or reign, which might punish or take revenge of his treason and rebellion. And it was enforced by the queen's counsel, that this is not only the wisdom of the laws of the realm which so denieth of it, but it is also the censure of foreign laws, the conclusion of common reason, which is the ground of all laws, and the demonstrative assertion of experience, which is the warranty of all reason. For first, the civil law maketh this judgment, that treason is nothing else but *crimen læsæ majestatis*, or *diminutæ majestatis*, making every offence which abridgeth or hurteth the power and authority of the prince, as an insult or invading of the crown, and extorting the imperial sceptre. And for common reason, it is not possible that a subject should once come to that height as to give law to his sovereign, but what with insolency of the change, and what with terror of his own guiltiness, he will never permit the king, if he can choose, to recover authority; nor, for doubt of that, to continue alive. And lastly, for experience, it is confirmed by all stories and examples, that the subject never obtained a superiority and command over the king, but there followed soon after the deposing and putting of the king to death, as appeareth in our own chronicles in two notable particulars of two unfortunate kings: the one of Edward the second, who when he kept himself close, for danger, was summoned by proclamation to come and take upon him the government of the realm: but as soon as he presented himself was made prisoner, and soon after forced to resign, and in the end tragically murdered in Berkley castle. And the other of king Richard the second, who though the duke of Hertford, after king Henry the fourth, presented himself before him with three humble reverences, yet in the end was deposed and put to death.

Defence. To the point of not arming his men otherwise than with pistols, rapiers and daggers, it was replied:

Reply. That that course was held upon cunning, the better to insinuate himself into the favour of the city, as coming like a friend with an All hail, or kiss, and not as an enemy, making full reckoning that the city would arm him, and arm with him; and that he took the pattern of his action from the day of the barricadoes at Paris, where the duke of Guise entering the city but with eight gentlemen, prevailing with the city of Paris to take his part, as my lord of Essex, thanks be to God, failed of the city of London, made the king, whom he thought likewise to have surprised, to forsake the town, and withdraw himself into other places, for his farther safety. And it was also urged against him out of the confession of the earl of Rutland and others, that he cried out to the citizens, "That they did him hurt and no good, to come without weapons;" and provoked them to arm: and finding they would not be moved to arm with him, fought to arm his own troops.

This, point by point, was the effect of the reply. Upon all which evidence, both the earls were found guilty of treason by all the several voices of every one of the peers, and so received judgment.

The names of the peers that passed upon the trial of the two earls.

Earl of Oxford.		Lord Windsor.
Earl of Shrewsbury.	Lord Viscount Bindon.	Lord Rich.
Earl of Derby.		Lord Darcy de Chichey.
Earl of Cumberland.	Lord De la Ware.	Lord Chandos.
Earl of Worcester.	Lord Morley.	Lord Hunsdon.
Earl of Suffex.	Lord Cobham.	Lord St. John de Bletfo.
Earl of Hertford.	Lord Stafford.	Lord Compton.
Earl of Lincoln.	Lord Gray.	Lord Burghley.
Earl of Nottingham.	Lord Lumley.	Lord Howard of Walden.

The names of the judges that assisted the court.

Lord Chief Justice.	Justice Fenner.
Lord Chief Justice of the Common-Pleas.	Justice Walmsly.
Lord Chief Baron.	Baron Clerke.
Justice Gawdy.	Justice Kingsmill.

Some particularities of that which passed after the arraignment of the late earls, and at the time of the suffering of the earl of ESSEX.

BUT the earl of Essex, finding that the consultation at Drury-house, and the secret plots of his premeditated and prepenfed treasons were come to light, contrary to his expectation, was touched, even at his parting from the bar, with a kind of remorse; especially because he had carried the manner of his answer, rather in a spirit of ostentation and glory, than with humility and penitence: and brake out in the hall, while the lords were in conference, into these words; "That seeing things were thus carried, he would ere it be long say more than "yet was known." Which good motion of his mind being, after his coming back to the Tower, first cherished by M. D. of Norwich, but after wrought on by the religious and effectual persuasions and exhortations of Mr. Abdy Ashton his chaplain, the man whom he made suit by name to have with him for his soul's health, as one that of late time he had been most used unto, and found most comfort of, comparing it, when he made the request, to the case of a patient, that in his extremity would be desirous to have that physician that was best acquainted with his body; he sent word the next day, to desire to speak with some of the principal counsellors, with whom he desired also that particularly Mr. Secretary might come for one. Upon which his request, first the lord Admiral and Mr. Secretary, and afterwards at two several times the lord Keeper of the great seal, the lord High Treasurer, the lord High Admiral, and Mr. Secretary repaired unto him: before whom, after he had asked the lord Keeper forgiveness, for restraining him in his house, and Mr. Secretary for having wronged him at the bar, concerning the matter of the Infanta, with signification of his earnest desire to be reconciled to them, which was accepted with all Christian charity and humanity; he proceeded to accuse heavily most of his confederates for carrying malicious minds to the state, and vehemently charged Cuffe his man to his own face, to have been
a prin-

a principal instigator of him in his treasons; and then disclosed how far Sir Henry Nevill, her majesty's late ambassador, was privy to all the conspiracy; of whose name till then there had not been so much as any suspicion. And farther, at the lords first coming to him, not sticking to confess that he knew her majesty could not be safe while he lived, did very earnestly desire this favour of the queen, that he might die as privately as might be.

The rest
most of the
times comes
upon their
heads.

And the morning before his execution, there being sent unto him, for his better preparation, Mr. Doctor Mountford, and Mr. Doctor Barlow, to join with Mr. Abdy Aylton his chaplain, he did in many words thank God that he had given him a deeper insight into his offence, being sorry he had so stood upon his justification at his arraignment: since which time, he said, he was become a new man, and heartily thanked God also that his course was by God's providence prevented. For, if his project had taken effect, "God knoweth," said he, "what harm it had wrought in the realm."

He did also humbly thank her majesty, that he should die in so private a manner, for he suffered in the Tower-yard, and not upon the hill, by his own special suit, lest the acclamation of the people, for those were his own words, might be a temptation to him: adding, that all popularity and trust in man was vain, the experience whereof himself had felt: and acknowledged farther unto them, that he was justly and worthily spued out, for that was also his own word, of the realm, and that the nature of his offence was like a leprosy that had infected far and near. And so likewise at the public place of his suffering, he did use vehement detestation of his offence, desiring God to forgive him his great, his bloody, his crying, and his infectious sin: and so died very penitently, but yet with great conflict, as it should seem, for his sins. For he never mentioned nor remembered there wife, children, or friend, nor took particular leave of any that were present, but wholly abstracted and sequestered himself to the state of his conscience, and prayer.

The effect of that which passed at the arraignments of Sir CHRISTOPHER BLUNT, Sir CHARLES DAVERS, Sir JOHN DAVIS, Sir GILLY MERICK, and HENRY CUFFE.

THE fifth of March, by a very honourable commission of Oyer and Terminer, directed to the lord High Admiral, the lord Chamberlain, Mr. Secretary, the lord Chief Justice of England, Mr. Chancellor of the exchequer, Mr. Secretary Herbert, with divers of the judges, the commissioners sitting in the court of the Queen's Bench, there were arraigned and tried by a jury both of aldermen of London, and other gentlemen of good credit and sort, Sir Christopher Blunt, Sir Charles Davers, Sir John Davis, Sir Gilly Merick, and Henry Cuffe. The three first whereof, before they pleaded, asked this question of the judges: Whether they might not confess the indictment in part, and plead not guilty to it in the other part? But being resolved by the judges, that their pleading must be general; they pleaded Not guilty, as did likewise the other two, without any such question asked. The reason of that question was, as they confessed, in respect of the clause laid in the indictment; That they intended and compassed the death and destruction of the queen's majesty: unto whose person, although they confessed

fed at the bar, as they had done in their examinations, that their meaning was to come to her in such strength, as they should not be resisted, and to require of her divers conditions and alterations of government, such as in their confessions are expressed, nevertheless they protested, they intended no personal harm to herself. Whereupon, as at the arraignment of the two earls, so then again the judges delivered the rule of the law; that the wisdom and foresight of the laws of this land maketh this judgment, That the subject that rebelleth or riseth in forcible manner to over-rule the royal will and power of the king, intendeth to deprive the king both of crown and life: and that the law judgeth not of the fact by the intent, but of the intent by the fact. And the queen's counsel did again enforce that point, setting forth that it was no mystery or quiddity of the common law, but it was a conclusion infallible of reason and experience; for that the crown was not a ceremony or garland, but consisted of preeminence and power.

And therefore, when the subject will take upon him to give law to the king, and to make the power sovereign and commanding to become subject and commanded; such subject layeth hold of the crown, and taketh the sword out of the king's hands. And that the crown was fastened so close upon the king's head, that it cannot be pulled off, but that head and life and all will follow; as all examples, both in foreign stories and here at home, do make manifest. And therefore, when their words did protest one thing, and their deeds did testify another, they were but like the precedent of the protestation used by Manlius the lieutenant of Catiline, that conspired against the state of Rome, who began his letter to the senate with these words: *Deos homineque testor, patres conscripti, nos nihil aliud, etc.*

And it was said farther, that admitting their protestations were so far true, that they had not at that time in their minds a formed and distinct cogitation to have destroyed the queen's person; yet nothing was more variable and mutable than the mind of man, and specially *Honores mutant mores*: when they were once aloft, and had the queen in their hands, and were peers in my lord of Essex his parliament, who could promise of what mind they would then be? especially when my lord of Essex at his arraignment had made defence of his first action of imprisoning the privy counsellors, by pretence that he was enforced to it by his unruly company. So that if themselves should not have had, or would not seem to have had, that extreme and devilish wickedness of mind, as to lay violent hands upon the queen's sacred person; yet, what must be done to satisfy the multitude and secure their party, must be then the question: wherein the example was remembered of Richard the third, who, though he were king in possession, and the rightful inheritors but infants, could never sleep quiet in his bed till they were made away. Much less would a Catilinary knot and combination of rebels, that did rise without so much as the fume of a title, ever endure, that a queen that had been their sovereign, and had reigned so many years in such renown and policy, should be longer alive than made for their own turn. And much speech was used to the same end. So that in the end all those three at the bar said, that now they were informed, and that they descended into a deeper consideration of the matter, they were sorry they had not confessed the indictment. And Sir Christopher Blunt, at the time of his suffering, discharged his conscience in plain terms, and said publicly before all the people, that he saw plainly with himself, that if they could

ARRAIGNMENTS OF CUFFE AND MERICK.

not have obtained all that they would, they must have drawn blood even from the queen herself.

The evidence given in against them three, was principally their own confessions, charging every one himself, and the other, and the rest of the evidence used at the arraignment of the late earls, and mentioned before: save that, because it was perceived, that that part of the charge would take no labour nor time, being plain matter and confessed, and because some touch had been given in the proclamation of the treasons of Ireland, and chiefly because Sir Christopher Blunt was marshal of the army in Ireland, and most inward with my lord in all his proceedings there; and not so only, but farther in the confession of Thomas Lee it was precisely contained, that he knew the earl of Essex and Tyrone, and Blunt the marshal, to be all one, and to run one course; it was thought fit to open some part of the treasons of Ireland, such as were then known. Which very happily gave the occasion for Blunt to make that discovery of the purpose to have invaded the realm with the army of Ireland: which he then offered, and afterwards uttered, and in the end sealed with his blood, as is hereafter set down.

Against Cuffe was given in evidence, both Sir Charles Davers's confession, who charged him, when there was any debating of the several enterprizes which they should undertake, that he did ever bind firmly and resolutely for the court: and the accusation under the earl's hand, avouched by him to his face, that he was a principal instigator of him in his treasons: but especially a full declaration of Sir Henry Nevill's, which describeth and planteth forth the whole manner of his practising with him.

The fellow, after he had made some introduction by an artificial and continued speech, and some time spent in sophistical arguments, descended to these two answers: the one, For his being within Essex-house that day, the day of the rebellion, they might as well charge a lion within a grate with treason, as him: and for the consultation at Drury-house, it was no more treason than the child in the mother's belly is a child. But it was replied, that for his being in the house, it was not compulsory, and that there was a distribution in the action, of some to make good the house, and some to enter the city, and the one part held correspondent to the other, and that in treasons there were no accessaries, but all principals.

And for the consultation at Drury-house, it was a perfect treason in itself, because the compassing of the king's destruction, which by judgment of law was concluded and implied in that consultation, was treason in the very thought and cogitation, so as that thought be proved by an overt act: and that the same consultation and debating thereupon was an overt act, though it had not been upon a hit of names, and articles in writing, much more being upon matter in writing.

And again: the going into the city was a pursuance and inducement of the enterprize to possess the court, and not a desisting or departure from it.

And lastly, it was ruled by the judges for law, That if many do conspire to execute treason against the prince in one manner, and some of them do execute it in another manner, yet their act, though differing in the manner, is the act of all them that conspire, by reason of the general malice of the intent.

Against Sir Gilly Merick, the evidence that was given, charged him chiefly with the matter of the open rebellion, that he was as captain or commander over the house, and took upon him charge to keep it, and make it good as a place of retreat for those which issued into the city, and fortifying and barricading the same
house,

house, and making provision of muskets, powder, pellets, and other munition and weapons for the holding and defending of it, and as a busy, forward and noted actor in that defence and resistance, which was made against the queen's forces brought against it by her majesty's lieutenant.

And farther to prove him privy to the plot, it was given in evidence, that some few days before the rebellion, with great heat and violence he had displaced certain gentlemen lodged in an house fast by Essex-house, and there planted divers of my lords followers and complices, all such as went forth with him in the action of rebellion.

That the afternoon before the rebellion, Merick, with a great company of others that afterwards were all in the action, had procured to be played before them the play of deposing king Richard the second.

Neither was it casual, but a play bespoke by Merick.

And not so only, but when it was told him by one of the players, that the play was old, and they should have loss in playing it, because few would come to it: there were forty shillings extraordinary given to play it, and so thereupon played it was.

So earnest he was to satisfy his eyes with the sight of that tragedy, which he thought soon after his lord should bring from the stage to the state, but that God turned it upon their own heads.

The speeches of Sir Christopher Blunt at his execution, are set down as near as they could be remembered, after the rest of the confessions and evidences.

Here follow the voluntary confessions themselves, such as were given in evidence at both the several arraignments, taken forth word for word out of the originals: whereby it may appear how God brought matters to light, at several times, and in several parts, all concurring in substance: and with them other declarations and parts of evidence.

The confession of THOMAS LEE, taken the 14th of February 1600, before Sir JOHN PEYTON, lieutenant of the Tower; ROGER WILBRAHAM, master of the Requests; Sir ANTHONY SAINTLEGER, master of the Rolls in Ireland, and THOMAS FLEMING, her majesty's Solicitor general.

THIS examinant saith, that Tyrone sent a message to this examinee by James Knowld, whom this examinee by the marshal's warrant in writing had sent to Tyrone before himself went to Tyrone, that if the earl of Essex would follow his plot, he would make him the greatest man that ever was in England, and that, when Essex and Tyrone should have conference together, for his assurance unto the earl of Essex, Tyrone would deliver his eldest son in pledge to the earl. And with this message this examinee made the earl of Essex acquainted before his coming to this examinee's house, at that time when this examinee was sent to Tyrone.

This examinee saith, he knew that Essex, Tyrone, and the marshal Sir Christopher Blunt, were all one, and held all one course.

THOMAS LEE.

Exam. per JOHN PEYTON,
ROGER WILBRAHAM,

ANTHONY SAINTLEGER,
THOMAS FLEMING.

P 2

The

The declaration of Sir WILLIAM WARRIN, 3 Octobris 1599.

The earl of
Essex came
the same day
to the court
in England.

THE said Sir William came to Armagh the last Friday, being the twenty-eighth of September: from thence he sent a messenger in the night to Tyrone to Dungannon, signifying his coming to Armagh, as aforesaid; and that the next morning he would meet Tyrone at the fort of Blackwater: where accordingly the said Tyrone met with him; and after other speeches by farther discourse the said Tyrone told the said Sir William, and delivered it with an oath, that within these two months he should see the greatest alteration, and the strangest, that he the said Sir William could imagine, or ever saw in his life: and said, that he hoped, before it was long, that the said Tyrone should have a good share in England: which speeches of the alteration Tyrone reiterated two or three several times.

WILLIAM WARREN.

Certified from the council of Ireland to the lords of the council here.

The declaration of THOMAS WOOD, 20 Januarii 1599, taken before the lord BUCKHURST, lord High Treasurer; the earl of NOTTINGHAM, lord High Admiral; Sir ROBERT CECIL, principal Secretary, and Sir J. FORTESCUE, Chancellor of the Exchequer.

THE said Wood said, that happening to be with the lord Fitzmorris baron of Lickinaw, at his house at Lickinaw, between Michaelmas and Allhallowtide last, the said baron walking abroad with the said Wood, asked of him what force the earl of Essex was of in England; he answered, he could not tell, but said he was well beloved of the commonalty. Then said the baron, that the earl was gone for England, and had discharged many of the companies of Ireland, and that it was agreed that he should be king of England, and Onele to be viceroy of Ireland; and whensoever he should have occasion, and would send for them, Onele should send him eight thousand men out of Ireland. The said Wood asked the baron, how he knew that? He answered, that the earl of *Desmond had written to him so much.

* The ordinary
earl that is in
Ireland.

THOMAS WOOD.

Confessed in the presence of THOMAS BUCKHURST, ROBERT CECIL,
NOTTINGHAM, JOHN FORTESCUE.

The confession of JAMES KNOWD, taken the sixteenth of February 1600, before Sir ANTHONY SAINTLEGER, master of the Rolls in Ireland, and ROGER WILBRAHAM, master of the Requests.

OWNEY mac Rory having secret intelligence of the friendship between the earl of Essex and Tyrone, wrote to Tyrone, desiring him to certify him thereof, whereby he might frame his course accordingly, and not do any thing contrary to their agreement: which letter myself did write by Owey's appointment, for then I was in credit with him; in which letter he also desired Tyrone to send him some munition. The letter, with instructions to that effect, was in my presence delivered

delivered to one Turlagh mac Davy o Kelly, a man of secrecy, sufficiency, and trust with Owney; and he carried it to Tyrone: before whose return Owney grew suspicious of me, because I sometimes belonged to Mr. Bowen, and therefore they would not trust me, so as I could not see the answer: but yet I heard by many of their secret council, that the effect thereof was, That the earl of Essex should be king of England, and Tyrone of Ireland.

Afterwards I met with Turlagh mac Davy, the messenger aforesaid, and asked him whether he brought an answer of the letter from Tyrone. He said he did, and delivered it to Owney. And then I asked him what he thought of the wars. He told me he had good hope the last year, and had none this year: his reason was, as he said, that the earl of Essex was to take their part, and they should aid him towards the conquest of England; and now they were hindered thereof by means of his apprehension.

I, dwelling with the tanist of the country, my mother's cousin german, heard him speak sundry times, that now the earl of Essex had gotten one of the swords, he would never forego his government until he became king of England, which was near at hand.

I saw a letter which the earl of Essex writ to Owney, to this effect; That if Owney came to him, he would speak with him about that, which if he would follow, should be happy for him and his country.

JAMES KNOWD.

Exam. per ANTHONY SAINTLEGER, ROGER WILBRAHAM.

The declaration of DAVID HETHRINGTON, an ancient captain and servitor in Ireland, 6 January 1599, taken before the lord BUCKHURST, lord High Treasurer; the earl of NOTTINGHAM, lord High Admiral; Sir ROBERT CECIL, principal Secretary, and Sir JOHN FORTESCUE, Chancellor of the Exchequer.

HE the said David Hethrington riding into the edge of the county of Kildare, about the end of the first cessation, fortun'd to meet with one James Occurren, one of the horsemen of Master Bowen provost marshal of Lemster, who told him, that the said James Occurren meeting lately with a principal follower of Owney mac Rory, chief of the Moores, Owney's man asked him what news he heard of the earl of Essex. To which James Occurren answered, that he was gone for England: whereunto he said, Nay, if you can tell me no news, I can tell you some; the earl of Essex is now in trouble for us, for that he would do no service upon us; which he never meant to do, for he is ours, and we are his.

DAVID HETHRINGTON.

Confessed in the presence of THO. BUCKHURST, RO. CECIL,
NOTTINGHAM, JO. FORTESCUE.

The first confession of Sir FERDINANDO GORGE, knight, the 16th of February 1600, taken before Sir THOMAS EGERTON, lord Keeper of the great Seal; the lord BUCKHURST, lord High Treasurer; the earl of NOTTINGHAM, lord High Admiral, and Sir ROBERT CECIL, principal Secretary.

HE saith, the earl of Essex wrote a letter to him in January, complaining of his misfortune: that he desired his company, and desired his repair up to him by the second of February; that he came to town on Saturday seven-night before the earl's insurrection, and that the same night late he visited the earl: who, after compliments, told him that he stood on his guard, and resolved not to hazard any more commandments or restraints; that he desired him to rest him that night and to repair unto him again, but in such sort as it might not be noted.

That he had been with the earl two or three times that week; and on Saturday, being the seventh of February, the earl told him that he had been sent for by the lords, and refused to come: delivering farther, that he resolved to defend himself from any more restraint.

He farther saith, that it was in question the same Saturday night, to have stirred in the night, and to have attempted the court. But being demanded, whether the earl could have had sufficient company to have done any thing in the night: he answered, that all the earl's company were ready at one hour's warning, and had been so before, in respect that he had meant long before to stand upon his guard.

That it was resolved to have the court first attempted; that the earl had three hundred gentlemen to do it; but that he the said Ferdinando Gorge was a violent dissuader of him from that purpose, and the earl most confident in the party of London, which he meant, upon a later dispute, first to assure; and that he was also assured of a party in Wales, but meant not to use them, until he had been possessed of the court.

That the earl and Sir Christopher Blunt understanding that Sir Walter Raleigh had sent to speak with him in the morning, the said Sir Christopher Blunt persuaded him, either to surprisè Sir Walter Raleigh, or to kill him. Which when he utterly refused, Sir Christopher Blunt sent four shot after him in a boat.

That at the going out of Essex-house gate, many cried out, To the court, to the court. But my lord of Essex turned him about towards London.

That he meant, after possession of the court, to call a parliament, and therein to proceed as cause should require.

At that time of the consultation on Saturday night, my lord was demanded, what assurance he had of those he made account to be his friends in the city? Whereunto he replied, that there was no question to be made of that, for one, amongst the rest, that was presently in one of the greatest commands amongst them, held himself to be interested in the cause, for so he phrased it, and was colonel of a thousand men, which were ready at all times; besides others that he held himself as assured of as of him, and able to make as great numbers. Some of them had at that instant, as he reported to us, sent unto him, taking notice

of

CONFESSIONS AND OTHER EVIDENCES.

my lord of Southampton, Sir Charles Davers, Sir Ferdinando Gorge, and himself, to meet at Drury-house, and there to consider of the same, and such other projects as his lordship delivered them: and principally, for surprizing of the court, and for the taking of the Tower of London. About which business they had two meetings, which were five or six days before the insurrection.

He farther saith, that Sir Christopher Blunt was not at this consultation, but that he stayed and advised with my lord himself about other things to him unknown: for that my lord trusted several men in several businesses, and not all together.

Being demanded, what was resolved in the opinions of these four before named? He saith, that Sir Charles Davers was appointed to the presence-chamber, and himself to the hall: and that my lord was to determine himself, who should have guarded the court-gate and the water-gate. And that Sir Charles Davers, upon a signal or a watch-word, should have come out of the presence into the guard-chamber; and then some out of the hall to have met him, and so have stept between the guard and their halberds; of which guard they hoped to have found but a dozen, or some such small number.

Being asked, whether he heard that such as my lord disliked should have received any violence? He saith, that my lord avowed the contrary; and that my lord said, he would call them to an honourable trial, and not use the sword.

Being demanded, whether my lord thought his enemies to be Spanish, *bona fide*, or no? He saith, that he never heard any such speech; and if my lord used any such, it came into his head on the sudden.

Being demanded, what party my lord had in London? He saith, that the sheriff Smith was his hope, as he thinketh.

Being demanded, whether my lord promised liberty of catholic religion? He saith, that Sir Christopher Blunt did give hope of it.

JOHN DAVIS.

Exam. per NOTTINGHAM, RO. CECIL, J. HERBERT.

The confession of Sir CHARLES DAVERS, taken the 18th of February, ~~anno~~ 1600, before Sir THOMAS EGERTON, lord Keeper of the great seal; the lord BUCKHURST, lord High Treasurer; the earl of NOTTINGHAM, the lord High Admiral; lord HUNSDON, lord Chamberlain, and Sir ROBERT CECIL, principal Secretary.

HE confesseth, that before Christmas the earl of Essex had bethought himself how he might secure his access unto the queen in such sort as he might not be resisted; but no resolution determinately taken until the coming up of this examine a little after Christmas.

And then he doth confess, that the resolution was taken to possess himself of the court; which resolution was taken agreeably to certain articles, which the earl of Essex did send to the earl of Southampton, this examine, Sir Ferdinando Gorge, and Sir John Davis, written with the earl's own hand. To which consultation, being held at Drury-house, some four or five days before Sunday, that was the eighth of February, Littleton came in towards the end.

The

The points which the earl of Essex projected under his hand were these :

First, whether it were fit to take the Tower of London. The reason whereof was this : that after the court was possessed, it was necessary to give reputation to the action, by having such a place to bridle the city, if there should be any dislike of their possessing the court.

To the possessing of the court, these circumstances were considered :

First, the earl of Essex should have assembled all the noblemen and gentlemen of quality on his party ; out of which number he should have chosen so many as should have possessed all the places of the court, where there might have been any likelihood of resistance : which being done, the earl of Essex, with divers noblemen, should have presented himself to the queen.

The manner how it should have been executed, was in this sort : Sir Christopher Blunt should have had charge of the outer gate, as he thinketh. Sir Charles Davers, this examinee, with his company, should have made good the presence, and should have seized upon the halberds of the guard. Sir John Davis should have taken charge of the hall. All this being set, upon a signal given, the earl should have come into the court with his company.

Being asked, what they would have done after ? he saith, They would have sent to have satisfied the city, and have called a parliament.

These were the resolutions set down by the earl of Essex of his own hand, after divers consultations.

He saith, Cuffe was ever of opinion, that the earl of Essex should come in this sort to the court.

CHARLES DAVERS.

Exam. per THO. EGERTON, C. S.	G. HUNSDON,
THO. BUCKHURST,	RO. CECIL.
NOTTINGHAM,	

The second confession of Sir CHARLES DAVERS, taken the same day, and set down upon farther calling himself to remembrance, under his own hand, before Sir THO. EGERTON, lord Keeper of the great seal ; lord BUCKHURST, lord High Treasurer ; the Earl of NOTTINGHAM, lord High Admiral ; Sir ROBERT CECIL, principal Secretary.

SOME points of the articles which my lord of Essex sent unto Drury-house, as near as I can remember, were these ; whether both the court and the Tower should be both attempted at one time ? if both, what numbers should be thought requisite for either ? if the court alone, what places should be first possessed ? by what persons ?

And for those which were not to come into the court beforehand, where and in what sort they might assemble themselves, with least suspicion, to come in with my lord ?

Whether it were not fit for my lord, and some of the principal persons, to be armed with privy coats ?

CHARLES DAVERS.

Knowledged in the presence of THO. EGERTON, C. S.	NOTTINGHAM,
THO. BUCKHURST,	ROBERT CECIL.

CONFESSIONS AND OTHER EVIDENCES.

The first confession of Sir CHRISTOPHER BLUNT, examined the 18th of February 1600, before Jo. HERBERT, second Secretary of estate, and in the presence of NIC. KEMPE, counsellor at law, WILLIAM WAIMARKE, WILLIAM MARTIN, ROBERT ANDREWS, citizens, JOHN TREVOR surveyor of the navy, and THOMAS THORNEY, his surgeon.

HE confesseth that the earl of Essex sent Wiseman, about the 20th of January, to visit his wife, with letters of compliment, and to require him to come up unto him to London, to settle his estate according as he had written unto him before some few days.

Being demanded, to what end they went to the city, to join with such strength as they hoped for there? he confesseth, it was to secure the earl of Essex his life, against such forces as should be sent against him. And being asked, What, against the queen's forces? he answered, That must have been judged afterwards.

But being farther asked, whether he did advise to come unto the court over night? He saith, No; for Sir Ferdinando Gorge did assure, that the alarm was taken of it at the court, and the guards doubled.

Being asked, whether he thought any prince could have endured to have any subject make the city his mediator? or to gather force to speak for him? He saith, he is not read in stories of former times? but he doth not know but that in former times subjects have used force for their mediation.

Being asked, what should have been done by any of the persons that should have been removed from the queen? He answered, that he never found my lord disposed to shed blood; but that any that should have been found, should have had indifferent trial.

Being asked upon his conscience, whether the earl of Essex did not give him comfort, that if he came to authority, there should be a toleration for religion? He confesseth, he should have been to blame to have denied it.

CHRISTOPHER BLUNT.

This was read unto Sir Christopher Blunt, and afterwards signed by him in the presence of us who are under written.

JO. HERBERT,	WIL. MARTIN,	JO. TREVOR,
NIC. KEMPE,	ROB. ANDREWS,	TH. THORNEY.
WIL. WAIMARKE,		

The second confession of Sir CHRISTOPHER BLUNT the same day, viz. the 18th of February; taken before Mr. JOHN HERBERT, second Secretary of estate, and subscribed by him in the presence of NICHOLAS KEMPE, counsellor at law, THOMAS THORNEY, his surgeon, and WILLIAM MARTIN, ROBERT ANDREWS, and RANDOLPH DULL, citizens.

The weak-
ness in
repealing
had received

SIR Christopher Blunt, after the signing of this confession, being told, that he did not deal plainly, excused himself by his former weakness, putting us in mind that he said once before, that when he was able to speak, he would tell all truth, doth now confess; That four or five days before the earl of Essex did rise, he

he did fet down certain articles to be considered on, which he saw not, until after-ward he was made acquainted with them, when they had amongst themselves disputed: which were these.

*in charging
her majesty's
lordes at the
gate.*

One of them was, whether the Tower of London should be taken?

Another, whether they should not possess the court, and so secure my lord, and other men to come to the queen?

For the first concerning the Tower, he did not like it; concluding, that he that had the power of the queen, should have that.

He confesseth that upon Saturday night, when Mr. Secretary Herbert had been with the earl, and that he saw some suspicion was taken, he thought it in vain to attempt the court, and persuaded him rather to save himself by flight, than to engage himself farther, and all his company. And so the resolution of the earl grew to go into the city, in hope, as he said before, to find many friends there.

He doth also say, that the earl did usually speak of his purpose to alter the government.

CHRISTOPHER BLUNT.

Exam. per JO. HERBERT.

Subscribed in the presence of NIC. KEMPE,
THO. THORNEY,
ROB. ANDREWS,

W. MARTIN,
RANDOLPH BULL.

The Declaration of the lord Keeper, the earl of WORCESTER, and the lord Chief Justice of England.

UPON Sunday, being the 8th of February last past, about ten of the clock in the forenoon, the lord Keeper of the great seal, the earl of Worcester, Sir William Knolles comptroller of her majesty's household, and the lord Chief Justice of England, being commanded by direction from the queen's majesty, did repair to the late earl of Essex his house, and finding the gate shut against them, after a little stay they were let in at the wicket: and as soon as they were within the gate, the wicket was shut upon them, and all their servants kept out.

At their coming thither they found the court full of men assembled together in very tumultuous sort; the earls of Essex, Rutland, and Southampton, and the lord Sandys, Mr. Parker, commonly called lord Montegle, Sir Christopher Blunt, Sir Charles Davers, and many other knights and gentlemen, and other persons unknown, which flocked together about the lord Keeper, *etc.* And thereupon the lord Keeper told the earl of Essex, that they were sent from her majesty to understand the cause of this their assembly, and to let them know, that if they had any particular cause of grief against any persons whatsoever, it should be heard, and they should have justice.

Hereupon the earl of Essex with a very loud voice declared, That his life was sought, and that he should have been murdered in his bed; that he had been perfidiously dealt with; that his hand had been counterfeited, and letters written in his name; and that therefore they were assembled there together to defend their lives; with much other speech to like effect. Hereupon the lord Chief Justice said unto the earl, That if they had any such matter of grief, or if any such matter were attempted or purposed against him, he willed the earl to declare it, assuring

him that it should be truly related to her majesty, and that it should be indifferently heard, and justice should be done whomsoever it concerned.

To this the earl of Southampton objected the assault made upon him by the lord Gray. Whereunto the lord Chief Justice said, That in his case justice had been done, and the party imprisoned for it. And hereupon the lord Keeper did estoons will the earl of Essex, that whatsoever private matter or offence he had against any person whatsoever, if he would deliver it unto them, they would faithfully and honestly deliver it to the queen's majesty, and doubted not to procure him honourable and equal justice, whomsoever it concerned; requiring him, that if he would not declare it openly, that he would impart it unto them privately, and doubted not but they would satisfy him in it.

Upon this there was a great clamour raised amongst the multitude, crying, "Away, my lord, they abuse you, they betray you, they undo you, you lose time." Whereupon the lord Keeper put on his hat, and said with a loud voice, "My lord, let us speak with you privately, and understand your griefs; and I command you all upon your allegiance, to lay down your weapons, and to depart, which you ought all to do, being thus commanded, if you be good subjects, and owe that duty to the queen's majesty which you profess." Whereupon they all break out into an exceeding loud shout and cry, crying, "All, all, all."

And whilst the lord Keeper was speaking, and commanding them upon their allegiance, as is before declared, the earl of Essex and the most part of that company did put on their hats, and so the earl of Essex went into the house, and the lord Keeper, *etc.* followed him, thinking that his purpose had been to speak with them privately, as they had required. And as they were going, some of that disordered company cried, "Kill them." And as they were going into the great chamber, some cried, "Cast the great seal out at the window." Some other cried there, "Kill them;" and some other said, "Nay, let us shop them up."

The lord Keeper did often call to the earl of Essex to speak with them privately, thinking still that his meaning had been so, until the earl brought them into his back chamber, and there gave order to have the farther door of that chamber shut fast. And at his going forth out of that chamber, the lord Keeper pressing again to have spoken with the earl of Essex, the earl said, "My lords, be patient a while, and stay here, and I will go into London, and take order with the mayor and sheriffs for the city, and will be here again within this half hour;" and so departed from the lord Keeper, *etc.* leaving the lord Keeper, *etc.* and divers of the gentlemen prisoners in that chamber, guarded by Sir John Davis, Francis Tresham, and Owen Salisbury, with musquet shot, where they continued until Sir Ferdinando Gorge came and delivered them about four of the clock in the afternoon.

In the mean time we did often require Sir John Davis, and Francis Tresham, to suffer us to depart, or at the least to suffer some one of us to go to the queen's majesty, to inform her where and in what sort we were kept. But they answered, That my lord, meaning the earl of Essex, had commanded that we should not depart before his return, which, they said, would be very shortly.

THOMAS FLETTON, C. S. EDWARD WORCESTER, JOHN POPHAM.

The examination of ROGER earl of RUTLAND, the 12th of February 1600, taken before Sir THOMAS FERTON, lord Keeper of the great seal; the lord BUCKHURST, lord High Treasurer; the earl of NOTTINGHAM, lord High Admiral; Sir ROBERT CECIL, principal Secretary, and Sir JO. POPHAM, lord Chief Justice of England.

HE saith, that at his coming to Essex-house on Sunday morning last, he found there with the earl of Essex, the lord Sandys, and the lord Chandos, and divers knights and gentlemen. And the earl of Essex told this examinee, that his life was practised to be taken away by the lord Cobham, and Sir Walter Raleigh, when he was sent for to the council; and the earl said, that now he meant by the help of his friends to defend himself: and saith, That the detaining of the lord Keeper and the other lords sent to the earl from the queen, was a stratagem of war: and saith, That the earl of Essex told him that London stood for him, and that sheriff Smith had given him intelligence, that he would make as many men to assist him as he could; and further the earl of Essex said, that he meant to possess himself of the city, the better to enable himself to revenge him on his enemies, the lord Cobham, Sir Robert Cecil, and Sir Walter Raleigh. And this examinee confesseth, That he resolved to live and die with the earl of Essex; and that the earl of Essex did intend to make his forces so strong, that her majesty should not be able to resist him in the revenge of his enemies. And saith, That the earl of Essex was most inward with the earl of Southampton, Sir Christopher Blunt, and others; who have of long time shewed themselves discontented, and have advised the earl of Essex to take other courses, and to stand upon his guard: and saith, That when the earl of Essex was talking with the lord Keeper, and other the lords sent from her majesty, divers said, "My lord, they mean to abuse you, and you lose time." And when the earl came to sheriff Smith's, he desired him to send for the lord Mayor that he might speak with him; and as the earl went in the streets of London, this examinee said to divers of the citizens, that if they would needs come, that it was better for their safety to come with weapons in their hands: and saith, That the earl of Essex, at the end of the street where sheriff Smith dwelt, cried out to the citizens, that they did him harm, for that they came naked; and willed them to get them weapons; and the earl of Essex also cried out to the citizens, that the crown of England was offered to be sold to the Infanta: and saith, That the earl burned divers papers that were in a little casket, whereof one was, as the earl said, an history of his troubles: and saith, That when they were assaulted in Essex-house, after their return, they first resolved to have made a sally out; and the earl said, that he was determined to die; and yet in the end they changed their opinion and yielded: and saith, That the earl of Southampton, Sir Christopher Blunt, and Sir John Davis, advised the earl of Essex, that the lord Keeper and his company should be detained: and this examinee saith, That he heard divers there present cry out, "Kill them, kill them:" and saith, That he thinketh the earl of Essex intended, that after he had possessed himself of the city, he would intreat the lord Keeper and his company to accompany him to the court. He saith, he heard Sir Christopher Blunt say openly, in the presence of
the

CONFESSIONS AND OTHER EVIDENCES.

the earl of Essex and others, how fearful, and in what several humours they should find them at the court, when they came thither.

RUTLAND.

Exam. *per* TH. EGERTON, C. S.
T. BUCKHURST,
NOTTINGHAM,

RO. CECIL.
JO. POPHAM.

The confession of WILLIAM lord SANDYS, of the parish of Sherborne-Cowdry in the county of Southampton, taken this 16th of February, 1600, before Sir JOHN POPHAM, lord Chief Justice; ROGER WILBRAHAM, master of the Requests, and EDWARD COKE, her majesty's Attorney-general.

HE saith, That he never understood that the earl did mean to stand upon his strength till Sunday in the morning, being the 8th of this instant February: and saith, That in the morning of that day this examine was sent for by the earl of Essex about six or seven of the clock; and the earl sent for him by his servant Warburton, who was married to a widow in Hampshire. And at his coming to the earl there were six or seven gentlemen with him, but remembereth not what they were; and next after, of a nobleman, came my lord Chandos, and after him came the earl of Southampton, and presently after the earl of Rutland, and after him Mr. Parker, commonly called the lord Montegle: and saith, That at his coming to the earl of Essex, he complained that it was practised by Sir Walter Raleigh to have murdered him as he should have gone to the lord Treasurer's house with Mr. Secretary Herbert. And saith, That he was present in the court-yard of Essex-house, when the lord Keeper, the earl of Worcester, Sir William Knolles, and the lord Chief Justice, came from the queen's majesty to the earl of Essex; and the lord Chief Justice required the earl of Essex to have some private conference with him; and that if any private wrongs were offered unto him, that they would make true report thereof to her majesty, who, no doubt, would reform the same: and saith, That this examine went with the earl, and the rest of his company, to London to sheriff Smith's, but went not into the house with him, but stayed in the street a while; and being sent for by the earl of Essex, went into the house, and from thence came with him till he came to Ludgate; which place being guarded, and resistance being made, and perceived by the earl of Essex, he said unto his company, "Charge;" and thereupon Sir Christopher Blunt, and others of his company gave the charge, and being repulsed, and this examine hurt in the leg, the earl retired with this examine and others to his house called Essex-house. And on his retire, the earl said to this examine, That if sheriff Smith did not his part, that his part was as far forth as the earl's own; which moved him to think that he trusted to the city. And when the earl was, after his retire, in Essex-house, he took an iron casket, and broke it open, and burnt divers papers in it; whereof there was a book, as he taketh it, and said, as he was burning of them, that they should tell no tales to hurt his friends: and saith, that the earl said, that he had a black bag about his neck that should tell no tales.

WILLIAM SANDYS.

Exam. *per* JO. POPHAM. ROGER WILBRAHAM. EDW. COKE.
The

The Examination of the lord CROMWELL, taken the 7th of March 1600, by Sir J. POPHAM, lord Chief Justice; CHRIST. YELVERTON, her majesty's serjeant, and FR. BACON, of her majesty's learned counsel.

* AT the sheriff's house this examinee pressed in with the rest, and found the earls shifting themselves in an inner chamber, where he heard my lord of Essex certify the company, that he had been advertised out of Ireland, which he would not now hide from them, that the realm should be delivered over to the hands of the infanta of Spain, and that he was wished to look to it; farther, that he was to seek redress for injuries; and that he had left at his house for pledges, the lord Keeper, the earl of Worcester, Sir William Knolles, and the lord Chief Justice.

EDW. CROMWELL.

Exam. per Jo. POPHAM, CHR. YELVERTON, FR. BACON.

Sir CHRISTOPHER BLUNT, knight, at the time of his arraignment, did openly at the bar desire to speak with the lord Admiral and Mr. Secretary; before whom he made this confession following; which the earl of SOUTHAMPTON confirmed afterwards, and he himself likewise at his death.

HE confesseth, That at the castle of Dublin, in that lodging which was once the earl of Southampton's, the earl of Essex purposing his return into England, advised with the earl of Southampton and himself, of his best manner of going into England for his security, seeing to go he was resolved.

At that time he propounded his going with a competent number of soldiers, to the number of two or three thousand, to have made good his first landing with that force, until he could have drawn unto himself a sufficient strength to have proceeded farther.

From this purpose this examinee did use all forcible persuasions; alledging not only his own ruin, which should follow thereof, and all those which should adhere to him in that action; but urging it to him as a matter most foul, because he was not only held a patron of his country, which by this means he should have destroyed; but also should have laid upon himself an irrevocable blot, having been so deeply bound to her majesty. To which dissuasion the earl of Southampton also inclined.

This design being thus dissuaded by them, then they fell to a second consideration: and therein this examinee confesseth, That he rather advised him, if needs he would go, to take with him some competent number of choice men.

He did not name unto him any particular power that would have come to him at his landing, but assured himself that his army would have been quickly increased by all sorts of discontented people.

* This examination, as appeareth by the date, was taken after Essex's arraignment, but is inserted, to shew how the speech of the realm to be field to the Infanta, which at his arraignment he derived from Mr. Secretary, at sheriff Smith's house he did was advertised out of Ireland: and with this later concur many other examinations.

CONFESSIONS AND OTHER EVIDENCES.

He did confels before his going, That he was assured that many of the rebels would be advised by him, but named none in particular.

The examination of the earl of SOUTHAMPTON after his arraignment; taken before the earl of NOTTINGHAM, lord High Admiral; Sir ROBERT CECIL, principal Secretary, and Mr. JOHN HERBERT, second Secretary of estate.

SIR Christopher Blunt being hurt, and lying in the castle of Dublin, in a chamber which had been mine, the earl of Essex one day took me thither with him, where being none but we three, he told us, He found it necessary for him to go into England, and thought it fit to carry with him as much of the army as he could conveniently transport, to go on shore with him to Wales, and there to make good his landing with those, till he could send for more; not doubting but his army would so increase in a small time, that he should be able to march to London, and make his conditions as he desired.

To which project I answered, That I held it altogether unfit, as well in respect of his conscience to God, as his love to his country, as his duty to his sovereign, of which he, of all men, ought to have greatest regard, seeing her majesty's favours to him had been so extraordinary: wherefore I could never give any consent unto it. Sir Christopher Blunt joined with me in this opinion.

Exam. *per* NOTTINGHAM, RO. CECIL, J. HERBERT.

The speech of Sir CHRISTOPHER BLUNT, at the time of his death, as near as it could be remembered, March 18, 1600.

MY lords, and you that be present, although I must confels, that it were better fitting the little time I have to breathe, to bestow the same in asking God forgiveness for my manifold and abominable sins, than to use any other discourse, especially having both an imperfection of speech, and, God knows, a weak memory, by reason of my late grievous wound: yet to satisfy all those that are present, what course hath been held by me in this late enterprise, because I was said to be an instigator and setter on of the late earl, I will truly, and upon the peril of my soul, speak the truth.

It is true, that the first time that ever I understood of any dangerous discontentment in my lord of Essex, was about three years ago at Wanstead upon his coming one day from Greenwich. At that time he spake many things unto me, but descended into no particulars, but in general terms.

After which time, he never brake with me in any matter tending to the alteration of the state, I protest before God, until he came into Ireland, other than I might conceive, that he was of an ambitious and discontented mind. But when I lay at the castle of Thomas Lee, called Reban, in Ireland, grievously hurt, and doubted of my life, he came to visit me, and then began to acquaint me with his intent.

[As he thus spake, the sheriff began to interrupt him, and told him the hour was past. But my lord Gray, and Sir Walter Raleigh captain of the guard, called

called to the sheriff, and required him not to interrupt him, but to suffer him quietly to finish his prayers and confessions. Sir Christopher Blunt said, Is Sir Walter Raleigh there? Those on the scaffold answered, Yea. To whom Sir Christopher Blunt spake on this manner:]

Sir Walter Raleigh, I thank God that you are present: I had an infinite desire to speak with you, to ask you forgiveness ere I died, both for the wrong done you, and for my particular ill intent towards you: I beseech you forgive me.

Sir Walter Raleigh answered, That he most willingly forgave him, and besought God to forgive him, and to give him his divine comfort: protesting before the Lord, That whatsoever Sir Christopher Blunt meant towards him, for his part he never had any ill intent towards him: and farther said to Sir Christopher Blunt, “ I pray you without offence let me put you in mind that you have been esteemed, “ not only a principal provoker and persuader of the earl of Essex in all his un- “ dutiful courses, but especially an adviser in that which hath been confessed of “ his purpose to transport a great part of her majesty’s army out of Ireland into “ England, to land at Milford, and thence to turn it against her sacred person. “ You shall do well to tell the truth, and to satisfy the world.” To which he answered thus:

Sir, if you will give me patience, I will deliver a truth, speaking now my last, in the presence of God, in whose mercy I trust. [And then he directed himself to my lord Gray and my lord Compton, and the rest that sat on horseback near the scaffold.]

When I was brought from Reban to Dublin, and lodged in the castle, his lordship and the earl of Southampton came to visit me; and to be short, he began thus plainly with me: That he intended to transport a choice part of the army of Ireland into England, and land them in Wales, at Milford or thereabouts; and so securing his descent thereby, would gather such other forces as might enable him to march to London. To which I protest before the Lord God, I made this or the like answer: That I would that night consider of it; which I did.

And the next day the earls came again: I told them, That such an enterprise, as it was most dangerous, so would it cost much blood, as I could not like of it; besides many hazards, which at this time I cannot remember unto you, neither will the time permit it. But I rather advised him to go over himself with a good train, and make sure of the court, and then make his own conditions.

And although it be true, that, as we all protested in our examinations and arraignments, we never resolved of doing hurt to her majesty’s person, for in none of our consultations was there set down any such purpose; yet, I know, and must confess, if we had failed of our ends, we should, rather than have been disappointed, even have drawn blood from herself. From henceforward he dealt no more with me herein, until he was discharged of his keeper at Essex-house. And then, he again asked mine advice, and disputed the matter with me; but resolved not. I went then into the country, and before he sent for me, which was some ten days before his rebellion, I never heard more of the matter. And then he wrote unto me to come up, upon pretence of making some assurances of land, and the like. I will leave the rest unto my confessions, given to that honourable lord Admiral, and worthy Mr. Secretary, to whom I beseech you, Sir Walter Raleigh, commend me; I can requite their favourable and charitable dealing with me, with nought else but my prayers for them. And I beseech God of his mercy,

to save and preserve the queen, who hath given comfort to my soul, in that I hear she hath forgiven me all, but the sentence of the law, which I most worthily detested, and do most willingly embrace; and hope that God will have mercy and compassion on me; who have offended him as many ways as ever sinful wretch did. I have led a life so far from his precepts, as no sinner more. God forgive it me, and forgive me my wicked thoughts, my licentious life, and this right arm of mine, which I fear me hath drawn blood in this last action. And I beseech you all bear witness, that I die a Catholic, yet so, as I hope to be saved only by the death and passion of Christ, and by his merits, not ascribing any thing to mine own works. And I trust you are all good people, and your prayers may profit me. Farewell, my worthy lord Gray, and my lord Compton, and to you all; God send you both to live long in honour. I will desire to say a few prayers, and embrace my death most willingly.

With that he turned from the rail towards the executioner; and the minister offering to speak with him, he came again to the rail, and besought that his conscience might not be troubled, for he was resolved; which he desired for God's sake. Whereupon commandment was given, that the minister should not interrupt him any farther. After which he prepared himself to the block, and so died very manfully and resolutely.

An abstract out of the earl of Essex's confession under his own hand.

UPON Saturday the twenty-first of February, after the late earl of Essex had desired us to come to him, as well to deliver his knowledge of those treasons which he had formerly denied at the bar, as also to recommend his humble and earnest request, that her majesty would be pleased, out of her grace and favour, to suffer him to die privately in the Tower; he did marvellous earnestly desire, that we would suffer him to speak unto Cuffe his secretary: against whom he vehemently complained unto us, to have been a principal instigator to these violent courses which he had undertaken. Wherein he protested, that he chiefly desired that he might make it appear that he was not the only persuader of those great offences which they had committed; but that Blunt, Cuffe, Temple, besides those other persons who were at the private conspiracy at Drury-house, to which, though these three were not called, yet they were privy, had most malicious and bloody purposes to subvert the state and government: which could not have been prevented, if his project had gone forward.

This request being granted him, and Cuffe brought before him, he there directly and vehemently charged him; and among other speeches used these words: "Henry Cuffe, call to God for mercy, and to the queen, and deserve it by declaring truth. For I, that must now prepare for another world, have resolved to deal clearly with God and the world: and must needs say this to you; You have been one of the chiefest instigators of me to all these my disloyal courses into which I have fallen."

Testified by THO. EGERTON, C. S. NOTTINGHAM,
THO. BUCKHURST, RO. CECIL.

The earl of Essex his confession to three ministers, whose names are under-written, the 25th of February, 1600.

THE late earl of Essex thanked God most heartily, That he had given him a deeper insight into his offence, being sorry he had so stood upon his justification at his arraignment, for he was since that become another man.

He thanked God that his course was so prevented; for if his project had taken effect, God knows, said he, what harm it had wrought in the realm.

He humbly thanked her majesty, that he should die in so private a manner, lest the acclamation of the people might have been a temptation unto him. To which he added, that all popularity and trust in man was vain: the experience whereof himself had felt.

He acknowledged with thankfulness to God, that he was thus justly spued out of the realm.

He publicly in his prayer and protestation, as also privately, aggravated the detestation of his offence; and especially in the hearing of them that were present at the execution, he exaggerated it with four epithets, desiring God to forgive him his great, his bloody, his crying, and his infectious sin: which word *infectious* he privately had explained to us, that it was a leprosy that had infected far and near.

THOMAS MONTFORD, WILLIAM BARLOW, AEDY ASHTON his chaplain.



THE
A P O L O G Y
OF
Sir FRANCIS BACON,

In certain Imputations concerning the late

E A R L of E S S E X.

To the Right Honourable his very good Lord

The E A R L of D E V O N S H I R E,

Lord Lieutenant of IRELAND.

IT may please your good lordship, I cannot be ignorant, and ought to be sensible of the wrong which I sustain in common speech, as if I had been false or unthankful to that noble, but unfortunate earl, the earl of Essex: and for satisfi-
 ing the vulgar sort, I do not so much regard it; though I love a good name, but yet as an handmaid and attendant of honesty and virtue. For I am of his opinion that said pleasantly, “That it was a shame to him that was a suitor to the
 “mistress, to make love to the waiting-woman;” and therefore to woo or court common fame, otherwise than it followeth on honest courses, I, for my part, find not myself fit or disposed. But, on the other side, there is no worldly thing that concerneth myself, which I hold more dear than the good opinion of certain persons; among which there is none I would more willingly give satisfaction unto, than to your lordship. First, because you loved my lord of Essex, and therefore will not be partial towards me, which is part of that I desire: next, because it hath ever pleased you to shew yourself to me an honourable friend, and so no baseness in me to seek to satisfy you: and lastly, because I know your lordship is excellently grounded in the true rules and habits of duties and moralities, which must be they which shall decide this matter; wherein, my lord, my defence needeth to be but simple and brief: namely, that whatsoever I did concerning that action and proceeding, was done in my duty and service to the queen and the state; in which I would not shew myself false-hearted, nor faint-hearted, for any man’s sake living. For every honest man that hath his heart well planted, will forsake his king rather than forsake God, and forsake his friend rather than forsake his king; and yet will

will forsake any earthly commodity, yea, and his own life in some cases, rather than forsake his friend. I hope the world hath not forgotten these degrees, else the heathen saying, *Abicus usque ad aras*, shall judge them.

And if any man shall say, I did officiously intrude myself into that business, because I had no ordinary place; the like may be said of all the business in effect that passed the hands of the learned counsel, either of state or revenues, these many years, wherein I was continually used. For, as your lordship may remember, the queen knew her strength so well, as she looked her word should be a warrant; and, after the manner of the choicest princes before her, did not always tie her trust to place, but did sometime divide private favour from office. And I for my part, though I was not so unseen in the world, but I knew the condition was subject to envy and peril; yet because I knew again she was constant in her favours, and made an end where she began: and especially because she upheld me with extraordinary access, and other demonstrations of confidence and grace, I resolved to endure it in expectation of better. But my scope and desire is, that your lordship would be pleased to have the honourable patience to know the truth, in some particularity, of all that passed in this cause, wherein I had any part, that you may perceive how honest a heart I ever bare to my sovereign, and to my country, and to that nobleman, who had so well deserved of me, and so well accepted of my deservings, whose fortune I cannot remember without much grief. But for any action of mine towards him, there is nothing that passed me in my life-time, that cometh to my remembrance with more clearness, and less check of conscience: for it will appear to your lordship, that I was not only not opposite to my lord of Essex, but that I did occupy the utmost of my wits, and adventure my fortune with the queen, to have reintegrated his, and so continued faithfully and industriously, till his last fatal impatience, for so I will call it, after which day there was not time to work for him; though the same, my affection, when it could not work on the subject proper, went to the next, with no ill effect towards some others, who, I think, do rather not know it, than not acknowledge it. And this I will assure your lordship, I will leave nothing untold, that is truth, for any enemy that I have, to add; and on the other side, I must reserve much which makes for me, in many respects of duty, which I esteem above my credit: and what I have here set down to your lordship, I protest, as I hope to have any part in God's favour, is true.

It is well known, how I did many years since dedicate my travels and studies to the use, and, as I may term it, service of my lord of Essex, which, I protest before God, I did not, making election of him as the likeliest mean of mine own advancement, but out of the humour of a man, that ever from the time I had any use of reason, whether it were reading upon good books, or upon the example of a good father, or by nature, I loved my country more than was answerable to my fortune; and I held at that time my lord to be the fittest instrument to do good to the state, and therefore I applied myself to him in a manner which I think happeneth rarely among men: for I did not only labour carefully and industriously in that he set me about, whether it were matter of advice or otherwise, but, neglecting the queen's service, mine own fortune, and in a sort my vocation, I did nothing but advise and ruminare with myself, to the best of my understanding, propositions and memorials of any thing that might concern his lordship's honour, fortune, or service. And when, not long after I entered into
this

this course, my brother Mr. Anthony Bacon came from beyond the seas, being a gentleman whose ability the world taketh knowledge of for matters of state, especially foreign, I did likewise knit his service to be at my lord's disposing. And on the other side, I must and will ever acknowledge my lord's love, trust, and favour towards me; and last of all his liberality, having incoffed me of land which I sold for eighteen hundred pounds to Mr. Reynold Nicholas, which, I think, was more worth; and that at such a time, and with so kind and noble circumstances, as the manner was as much as the matter; which, though it be but an idle digression, yet because I am not willing to be short in commemoration of his benefits, I will presume to trouble your lordship with relating to you the manner of it. After the queen had denied me the solicitor's place, for the which his lordship had been a long and earnest suitor on my behalf, it pleased him to come to me from Richmond to Twicknam Park, and brake with me, and said: "Mr. Bacon, the queen hath denied me the place for you, and hath placed another; I know you are the least part of your own matter, but you fare ill because you have chosen me for your mean and dependence: you have spent your time and thoughts in my matters; I die, these were his very words, if I do not somewhat towards your fortune, you shall not deny to accept a piece of land which I will bestow upon you." My answer, I remember, was, that for my fortune it was no great matter; but that his lordship's offer made me call to mind what was wont to be said, when I was in France, of the duke of Guise, that he was the greatest usurer in France, because he had turned all his estate into obligations: meaning, that he had left himself nothing, but only had bound numbers of persons to him. "Now, my lord, said I, I would not have you imitate his course, nor turn your state thus by great gifts into obligations, for you will find many bad debtors." He bade me take no care for that, and pressed it: whereupon I said, "My lord, I see I must be your homager, and hold land of your gift; but do you know the manner of doing homage in law? Always it is with a saving of his faith to the king and his other lords; and therefore, my lord, said I, I can be no more yours than I was, and it must be with the ancient savings; and if I grow to be a rich man, you will give me leave to give it back again to some of your unrewarded followers."

But to return: sure I am, though I can arrogate nothing to myself but that I was a faithful remembrancer to his lordship, that while I had most credit with him his fortune went on best: and yet in two main points we always directly and contradictorily differed, which I will mention to your lordship, because it giveth light to all that followed. The one was, I ever set this down, that the only course to be held with the queen, was by obsequiousness and observance; and I remember I would usually engage confidently, that if he would take that course constantly, and with choice of good particulars to express it, the queen would be brought in time to Ahasuerus's question, to ask, *What should be done to the man that the king would honour?* Meaning, that her goodness was without limit, where there was a true concurrence: which I knew in her nature to be true. My lord, on the other side, had a settled opinion, that the queen could be brought to nothing but by a kind of necessity and authority; and I well remember, when by violent courses at any time he had got his will, he would ask me, "Now, Sir, whose principles be true?" And I would again say to him; "My lord, these courses be like to hot waters, they will help at a pang; but if you use them you shall spoil the

"stomach.

“ stomach, and you shall be fain still to make them stronger and stronger, and yet
 “ in the end they will lessen their operation;” with much other variety, where-
 with I used to touch that string. Another point was, that I always vehemently
 dissuaded him from seeking greatness by a military dependence, or by a popular
 dependence, as that which would breed in the queen jealousy, in himself pretump-
 tion, and in the state perturbation: and I did usually compare them to Icarus’s
 two wings, which were joined on with wax, and would make him venture to soar
 too high, and then fail him at the height. And I would farther say unto him;
 “ My lord, stand upon two feet, and fly not upon two wings: the two feet are
 “ the two kinds of justice, commutative, and distributive: use your greatness for
 “ advancing of merit and virtue, and relieving wrongs and burdens; you shall
 “ need no other art or finesse:” but he would tell me, that opinion came not
 from my mind, but from my robe. But it is very true, that I, that never meant
 to intral myself to my lord of Essex, nor any other man, more than stood with
 the public good, did, though I could little prevail, divert him by all means pos-
 sible from courses of the wars and popularity: for I saw plainly the queen must
 either live or die; if she lived, then the times would be as in the declination of
 an old prince; if she died, the times would be as in the beginning of a new; and
 that if his lordship did rise too fast in these courses, the times might be dangerous
 for him, and he for them. Nay, I remember, I was thus plain with him upon
 his voyage to the islands, when I saw every spring put forth such actions of charge
 and provocation, that I said to him, “ My lord, when I came first unto you, I
 “ took you for a physician that desired to cure the diseases of the state; but now
 “ I doubt you will be like those physicians which can be content to keep their pa-
 “ tients low, because they would always be in request.” Which plainness he
 nevertheless took very well, as he had an excellent ear, and was *patientissimus veri*,
 and assured me the case of the realm required it: and I think this speech of mine,
 and the like renewed afterwards, pricked him to write that Apology which is in
 many mens hands.

But this difference in two points so main and material, bred in process of time
 a discontinuance of privateness, as it is the manner of men seldom to communicate
 where they think their courses not approved, between his lordship and myself; so
 as I was not called nor advised with for some year and a half before his lordship’s
 going into Ireland, as in former time: yet, nevertheless, touching his going into
 Ireland, it pleased him expressly, and in a set manner, to desire mine opinion and
 counsel. At which time I did not only dissuade, but protest against his going;
 telling him with as much vehemency and asseveration as I could, that absence in
 that kind would exulcerate the queen’s mind, whereby it would not be possible for
 him to carry himself so as to give her sufficient contentment; nor for her to carry
 herself so as to give him sufficient countenance; which would be ill for her, ill
 for him, and ill for the state. And because I would omit no argument, I remem-
 ber I stood also upon the difficulty of the action; setting before him out of histo-
 ries, that the Irish was such an enemy as the ancient Gauls, or Britons, or Ger-
 mans were; and that we saw how the Romans, who had such discipline to govern
 their soldiers, and such donatives to encourage them, and the whole world in a
 manner to levy them; yet when they came to deal with enemies, which placed
 their felicity only in liberty, and the sharpness of their sword, and had the natural
 elemental advantages of woods, and bogs, and hardness of bodies, they ever found
 they

they had their hands full of them; and therefore concluded, that going over with such expectation as he did, and through the churlishness of the enterprise not like to answer it, would mightily diminish his reputation: and many other reasons I used, so as I am sure I never in any thing in my life-time dealt with him in like earnestness by speech, by writing, and by all the means I could devise. For I did as plainly see his overthrow chained, as it were by destiny, to that journey, as it is possible for any man to ground a judgment upon future contingents. But my lord, howsoever his ear was open, yet his heart and resolution was shut against that advice, whereby his ruin might have been prevented. After my lord's going, I saw then how true a prophet I was, in regard of the evident alteration which naturally succeeded in the queen's mind; and thereupon I was still in watch to find the best occasion that in the weakness of my power I could either take or admit, to pull him out of the fire if it had been possible: and not long after, methought I saw some overture thereof, which I apprehended readily; a particularity which I think to be known to very few, and the which I do the rather relate unto your lordship, because I hear it should be talked, that while my lord was in Ireland I revealed some matters against him, or I cannot tell what; which if it were not a mere slander as the rest is, but had any, though never so little colour, was surely upon this occasion. The queen, one day at Nonesuch, a little, as I remember, before Cuffie's coming over, where I attended her, shewed a passionate distaste of my lord's proceedings in Ireland, as if they were unfortunate, without judgment, contemptuous, and not without some private end of his own, and all that might be; and was pleased, as the spake of it to many that she trusted least, so to fall into the like speech with me. Whereupon I, who was still awake, and true to my grounds which I thought surest for my lord's good, said to this effect: "Madam, I know not the particulars of estate, and I know this, that princes ac-
 "tions must have no abrupt periods or conclusions; but otherwise I would think,
 "that if you had my lord of Essex here with a white staff in his hand, as my lord
 "of Leicester had, and continued him still about you for society to yourself, and
 "for an honour and ornament to your attendance and court in the eyes of your
 "people, and in the eyes of foreign ambassadors, then were he in his right ele-
 "ment; for to discontent him as you do, and yet to put arms and power into his
 "hands, may be a kind of temptation to make him prove cumbersome and unruly.
 "And therefore if you would *imponere bonam clausulam*, and send for him, and
 "satisfy him with honour here near you, if your affairs, which, as I have said, I
 "am not acquainted with, will permit it, I think were the best way." Which
 course, your lordship knoweth, if it had been taken, then all had been well,
 and no contempt in my lord's coming over, nor continuance of these jealousies,
 which that employment of Ireland bred, and my lord here in his former greatness.
 Well, the next news that I heard was, that my lord was come over, and that
 he was committed to his chamber for leaving Ireland without the queen's li-
 cence; this was at Nonesuch, where, as my duty was, I came to his lordship,
 and talked with him privately about a quarter of an hour, and he asked mine
 opinion of the course that was taken with him: I told him, "My lord, *Nube-*
 "*cula est, cito transibit*; it is but a mist. But shall I tell your lordship, it is as
 "mists are: if it go upwards, it may perhaps cause a shower; if downwards,
 "it will clear up. And therefore, good my lord, carry it so, as you take away
 "by all means all umbrages and distastes from the queen; and especially, if I
 "were

" were worthy to advise you, as I have been by yourself thought, and now your
 " question imports the continuance of that opinion, observe three points: first,
 " make not this cessation or peace, which is concluded with Tyrone, as a service
 " wherein you glory, but as a shuffling up of a prosecution which was not very
 " fortunate. Next, represent not to the queen any necessity of estate, whereby,
 " as by a coercion or wretch, she would think herself enforced to send you back
 " into Ireland, but leave it to her. Thirdly, seek access *importune, opportune,*
 " seriously, sportingly, every way." I remember my lord was willing to hear
 me, but spake very few words, and shaked his head sometimes, as if he thought
 I was in the wrong; but, sure I am, he did just contrary in every one of these
 three points. After this, during the while since my lord was committed to my
 lord Keeper's, I came divers times to the queen, as I had used to do, about causes
 of her revenue and law business, as is well known; by reason of which accesses,
 according to the ordinary charities of court, it was given out, that I was one of
 them that incensed the queen against my lord of Essex. These speeches I cannot
 tell, nor I will not think, that they grew any way from her majesty's own speeches,
 whose memory I will ever honour; if they did, she is with God, and *Miserum est*
ab illis laedi, de quibus non possis quaeri. But I must give this testimony to my lord
 Cecil, that one time in his house at the Savoy he dealt with me directly, and said
 to me, " Cousin, I hear it, but I believe it not, that you should do some ill office
 " to my lord of Essex; for my part I am merely passive, and not active in this
 " action; and I follow the queen, and that heavily, and I lead her not; my
 " lord of Essex is one that in nature I could consent with as well as with any
 " one living; the queen indeed is my sovereign, and I am her creature, I may
 " not lose her, and the same course I would wish you to take." Whereupon
 I satisfied him how far I was from any such mind. And as sometimes it cometh
 to pass, that mens inclinations are opened more in a toy, than in a serious
 matter: a little before that time, being about the middle of Michaelmas term,
 her majesty had a purpose to dine at my lodge at Twicknam Park, at which
 time I had, though I profess not to be a poet, prepared a sonnet directly tend-
 ing and alluding to draw on her majesty's reconcilment to my lord; which,
 I remember, also I shewed to a great person, and one of my lord's nearest
 friends, who commended it. This, though it be, as I said, but a toy, yet it
 shewed plainly in what spirit I proceeded; and that I was ready not only to
 do my lord good offices, but to publish and declare myself for him: and never
 was I so ambitious of any thing in my life-time, as I was to have carried some
 token or favor from her majesty to my lord; using all the art I had, both to pro-
 cure her majesty to send, and myself to be the messenger. For as to the for-
 mer I feared not to alledge to her, that this proceeding toward my lord was a
 thing towards the people very unplaussible; and therefore wished her majesty,
 however she did, yet to discharge herself of it, and lay it upon others; and there-
 fore that she should intermix her proceeding with some immediate graces from
 herself, that the world might take knowledge of her princely nature and goodness,
 lest it should alienate the hearts of her people from her: which I did stand upon;
 knowing well that if she once relented to send or visit, those demonstrations would
 prove matter of substance for my lord's good. And to draw that employment
 upon myself, I advised her majesty, that whensoever God should move her to turn
 the light of her favours towards my lord, to make signification to him thereof;

that her majesty, if she did it not in person, would at the least use some such mean as might not intitle themselves to any part of the thanks, as persons that were thought mighty with her to work her, or to bring her about; but to use some such as could not be thought but a mere conduit of her own goodness. But I could never prevail with her, though I am persuaded she saw plainly whereat I levelled; and she plainly had me in jealousy, that I was not hers intirely, but still had inward and deep respects towards my lord, more than stood at that time with her will and pleasure. About the same time I remember an answer of mine in a matter which had some affinity with my lord's cause, which though it grew from me, went after about in others names. For her majesty being mightily incensed with that book which was dedicated to my lord of Essex, being a story of the first year of king Henry IV. thinking it a seditious prelude to put into the peoples head boldness and faction, said, She had an opinion that there was treason in it, and asked me if I could not find any places in it that might be drawn within case of treason: whereto I answered; for treason surely I found none, but for felony very many. And when her majesty hastily asked me, Wherein? I told her, the author had committed very apparent theft: for he had taken most of the sentences of Cornelius Tacitus, and translated them into English, and put them into his text. And another time, when the queen would not be persuaded that it was his writing whose name was to it, but that it had some more mischievous author; and said with great indignation, That she would have him racked to produce his author: I replied; "Nay, madam, he is a doctor, never rack his person, but rack his style; let him have pen, ink, and paper, and help of books, and be enjoined to continue the story where it breaketh off, and I will undertake by collating the styles to judge whether he were the author or no." But for the main matter, sure I am, when the queen at any time asked mine opinion of my lord's case, I ever in one tenour said unto her; That they were faults which the law might term contempts; because they were the transgression of her particular directions and instructions: but then what defence might be made of them, in regard of the great interest the person had in her majesty's favour; in regard of the greatness of his place, and the amplex of his commission; in regard of the nature of the business, being action of war, which in common cases cannot be tied to strictness of instructions; in regard of the distance of the place, having also a sea between, that his demands and her commands must be subject to wind and weather; in regard of a council of state in Ireland, which he had at his back to avow his actions upon; and lastly, in regard of a good intention, that he would alledge for himself; which, I told her, in some religions was held to be a sufficient diminution for God's commandments, much more for princes: in all these regards, I besought her majesty to be advised again and again, how she brought the cause into any public question. Nay, I went farther; for I told her, my lord was an eloquent and well-spoken man; and besides his eloquence of nature or art, he had an eloquence of accident which passed them both, which was the pity and benevolence of his hearers; and therefore, that when he should come to his answer for himself, I doubted his words would have so unequal a passage above theirs that should charge him, as would not be for her majesty's honour; and therefore wished the consultation might be, that they might wrap it up privately between themselves; and that she would restore my lord to his former attendance, with some addition of honour to take away discontent. But this I will never deny;

that

that I did shew no approbation generally of his being sent back again into Ireland, both because it would have carried a repugnancy with my former discourse, and because I was in mine own heart fully persuaded that it was not good, either for the queen, or for the state, or for himself: and yet I did not dissuade it neither, but left it ever as *locus lubricus*. For this particularity I do well remember, that after your lordship was named for the place in Ireland, and not long before your going, it pleased her majesty at Whitehall to speak to me of that nomination: at which time I said to her; "Surely, madam, if you mean not to employ my lord of Essex thither again, your majesty cannot make a better choice;" and was going on to shew some reason, and her majesty interrupted me with great passion: "Essex!" said she; "whenever I send Essex back again into Ireland, I will marry you, claim it of me." Whereunto I said; "Well, madam, I will release that contract, if his going be for the good of your state." Immediately after the queen had thought of a course, which was also executed, to have somewhat published in the Star-chamber, for the satisfaction of the world, touching my lord of Essex his restraint, and my lord not to be called to it; but occasion to be taken by reason of some libels then dispersed: which when her majesty propounded unto me, I was utterly against it; and told her plainly, That the people would say, that my lord was wounded upon his back, and that Justice had her balance taken from her, which ever consisted of an accusation and defence; with many other quick and significant terms to that purpose: insomuch that, I remember, I said, that my lord *in foro famae* was too hard for her; and therefore wished her, as I had done before, to wrap it up privately. And certainly I offended her at that time, which was rare with me: for I call to mind, that both the Christmas, Lent, and Easter term following, though I came divers times to her upon law business, yet methought her face and manner was not so clear and open to me as it was at the first. And she did directly charge me, that I was absent that day at the Star-chamber, which was very true; but I alledged some indisposition of body to excuse it: and during all the time aforesaid, there was *altum silentium* from her to me touching my lord of Essex's causes.

But towards the end of Easter term her majesty brake with me, and told me, That she had found my words true; for that the proceeding in the Star-chamber had done no good, but rather kindled factious bruits, as she termed them, than quenched them; and therefore, that she was determined now, for the satisfaction of the world, to proceed against my lord in the Star-chamber by an information *Ore tenus*, and to have my lord brought to his answer: howbeit, she said, she would assure me, that whatsoever she did should be towards my lord *ad castigacionem, et non ad destructionem*; as indeed she had often repeated the same phrase before: whereunto I said, to the end utterly to divert her, "Madam, if you will have me speak to you in this argument, I must speak to you as Frier Bacon's head spake, that said first, *Time is*; and then *Time was*; and *Time will never be*: for certainly, said I, it is now far too late; the matter is cold, and hath taken too much wind." Whereat she seemed again offended, and rose from me; and that resolution for a while continued: and after, in the beginning of Midsummer term, I attending her, and finding her settled in that resolution, which I heard of also otherwise, she falling upon the like speech; it is true, that seeing no other remedy, I said to her slightly, "Why, madam, if you will needs have a proceeding, you were best have it in some such sort as Ovid spake of his mistress; *est*"

“ *aliquid luce patente minus* ; to make a council-table matter of it, and there an “ end : ” which speech again she seemed to take in ill part ; but yet I think it did good at that time, and helped to divert that course of proceeding by information in the Star-chamber. Nevertheless, afterwards it pleased her to make a more solemn matter of the proceeding ; and some few days after, an order was given that the matter should be heard at York-house, before an assembly of counsellors, peers, and judges, and some audience of men of quality to be admitted : and then did some principal counsellors send for us of the learned counsel, and notify her majesty's pleasure unto us ; save that it was said to me openly by one of them, that her majesty was not yet resolved whether she would have me forborn in the business or no. And hereupon might arise that other sinister and untrue speech, that, I hear, is raised of me, how I was a suitor to be used against my lord of Essex at that time : for it is very true, that I that knew well what had passed between the queen and me, and what occasion I had given her both of distaste and distrust, in crossing her disposition, by standing stedfastly for my lord of Essex, and suspecting it also to be a stratagem arising from some particular emulation, I writ to her two or three words of compliment, signifying to her majesty, “ That “ if she would be pleased to spare me in my lord of Essex's cause, out of the con- “ sideration she took of my obligation towards him, I should reckon it for one “ of her greatest favours : but otherwise desiring her majesty to think that I knew “ the degrees of duties ; and that no particular obligation whatsoever to any sub- “ ject could supplant or weaken that entireness of duty that I did owe and bear to “ her and her service.” And this was the goodly suit I made, being a respect no man that had his wits could have omitted : but nevertheless I had a farther reach in it ; for I judged that day's work would be a full period of any bitterness or harshness between the queen and my lord : and therefore, if I declared myself fully according to her mind at that time, which could not do my lord any manner of prejudice, I should keep my credit with her ever after, whereby to do my lord service. Hereupon the next news that I heard was, that we were all sent for again : and that her majesty's pleasure was, we all should have parts in the business : and the lords falling into distribution of our parts, it was allotted to me, that I should set forth some undutiful carriage of my lord, in giving occasion and countenance to a seditious pamphlet, as it was termed, which was dedicated unto him, which was the book before mentioned of king Henry IV. Whereupon I replied to that allotment, and said to their lordships, That it was an old matter, and had no manner of coherence with the rest of the charge, being matters of Ireland : and therefore, that I having been wronged by bruits before, this would expose me to them more ; and it would be said I gave in evidence my own tales. It was answered again with good shew, That because it was considered how I stood tied to my lord of Essex, therefore that part was thought fittest for me, which did him least hurt : for that whereas all the rest was matter of charge and accusation, this only was but matter of caveat and admonition. Wherewith though I was in mine own mind little satisfied, because I knew well a man were better to be charged with some faults, than admonished of some others : yet the conclusion binding upon the queen's pleasure directly, *volens nolens*, I could not avoid that part that was laid upon me : which part, if in the delivery I did handle not tenderly, though no man before me did in so clear terms free my lord from all disloyalty as I did, that, your lordship knoweth, must be ascribed to the superior duty I did owe

owe to the queen's fame and honour in a public proceeding, and partly to the intention I had to uphold myself in credit and strength with the queen, the better to be able to do my lord good offices afterwards: for as soon as this day was past, I lost no time; but the very next day following, as I remember, I attended her majesty, fully resolved to try and put in use my utmost endeavour, so far as I in my weakness could give furtherance, to bring my lord again speedily into court and favour; and knowing, as I supposed at least, how the queen was to be used, I thought that to make her conceive that the matter went well then, was the way to make her leave off there: and I remember well, I said to her, "You have now, madam, obtained victory over two things, which the greatest princes in the world cannot at their wills subdue; the one is over fame; the other is over a great mind: for surely the world is now, I hope, reasonably well satisfied; and for my lord, he did shew that humiliation towards your majesty, as I am persuaded he was never in his life-time more fit for your majesty's favour than he is now: therefore if your majesty will not mar it by lingering, but give over at the best, and now you have made so good a full point, receive him again with tenderness, I shall then think, that all that is past is for the best." Whereat, I remember, she took exceeding great contentment, and did often iterate and put me in mind, that she had ever said, That her proceedings should be *ad reparationem*, and not *ad ruinam*; as who saith, that now was the time I should well perceive, that that saying of hers should prove true. And farther she willed me to set down in writing all that passed that day. I obeyed her commandment, and within some few days after brought her again the narration, which I did read unto her in two several afternoons: and when I came to that part that set forth my lord's own answer, which was my principal care, I do well bear in mind, that she was extraordinarily moved with it, in kindness and relenting towards my lord; and told me afterwards, speaking how well I had expressed my lord's part, That she perceived old love would not easily be forgotten: whereunto I answered suddenly, that I hoped she meant that by herself. But in conclusion I did advise her, That now she had taken a representation of the matter to herself, that she would let it go no farther: "For, madam," said I, "the fire blazeth well already, why should you tumble it? And besides, it may please you to keep a convenience with yourself in this case: for since your express direction was, there should be no register nor clerk to take this sentence, nor no record or memorial made up of the proceeding, why should you now do that popularly, which you would not admit to be done judicially?" Whereupon she did agree that that writing should be suppressed; and I think there were not five persons that ever saw it. But from this time forth, during the whole latter end of that summer, while the court was at Nonfuch and Oatlands, I made it my task and scope to take and give occasions for my lord's reintegration in his fortunes: which my intention I did also signify to my lord as soon as ever he was at his liberty; whereby I might without peril of the queen's indignation write to him: and having received from his lordship a courteous and loving acception of my good will and endeavours, I did apply it in all my accesss to the queen, which were very many at that time; and purposely fought and wrought upon other variable pretences, but only and chiefly for that purpose. And on the other side, I did not forbear to give my lord from time to time faithful advertisement what I found, and what I wished. And I drew for him, by his appointment, some letters to her majesty; which though I knew well
his

his lordship's gift and stile was far better than mine own, yet, because he required it, alledging, that by his long restraint he was grown almost a stranger to the queen's present conceits, I was ready to perform it: and sure I am, that for the space of six weeks or two months, it prospered so well, as I expected continually his restoring to his attendance. And I was never better welcome to the queen, nor more made of than when I spake fullest and boldest for him: in which kind the particulars were exceeding many; whereof, for an example, I will remember to your lordship one or two. As at one time, I call to mind, her majesty was speaking of a fellow that undertook to cure, or at least to ease my brother of his gout, and asked me how it went forward: and I told her majesty, That at the first he received good by it; but after in the course of his cure he found himself at a stay, or rather worke: the queen said again, "I will tell you, Bacon, the error of
 " it: the manner of these physicians, and especially these empirics, is to continue
 " one kind of medicine; which at the first is proper, being to draw out the ill hu-
 " mour; but, after, they have not the discretion to change the medicine, but ap-
 " ply still drawing medicines, when they should rather intend to cure and corrob-
 " rate the part." "Good Lord! madam, said I, how wisely and aptly can you
 " speak and discern of physic ministred to the body, and consider not that there
 " is the like occasion of physic ministred to the mind: as now in the case of my
 " lord of Essex, your princely word ever was, that you intended ever to reform
 " his mind, and not ruin his fortune: I know well you cannot but think that you
 " have drawn the humour sufficiently; and therefore it were more than time, and
 " it were but for doubt of mortifying or exulcerating, that you did apply and mi-
 " nister strength and comfort unto him: for these same gradations of yours are
 " fitter to corrupt than correct any mind of greatness." And another time I re-
 " member she told me for news, That my lord had written unto her some very duti-
 " ful letters, and that she had been moved by them; and when she took it to be
 " the abundance of his heart, she found it to be but a preparative to a suit for the
 " renewing of his farm of sweet wines. Whereunto I replied, "O madam, how
 " doth your majesty construe these things, as if these two could not stand well to-
 " gether, which indeed nature hath planted in all creatures! For there are but
 " two sympathies, the one towards perfection, the other towards preservation;
 " that to perfection, as the iron tendeth to the loadstone; that to preservation, as
 " the vine will creep towards a stake or prop that stands by it; not for any love
 " to the stake, but to uphold itself. And therefore, madam, you must distinguish,
 " my lord's desire to do you service is, as to his perfection, that which he thinks
 " himself to be born for; whereas his desire to obtain this thing of you, is but for
 " a sustentation." And not to trouble your lordship with many other particulars
 like unto these, it was at the self-same time that I did draw, with my lord's privity,
 and by his appointment, two letters, the one written as from my brother, the
 other as an answer returned from my lord, both to be by me in secret manner
 shewed to the queen, which it pleased my lord very strangely to mention at the
 bar; the scope of which were but to represent and picture forth unto her majesty
 my lord's mind to be such, as I knew her majesty would fainest have had it: which
 letters whosoever shall see, for they cannot now be retracted or altered, being by
 reason of my brother's or his lordship's servants delivery long since come into
 divers hands, let him judge, especially if he knew the queen, and do remember
 those times, whether they were not the labours of one that fought to bring the
 queen

queen about for my lord of Effex his good. The truth is, that the issue of all his dealing grew to this, that the queen, by some slackness of my lord's, as I imagine, liked him worse and worse, and grew more incensed towards him. Then she remembering belike the continual, and incessant, and confident speeches and courses that I had held on my lord's side, became utterly alienated from me, and for the space of, at least, three months, which was between Michaelmas and New-year's-tide following, would not so much as look on me, but turned away from me with express and purpose-like discountenance wheresoever she saw me; and at such time as I desired to speak with her about law-business, ever sent me forth very slight refusals, inasmuch as it is most true, that immediately after New-year's-tide I desired to speak with her, and being admitted to her, I dealt with her plainly; and said, "Madam, I see you withdraw your favour from me, and now I have lost many friends for your sake, I shall lose you too: you have put me like one of those that the Frenchmen call *enfants perdus*, that serve on foot before horsemen; so have you put me into matters of envy without place, or without strength; and I know at chess a pawn before the king is ever much played upon; a great many love me not, because they think I have been against my lord of Effex; and you love me not, because you know I have been for him; yet will I never repent me, that I have dealt in simplicity of heart towards you both, without respect of cautions to myself; and therefore *vivus vidensque perco*: if I do break my neck, I shall do it in a manner as Mr. Dorrington did it, which walked on the battlements of the church many days, and took a view and survey where he should fall. And so, Madam, said I, I am not so simple but that I take a prospect of mine overthrow; only I thought I would tell you so much, that you may know that it was faith, and not folly that brought me into it, and so I will pray for you." Upon which speeches of mine uttered with some passion, it is true her majesty was exceedingly moved; and accumulated a number of kind and gracious words upon me, and willed me to rest upon this, *Gratia mea sufficit*, and a number of other sensible and tender words and demonstrations, such as more could not be; but as touching my lord of Effex, *ne verbum quidem*. Whereupon I departed, resting then determined to meddle no more in the matter; as that, that I saw would overthrow me, and not be able to do him any good. And thus I made mine own peace with mine own confidence at that time; and this was the last time I saw her majesty before the eighth of February, which was the day of my lord of Effex his misfortune; after which time, for that I performed at the bar in my public service, your lordship knoweth, by the rules of duty that I was to do it honestly, and without prevarication; but for any putting myself into it, I protest before God, I never moved either the queen, or any person living, concerning my being used in the service, either of evidence or examination; but it was merely laid upon me with the rest of my fellows. And for the time which passed, I mean between the arraignment and my lord's suffering, I well remember I was but once with the queen, at which time, though I durst not deal directly for my lord as things then stood; yet generally I did both commend her majesty's mercy, terming it to her as an excellent balm that did continually distil from her sovereign hands, and made an excellent odour in the senses of her people; and not only so, but I took hardiness to extenuate, not the fact, for that I durst not, but the danger, telling her, that if some base or cruel-minded persons had entered into such an action, it might have caused much blood and combustion: but it appeared well, they were such as

knew

knew not how to play the malefactors; and some other words which I now omit. And as for the rest of the carriage of myself in that service, I have many honourable witnesses that can tell, that the next day after my lord's arraignment, by my diligence and information touching the quality and nature of the offenders, six or nine were stayed, which otherwise had been attainted, I bringing their lordships letter for their stay, after the jury was sworn to pass upon them; so near it went: and how careful I was, and made it my part, that whosoever was in trouble about that matter, as soon as ever his case was sufficiently known and defined of, might not continue in restraint, but be set at liberty; and many other parts, which, I am well assured of, stood with the duty of an honest man. But indeed I will not deny for the case of Sir Thomas Smith of London, the queen demanding my opinion of it, I told her, I thought it was as hard as many of the rest. But what was the reason? Because at that time I had seen only his accusation, and had never been present at any examination of his; and the matter so standing, I had been very untrue to my service, if I had not delivered that opinion. But afterwards upon a re-examination of some that charged him, who weakened their own testimony, and especially hearing himself *viva voce*, I went instantly to the queen, out of the soundness of my conscience, not regarding what opinion I had formerly delivered, and told her majesty, I was satisfied and resolved in my conscience, that for the reputation of the action, the plot was to countenance the action farther by him in respect of his place, than they had indeed any interest or intelligence with him. It is very true also, about that time her majesty taking a liking of my pen, upon that which I formerly had done concerning the proceeding at York-house, and likewise upon some other declarations, which in former times by her appointment I put in writing, commanded me to pen that book, which was published for the better satisfaction of the world; which I did, but so, as never secretary had more particular and express directions and instructions in every point how to guide my hand in it; and not only so, but after that I had made a first draught thereof, and propounded it to certain principal counsellors by her majesty's appointment, it was perused, weighed, censured, altered, and made almost a new writing, according to their lordships better consideration; wherein their lordships and myself both were as religious and curious of truth, as desirous of satisfaction: and myself indeed gave only words and form of style in pursuing their direction. And after it had passed their allowance, it was again exactly perused by the queen herself, and some alterations made again by her appointment: nay, and after it was set to print, the queen, who, as your lordship knoweth, as she was excellent in great matters, so she was exquisite in small; and noted that I could not forget my ancient respect to my lord of Essex, in terming him ever *my lord of Essex*, *my lord of Essex*, almost in every page of the book, which she thought not fit, but would have it made *Essex*, or *the late earl of Essex*: whereupon of force it was printed *de novo*, and the first copies suppressed by her peremptory commandment.

And this, my good lord, to my farthest remembrance, is all that passed wherein I had part; which I have set down as near as I could in the very words and speeches that were used, not because they are worthy the repetition, I mean those of mine own; but to the end your lordship may lively and plainly discern between the face of truth, and a smooth tale; and the rather also, because in things that passed a good while since, the very words and phrases did sometimes bring to my remem-

SIR FRANCIS BACON'S APOLOGY.

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remembrance the matters: wherein I report me to your honourable judgment, whether you do not see the traces of an honest man: and had I been as well believed either by the queen or by my lord, as I was well heard by them both, both my lord had been fortunate, and so had myself in his fortune.

To conclude therefore, I humbly pray your lordship to pardon me for troubling you with this long narration; and that you will vouchsafe to hold me in your good opinion, till you know I have deserved, or find that I shall deserve the contrary; and so ever I continue

At your Lordship's honourable commandments very humbly,

F. B.



A

SPEECH in PARLIAMENT,

39 of ELIZABETH,

Upon the Motion of SUBSIDY.

AND please you, Mr. Speaker, I must consider the time which is spent; but yet so, as I must consider also the matter, which is great. This great cause was, at the first, so materially and weightily propounded; and after, in such sort persuaded and enforced; and by him that last spake, so much time taken, and yet to good purpose; as I shall speak at a great disadvantage: but because it hath been always used, and the mixture of this house doth so require it, that in causes of this nature there be some speech and opinion, as well from persons of generality, as by persons of authority, I will say somewhat, and not much: wherein it shall not be fit for me to enter into, or to insist upon secrets, either of her majesty's coffers, or of her council; but my speech must be of a more vulgar nature.

I will not enter, Mr. Speaker, into a laudative speech of the high and singular benefits, which by her majesty's most politic and happy government we receive, thereby to incite you to a retribution; partly because no breath of man can set them forth worthily; and partly because, I know, her majesty in her magnanimity doth bestow her benefits like her freest patents, *absque aliquo inde rescendo*; not looking for any thing again, if it were in respect only of her particular, but love and loyalty. Neither will I now at this time put the case of this realm of England too precisely; how it standeth with the subject in point of payments to the crown: though I could make it appear by demonstration, what opinion soever be conceived, that never subjects were partakers of greater freedom and ease; and that whether you look abroad into other countries at this present time, or look back to former times in this our own country, we shall find an exceeding difference in matter of taxes; which now I reserve to mention; not so much in doubt to acquaint your ears with foreign strains, or to dig up the sepulchres of buried and forgotten impositions, which in this case, as by way of comparison, it is necessary you understand; but because speech in the house is fit to persuade the general point, and particularly is more proper and seasonable for the committee: neither will I make any observations upon her majesty's manner of expending and issuing treasure; being not upon excessive and exorbitant donatives; nor upon sumptuous and unnecessary triumphs, buildings, or like magnificence; but upon the preservation, protection, and honour of the realm: for I dare not scan upon her majesty's actions, which it becometh me rather to admire in silence, than to gloss or discourse upon them, though with never so good a meaning. Sure I am that the treasure that cometh from you to her majesty

majesty is but as a vapour which riseth from the earth, and gathereth into a cloud, and stayeth not there long; but upon the same earth it falleth again: and what if some drops of this do fall upon France or Flanders? It is like a sweet odour of honour and reputation to our nation throughout the world. But I will only insist upon the natural and inviolate law of preservation.

It is a truth, Mr. Speaker, and a familiar truth, that safety and preservation are to be preferred before benefit or increase, inasmuch as those counsels which tend to preservation seem to be attended with necessity: whereas those deliberations which tend to benefit, seem only accompanied with persuasion. And it is ever gain and no loss, when at the foot of the account there remains the purchase of safety. The prints of this are every where to be found: the patient will ever part with some of his blood to save and clear the rest: the sea-faring man will, in a storm, cast over some of his goods to save and assure the rest: the husbandman will afford some foot of ground for his hedge and ditch, to fortify and defend the rest. Why, Mr. Speaker, the disputer will, if he be wise and cunning, grant somewhat that seemeth to make against him, because he will keep himself within the strength of his opinion, and the better maintain the rest. But this place advertiseth me not to handle the matter in a common place. I will now deliver unto you that, which, upon a *probatum est*, hath wrought upon myself, knowing your affections to be like my own. There hath fallen out, since the last parliament, four accidents or occurrences of state; things published and known to you all; by every one whereof it seemeth to me, in my vulgar understanding, that the danger of this realm is increased: which I speak not by way of apprehending fear, for I know I speak to English courages; but by way of pressing provision: for I do find, Mr. Speaker, that when kingdoms and states are entred into terms and resolutions of hostility one against the other; yet they are many times restrained from their attempts by four impediments:

The first is by this same *aliud agere*; when they have their hands full of other matters, which they have embraced, and serveth for a diversion of their hostile purposes.

The next is, when they want the commodity or opportunity of some places of near approach.

The third, when they have conceived an apprehension of the difficulty and churlishness of the enterprise, and that it is not prepared to their hand.

And the fourth is, when a state, through the age of the monarch, groweth heavy and indisposed to actions of great peril and motion; and this dull humour is not sharpened nor inflamed by any provocations or scorns. Now if it please you to examine, whether by removing the impediments in these four kinds the danger be not grown so many degrees nearer us by accidents, as I said, fresh, and all dated since the last parliament.

Soon after the last parliament, you may be pleased to remember how the French king revolted from his religion; whereby every man of common understanding may infer, that the quarrel between France and Spain is more reconcileable, and a greater inclination of affairs to a peace than before: which supposed, it followeth, Spain shall be more free to intend his malice against this realm.

Since the last parliament it is also notorious in every man's knowledge and remembrance, that the Spaniards have possessed themselves of that avenue and place of approach for England, which was never in the hands of any king of Spain be-

A SPEECH ON THE MOTION OF A SUBSIDY.

fore; and that is Calais: which in true reason and consideration of estate of what value or service it is, I know not; but in common understanding, it is a knocking at our doors.

Since the last parliament also that ulcer of Ireland, which indeed brake forth before, hath run on and raged more: which cannot but be a great attractive to the ambition of the council of Spain, who by former experience know of how tough a complexion this realm of England is to be assailed; and therefore, as rheums and fluxes of humours, is like to resort to that part which is weak and distempered.

And lastly, it is famous now, and so will be many ages hence, how by these two sea-journeys we have braved him, and objected him to scorn: so that no blood can be so frozen or mortified, but must needs take flames of revenge upon so mighty a disgrace.

So as this concurrence of occurrents, all since our last assembly, some to deliver and free our enemies, some to advance and bring him on his way, some to tempt and allure him, some to spur on and provoke him, cannot but threaten an increase of our peril in great proportion.

Lastly, Mr. Speaker, I will but reduce to the memory of this house one other argument, for ample and large providing and supplying treasure; and this it is:

I see men do with great alacrity and spirit proceed when they have obtained a course they long wished for and were restrained from. Myself can remember both in this honourable assembly, and in all other places of this realm, how forward and affectionate men were to have an invasive war. Then we would say, a defensive war was like eating and consuming interest, and needs we would be adventurers and assailants; *Habes quod tota mente petisti*: shall we not now make it good, especially when we have tasted so prosperous fruit of our desires?

The first of these expeditions invasive was achieved with great felicity, ravished a strong and famous port in the lap and bosom of their high countries; brought them to such despair as they fired themselves and their Indian fleet in sacrifice, as a good odour and incense unto God for the great and barbarous cruelties which they have committed upon the poor Indians, whither that fleet was sailing; disordered their reckonings so, as the next news we heard of was nothing but protesting of bills and breaking credit.

The second journey was with notable resolution born up against weather and all difficulties; and besides the success in amusing him and putting him to infinite charge, sure I am it was like a Tartar's or Parthian's bow, which shooteth backward, and had a most strong and violent effect and operation both in France and Flanders; so that our neighbours and confederates have reaped the harvest of it; and while the life-blood of Spain went inward to the heart, the outward limbs and members trembled, and could not resist. And lastly, we have a perfect account of all the noble and good blood that was carried forth, and of all our sea-walls and good shipping, without mortality of persons, wreck of vessels, or any manner of diminution. And these have been the happy effects of our so long and so much desired invasive war.

To conclude, Mr. Speaker, therefore, I doubt not but every man will consent that our gift must bear these two marks and badges: the one, of the danger of the realm by so great a proportion, since the last parliament, increased; the other, of the satisfaction we receive in having obtained our so earnest and ardent desire of an invasive war.

A

P R O C L A M A T I O N

D R A W N

For his M A J E S T Y's first coming in.

[Prepared, but not used.]

HAVING great cause at this time to be moved with diversity of affections, we do in first place condole with all our loving subjects of England, for the loss of their so virtuous and excellent queen; being a prince that we always found a dear sister, yea a mother to ourself in many her actions and advices. A prince, whom we hold and behold as an excellent pattern and example to imitate in many her royal virtues and parts of government; and a prince whose days we could have wished to have been prolonged; we reporting ourselves not only to the testimony of our royal heart, but to the judgment of all the world, whether there ever appeared in us any ambitious or impatient desire to prevent God's appointed time. Neither are we so partial to our own honour, but that we do in great part ascribe this our most peaceable and quiet entrance and coming to these our crowns, next under the blessing of almighty God, and our undoubted right, to the fruit of her majesty's peaceable and quiet government, accustoming the people to all loyalty and obedience. As for that which concerneth ourselves, we would have all our loving subjects know, that we do not take so much gladness and contentment in the devolving of these kingdoms unto our royal person, for any addition or increase of glory, power or riches, as in this, that it is so manifest an evidence unto us, especially the manner of it considered, that we stand, though unworthy, in God's favour, who hath put more means into our hands to reward our friends and servants, and to pardon and obliterate injuries, and to comfort and relieve the hearts and estates of our people and loving subjects, and chiefly to advance the holy religion and church of almighty God, and to deserve well of the christian commonwealth. And more especially we cannot but congratulate and rejoice in this one point, that it hath pleased God to make us the instrument, and, as it were, the corner-stone, to unite these two mighty and warlike nations of England and Scotland into one kingdom. For although these two nations are situate upon the continent of one island, and are undivided either by seas or mountains or by diversity of language; and although our neighbour kingdoms of Spain and France have already had the happiness to be reunited in the several members of those kingdoms formerly disjoined; yet in this island it appeareth not in the records of any true history, no nor scarcely in the conceit of any fabulous narration or tradition, that this whole island of Great Britain was ever united under one sovereign prince before this day. Which as we cannot but take as a singular honour and favour of God unto ourselves; so we may conceive

good

P R O C L A M A T I O N D R A W N F O R

good hope that the kingdoms of Christendom standing distributed and counterpoised, as by this last union they now are, it will be a foundation of the universal peace of all christian princes; and that now the strife that shall remain between them, shall be but an emulation who shall govern best, and most to the weal and good of his people.

Another great cause of our just rejoicing is, the assured hope that we conceive, that whereas our kingdom of Ireland hath been so long time torn and afflicted with the miseries of wars, the making and prosecuting of which wars hath cost such an infinite deal of blood and treasure of our realm of England to be spilt and consumed thereupon; we shall be able, through God's favour and assistance, to put a speedy and an honourable end to those wars. And it is our princely design and full purpose and resolution, not only to reduce that nation from their rebellion and revolt, but also to reclaim them from their barbarous manners to justice and the fear of God; and to populate, plant, and make civil all the provinces in that kingdom: which also being an action that not any of our noble progenitors, kings of England, have ever had the happiness thoroughly to prosecute and accomplish, we take so much to heart as we are persuaded it is one of the chief causes for the which God hath brought us to the imperial crown of these kingdoms.

Further, we cannot but take great comfort in the state and correspondence which we now stand in of peace and unity with all christian princes, and otherwise, of quietness and obedience of our own people at home: whereby we shall not need to expose that our kingdom of England to any quarrel or war, but rather have occasion to preserve them in peace and tranquillity, and openness of trade with all foreign nations.

Lately and principally, we cannot but take unspeakable comfort in the great and wonderful consent and unity, joy and alacrity, wherewith our loving subjects of our kingdom of England have received and acknowledged us their natural and lawful king and governor, according to our most clear and undoubted right, in so quiet and settled manner, as, if we had been long ago declared and established successor, and had taken all mens oaths and homages, greater and more perfect unity and readiness could not have been. For considering with ourselves, that notwithstanding difference of religion or any other faction, and notwithstanding our absence so far off, and notwithstanding the sparing and reserved communicating of one another's minds; yet all our loving subjects met in one thought and voice, without any the least disturbance or interruption, yea, hesitation or doubtfulness, or any shew thereof; we cannot but acknowledge it is a great work of God, who hath an immediate and extraordinary direction in the disposing of kingdoms and flows of peoples hearts.

Wherefore, after our most humble and devout thanks to almighty God, by whom kings reign, who hath established us King and Governor of these kingdoms; we return our hearty and affectionate thanks unto the lords spiritual and temporal, the knights and gentlemen, the cities and towns, and generally unto our commons, and all estates and degrees of that our kingdom of England, for their so acceptable first-fruits of their obedience and loyalties offered and performed in our absence; much commending the great wisdom, courage, and watchfulness used by the peers of that our kingdom, according to the nobility of their bloods and lineages, many of them mingled with the blood royal; and therefore in nature affectionate

fectionate to their rightful king; and likewise of the counsellors of the late queen, according to their gravity and oath, and the spirit of their good mistress, now a glorious saint in heaven, in carrying and ordering our affairs with that fidelity, moderation, and consent, which in them hath well appeared: and also the great readines, concord, and chearfulness in the principal knights and gentlemen of severall countries, with the head officers of great cities, corporations, and towns: and do take knowledge by name of the readines and good zeal of that our chiefest and most famous city, the city of London, the chamber of that our kingdom: assuring them, that we will be unto that city, by all means of confirming and increasing their happy and wealthy estate, not only a just and gracious sovereign lord and king, but a special and bountiful patron and benefactor.

And we on our part, as well in remuneration of all their loyal and loving affections, as in discharge of our princely office, do promise and assure them, that as all manner of estates have concurred and consented in their duty and zeal towards us, so it shall be our continual care and resolution to preserve and maintain every severall estate in a happy and flourishing condition, without confusion or over-growing of any one to the prejudice, discontentment, or discouragement of the rest: and generally in all estates we hope God will strengthen and assist us, not only to extirpate all gross and notorious abuses and corruptions, of simonies, briberies, extortions, exactions, oppressions, vexations, burdensome payments, and overcharges, and the like; but further to extend our princely care to the supply of the very neglects and omissions of any thing that may tend to the good of our people. So that every place and service that is fit for the honour or good of the commonwealth shall be filled, and no man's virtue left idle, unemployed, or unrewarded; and every good ordinance and constitution, for the amendment of the estate and times, be revived and put in execution.

In the mean time, minding by God's leave, all delay set apart, to comfort and secure our loving subjects in our kingdom of England by our personal presence there, we require all our loving subjects joyfully to expect the same: and yet so, as we signify our will and pleasure to be, that all such ceremonies and preparations as shall be made and used to do us honour, or to express gratulation, be rather comely and orderly, than sumptuous and glorious; and for the expressing of magnificence, that it be rather employed and bestowed upon the funeral of the late queen, to whose memory, we are of opinion, too much honour cannot be done or performed.

A
 D R A U G H T
 OF A
 P R O C L A M A T I O N
 TOUCHING
 His M A J E S T Y ' s S T I L E .

2^{do} J A C O B I . [Prepared, not used.]

AS it is a manifest token, or rather a substantial effect, of the wrath and indignation of God, when kingdoms are rent and divided, which have formerly been entire and united under one monarch and governor; so, on the contrary part, when it shall please the almighty, by whom kings reign as his deputies and lieutenants, to enlarge his commissions of empire and sovereignty, and to commit those nations to one king to govern, which he hath formerly committed to several kings, it is an evident argument of his great favour both upon king and upon people; upon the king, inasmuch as he may with comfort conceive that he is one of those servants to whom it was said, *Thou hast been faithful in the less, I will make thee lord of more*; upon the people, because the greatness of kingdoms and dominions, especially not being scattered but adjacent and compact, doth ever bring with it greater security from outward enemies, and greater freedom from inward burdens, unto both which people under petty and weak estates are more exposed; which so happy fruit of the union of kingdoms is chiefly to be understood, when such conjunction or augmentation is not wrought by conquest and violence, or by pact and submission, but by the law of nature and hereditary descent. For in conquest it is commonly seen, although the bulk and quantity of territory be increased, yet the strength of kingdoms is diminished, as well by the wasting of the forces of both parts in the conflict, as by the evil coherence of the nation conquering and conquered, the one being apt to be insolent, and the other discontent; and so both full of jealousies and discord. And where countries are annexed only by act of estates and submissions, such submissions are commonly grounded upon fear, which is no good author of continuance, besides the quarrels and revolts which do ensue upon conditional and articulate submissions: but when the lines of two kingdoms do meet in the person of one monarch, as in a true point or perfect angle; and that from marriage, which is the first conjunction in human society, there shall proceed one inheritor in blood to several kingdoms, whereby they are actually united and incorporated under one head; it is the work of God and nature, whereunto the works of force and policy cannot attain; and it is that which hath not in itself

itself any manner of seeds of discord or disunion, other than such as envy and malignity shall sow, and which groundeth an union, not only indissoluble, but also most comfortable and happy amongst the people.

We therefore in all humbleness acknowledge, that it is the great and blessed work of Almighty God, that these two ancient and mighty realms of England and Scotland, which by nature have no true but an imaginary separation, being both situate and comprehended in one most famous and renowned island of Great Britany, compassed by the ocean, without any mountains, seas, or other boundaries of nature, to make any partition, wall, or trench, between them, and being also exempted from the first curse of disunion, which was the confusion of tongues, and being people of a like constitution of mind and body, especially in warlike prowets and disposition: and yet nevertheless have in so many ages been disjoined under several kings and governors, are now at the last, by right inherent in the commixture of our blood, united in our person and generation; wherein it hath pleased God to anoint us with the oil of gladness and gratulation above our progenitors, kings of either nation. Neither can we sufficiently contemplate and behold the passages, degrees, and insinuations, whereby it hath pleased the eternal God, to whom all his works are from the beginning known and present, to open and prepare a way to this excellent work; having first ordained that both nations should be knit in one true and reformed religion, which is the perfectest band of all unity and union; and secondly, that there should precede so long a peace continued between the nations for so many years last past, whereby all seeds and sparks of ancient discord have been laid asleep, and grown to an obliteration and oblivion; and lastly, that ourselves, in the true measure of our affections, should have so just cause to embrace both nations with equal and indifferent love and inclination, inasmuch as our birth and the passing of the first part of our age hath been in the one nation, and our principal seat and mansion, and the passing of the latter part of our days is like to be in the other. Which our equal and upright holding of the balance between both nations, being the highest point of all others in our distributive justice, we give the world to know, that we are constantly resolved to preserve inviolate against all emulations and partialities, not making any difference at all between the subjects of either nation, in affection, honours, favours, gifts, employments, confidences, or the like; but only such as the true distinctions of the persons, being capable or not capable, fit or not fit, acquainted with affairs or not acquainted with affairs, needing our princely bounty or not needing the same, approved to us by our experience or not approved, meriting or not meriting, and the several degrees of these and the like conditions shall in right reason tie us unto, without any manner of regard to the country in itself; to the end that they may well perceive, that in our mind and apprehension they are all one and the same nation; and that our heart is truly placed in the center of government, from whence all lines to the circumference are equal and of one space and distance.

But for the further advancing and perfecting of this work, we have taken into our princely care and cogitations, what it is that may appertain to our own imperial power, right, and authority; and what requireth votes and assents of our parliaments or estates; and again, what may presently be done, and what must be left to further time, that our proceeding may be void of all inconvenience and informality; wherein by the example of Almighty God, who is accustomed to begin all his great works and designments by alterations or impositions of names, as the

DRAUGHT OF A PROCLAMATION

fittest means to imprint in the hearts of people a character and expectation of that which is to follow; we have thought good to withdraw and discontinue the divided names of England and Scotland out of our regal title and title, and to use in place of them the common and contracted name of Great Britany: not upon any vain-glory, whereof, we persuade ourselves, our actions do sufficiently free us in the judgment of all the world; and if any such humour should reign in us, it were better satisfied by length of stile and enumeration of kingdoms: but only as a fit signification of that which is already done, and a significant prefiguration of that which we further intend. For as in giving names to natural persons, it is used to impose them in infancy, and not to stay till fulness of growth; so it seemed to us not unreasonable to bring in further use this name at the first, and to proceed to the more substantial points of the union after, as fast and as far as the common good of both the realms should permit, especially considering the name of Britany was no coined or new-devised or affected name at pleasure, but the true and ancient name which God and time hath imposed, extant, and received in histories, in cards, and in ordinary speech and writing, where the whole island is meant to be denominate; so as it is not accompanied with so much as any strangeness in common speech. And although we never doubted, neither ever heard that any other presumed to doubt, but that the form and tenor of our regal stile and title, and the delineation of the same, did only and wholly of mere right appertain to our supreme and absolute prerogative to express the same in such words or sort, as seemed good to our royal pleasure: yet because we were to have the advice and assent of our parliament concerning other points of the union, we were pleased our said parliament should, amongst the rest, take also the same into their consideration. But finding by the grave opinion of our judges, who are the interpreters of our laws, that in case that alteration of stile, which seemed to us but verbal, should be established and enacted by parliament, it might involve, by implication and consequence, not only a more present alteration, but also a further innovation than we any ways intended; or at least might be subject to some colourable scruple or such a perilous construction: we rested well satisfied to respite the same, as to require it by act of parliament. But being still resolved and fixed that it may conduce towards this happy end of the better uniting of the nations, we have thought good by the advice of our council to take the same upon us by our proclamation, being a course safe and free from any of the perils or scruples aforesaid. And therefore we do by these presents publish, proclaim, and assume to ourselves from henceforth, according to our undoubted right, the stile and title of King of Great Britany, France, and Ireland, and otherwise as followeth in our stile formerly used. And we do hereby straitly charge and command our chancellor, and all such as have the custody of any of our seals; and all other our officers and subjects whatsoever, to whom it may in any wise appertain, that from henceforth in all commissions, patents, writs, processses, grants, records, instruments, impressions, sermons, and all other writings and speeches whatsoever, wherein our stile is used to be set forth or recited, that our said stile, as is before by these presents declared and prescribed, be only used, and no other. And because we do but now declare that which in truth was before, our will and pleasure is, that in the computation of our reign, as to all writings or instruments hereafter to be made, the same computation be taken and made, as if we had taken upon us the stile aforesaid immediately after the decease of our late

TOUCHING HIS MAJESTY'S STILE.

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late dear sifter. And we do notify to all our subjects, that if any person, of what degree or condition soever he be, shall impugn our said stile, or derogate and detract from the same by any arguments, speeches, words, or otherwise; we shall proceed against him, as against an offender against our crown and dignity, and a disturber of the quiet and peace of our kingdom, according to the utmost severity of our laws in that behalf. Nevertheless our meaning is not, that where in any writ, pleading, or other record, writing, instrument of speech, it hath been used for mention to be made of England or the realm of England, or any other word or words derived from the same, and not of our whole and entire stile and title; that therein any alteration at all be used by pretext of this our proclamation, which we intend to take place only where our whole stile shall be recited, and not otherwise; and in the other cases the ancient form to be used and observed.



A

S P E E C H

MADE BY

Sir FRANCIS BACON, Knight,

Chosen by the COMMONS to present

A PETITION touching PURVEYORS.

Delivered to his Majesty in the withdrawing-chamber at Whitehall, in the Parliament held primo et secundo JACOBI, the first session.

IT is well known to your majesty, excellent king, that the emperors of Rome, for their better glory and ornament, did use in their titles the additions of the countries and nations where they had obtained victories : as *Germanicus*, *Britannicus*, and the like. But after all those names, as in the higher place, followed the name of *Pater Patriae*, as the greatest name of all human honour immediately preceding that name of Augustus ; whereby they took themselves to express some affinity that they had, in respect of their office, with divine honour. Your majesty might, with good reason, assume unto yourself many of those other names ; as *Germanicus*, *Saxonicus*, *Britannicus*, *Francicus*, *Danicus*, *Gothicus*, and others, as appertaining to you not by blood-shed, as they bare them, but by blood ; your majesty's royal person being a noble confluence of streams and veins wherein the royal blood of many kingdoms of Europe are met and united. But no name is more worthy of you, nor may more truly be ascribed unto you, than that name of father of your people, which you bare and express not in the formality of your stile, but in the real course of your government. We ought not to say unto you as was said to Julius Cæsar, *Quæ miramur, habemus ; quæ laudamus, expectamus* : that we have already wherefore to admire you, and that now we expect somewhat for which to commend you : for we may, without suspicion of flattery, acknowledge, that we have found in your majesty great cause, both of admiration and commendation. For great is the admiration, wherewith you have possessed us since this parliament began in those two causes wherein we have had access unto you, and heard your voice : that of the return of Sir Francis Goodwin, and that of the Union ; whereby it seemeth unto us, the one of these being so subtle a question of law ; and the other so high a cause of estate, that as the Scripture saith of the wisest king, *that his heart was as the sands of the sea* ; which, though it be one of the largest and vastest bodies, yet it consisteth of the smallest motes and portions : so, I say, it appeareth unto us in these two examples, that God hath given your majesty a rare sufficiency, both to compass and fathom the greatest matters, and to discern the least.

And

And for matter of praise and commendation, which chiefly belongeth to goodnes, we cannot but with great thankfulnes profess, that your majesty, within the circle of one year of your reign, *infra orbem anni vertentis*, hath endeavoured to unite your church, which was divided; to supply your nobility, which was diminished; and to ease your people in cases where they were burdened and oppressed.

In the last of these, your high merits, that is, the ease and comfort of your people, doth fall out to be comprehended; the message which I now bring unto your majesty, concerning the great grievance arising by the manifold abuses of purveyors, differing in some degree from most of the things wherein we deal and consult: for it is true that the knights, citizens, and burgeses, in parliament assembled, are a representative body of your Commons and third estate; and in many matters, although we apply ourselves to perform the trust of those that choose us, yet it may be, we do speak much out of our own senses and discourses. But in this grievance, being of that nature whereunto the poor people is most exposed, and men of quality less, we shall most humbly desire your majesty to conceive, that your majesty doth not hear our opinions or senses, but the very groans and complaints themselves of your Commons more truly and vively, than by representation. For there is no grievance in your kingdom so general, so continual, so sensible, and so bitter unto the common subject, as this whereof we now speak; wherein it may please your majesty to vouchsafe me leave, first, to set forth unto you the dutiful and respective carriage of our proceeding; next, the substance of our petition; and thirdly, some reasons and motives which in all humbleness we do offer to your majesty's royal consideration or commiseration; we assuring ourselves that never king reigned that had better notions of head and motions of heart, for the good and comfort of his loving subjects.

For the first; in the course of remedy which we desire, we pretend not nor intend not, in any sort, to derogate from your majesty's prerogative, nor to touch, diminish, or question any of your majesty's regalities or rights. For we seek nothing but the reformation of abuses, and the execution of former laws whereunto we are born. And although it be no strange thing in parliament for new abuses to crave new remedies, yet nevertheless in these abuses, which if not in nature, yet in extremity and height of them, are most of them new, we content ourselves with the old laws: only we desire a confirmation and quickening of them in their execution; so far are we from any humour of innovation or incroachment.

As to the court of the green-cloth, ordained for the provision of your majesty's most honourable household, we hold it ancient, we hold it reverend. Other courts respect your politic person, but that respects your natural person. But yet, notwithstanding, most excellent king, to use that freedom which to subjects that pour out their griefs before so gracious a king, is allowable, we may very well alledge unto your majesty, a comparison or similitude used by one of the fathers in another matter, and not unfitly representing our case in this point: and it is of the leaves and roots of nettles; the leaves are venomous and stinging where they touch; the root is not so, but is without venom or malignity: and yet it is that root that bears and supports all the leaves. This needs no farther application.

To come now to the substance of our petition. It is no other, than by the benefit of your majesty's laws to be relieved of the abuses of purveyors; which abuses do naturally divide themselves into three sorts: the first, they take in kind that they ought not to take; the second, they take in quantity a far greater portion

portion than cometh to your majesty's use; the third they take in an unlawful manner, in a manner, I say, directly and expressly prohibited by divers laws.

For the first of these, I am a little to alter their name; for instead of takers, they become taxers; instead of taking provision for your majesty's service, they tax your people *ad redimendam vacationem*: imposing upon them, and extorting from them, divers sums of money, sometimes in gross, sometimes in the nature of stipends annually paid, *ne noceant*, to be freed and eased of their oppression. Again, they take trees, which by law they cannot do; timber-trees, which are the beauty, countenance, and shelter of mens houses; that men have long spared from their own purse and profit; that men esteem, for their use and delight, above ten times the value; that are a loss which men cannot repair or recover. These do they take, to the defacing and spoiling of your subjects mansions and dwellings, except they may be compounded with according to their own appetites. And if a gentleman be too hard for them while he is at home, they will watch their time when there is but a bailiff or a servant remaining, and put the ax to the root of the tree, ere ever the master can stop it. Again, they use a strange and most unjust exaction, in causing the subjects to pay poundage of their own debts, due from your majesty unto them: so as a poor man, when he hath had his hay, or his wood, or his poultry, which perchance he was full loth to part with, and had for the provision of his own family, and not to put to sale, taken from him, and that not at a just price, but under the value, and cometh to receive his money, he shall have after the rate of twelve pence in the pound abated for poundage of his due payment, growing upon so hard conditions. Nay farther, they are grown to that extremity, as is affirmed, though it be scarce credible, save that in such persons all things are credible, that they will take double poundage, once when the debenture is made, and again the second time when the money is paid.

For the second point, most gracious sovereign, touching the quantity which they take, far above that which is answered to your majesty's use: they are the only multipliers in the world; they have the art of multiplication. For it is affirmed unto me by divers gentlemen of good regard, and experience in these causes, as a matter which I may safely avouch before your majesty, to whom we owe all truth, as well of information as subjection, that there is no pound profit which redoundeth to your majesty in this course, but induceth and begetteth three pound damage upon your subjects, besides the discontentment. And to the end they may make this spoil, what do they? Whereas divers statutes do strictly provide, that whatsoever they take, shall be registered and attested, to the end, that by making a collation of that which is taken from the country, and that which is answered above, their deceits might appear; they, to the end to obscure their deceits, utterly omit the observation of this, which the law prescribeth.

And therefore to descend, if it may please your majesty, to the third sort of abuse, which is of the unlawful manner of their taking, whereof this omission is a branch; it is so manifold, as it rather asketh an enumeration of some of the particulars, than a prosecution of all. For their price: by law they ought to take as they can agree with the subject; by abuse they take at an imposed and enforced price: by law they ought to make but one appraisement by neighbours in the country; by abuse they make a second appraisement at the court-gate; and when the subject's cattle come up many miles lean, and out of plight, by reason of their
great

great travel, then they prize them anew at an abated price : by law they ought to take between sun and sun ; by abuse they take by twilight, and in the night-time, a time well chosen for malefactors : by law they ought not to take in the high-ways, a place by your majesty's high prerogative protected, and by statute by special words excepted, by abuse they take in the ways, in contempt of your majesty's prerogative and laws : by law they ought to shew their commission, and the form of commission is by law set down ; the commissions they bring down, are against the law, and because they know so much, they will not shew them. A number of other particulars there are, whereof as I have given your majesty a taste, so the chief of them upon deliberate advice are set down in writing by the labour of certain committees, and approbation of the whole house, more particularly and lively than I can express them, myself having them but at the second hand by reason of my abode above. But this writing is a collection of theirs who dwell amongst the abuses of these offenders, and complaints of the people ; and therefore must needs have a more perfect understanding of all the circumstances of them.

It remaineth only that I use a few words, the rather to move your majesty in this cause : a few words, I say a very few ; for neither need so great enormities any aggravating, neither needeth so great grace, as useth of itself to flow from your majesty's princely goodness, any artificial persuading. There be two things only which I think good to set before your majesty ; the one the example of your most noble progenitors kings of this realm, who from the first king that endowed this kingdom with the great charter of their liberties, until the last, all save one, who as he was singular in many excellent things, so I would he had not been alone in this, have ordained, every one of them in their several reigns, some laws or law against this kind of offenders ; and especially the example of one of them, that king, who for his greatness, wisdom, glory, and union of several kingdoms, resembleth your majesty most, both in virtue and fortune, king Edward III. who, in his time only made ten several laws against this mischief. The second is the example of God himself ; who hath said and pronounced, *That he will not hold him guiltless that taketh his name in vain.* For all these great misdemeanors are committed in and under your majesty's name : and therefore we hope your majesty will hold them twice guilty that commit these offences ; once for the oppressing of the people, and once more for doing it under the colour and abuse of your majesty's dreaded and beloved name. So then I will conclude with the saying of Pindarus, *Optima res aqua* ; not for the excellency, but for the common use of it ; and so contrariwise this matter of abuse of purveyance, if it be not the most hainous abuse, yet certainly it is the most common and general abuse of all others in the kingdom.

It resteth, that, according to the commandment laid upon me, I do in all humbleness present this writing to your majesty's royal hands, with most humble petition on the behalf of your Commons, that as your majesty hath been pleased to vouchsafe your gracious audience to hear me speak, so you would be pleased to enlarge your patience to hear this writing read, which is more material.

A BRIEF
 DISCOURSE
 OF THE
 HAPPY UNION
 Of the Kingdoms of
 ENGLAND and SCOTLAND.

Dedicated in private to his MAJESTY*.

I Do not find it strange, excellent king, that when Heraclitus, he that was surnamed the Obscure, had set forth a certain book which is not now extant, many men took it for a discourse of nature, and many others took it for a treatise of policy. For there is a great affinity and consent between the rules of nature, and the true rules of policy: the one being nothing else but an order in the government of the world; and the other an order in the government of an estate. And therefore the education and erudition of the kings of Persia was in a science which was termed by a name then of great reverence, but now degenerate and taken in the ill part. For the Persian magic, which was the secret literature of their kings, was an application of the contemplations and observations of nature unto a sense politic; taking the fundamental laws of nature, and the branches and passages of them, as an original or first model, whence to take and describe a copy and imitation for government.

After this manner the foresaid instructors set before their kings the examples of the celestial bodies, the sun, the moon, and the rest, which have great glory and veneration, but no rest or intermission; being in a perpetual office of motion, for the cherishing, in turn and in course, of inferior bodies: expressing likewise the true manner of the motions of government, which though they ought to be swift and rapid in respect of dispatch and occasions, yet are they to be constant and regular, without wavering or confusion.

So did they represent unto them how the heavens do not enrich themselves by the earth and the seas, nor keep no dead stock, nor untouched treasures of that they draw to them from below; but whatsoever moisture they do levy and take from both elements in vapours, they do spend and turn back again in showers, only holding and storing them up for a time, to the end to issue and distribute them in season.

* Printed in 1603, in 12^{mo}.

But chiefly, they did exprefs and expound unto them that fundamental law of nature, whereby all things do fubfift and are preferved; which is, that every thing in nature, although it hath its private and particular affection and appetite, and doth follow and purfue the fame in fmall moments, and when it is free and delivered from more general and common refpects; yet, neverthelefs, when there is queftion or cafe for fustaining of the more general, they forfake their own particularities, and attend and confpire to uphold the public.

So we fee the iron in fmall quantity will afcend and approach to the loadftone upon a particular fymphony: but if it be any quantity of moment, it leaveth its appetite of amity to the loadftone, and, like a good patriot, falleth to the earth, which is the place and region of mafsy bodies.

So again the water and other like bodies do fall towards the centre of the earth, which is, as was faid, their region or country: and yet we fee nothing more ufual in all water-works and engines, than that the water, rather than to fuffer any diftraction or difunion in nature, will afcend, forfaking the love to its own region or country, and applying itfelf to the body next adjoining.

But it were too long a digreffion to proceed to more examples of this kind. Your majefty yourfelf did fall upon a paffage of this nature in your gracious fpeech of thanks unto your council, when acknowledging princely their vigilancies and well-defervings, it pleased you to note, that it was a fuccefs and event above the courfe of nature, to have fo great change with fo great a quiet: forasmuch as fudden mutations, as well in ftate as in nature, are rarely without violence and perturbation: fo as ftill I conclude there is, as was faid, a congruity between the principles of nature and policy. And left that instance may feem to oppone to this affertion, I may even in that particular, with your majefty's favour, offer unto you a type or pattern in nature, much refembling this event in your ftate; namely, earthquakes, which many of them bring ever much terror and wonder, but no actual hurt; the earth trembling for a moment, and fuddenly ftablifhing in perfect quiet as it was before.

This knowledge then of making the government of the world a mirror for the government of a ftate, being a wifdom almoft loft, whereof the reafon I take to be becaufe of the difficulty for one man to embrace both philofophies, I have thought good to make fome proof, as far as my weaknefs and the ftraits of time will fuffer, to revive in the handling of one particular, wherewith now I moft humbly prefent your majefty: for furely, as hath been faid, it is a form of difcourfe anciently ufed towards kings; and to what king fhould it be more proper than to a king that is ftudious to conjoin contemplative virtue and active virtue together?

Your majefty is the firft king that had the honour to be *lapis angularis*, to unite thefe two mighty and warlike nations of England and Scotland under one foveignty and monarchy. It doth not appear by the records and memoirs of any true hiftory, or fcarcely by the fiction and pleasure of any fabulous narration or tradition, that ever, of any antiquity, this ifland of Great Britain was united under one king before this day. And yet there be no mountains nor races of hills, there be no feas or great rivers, there is no diversity of tongue or language that hath invited or provoked this ancient feparation or divorce. The lot of Spain was to have the feveral kingdoms of that continent, Portugal only excepted, to be united in an age not long paff; and now in our age that of Portugal alfo, which was the laft that held out, to be incorporated with the reft. The lot of France hath been,

much about the same time likewise, to have re-annexed unto that crown the several dutchies and portions which were in former times dismembered. The lot of this island is the last reserved for your majesty's happy times, by the special providence and favour of God, who hath brought your majesty to this happy conjunction with the great consent of hearts, and in the strength of your years, and in the maturity of your experience. It resteth but that, as I promised, I set before your majesty's princely consideration, the grounds of nature touching the union and commixture of bodies, and the correspondence which they have with the grounds of policy in the conjunction of states and kingdoms.

First, therefore, that position, *Vis unita fortior*, being one of the common notions of the mind, needeth not much to be induced or illustrated.

We see the sun when he entereth, and while he continueth under the sign of Leo, causeth more vehement heats than when he is in Cancer, what time his beams are nevertheless more perpendicular. The reason whereof, in great part, hath been truly ascribed to the conjunction and corradation, in that place of heaven, of the sun with the four stars of the first magnitude, Sirius, Canicula, Cor Leonis, and Cauda Leonis.

So the moon likewise, by ancient tradition, while she is in the same sign of Leo, is said to be at the heart, which is not for any affinity which that place of heaven can have with that part of man's body, but only because the moon is then, by reason of the conjunction and nearness with the stars aforementioned, in greatest strength of influence, and so worketh upon that part in inferior bodies, which is most vital and principal.

So we see waters and liquors, in small quantity, do easily putrify and corrupt; but in large quantity sublast long, by reason of the strength they receive by union.

So in earthquakes, the more general do little hurt, by reason of the united weight which they offer to subvert; but narrow and particular earthquakes have many times overturned whole towns and cities.

So then this point touching the force of union is evident: and therefore it is more fit to speak of the manner of union; wherein again it will not be pertinent to handle one kind of union, which is union by victory, when one body doth merely subdue another, and converteth the same into its own nature, extinguishing and expelling what part soever of it it cannot overcome. As when the fire converteth the wood into fire, purging away the smoke and the ashes as unapt matter to inflame: or when the body of a living creature doth convert and assimilate food and nourishment, purging and expelling whatsoever it cannot convert. For these representations do answer in matter of policy to union of countries by conquest, where the conquering state doth extinguish, extirpate, and expelle any part of the state conquered, which it findeth so contrary as it cannot alter and convert it. And therefore, leaving violent unions, we will consider only of natural unions.

The difference is excellent which the best observers in nature do take between *compositio* and *mistio*, putting together, and mingling: the one being but a conjunction of bodies in place, the other in quality and consent: the one the mother of sedition and alteration, the other of peace and continuance: the one rather a confusion than an union, the other properly an union. Therefore we see those bodies, which they call *imperfecta mista*, last not, but are speedily dissolved. For take for example snow or froth, which are compositions of air and water, and in
them

them you may behold how easily they sever and dissolve, the water closing together and excluding the air.

So those three bodies which the alchemists do so much celebrate as the three principles of things; that is to say, earth, water, and oil, which it pleaseth them to term salt, mercury, and sulphur, we see, if they be united only by composition or putting together, how weakly and rudely they do incorporate: for water and earth make but an imperfect slime; and if they be forced together by agitation, yet upon a little settling, the earth resideth in the bottom. So water and oil, though by agitation it be brought into an ointment, yet after a little settling the oil will float on the top. So as such imperfect mixtures continue no longer than they are forced; and still in the end the worthiest getteth above.

But otherwise it is of perfect mixtures. For we see these three bodies, of earth, water, and oil, when they are joined in a vegetable or mineral, they are so united, as without great subtlety of art and force of extraction, they cannot be separated and reduced into the same simple bodies again. So as the difference between *compositio* and *mixtio* clearly set down is this; that *compositio* is the joining or putting together of bodies without a new form: and *mixtio* is the joining or putting together of bodies under a new form: for the new form is *commune vinculum*, and without that the old forms will be at strife and discord.

Now to reflect this light of nature upon matter of estate; there hath been put in practice in government these two several kinds of policy in uniting and conjoining of states and kingdoms; the one to retain the ancient form still severed, and only conjoined in sovereignty; the other to superinduce a new form agreeable and convenient to the entire estate. The former of these hath been more usual, and is more easy; but the latter is more happy. For if a man do attentively resolve histories of all nations, and judge truly thereupon, he will make this conclusion, that there was never any states that were good commixtures but the Romans; which because it was the best state of the world, and is the best example of this point, we will chiefly insist thereupon.

In the antiquities of Rome Virgil bringeth in Jupiter by way of oracle or prediction speaking of the mixture of the Trojans and the Italians.

*Sermonem Ausonii patrium moresque tenebunt:
Utque est, nomen erit: commixti corpore tantum
Subsident Teucri; morem ritusque sacrorum
Adjiciam: faciamque omnes uno ore Latinos.
Hinc genus, Ausonio mixtum quod sanguine surget,
Supra homines, supra ire Deos pietate videbis.*

Æn. xii. 834.

Wherein Jupiter maketh a kind of partition or distribution: that Italy should give the language and the laws; Troy should give a mixture of men, and some religious rites; and both people should meet in one name of Latins.

Soon after the foundation of the city of Rome, the people of the Romans and the Sabines mingled upon equal terms: wherein the interchange went so even, that, as Livy noteth, the one nation gave the name to the place, the other to the people. For Rome continued the name, but the people were called Quirites, which was the Sabine word, derived of Cures the country of Tatius.

But that which is chiefly to be noted in the whole continuance of the Roman government; they were so liberal of their naturalizations, as in effect they made

perpetual mixtures. For the manner was to grant the same, not only to particular persons, but to families and lineages; and not only so, but to whole cities and countries. So as in the end it came to that, that Rome was *communis patria*, as some of the civilians call it.

So we read of St Paul, after he had been beaten with rods, and thereupon charged the officer with the violation of the privilege of a citizen of Rome; the captain said to him, *Art thou then a Roman? That privilege hath cost me dear.* To whom St Paul replied, *But I was so born*; and yet, in another place, St Paul professeth himself, that he was a Jew by tribe: so as it is manifest that some of his ancestors were naturalized; and so it was conveyed to him and their other descendents.

So we read, that it was one of the first despites that was done to Julius Cæsar, that whereas he had obtained naturalization for a city in Gaul, one of the city was beaten with rods of the consul Marcellus.

So we read in Tacitus, that in the emperor Claudius's time, the nation of Gaul, that part which is called Comata, the wilder part, were suitors to be made capable of the honour of being senators and officers of Rome. His words are these; *Cum de supplendo senatu ageretur primoresque Galliae, quae Comata appellatur, foedera et civitatem Romanam pridem consecuti, jus adipiscendorum in urbe honorum peterent; multus ea super re varisque rumor, et studiis diversis, apud principem certabatur.* And in the end, after long debate, it was ruled they should be admitted.

So likewise, the authority of Nicholas Machiavel seemeth not to be contemned; who enquiring the causes of the growth of the Roman empire, doth give judgment; there was not one greater than this, that the state did so easily compound and incorporate with strangers.

It is true, that most cities and kingdoms have taken the other course: of which this effect hath followed, that the addition of further empire and territory hath been rather matter of burden, than matter of strength unto them: yea, and farther it hath kept alive the seeds and roots of revolts and rebellions for many ages; as we may see in a fresh and notable example of the kingdom of Arragon: which, though it were united to Castile by marriage, and not by conquest; and so descended in hereditary union by the space of more than an hundred years; yet because it was continued in a divided government, and not well incorporated and cemented with the other crowns, entered into a rebellion upon point of their *fueros*, or liberties, now of very late years.

Now to speak briefly of the several parts of that form, whereby states and kingdoms are perfectly united, they are, besides the sovereignty itself, four in number; union in name, union in language, union in laws, union in employments.

For name, though it seem but a superficial and outward matter, yet it carrieth much impression and enchantment: the general and common name of Græcia made the Greeks always apt to unite, though otherwise full of divisions amongst themselves, against other nations whom they called barbarous. The Helvetian name is no small band to knit together their leagues and confederacies the faster. The common name of Spain, no doubt, hath been a special means of the better union and conglutination of the several kingdoms of Castile, Arragon, Granada, Navarre, Valentia, Catalonia, and the rest, comprehending also now lately Portugal.

For

For language, it is not needful to insist upon it; because both your majesty's kingdoms are of one language, though of several dialects; and the difference is so small between them, as promiseth rather an enriching of one language than a continuance of two.

For laws, which are the principal sinews of government, they be of three natures; *jura*, which I will term freedoms or abilities, *leges*, and *mores*.

For abilities and freedoms, they were amongst the Romans of four kinds, or rather degrees. *Jus connubii*, *jus civitatis*, *jus suffragii*, and *jus petitionis* or *honorum*. *Jus connubii* is a thing in these times out of use: for marriage is open between all diversities of nations. *Jus civitatis* answereth to that we call denization or naturalization. *Jus suffragii* answereth to the voice in parliament. *Jus petitionis* answereth to place in council or office. And the Romans did many times sever these freedoms; granting *jus connubii*, *sine civitate*, and *civitatem*, *sine suffragio*, and *suffragium*, *sine jure petitionis*, which was commonly with them the last.

For those we called *leges*, it is a matter of curiosity and inconveniency, to seek either to extirpate all particular customs, or to draw all subjects to one place or resort of judicature and session. It sufficeth there be an uniformity in the principal and fundamental laws, both ecclesiastical and civil: for in this point the rule holdeth which was pronounced by an ancient father, touching the diversity of rites in the church; for finding the vesture of the queen in the psalm, which did prefigure the church, was of divers colours; and finding again that Christ's coat was without a seam, he concluded well, *in veste varietas sit, scissura non sit*.

For manners; a content in them is to be sought indulktriously, but not to be enforced: for nothing amongst people breedeth so much pertinacy in holding their customs, as sudden and violent offer to remove them.

And as for employments, it is no more, but an indifferent hand, and execution of that verse:

Tros, Tyriusque mibi nullo discrimine agetur.

There remaineth only to remember out of the grounds of nature the two conditions of perfect mixture; whereof the former is time: for the natural philosophers say well, that *compositio* is *opus hominis*, and *mistio* *opus naturae*. For it is the duty of man to make a fit application of bodies together: but the perfect fermentation and incorporation of them must be left to time and nature; and unnatural hastening thereof doth disturb the work, and not dispatch it.

So we see, after the graft is put into the stock and bound, it must be left to time and nature to make that *continuum*, which at the first was but *contiguum*. And it is not any continual pressing or thrusting together that will prevent nature's season, but rather hinder it. And so in liquors, those commixtures which are at the first troubled, grow after clear and settled by the benefit of rest and time.

The second condition is, that the greater draw the less. So we see when two lights do meet, the greater doth darken and dim the less. And when a smaller river runneth into a greater, it loseth both its name and stream. And hereof, to conclude, we see an excellent example in the kingdoms of Judah and Israel. The kingdom of Judah contained two tribes; the kingdom of Israel contained ten. King David reigned over Judah for certain years; and, after the death of Ishobeth the son of Saul, obtained likewise the kingdom of Israel. This union

continued

UNION OF ENGLAND AND SCOTLAND.

continued in him, and likewise in his son Solomon, by the space of seventy years, at least, between them both: but yet, because the seat of the kingdom was kept still in Judah, and so the less sought to draw the greater: upon the first occasion offered, the kingdoms brake again, and so continued ever after.

Thus having in all humbleness made oblation to your majesty of these simple fruits of my devotion and studies, I do wish, and do wish it not in the nature of an impossibility, to my apprehension, that this happy union of your majesty's two kingdoms of England and Scotland, may be in as good an hour, and under the like divine providence, as that was between the Romans and the Sabines.



CERTAIN

CERTAIN
ARTICLES or CONSIDERATIONS
Touching the
UNION of the KINGDOMS
OF
ENGLAND and SCOTLAND.

Collected and dispersed for His MAJESTY'S better service.

YOUR majesty, being, I doubt not, directed and conducted by a better oracle than that which was given for light to Æneas in his peregrination, *Antiquam exquirite matrem*, hath a royal, and indeed an heroicall desire to reduce these two kingdoms of England and Scotland into the unity of their ancient mother kingdom of Britain. Wherein as I would gladly applaud unto your majesty, or sing aloud that hymn or anthem, *Sic itur ad astra*; so in a more soft and submissive voice, I must necessarily remember unto your majesty that warning or caveat, *Ardua quae pulchra*: it is an action that requireth, yea, and needeth much, not only of your majesty's wisdom, but of your felicity. In this argument I presumed at your majesty's first entrance to write a few lines, indeed scholastically and speculatively, and not actively or politicly, as I held it fit for me at that time; when neither your majesty was in that your desire declared, nor myself in that service used or trusted. But now that both your majesty hath opened your desire and purpose with much admiration, even of those who give it not so full an approbation, and that myself was by the Commons graced with the first vote of all the Commons selected for that cause; not in any estimation of my ability, for therein so wise an assembly could not be so much deceived, but in an acknowledgment of my extreme labours and integrity; in that business I thought myself every way bound, both in duty to your majesty, and in trust to that house of parliament, and in consent to the matter itself, and in conformity to mine own travels and beginnings, not to neglect any pains that may tend to the furtherance of so excellent a work; wherein I will endeavour that that which I shall set down be *nihil minus quam verba*: for length and ornament of speech are to be used for persuasion of multitudes, and not for information of kings; especially such a king as is the only instance that ever I knew to make a man of Plato's opinion, "that all knowledge is but remembrance, and that the mind of man knoweth all things, and demandeth only to have her own notions excited and awaked:" which your majesty's rare and indeed

deed singular gift and faculty of swift apprehension, and infinite expansion or multiplication of another man's knowledge by your own, as I have often observed, so I did extremely admire in Goodwin's cause, being a matter full of secrets and mysteries of our laws, merely new unto you, and quite out of the path of your education, reading, and conference: when in, nevertheless, upon a spark of light given, your majesty took in so dextrously and profoundly, as if you had been indeed *anima legis*, not only in execution, but in understanding: the remembrance whereof, as it will never be out of my mind, so it will always be a warning to me to seek rather to excite your judgment briefly, than to inform it tediously; and if in a matter of that nature, how much more in this, wherein your princely cogitations have wrought themselves, and been conversant, and wherein the principal light proceeded from yourself.

And therefore my purpose is only to break this matter of the union into certain short articles and questions, and to make a certain kind of anatomy or analysis of the parts and members thereof: not that I am of opinion that all the questions which I now shall open, were fit to be in the consultation of the commissioners propounded. For I hold nothing so great an enemy to good resolution, as the making of too many questions; especially in assemblies which consist of many. For princes, for avoiding of distraction, must take many things by way of admittance; and if questions must be made of them, rather to suffer them to arise from others, than to grace them and authorize them as propounded from themselves. But unto your majesty's private consideration, to whom it may better sort with me rather to speak as a remembrancer than as a counsellor, I have thought good to lay before you all the branches, lineaments, and degrees of this union, that upon the view and consideration of them and their circumstances, your majesty may the more clearly discern, and more readily call to mind which of them is to be embraced, and which to be rejected: and of these, which are to be accepted, which of them is presently to be proceeded in, and which to be put over to farther time. And again, which of them shall require authority of parliament, and which are fitter to be effected by your majesty's royal power and prerogative, or by other policies or means; and lastly, which of them is liker to pass with difficulty and contradiction, and which with more facility and smoothness.

First, therefore, to begin with that question, that, I suppose, will be out of question.

Statute concerning Scotland.
 Statute concerning the
 Statute concerning
 tion.

Whether it be not meet, that the statutes, which were made touching Scotland or the Scottish nation, while the kingdoms stood severed, be repealed?

It is true, there is a diversity in these; for some of these laws consider Scotland as an enemy's country; other laws consider it as a foreign country only: as for example; the law of Rich. II. anno 7. which prohibiteth all armour or victual to be carried to Scotland; and the law of 7 of K. Hen. VII. that enacteth all the Scottish men to depart the realm within a time prefixed. Both these laws, and some others, respect Scotland as a country of hostility: but the law of 22 of Edw. IV. that enacteth Berwick with the liberty of a staple, where all Scottish merchandises should resort that should be uttered for England, and likewise all English merchandises that should be uttered for Scotland; this law beholdeth Scotland only as a foreign nation; and not so much neither; for there have been erected staples in towns of England for some commodities, with an exclusion and restriction of other parts of England.

But

But this is a matter of the least difficulty ; your majesty shall have a calendar made of the laws, and a brief of the effect ; and so you may judge of them : and the like or reciprocally is to be done by Scotland for such laws as they have concerning England and the English nation.

The second question is, what laws, customs, commissions, officers, garrisons, and the like, are to be put down, discontinued or taken away upon the borders of both realms ?

To this point, because I am not acquainted with the orders of the marches, I can say the less.

Herein falleth that question, whether that the tenants, who hold their tenants rights in a greater freedom and exemption, in consideration of their service upon the borders, and that the countries themselves, which are in the same respect discharged of subsidies and taxes, should not now be brought to be in one degree with other tenants and countries ; *nam cessante causa, tollitur effectus* ? Wherein, in my opinion, some time would be given ; *quia adhuc eorum messis in herba est* : but some present ordinance should be made to take effect at a future time, considering it is one of the greatest points and marks of the division of the kingdoms. And because reason doth dictate, that where the principal solution of continuity was, there the healing and consolidating plaister should be chiefly applied ; there would be some farther device for the utter and perpetual confounding of those imaginary bounds, as your majesty termeth them : and therefore it should be considered, whether it were not convenient to plant and erect at Carlisle or Berwick some council or court of justice, the jurisdiction whereof might extend part into England and part into Scotland, with a commission not to proceed precisely, or merely according to the laws and customs either of England or Scotland, but mixtly, according to instructions by your majesty to be set down, after the imitation and precedent of the council of the marches here in England, erected upon the union of Wales ?

The third question is that which many will make a great question of, though perhaps your majesty will make no question of it ; and that is, whether your majesty should not make a stop or stand here, and not to proceed to any farther union, contenting yourself with the two former articles or points.

For it will be said, that we are now well, thanks be to God and your majesty, and the state of neither kingdom is to be repented of ; and that it is true which Hippocrates saith, that *Sana corpora difficile medicationes ferunt*, it is better to make alterations in sick bodies than in sound. The consideration of which point will rest upon these two branches : what inconveniencies will ensue with time, if the realms stand as they are divided, which are yet not found nor sprung up. For it may be the sweetness of your majesty's first entrance, and the great benefit that both nations have felt thereby, hath covered many inconveniencies : which, nevertheless, be your majesty's government never so gracious and politic, continuance of time and the accidents of time may breed and discover, if the kingdoms stand divided.

The second branch is ; allow no manifest or important peril or inconvenience should ensue of the continuing of the kingdoms divided, yet on the other side, whether that upon the farther uniting of them, there be not like to follow that addition and increase of wealth and reputation, as is worthy your majesty's virtues and fortune, to be the author and founder of, for the advancement and exaltation of your majesty's royal posterity in time to come ?

Points where-
in the nation
stand already
united.

But admitting that your majesty should proceed to this more perfect and intire union, wherein your majesty may say *Majus opus moro*; to enter into the parts and degrees thereof, I think fit first to set down, as in a brief table, in what points the nations stand now at this present time already united, and in what points yet still severed and divided, that your majesty may the better see what is done, and what is to be done; and how that which is to be done is to be inferred upon that which is done.

The points wherein the nations stand already united are :

In sovereignty.

In the relative thereof, which is subjection.

In religion.

In continent.

In language.

And now lastly, by the peace by your majesty concluded with Spain, in leagues and confederacies; for now both nations have the same friends and the same enemies.

Yet notwithstanding there is none of these six points, wherein the union is perfect and consummate; but every of them hath some scruple or rather grain of separation inwrapped and included in them.

Sovereignty,
line royal.

For the sovereignty, the union is absolute in your majesty and your generation; but if it should so be, which God of his infinite mercy defend, that your issue should fail, then the descent of both realms doth resort to the several lines of the several bloods royal.

Subjection,
obedience.

Alien, natu-
ralization.

For subjection, I take the law of England to be clear, what the law of Scotland is I know not, that all Scotmen from the very instant of your majesty's reign begun, are become denizens, and the *post-nati* are naturalized subjects of England for the time forwards: for by our laws none can be an alien but he that is of another allegiance than our sovereign lord the king's: for there be but two sorts of aliens, whereof we find mention in our law, an alien ami, and an alien enemy; whereof the former is a subject of a state in amity with the king, and the latter a subject of a state in hostility: but whether he be one or other, it is an essential difference unto the definition of an alien, if he be not of the king's allegiance; as we see it evidently in the precedent of Ireland, who, since they were subjects to the crown of England, have ever been inheritable and capable as natural subjects; and yet not by any statute or act of parliament, but merely by the common law, and the reason thereof. So as there is no doubt, that every subject of Scotland was, and is in like plight and degree, since your majesty's coming in, as if your majesty had granted particularly your letters of denization or naturalization to every of them, and the *post-nati* wholly natural. But then on the other side, for the time backward, and for those that were *ante-nati*, the blood is not by law naturalized, so as they cannot take it by descent from their ancestors without act of parliament: and therefore in this point there is a defect in the union of subjection.

Religion,
discipline,
government,
Continent,
language.

For matter of religion, the union is perfect in points of doctrine; but in matter of discipline and government it is imperfect.

For the continent, it is true there are no natural boundaries of mountains or seas, or navigable rivers; but yet there are badges and memorials of borders; of which point I have spoken before.

For

For the language, it is true the nations are *unius labii*, and have not the first Language, curle of disunion, which was confusion of tongues, whereby one understood not another. But yet the dialect is differing, and it remaineth a kind of mark of distinct. Language, distinct. But for that, *tempori permittendum*, it is to be left to time. For considering that both languages do concur in the principal office and duty of a language, which is to make a man's self understood: for the rest, it is rather to be accounted, as was said, a diversity of dialect than of language: and, as I said in my first writing, it is like to bring forth the enriching of one language, by compounding and taking in the proper and significant words of either tongue, rather than a continuance of two languages.

For leagues and confederacies, it is true, that neither nation is now in hostility with any state, wherewith the other nation is in amity: but yet so, as the leagues and treaties have been concluded with either nation respectively, and not with both jointly; which may contain some diversity of articles of straitness of amity with one more than with the other. Leagues, confederacies, treaties.

But many of these matters may perhaps be of that kind, as may fall within that rule, *In veste varietas fit, scissura non fit.*

Now to descend to the particular points wherein the realms stand severed and divided, over and besides the former six points of separation, which I have noted and placed as defects or abatements of the six points of the union, and therefore shall not need to be repeated: the points, I say, yet remaining, I will divide into external and internal.

The external points therefore of the separation are four.

1. The severall crowns, I mean the ceremonial and material crowns.
2. The second is the severall names, stiles, or appellations.
3. The third is the severall prints of the seals.
4. The fourth is the severall stamps or marks of the coins or moneys.

External points of the separation and union.

It is true, that the external are in some respect and parts much mingled and interlaced with considerations internal; and that they may be as effectual to the true union, which must be the work of time, as the internal, because they are operative upon the conceits and opinions of the people; the uniting of whose hearts and affections is the life and true end of this work.

For the ceremonial crowns, the question will be, whether there shall be framed one new imperial crown of Britain to be used for the times to come? Also, admitting that to be thought convenient, whether in the frame thereof there shall not be some reference to the crowns of Ireland and France? The ceremonial or material crowns.

Also whether your majesty should repeat or iterate your own coronation and your Queen's, or only ordain that such new crown shall be used by your posterity hereafter?

The difficulties will be in the conceit of some inequality, whereby the realm of Scotland may be thought to be made an accession unto the realm of England. But that resteth in some circumstances; for the compounding of the two crowns is equal; the calling of the new crown the crown of Britain is equal. Only the place of coronation, if it shall be at Westminster, which is the ancient, august, and sacred place for the kings of England, may seem to make an inequality. And again, if the crown of Scotland be discontinued, then that ceremony, which I hear is used in the parliament of Scotland in the absence of the kings, to have the crowns carried in solemnity, must likewise cease.

Titles
and names.

For the name, the main question is, whether the contracted name of Britain shall be by your majesty used, or the divided names of England and Scotland?

Admitting there shall be an alteration, then the case will require these inferior questions:

First, whether the name of Britain shall only be used in your majesty's stile, where the intire stile is recited; and in all other forms the divided names to remain, both of the realms and of the people? or otherwise, that the very divided names of realms and people shall likewise be changed or turned into special or subdivided names of the general name; that is to say, for example, whether your majesty in your stile shall denominate yourself king of Britain, France, and Ireland, *etc.* and yet, nevertheless, in any commission, writ, or otherwise, where your majesty mentions England or Scotland, you shall retain the ancient names, as *secundum consuetudinem regni regis Angliæ*; or whether those divided names shall be for ever lost and taken away, and turned into the subdivisions of South-Britain and North-Britain, and the people to be South-Britons and North-Britons? And so in the example aforesaid, the tenour of the like clause to run *secundum consuetudinem Britanniae australis*.

Also, if the former of these shall be thought convenient, whether it were not better for your majesty to take that alteration of stile upon you by proclamation, as Edward the third did the stile of France, than to have it enacted by parliament?

Also, in the alteration of the stile, whether it were not better to transpose the kingdom of Ireland, and put it immediately after Britain, and so place the islands together; and the kingdom of France, being upon the continent, last; in regard that these islands of the western ocean seem by nature and providence an entire empire in themselves; and also, that there was never king of England so entirely possit of Ireland as your majesty is: so as your stile to run king of Britain, Ireland, and the islands adjacent, and of France, *etc.*

The difficulties in this have been already thoroughly beaten over; but they gather but to two heads.

The one, point of honour and love to the former names.

The other, doubt, lest the alteration of the name may induce and involve an alteration of the laws and policies of the kingdom; both which, if your majesty shall assume the stile by proclamation, and not by parliament, are in themselves satisfied: for then the usual names must needs remain in writs and records, the forms whereof cannot be altered but by act of parliament, and so the point of honour satisfied. And again, your proclamation altereth no law, and so the scruple of a tacit or implied alteration of laws likewise satisfied. But then it may be considered, whether it were not a form of the greatest honour, if the parliament, though they did not enact it, yet should become tutors and petitioners to your majesty to assume it?

Seals.

For the seals, that there should be but one great seal of Britain, and one chancellor, and that there should only be a seal in Scotland for processses and ordinary justice: and that all patents of grants of lands or otherwise, as well in Scotland as in England, should pass under the great seal here, kept about your person; it is an alteration internal, whereof I do not now speak.

But the question in this place is, whether the great seals of England and Scotland should not be changed into one and the same form of image and superscription of

of Britain, which, nevertheless, is requisite should be with some one plain or manifest alteration, lest there be a buz, and suspect, that grants of things in England may be passed by the seal of Scotland, or *e converso*?

Also, whether this alteration of form may not be done without act of parliament, as the great seals have used to be heretofore changed as to their impressions?

For the moneys, as to the real and internal consideration thereof, the question will be, whether your majesty should not continue two mints? which, the distance of territory considered, I suppose will be of necessity.

Secondly, how the standards, if it be not already done, as I hear some doubt made of it in popular rumour, may be reduced into an exact proportion for the time to come; and likewise the computation, tale, or valuation to be made exact for the moneys already beaten?

The standards
and stamps,
moneys.

That done, the last question is, which is only proper to this place, whether the stamp or the image and superscription of Britain for the time forwards should not be made the self-same in both places, without any difference at all? A matter also which may be done, as our law is, by your majesty's prerogative without act of parliament.

These points are points of demonstration, *ad faciendum populum*, but so much the more they go to the root of your majesty's intention, which is to imprint and inculcate into the hearts and heads of the people, that they are one people and one nation.

In this kind also I have heard it pass abroad in speech of the erection of some new order of knighthood, with a reference to the union, and an oath appropriate thereunto, which is a point likewise deserves a consideration. So much for the external points.

The internal points of separation are as followeth.

1. Several parliaments.
2. Several councils of state.
3. Several officers of the crown.
4. Several nobilities.
5. Several laws.
6. Several courts of justice, trials, and processes.
7. Several receipts and finances.
8. Several admiralties and merchandizings.
9. Several freedoms and liberties.
10. Several taxes and imposts.

Internal
points of
union.

As touching the several states ecclesiastical, and the several mints and standards, and the several articles and treaties of intercourse with foreign nations, I touched them before.

In these points of the strait and more inward union, there will intervene one principal difficulty and impediment, growing from that root, which Aristotle in his *Politics* maketh to be the root of all division and dissension in commonwealths, and that is equality and inequality. For the realm of Scotland is now an ancient and noble realm, substantive of itself. But when this island shall be made Britain, then Scotland is no more to be considered as Scotland, but as a part of Britain; no more than England is to be considered as England, but as a part likewise of Britain; and consequently neither of these are to be considered as things entire of them-

themselves, but in the proportion that they bear to the whole. And therefore let us imagine, *Nam id mente possumus, quod actu non possumus*, that Britain had never been divided, but had ever been one kingdom; then that part of soil or territory, which is comprehended under the name of Scotland, is in quantity, as I have heard it esteemed, how truly I know not, not past a third part of Britain; and that part of soil or territory which is comprehended under the name of England, is two parts of Britain, leaving to speak of any difference of wealth or population, and speaking only of quantity. So then if, for example, Scotland should bring to parliament as much nobility as England, then a third part should countervail two parts; *nam si mo qualiter aequalia addas, omnia erant inaequalia*. And this, I protest before God and your majesty, I do speak not as a man born in England, but as a man born in Britain. And therefore to descend to the particulars:

For the parliaments, the consideration of that point will fall into four questions.

1. Parliament. 1. The first, what proportion shall be kept between the votes of England and the votes of Scotland?

2. The second touching the manner of proposition, or possessing of the parliament of causes there to be handled; which in England is used to be done immediately by any member of the parliament, or by the prolocutor; and in Scotland is used to be done immediately by the lords of the articles; whereof the one form seemeth to have more liberty, and the other more gravity and maturity: and therefore the question will be, whether of these shall yield to other, or whether there should not be a mixture of both, by some commissions precedent to every parliament, in the nature of lords of the articles, and yet not excluding the liberty of propounding in full parliament afterwards?

3. The third, touching the orders of parliament, how they may be compounded, and the best of either taken?

4. The fourth, how those, which by inheritance or otherwise have officers of honour and ceremony in both the parliaments, as the lord steward with us, *etc.* may be satisfied, and duplicity accommodated?

2. Councils of state.

For the councils of state, while the kingdoms stand divided, it should seem necessary to continue several councils; but if your majesty should proceed to a strict union, then howsoever your majesty may establish some provincial councils in Scotland, as there is here of York, and in the marches of Wales, yet the question will be, whether it will not be more convenient for your majesty, to have but one privy council about your person, whereof the principal officers of the crown of Scotland to be for dignity sake, howsoever their abiding and remaining may be as your majesty shall employ their service? But this point belongeth merely and wholly to your majesty's royal will and pleasure.

3. Officers of the crown.

For the officers of the crown, the consideration thereof will fall into these questions.

First, in regard of the latitude of your kingdom and the distance of place, whether it will not be matter of necessity to continue the several officers, because of the impossibility for the service to be performed by one?

The second, admitting the duplicity of officers should be continued, yet whether there should not be a difference, that one should be the principal officer, and the other to be but special and subaltern? as for example, one to be chancellor of Britain, and the other to be chancellor with some special addition, as here of the duchy, *etc.*

The

The third, if no such specialty or inferiority be thought fit, then whether both officers should not have the title and the name of the whole island and precincts? as the lord Chancellor of England to be lord Chancellor of Britain, and the lord Chancellor of Scotland to be lord Chancellor of Britain, but with several provisos that they shall not intromit themselves but within their several precincts.

For the nobilities, the consideration thereof will fall into these questions.

4. Nobilities.

The first, of their votes in parliament, which was touched before, what proportion they shall bear to the nobility of England? wherein if the proportion which shall be thought fit, be not full, yet your majesty may, out of your prerogative, supply it; for although you cannot make fewer of Scotland, yet you may make more of England.

The second is touching the place and precedence wherein to marshal them according to the precedence of England in your majesty's stile, and according to the nobility of Ireland; that is, all English earls first, and then Scottish, will be thought unequal for Scotland. To marshal them according to antiquity, will be thought unequal for England. Because I hear their nobility is generally more ancient: and therefore the question will be, whether the most indifferent way were not to take them interchangeably; as for example, first, the ancient earl of England; and then the ancient earl of Scotland, and so *alternis vicibus*?

For the laws, to make an entire and perfect union, it is a matter of great difficulty and length, both in the collecting of them, and in the passing of them. For first, as to the collecting of them, there must be made by the lawyers of either nation a digest under titles of their several laws and customs, as well common laws as statutes, that they may be collated and compared, and that the diversities may appear and be discerned of. And for the passing of them, we see by experience that *patrius mos* is dear to all men, and that men are bred and nourished up in the love of it; and therefore how harsh changes and innovations are. And we see likewise what disputation and argument the alteration of some one law doth cause and bring forth, how much more the alteration of the whole corps of the law? Therefore the first question will be, whether it be not good to proceed by parts, and to take that that is most necessary, and leave the rest to time? The parts therefore or subject of laws, are for this purpose fitliest distributed according to that ordinary division of criminal and civil, and those of criminal causes into capital and penal.

5. Laws.

The second question therefore is, allowing the general union of laws to be too great a work to embrace, whether it were not convenient that cases capital were the same in both nations; I say the cases, I do not speak of the proceedings or trials; that is to say, whether the same offences were not fit to be made treason or felony in both places?

The third question is, whether cases penal, though not capital, yet if they concern the public state, or otherwise the discipline of manners, were not fit likewise to be brought into one degree, as the case of misprision of treason, the case of *praemunire*, the case of fugitives, the case of incest, the case of simony, and the rest?

But the question that is more urgent than any of these is, whether these cases at the least, be they of an higher or inferior degree, wherein the fact committed, or act done in Scotland, may prejudice the state and subjects of England, or *e converso*, are not to be reduced into one uniformity of law and punishment?

As

As for example, a perjury committed in a court of justice in Scotland, cannot be prejudicial in England, because depositions taken in Scotland cannot be produced and used here in England. But a forgery of a deed in Scotland, I mean with a false date of England, may be used and given in evidence in England. So likewise the depopulating of a town in Scotland doth not directly prejudice the state of England: but if an English merchant shall carry silver and gold into Scotland, as he may, and thence transport it into foreign parts, this prejudiceth the state of England, and may be an evasion to all the laws of England ordained in that case; and therefore had need to be bidded with as severe a law in Scotland, as it is here in England.

Of this kind there are many laws.

The law of the 5th of Richard II. of going over without licence, if there be not the like law in Scotland, will be frustrated and evaded: for any subject of England may go first into Scotland, and thence into foreign parts.

So the laws prohibiting transportation of sundry commodities, as gold and silver, ordnance, artillery, corn, *etc.* if there be not a correspondence of laws in Scotland, will in like manner be eluded and frustrated; for any English merchant or subject may carry such commodities first into Scotland, as well as he may carry them from port to port in England; and out of Scotland into foreign parts, without any peril of law.

So libels may be devised and written in Scotland, and published and scattered in England.

Treasons may be plotted in Scotland and executed in England.

And so in many other cases, if there be not the like severity of law in Scotland to restrain offences that there is in England, whereof we are here ignorant whether there be or no, it will be a gap or stop even for English subjects to escape and avoid the laws of England.

But for treasons, the best is that by the statute of 26 K. Henry VIII. *cap.* 13. any treason committed in Scotland, may be proceeded with in England, as well as treasons committed in France, Rome, or elsewhere.

6. Court of
justice and
administration
of law.

For courts of justice, trials, processess, and other administration of laws, to make any alteration in either nation, it will be a thing so new and unwonted to either people, that it may be doubted it will make the administration of justice, which of all other things ought to be known and certain as a beaten way, to become intricate and uncertain. And besides, I do not see that the severalty of administration of justice, though it be by court sovereign of last resort, I mean without appeal or error, is any impediment at all to the union of a kingdom: as we see by experience in the several courts of parliament in the kingdom of France. And I have been always of opinion, that the subjects of England do already fetch justice somewhat far off, more than in any nation that I know, the largeness of the kingdom considered, though it be holpen in some part by the circuits of the judges; and the two councils established at York, and in the marches of Wales.

But it may be a good question, whether, as *commune vinculum* of the justice of both nations, your majesty should not erect some court about your person, in the nature of the grand council of France: to which court you might, by way of evocation, draw causes from the ordinary judges of both nations; for so doth the French king from all the courts of parliament in France; many of which are more remote from Paris than any part of Scotland is from London.

For

For receipts and finances, I see no question will arise, in regard it will be matter of necessity to establish in Scotland a receipt of treasure for payments and erogations to be made in those parts: and for the treasure of spare, in either receipts, the custodies thereof may well be several; considering by your majesty's commandment they may be at all times removed or disposed according to your majesty's occasions.

7. Receipts, Finances, and Patrimonies of the Crown.

For the patrimonies of both crowns, I see no question will arise, except your majesty would be pleased to make one compounded annexation, for an inseparable patrimony to the crown out of the lands of both nations: and so the like for the principality of Britain, and for other appennages of the rest of your children; erecting likewise such duchies and honours, compounded of the possessions of both nations, as shall be thought fit.

For admiralty or navy, I see no great question will arise; for I see no inconvenience for your majesty to continue shipping in Scotland. And for the jurisdictions of the admiralties, and the profits and casualties of them, they will be respective unto the coasts, over-against which the seas lie and are situated; as it is here with the admiralties of England.

8. Admiralty, Navy, and Merchandising.

And for merchandising, it may be a question, whether that the companies of the merchant adventurers, of the Turkey merchants, and the Muscovy merchants, if they shall be continued, should not be compounded of merchants of both nations, English and Scottish. For to leave trade free in the one nation, and to have it restrained in the other, may percase breed some inconvenience.

For freedoms and liberties, the charters of both nations may be reviewed; and of such liberties as are agreeable and convenient for the subjects and people of both nations, one great charter may be made and confirmed to the subjects of Britain; and those liberties which are peculiar or proper to either nation, to stand in state as they do.

9. Freedoms and Liberties.

But for imposts and customs, it will be a great question how to accommodate them and reconcile them: for if they be much easier in Scotland, than they be here in England, which is a thing I know not, then this inconvenience will follow; that the merchants of England may unlade in the ports of Scotland: and this kingdom to be served from thence, and your majesty's customs abated.

10. Taxes and Imposts.

And for the question, whether the Scottish merchants should pay strangers custom in England? that resteth upon the point of naturalization, which I touched before.

Thus have I made your majesty a brief and naked memorial of the articles and points of this great cause, which may serve only to excite and stir up your majesty's royal judgment, and the judgment of wiser men whom you will be pleased to call to it: wherein I will not presume to persuade or dissuade any thing; nor to interpose mine own opinion, but do expect light from your majesty's royal directions; unto the which I shall ever submit my judgment, and apply my travails. And I most humbly pray your majesty, in this which is done to pardon my errors, and to cover them with my good intention and meaning, and desire I have to do your majesty service, and to acquit the trust that was reposed in me, and chiefly in your majesty's benign and gracious acceptation.

THE MOST HUMBLE
CERTIFICATE or RETURN
 OF THE
 Commissioners of ENGLAND and SCOTLAND,
 Authorized to treat of
 An UNION for the Weal of both Realms:

2 JAC. I. [Prepared, but altered.]

WE the commissioners for England and Scotland respectively named and appointed, in all humbleness do signify to his most excellent majesty, and to the most honourable high courts of parliament of both realms, that we have assembled ourselves, consulted and treated according to the nature and limits of our commission; and forasmuch as we do find that hardly within the memory of all times, or within the compass of the universal world, there can be shewed forth a fit example or precedent of the work we have in hand concurring in all points material, we thought ourselves so much the more bound to resort to the infallible and original grounds of nature and common reason, and freeing ourselves from the leading or misleading of examples, to insist and fix our considerations upon the individual business in hand, without wandering or discourses.

It seemed therefore unto us a matter demonstrative by the light of reason, that we were in first place to begin with the remotion and abolition of all manner of hostile, envious, or malign laws on either side, being in themselves mere temporary, and now by time become directly contrary to our present most happy estate; which laws, as they are already dead in force and vigour, so we thought fit now to wish them buried in oblivion; that by the utter extinguishment of the memory of discords past, we may avoid all seeds of relapse into discords to come.

Secondly, as matter of nature not unlike the former, we entered into consideration of such limited constitutions as served but for to obtain a form of justice between subjects under several monarchs, and did in the very grounds and motive of them presuppose incursions, and intermixture of hostility: all which occasions, as they are in themselves now vanished and done away, so we wish the abolition and cessation thereof to be declared.

Thirdly, for so much as the principal degree to union is communion and participation of mutual commodities and benefits, it appeared to us to follow next in order, that the commerce between both nations be set open and free, so as the commodities and provisions of either may pass and flow to and fro, without any stops or obstructions, into the veins of the whole body, for the better

sustenta-

CERTIFICATE TOUCHING THE UNION.

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sustentation and comfort of all the parts: with caution nevertheless, that the vital nourishment be not so drawn into one part, as it may endanger a consumption and withering of the other.

Fourthly, after the communion and participation by commerce, which can extend but to the transmission of such commodities as are moveable, personal, and transitory, there succeeded naturally that other degree, that there be made a mutual endowment and donation of either realm towards other of the abilities and capacities to take and enjoy things which are permanent, real, and fixed; as namely, freehold and inheritance, and the like: and that as well the internal and vital veins of blood be opened from interruption and obstruction in making pedigree, and claiming by descent, as the external and elemental veins of passage and commerce; with reservation nevertheless unto the due time of such abilities and capacities only, as no power on earth can confer without time and education.

And lastly, because the perfection of this blessed work consisteth in the union, not only of the solid parts of the estate, but also in the spirit and sinews of the same, which are the laws and government, which nevertheless are already perfectly united in the head, but require a further time to be united in the bulk and frame of the whole body; in contemplation hereof we did conceive that the first step thereunto was to provide, that the justice of either realm should aid and assist, and not frustrate and interrupt the justice of the other, specially in sundry cases criminal; so that either realm may not be abused by malefactors as a sanctuary or place of refuge, to avoid the condign punishment of their crimes and offences.

All which several points, as we account them, summed up and put together, but as a degree or middle term to the perfection of this blessed work; so yet we conceived them to make a just and fit period for our present consultation and proceeding.

And for so much as concerneth the manner of our proceedings, we may truly make this attestation unto ourselves, that as the mark we shot at was union and unity, so it pleased God in the handling thereof to bless us with the spirit of unity, insomuch as from our first sitting unto the breaking up of our assembly, a thing most rare, the circumstance of the cause and persons considered, there did not happen or intervene, neither in our debates or arguments, any manner of altercation or strife of words; nor in our resolutions any variety or division of votes, but the whole passed with an unanimity and uniformity of consent: and yet so, as we suppose, there was never in any consultation greater plainness and liberty of speech, argument and debate, replying, contradicting, recalling any thing spoken where cause was, expounding any matter ambiguous or mistaken; and all other points of free and friendly interlocution and conference, without cavillations, advantages, or overtakings: a matter that we cannot ascribe to the skill or temper of our own carriage, but to the guiding and conducting of God's holy providence and will, the true author of all unity and agreement. Neither did we, where the business required, rest so upon our own sense and opinions, but we did also aid and assist ourselves, as well with the reverend opinion of judges and persons of great science and authority in the laws, and also with the wisdom and experience of merchants, and men expert in commerce. In all which our proceedings, notwithstanding, we are so far from pretending or aiming at any prejudication, either of his royal majesty's sovereign and high wisdom, which we do most dutifully acknowledge to be

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able to pierce and penetrate far beyond the reach of our capacities; or of the solid and profound judgment of the high courts of parliament of both realms, as we do in all humbleness submit our judgments and doings to his sacred majesty, and to the parliaments, protesting our sincerity, and craving gracious and benign construction and acceptation of our travails.

We therefore with one mind and consent have agreed and concluded, that there be propounded and presented to his majesty and the parliament of both realms, these articles and propositions following.



A

S P E E C H

USED BY

Sir FRANCIS BACON, Knight,

In the Honourable House of Commons, quinto JACOBI,

Concerning the Article of the

GENERAL NATURALIZATION

OF THE

SCOTISH NATION.

IT may please you, Mr. Speaker, preface I will use none, but put myself upon your good opinion, to which I have been accustomed beyond my deservings; neither will I hold you in suspense what way I will choose, but now at the first declare myself, that I mean to counsel the house to naturalize this nation: wherein, nevertheless, I have a request to make unto you, which is of more efficacy to the purpose I have in hand than all that I shall say afterwards. And it is the same request, which Demosthenes did more than once, in great causes of estate, make to the people of Athens, that when they took into their hands the balls, whereby to give their voices, according as the manner of them was, they would raise their thoughts, and lay aside those considerations which their private vocations and degrees might minister and represent unto them, and would take upon them cogitations and minds agreeable to the dignity and honour of the estate.

For, Mr. Speaker, as it was aptly and sharply said by Alexander to Parmenio, when upon their recital of the great offers which Darius made, Parmenio said unto him, *I would accept these offers, were I as Alexander*: he turned it upon him again, *So would I, saith he, were I as Parmenio*. So in this cause, if an honest English merchant, I do not single out that state in disgrace, for this island ever held it honourable, but only for an instance of a private profession, if an English merchant should say, "Surely I would proceed no farther in the union, were I as the king;" it might be reasonably answered, "No more would the king, were he as an English merchant." And the like may be said of a gentleman in the country, be he never so worthy or sufficient; or of a lawyer, be he never so wise or learned; or of any other particular condition of men in this kingdom: for certainly,

Mr.

Mr. Speaker, if a man shall be only or chiefly sensible of those respects which his particular vocation and degree shall suggest and infuse into his brain, and not enter into true and worthy considerations or ellare, he shall never be able ought to give counsel, or take counsel in this matter. So that if this request be granted, I account the cause obtained.

But to proceed to the matter itself: all consultations do rest upon questions comparative; for when a question is *de vero*, it is simple, for there is but one truth; but when a question is *de bono*, it is for the most part comparative; for there be differing degrees of good and evil, and the best of the good is to be preferred and chosen, and the worst of the evil is to be declined and avoided; and therefore in questions of this nature you may not look for answer proper to every inconvenience alleged; for somewhat that cannot be especially answered may, nevertheless, be encountered and over-weighed by matter of greater moment; and therefore the matter which I shall set forth unto you, will naturally receive the distribution of three parts.

The answer
to the
verbo
proposed
concerning the
naturalization
of
foreigners

First, an answer to those inconveniencies which have been alleged to ensue, if we should give way to this naturalization; which, I suppose, you will not find to be so great as they have been made; but that much doth is put into the balance to help to make weight.

Secondly, an encounter against the remainder of these inconveniencies which cannot properly be answered, by much greater inconveniencies, which we shall incur if we do not proceed to this naturalization.

Thirdly, an encounter likewise, but of another nature, that is, by the gain and benefit which we shall draw and purchase to ourselves by proceeding to this naturalization. And yet, to avoid confusion, which ever followeth upon too much generality, it is necessary for me, before I proceed to persuasion, to use some distribution of the points or parts of naturalization, which certainly can be no better, or none other, than the ancient distinction of *jus civitatis, jus suffragii vel tribus, et jus petitionis sive honoris*: for all ability and capacity is either of private interest of *meum et tuum*, or of public service; and the public consisteth chiefly either in voice, or in office. Now it is the first of these, Mr. Speaker, that I will only handle at this time and in this place, and refer the other two for a committee, because they receive more distinction and restriction.

To come therefore to the inconveniencies alleged on the other part, the first of them is, that there may ensue of this naturalization a surcharge of people upon this realm of England, which is supposed already to have the full charge and content; and therefore there cannot be an admission of the adoptive without a diminution of the fortunes and conditions of those that are native subjects of this realm. A grave objection, Mr. Speaker, and dutiful; for it proceeds not of any unkindness to the Scottish nation, but of a natural fastness to ourselves; for that answer of the virgins, *Ne forte non sufficiat vobis et nobis*, proceeded not out of any envy or malign humour, but out of providence, and the original charity which begins with ourselves. And I must confess, Mr. Speaker, that as the gentleman said, when Abraham and Lot, in regard of the greatness of their families, grew pent and straitned, it is true, that, though they were brethren, they grew to difference, and to those words, *Vade tu ad dexteram, et ego ad sinistram, etc.* But, certainly, I should never have brought that example on that side; for we see what followed of it, how that this separation *ad dexteram et ad sinistram* caused the miserable

miserable captivity of the one brother, and the dangerous, though prosperous war of the other, for his rescue and recovery.

But to this objection, Mr. Speaker, being so weighty and so principal, I mean to give three several answers, every one of them being, to my understanding, by itself sufficient.

The first is, that this opinion of the number of the Scottish nation, that should be likely to plant themselves here amongst us, will be found to be a thing rather in conceit than in event; for, Mr. Speaker, you shall find those plausible similitudes, of a tree that will thrive the better if it be removed into the more fruitful soil; and of sheep or cattle, that if they find a gap or passage open will leave the more barren pasture, and get into the more rich and plentiful, to be but arguments merely superficial, and to have no sound resemblance with the transplanting or transferring of families; for the tree, we know, by nature, as soon as it is set in the better ground, can fasten upon it, and take nutriment from it; and a sheep, as soon as he gets into the better pasture, what should let him to graze and feed? But there belongeth more, I take it, to a family or particular person, that shall remove from one nation to another: for if, Mr. Speaker, they have not stock, means, acquaintance, and custom, habitation, trades, countenance, and the like, I hope you doubt not but they will starve in the midst of the rich pasture, and are far enough off from grazing at their pleasure: and therefore in this point, which is conjectural, experience is the best guide; for the time past is a pattern of the time to come. I think no man doubteth, Mr. Speaker, but his majesty's first coming in was the greatest spring-tide for the confluence and entrance of that nation. Now I would fain understand, in these four years space, and in the fulness and strength of the current and tide, how many families of the Scotfmen are planted in the cities, boroughs and towns of this kingdom; for I do assure myself, that, more than some persons of quality about his majesty's person here at the court, and in London, and some other inferior persons, that have a dependence upon them, the return and certificate, if such a survey should be made, would be of a number extremely small: I report me to all your private knowledges of the places where you inhabit.

Now, Mr. Speaker, as I said, *Si in ligno vituli ita fit, quid fiet in arido?* I am sure there will be no more such spring tides. But you will tell me of a multitude of families of the Scottish nation in Polonia; and if they multiply in a country so far off, how much more here at hand? For that, Mr. Speaker, you must impute it of necessity to some special accident of time and place that draws them thither: for you see plainly before your eyes, that in Germany, which is much nearer, and in France, where they are invited with privileges, and with this very privilege of naturalization, yet no such number can be found; so as it cannot either be nearness of place, or privilege of person, that is the cause. But shall I tell you, Mr. Speaker, what I think? Of all the places in the world, near or far off, they will never take that course of life in this kingdom, which they content themselves with in Poland; for we see it to be the nature of all men that they will rather discover poverty abroad, than at home. There is never a gentleman that hath over-reached himself in expence, and thereby must abate his countenance, but he will rather travel, and do it abroad than at home: and we know well they have good high stomachs, and have ever stood in some terms and emulation with us: and therefore they will never live here, except they can live in good fashion. So as I

assure you, Mr. Speaker, I am of opinion that the fear which we now have to admit them, will have like success as that contention had between the nobility and people of Rome for the admitting of a plebeian consul; which whilst it was in passage was very vehement, and mightily stood upon, and when the people had obtained it, they never made any plebeian consul, not in sixty years after: and so will this be for many years, as I am persuaded, rather a matter in opinion and reputation, than in use or effect. And this is the first answer that I give to this main inconvenience pretended, of surcharge of people.

The second answer which I give to this objection, is this: I must have leave to doubt, Mr. Speaker, that this realm of England is not yet peopled to the full; for certain it is, that the territories of France, Italy, Flanders, and some parts of Germany, do in equal space of ground bear and contain a far greater quantity of people, if they were mustered by the poll; neither can I see, that this kingdom is so much inferior unto those foreign parts in fruitfulness, as it is in population; which makes me conceive we have not our full charge. Besides, I do see manifestly among us the badges and tokens rather of scarceness, than of press of people, as drowned grounds, commons, wailes, and the like, which is a plain demonstration, that howsoever there may be an over-swelling throng and press of people here about London, which is most in our eye, yet the body of the kingdom is but thin sown with people: and whosoever shall compare the ruins and decays of ancient towns in this realm, with the erections and augmentations of new, cannot but judge that this realm hath been far better peopled in former times; it may be, in the heptarchy, or otherwise: for generally the rule holdeth, the smaller the state, the greater the population, *pro rata*. And whether this be true or no, we need not seek farther, than to call to our remembrance how many of us serve here in this place for desolate and decayed boroughs.

Again, Mr. Speaker, whosoever looketh into the principles of estate, must hold that it is the mediterrane countries, and not the maritime, which need to fear surcharge of people; for all sea-provinces, and especially islands, have another element besides the earth and soil, for their sustentation. For what an infinite number of people are, and may be, sustained by fishing, carriage by sea, and merchandising? Wherein again I do discover, that we are not at all pinched by multitude of people; for if we were, it were not possible that we should relinquish and resign such an infinite benefit of fishing to the Flemings, as it is well known we do. And therefore I see, that we have wastes by sea, as well as by land; which still is an intallible argument that our industry is not awakened to seek maintenance by any over-great press or charge of people. And lastly, Mr. Speaker, there was never any kingdom in the ages of the world had, I think, so fair and happy a means to issue and discharge the multitude of their people, if it were too great, as this kingdom hath, in regard of that desolate and wasted kingdom of Ireland; which being a country blessed with almost all the dowries of nature, as rivers, havens, woods, quarries, good soil, and temperate climate, and now at last under his majesty blessed also with obedience, doth, as it were, continually call unto us for our colonies and plantations. And so I conclude my second answer to this pretended inconvenience, of surcharge of people.

The third answer, Mr. Speaker, which I give, is this: I demand what is the worst effect that can follow of surcharge of people? Look into all stories, and you shall find it none other than some honourable war for the enlargement of their

borders, which find themselves pent, upon foreign parts; which inconvenience, in a valorous and warlike nation, I know not whether I should term an inconvenience or no; for the saying is most true, though in another sense, *Omne solum ferti patria*. It was spoken indeed of the patience of an exiled man, but it is no less true of the valour of a warlike nation. And certainly, Mr. Speaker, I hope I may speak it without offence, that if we did hold ourselves worthy, whensoever just cause should be given, either to recover our ancient rights, or to revenge our late wrongs, or to attain the honour of our ancestors, or to enlarge the patrimony of our posterity, we should never in this manner forget considerations of amplitude and greatness, and fall at variance about profit and reckonings; fitter a great deal for private persons than for parliaments and kingdoms. And thus, Mr. Speaker, I leave this first objection to such satisfaction as you have heard.

The second objection is, that the fundamental laws of both these kingdoms of England and Scotland are yet divers and several; nay more, that it is declared by the instrument, that they shall so continue, and that there is no intent in his majesty to make innovation in them; and therefore that it should not be seasonable to proceed to this naturalization, whereby to endow them with our rights and privileges, except they should likewise receive and submit themselves to our laws; and this objection likewise, Mr. Speaker, I allow to be a weighty objection, and worthy to be well answered and discussed.

The answer which I shall offer is this: it is true, for my own part, Mr. Speaker, that I wish the Scottish nation governed by our laws; for I hold our laws with some reducement worthy to govern, and it were the world: but this is that which I say, and I desire therein your attention, that, according to true reason of estate, naturalization is in order first and precedent to union of laws; in degree a less matter than union of laws; and in nature separable, not inseparable from union of laws; for naturalization doth but take out the marks of a foreigner, but union of laws make them entirely as ourselves. Naturalization taketh away separation; but union of laws doth take away distinction. Do we not see, Mr. Speaker, that in the administration of the world under the great monarch God himself, that his laws are diverse; one law in spirits, another in bodies; one law in regions celestial, another in elementary; and yet the creatures are all one mass or lump, without any *vacuum* or separation? Do we not likewise see in the state of the church, that amongst people of all languages and lineages there is one communion of saints, and that we are all fellow-citizens and naturalized of the heavenly Jerusalem; and yet nevertheless divers and several ecclesiastical laws, policies, and hierarchies, according to the speech of that worthy father, *In veste varietas fit, fides una non fit?* And therefore certainly, Mr. Speaker, the bond of law is the more special and private bond, and the bond of naturalization the more common and general; for the laws are rather *figura reipublicae* than *forma*, and rather bonds of perfection than bonds of entireness: and therefore we see in the experience of our own government, that in the kingdom of Ireland all our statute laws, since Poyning's law, are not in force; and yet we deny them not the benefit of naturalization. In Jersey and Guernsey and the isle of Man, our common laws are not in force, and yet they have the benefit of naturalization; neither need any man doubt but that our laws and customs must in small time gather and win upon theirs; for here is the seat of the kingdom, whence come the supreme directions of estate: here is the king's person and example, of which the verse saith, *Regis ad exemplum totas*

conpenitur orbis. And therefore it is not possible, although not by solemn and formal act of estates, yet by the secret operation of no long time, but they will come under the yoke of our laws, and so *dabitur tractus pari jugo.* And this is the answer I give to the second objection.

The third objection is, some inequality in the fortunes of these two nations, England and Scotland, by the commixture whereof there may ensue advantage to them and loss to us. Wherein, Mr. Speaker, it is well that this difference or disparity consisteth but in the external goods of fortune; for indeed it must be confessed, that for the goods of the mind and the body, they are *alteri nos*, other ourselves; for to do them but right, we know in their capacity and understanding they are a people ingenious, in labour industrious, in courage valiant, in body hard, active and comely. More might be said, but in commending them we do but in effect commend ourselves; for they are of one piece and continent with us; and the truth is, we are participant both of their virtues and vices. For if they have been noted to be a people not so tractable in government, we cannot, without flattering ourselves, free ourselves altogether from that fault, being a thing indeed incident to all martial people; as we see it evident by the example of the Romans and others; even like unto fierce hories, that though they be of better service than others, yet are they harder to guide and manage.

But for this objection, Mr. Speaker, I purpose to answer it, not by authority of Scriptures, which saith, *Beatius est dare quam accipere*, but by an authority framed and derived from the judgment of ourselves and our ancestors in the same case, as to this point. For, Mr. Speaker, in all the line of our kings none used to carry greater commendation than his majesty's noble progenitor king Edward the first of that name; and amongst his other commendations, both of war and policy, none is more celebrated than his purpose and enterprise for the conquest of Scotland, as not bending his designs to glorious conquests abroad, but to solid strength at home; which, nevertheless, if it had succeeded well, could not but have brought in all those inconveniences of the commixture of a more opulent kingdom with a less, that are now alleged. For it is not the yoke, either of our laws or arms, that can alter the nature of the climate or the nature of the soil; neither is it the manner of the commixture that can alter the matter of the commixture: and therefore, Mr. Speaker, if it were good for us then, it is good for us now, and not to be prized the less because we paid not so dear for it. But a more full answer to this objection I refer over to that which will come after, to be spoken touching surety and greatness.

The fourth objection, Mr. Speaker, is not properly an objection, but rather a pre-occupation of an objection of the other side; for it may be said, and very materially, Whereabout do we contend? The benefit of naturalization is by the law, in as many as have been or shall be born since his majesty's coming to the crown, already settled and invested. There is no more then but to bring the *ante-nati* into the degree of the *post-nati*, that men grown that have well deserved, may be in no worse case than children which have not deserved, and elder brothers in no worse case than younger brothers; so as we stand upon *quiddam*, not *quantum*, being but a little difference of time of one generation from another. To this, Mr. Speaker, it is said by some, that the law is not so, but that the *post-nati* are aliens as the rest. A point that I mean not much to argue, both because it hath been well spoken to by the gentleman that spoke last before me; and because I

do desire in this case and in this place to speak rather of conveniency than of law : only this I will say, that that opinion seems to me contrary to reason of law, contrary to form of pleading in law, and contrary to authority and experience of law. For reason of law, when I meditate of it, methinks the wisdom of the common laws of England well observed, is admirable in the distribution of the benefit and protection of the laws, according to the several conditions of persons, in an excellent proportion. The degrees are four, but bipartite, two of aliens and two of subjects.

The first degree is of an alien born under a king or estate, that is an enemy. If such an one come into this kingdom without safe-conduct, it is at his peril; the law giveth him no protection, neither for body, lands, nor goods; so as if he be slain there is no remedy by any appeal at the party's suit, although his wife were an English woman: marry at the king's suit, the case may be otherwise in regard of the offence to the peace.

The second degree is of an alien that is born under the faith and allegiance of a king or state that is a friend. Unto such a person the law doth impart a greater benefit and protection, that is, concerning things personal, transitory, and moveable, as goods and chattels, contracts and the like, but not concerning freehold and inheritance. And the reason is, because he may be an enemy, though he be not; for the state under the obedience of which he is, may enter into quarrel and hostility; and therefore as the law hath but a transitory assurance of him, so it rewards him but with transitory benefits.

The third degree is of a subject, who having been an alien, is by charter made denizen. To such an one the law doth impart yet a more ample benefit; for it gives him power to purchase freehold and inheritance to his own use, and likewise enables the children born after his denization to inherit. But yet nevertheless he cannot make title or convey pedigree from any ancestor paramount; for the law thinks not good to make him in the same degree with a subject born, because he was once an alien, and so might once have been an enemy: and *nemo subito fingitur*, mens affections cannot be so settled by any benefit, as when from their nativity they are inbred and inherent.

And the fourth degree, which is the perfect degree, is of such a person as neither is enemy, nor could have been enemy in time past; nor can be enemy in time to come; and therefore the law gives unto him the full benefit of naturalization.

Now, Mr. Speaker, if these be the true steps and paces of the law, no man can deny but whosoever is born under the king's obedience, never could *in aliquo puncto temporis* be an enemy, a rebel he might be, but no enemy, and therefore in reason of law is naturalized. Nay, contrariwise, he is bound *jure nativitatis* to defend this kingdom of England against all invaders or rebels; and therefore as he is obliged to the protection of arms, and that perpetually and universally, so he is to have the perpetual and universal benefit and protection of laws, which is naturalization.

For form of pleading, it is true that hath been said, that if a man would plead another to be an alien, he must not only set forth negatively and privatively, that he was born out of the obedience of our sovereign lord the king, but affirmatively, under the obedience of a foreign king or state in particular, which can never be done in this case.

As for authority, I will not press it; you know all what hath been published by the king's proclamation. And for experience of law we see it in the subjects of Ireland, in the subjects of Guernsey and Jersey, parcels of the duchy of Normandy; in the subjects of Calais, when it was English, which was parcel of the crown of France. But, as I said, I am not willing to enter into an argument of law, but to hold myself to point of conveniency, so as for my part I hold all *post-nati* naturalized *ipso jure*; but yet I am far from opinion, that it should be a thing superfluous to have it done by parliament; chiefly in respect of that true principle of estate, *Periculum aditus periculis ad remanentem sunt commendatæ*. It will lift up a sign to all the world of our love towards them, and good agreement with them. And these are, Mr. Speaker, the material objections which have been made on the other side, whereunto you have heard my answers; weigh them in your wisdoms, and so I conclude that general part.

Now, Mr. Speaker, according as I promised, I must fill the other balance in expressing unto you the inconveniences which we shall incur, if we shall not proceed to this naturalization: wherein that inconvenience, which of all others, and alone by itself, if there were none other, doth exceedingly move me, and may move you, is a position of estate, collected out of the records of time, which is this: that whosoever several kingdoms or estates have been united in sovereignty, if that union hath not been fortified and bound in with a farther union, and namely, that which is now in question, of naturalization, this hath followed, that at one time or other they have broken again, being upon all occasions apt to revolt and relapse to the former separation.

Of this assertion the first example which I will set before you, is of that memorable union which was between the Romans and the Latins, which continued from the battle at the lake of Regilla, for many years, unto the consulships. At what time there began, about this very point of naturalization, that war which was called *Bellum sociale*, being the most bloody and pernicious war that ever the Roman state endured: wherein, after numbers of battles and infinite sieges and surprises of towns, the Romans in the end prevailed and mastered the Latins: but as soon as ever they had the honour of the war, looking back into what perdition and confusion they were near to have been brought, they presently naturalized them all. You speak of a naturalization in blood; there was a naturalization indeed in blood.

Let me set before you again the example of Sparta, and the rest of Peloponnesus their associates. The state of Sparta was a nice and jealous state in this point of imparting naturalization to their confederates. But what was the issue of it? After they had held them in a kind of society and amity for divers years, upon the first occasion given, which was no more than the surprise of the castle of Thebes, by certain desperate conspirators in the habit of maskers, there ensued immediately a general revolt and defection of their associates; which was the ruin of their state, never afterwards to be recovered.

Of later times let me lead your consideration to behold the like events in the Kingdom of Arragon; which kingdom was united with Castile and the rest of Spain in the persons of Ferdinando and Isabella, and so continued many years; but yet so as it stood a kingdom severed and divided from the rest of the body of Spain in privileges, and directly in this point of naturalization, or capacity
of

of inheritance. What came of this? Thus much, that now of fresh memory, not past twelve years since, only upon the voice of a condemned man out of the grate of a prison towards the street, that cried, *Eueros*, which is as much as, liberties or privileges, there was raised a dangerous rebellion, which was suppressed with great difficulty with an army royal. After which victory nevertheless, to shun farther inconvenience, their privileges were disannulled, and they were incorporated with the rest of Spain. Upon so small a spark, notwithstanding so long continuance, were they ready to break and sever again.

The like may be said of the states of Florence and Pisa, which city of Pisa being united unto Florence, but not endowed with the benefit of naturalization, upon the first light of foreign assistance, by the expedition of Charles VIII. of France into Italy, did revolt; though it be since again reunited and incorporated.

The same effect we see in the most barbarous government, which shews it the rather to be an effect of nature; for it was thought a fit policy by the council of Constantinople, to retain the three provinces of Transylvania, Wallachia, and Moldavia, which were as the very nurseries of Constantinople, in respect of their provisions, to the end they might be the less waited, only under Waywoods as vassals and homagers, and not under Bashaws, as provinces of the Turkish empire: which policy we see by late experience proved unfortunate, as appeared by the revolt of the same three provinces, under the arms and conduct of Sigismund prince of Transylvania; a leader very famous for a time; which revolt is not yet fully recovered. Whereas we seldom or never hear of revolts of provinces incorporated with the Turkish empire.

On the other part, Mr. Speaker, because it is true what the logicians say, *Opposita iuxta se posita magis clarescunt*: let us take a view, and we shall find that wheresoever kingdoms and states have been united, and that union corroborated by the bond of mutual naturalization, you shall never observe them afterwards upon any occasion of trouble or otherwise, to break and sever again: as we see most evidently before our eyes, in divers provinces of France, that is to say Guienne, Provence, Normandy, Britain, which, notwithstanding the infinite infesting troubles of that kingdom, never offered to break again.

We see the like effect in all the kingdoms of Spain, which are mutually naturalized, as Leon, Castile, Valentia, Andalusia, Granada, and the rest, except Arragon, which held the contrary course, and therefore had the contrary success, as was said, and Portugal, of which there is not yet sufficient trial. And lastly, we see the like effect in our own nation, which never rent asunder after it was once united; so as we now scarce know whether the heptarchy were a true story or a fable. And therefore, Mr. Speaker, when I revolve with myself these examples and others, so lively expressing the necessity of a naturalization to avoid a relapse into a separation; and do hear so many arguments and scruples made on the other side; it makes me think on the old bishop, which, upon a public disputation of certain christian divines with some learned men of the heathen, did extremely press to be heard; and they were loth to suffer him, because they knew he was unlearned, though otherwise an holy and well-meaning man: but at last, with much ado, he got to be heard; and when he came to speak, instead of using argument, he did only say over his belief: but did it with such assurance and constancy, as it did strike the minds of those that heard him more than any argument had done. And so, Mr. Speaker, against all these witty and subtle arguments, I say, that I do

do believe, and I would be sorry to be found a prophet in it, that except we proceed with this naturalization, though perhaps not in his majesty's time, who hath such interest in both nations, yet in the time of his descendents these realms will be in continual danger to divide and break again. Now if any man be of that careless mind, *Mancat nostras ea cura nepotes*; or of that hard mind, to leave things to be tried by the sharpest sword: sure I am, he is not of St. Paul's opinion, who affirmeth, that whosoever useth not fore-sight and provision for his family, is worse than an unbeliever; much more, if we shall not use fore-sight for these two kingdoms, that comprehend in them so many families, but leave things open to the peril of future divisions. And thus have I expressed unto you that inconvenience which, of all others, sinketh deepest with me as the most weighty: neither do there want other inconveniencies, Mr. Speaker, the effects and influence whereof, I fear, will not be adjourned to so long a day as this that I have spoken of: for I leave it to your wisdoms to consider whether you do not think, in case, by the denial of this naturalization, any pique, or alienation, or unkindness, I do not say should be, but should be thought to be, or noised to be between these two nations, whether it will not quicken and excite all the envious and malicious humours, wheresoever, which are now covered, against us, either foreign or at home; and so open the way to practices and other engines and machinations, to the disturbance of this state? As for that other inconvenience of his majesty's engagement into this action, it is too binding and pressing to be spoken of, and may do better a great deal in your minds than in my mouth, or in the mouth of any man else; because, as I say, it doth press our liberty too far. And therefore, Mr. Speaker, I come now to the third general part of my division, concerning the benefits which we shall purchase by this knitting of the knot surer and straiter between these two kingdoms, by the communicating of naturalization: the benefits may appear to be two, the one surety, the other greatness.

Touching surety, Mr. Speaker, it was well said by Titus Quintius the Roman, touching the state of Peloponnesus, that the tortoise is safe within her shell, *Tessudo intra tegumen tuta est*; but if there be any parts that lie open, they endanger all the rest. We know well, that although the state at this time be in a happy peace, yet for the time past, the more ancient enemy to this kingdom hath been the French, and the more late the Spaniard; and both these had as it were their several postern gates, whereby they might have approach and entrance to annoy us. France had Scotland, and Spain had Ireland; for these were the two accessies which did comfort and encourage both these enemies to assail and trouble us. We see that of Scotland is cut off by the union of these two kingdoms, if that it shall be now made constant and permanent; that of Ireland is cut off likewise by the convenient situation of the north of Scotland towards the north of Ireland, where the fore was: which we see, being suddenly closed, hath continued closed by means of this salve; so that as now there are no parts of this state exposed to danger to be a temptation to the ambition of foreigners, but their approaches and avenues are taken away: for I do little doubt but those foreigners which had so little success when they had those advantages, will have much less comfort now that they be taken from them: and so much for surety.

For greatness, Mr. Speaker, I think a man may speak it soberly and without bravery, that this kingdom of England, having Scotland united, Ireland reduced, the sea-provinces of the Low Countries contracted, and shipping maintained, is
one

one of the greatest monarchies, in forces truly esteemed, that hath been in the world. For certainly the kingdoms here on earth have a resemblance with the kingdom of heaven, which our Saviour compareth, not to any great kernel or nut, but to a very small grain, yet such an one as is apt to grow and spread; and such do I take to be the constitution of this kingdom; if indeed we shall refer our counsels to greatness and power, and not quench them too much with the consideration of utility and wealth. For, Mr. Speaker, was it not, think you, a true answer that Solon of Greece made to the rich king Cræsus of Lydia, when he shewed unto him a great quantity of gold that he had gathered together, in ostentation of his greatness and might? But Solon said to him, contrary to his expectation, "Why, Sir, if another come that hath better iron than you, he will be lord of all your gold." Neither is the authority of Machiavel to be despised, who scorneth that proverb of state, taken first from a speech of Mucianus, That moneys are the sinews of wars; and saith, "There are no true sinews of wars, but the very sinews of the arms of valiant men."

Nay more, Mr. Speaker, whosoever shall look into the seminaries and beginnings of the monarchies of the world, he shall find them founded in poverty.

Persia, a country barren and poor, in respect of the Medes, whom they subdued.

Macedon, a kingdom ignoble and mercenary until the time of Philip the son of Amyntas.

Rome had poor and pastoral beginnings.

The Turks, a band of Sarmatian Scythes, that in a vagabond manner made incurfion upon that part of Asia, which is yet called Turcomania; out of which, after much variety of fortune, sprung the Ottoman family, now the terror of the world.

So, we know, the Goths, Vandals, Alans, Huns, Lombards, Normans, and the rest of the northern people, in one age of the world made their descent or expedition upon the Roman empire, and came not, as rovers, to carry away prey, and be gone again; but planted themselves in a number of rich and fruitful provinces, where not only their generations, but their names, remain to this day; witness Lombardy, Catalonia, a name compounded of Goth and Alan, Andalusia, a name corrupted from Vandalitia, Hungaria, Normandy, and others.

Nay, the fortune of the Swisses of late years, which are bred in a barren and mountainous country, is not to be forgotten; who first ruined the duke of Burgundy, the same who had almost ruined the kingdom of France, what time, after the battle near Granfon, the rich jewel of Burgundy, prized at many thousands, was sold for a few pence by a common Swiss, that knew no more what a jewel meant, than did Æsop's cock. And again, the same nation, in revenge of a scorn, was the ruin of the French king's affairs in Italy, Lewis XII. For that king, when he was pressed somewhat rudely by an agent of the Switzers to raise their pensions, brake into words of choler: "What, saith he, will these villains of the mountains put a tax upon me?" Which words lost him his duchy of Milan, and chased him out of Italy.

All which examples, Mr. Speaker, do well prove Solon's opinion of the authority and mastery that iron hath over gold. And therefore, if I shall speak unto you mine own heart, methinks, we should a little disdain that the nation of Spain, which howsoever of late it hath grown to rule, yet of ancient time served many ages; first under Carthage, then under Rome, after under Saracens, Goths, and
others,

OF GENERAL NATURALIZATION.

others, should of late years take unto themselves that spirit as to dream of a monarchy in the west, according to that device, *Video solem orientem in occidente*, only because they have ravished from some wild and unarmed people mines and store of gold; and on the other side, that this island of Britain, seated and manned as it is, and that hath, I make no question, the best iron in the world, that is, the best soldiers in the world, shall think of nothing but reckonings and audits, and *meum et tuum*, and I cannot tell what.

Mr. Speaker, I have, I take it, gone through the parts which I propounded to myself, wherein if any man shall think that I have sung a *placebo*, for mine own particular, I would have him know that I am not so unseen in the world, but that I discern it were much alike for my private fortune to rest a *tacebo*, as to sing a *placebo* in this business: but I have spoken out of the fountain of my heart, *Credidi propter quod locutus sum*: I believed, therefore I spake. So as my duty is performed: the judgment is yours; God direct it for the best.



A

S P E E C H

USED BY

Sir FRANCIS BACON, Knight,

In the Lower House of Parliament.

By Occasion of a Motion concerning the

U N I O N of L A W S.

AND it please you, Mr. Speaker, were it now a time to wish, as it is to advise, no man should be more forward or more earnest than myself in this wish, that his majesty's subjects of England and Scotland were governed by one law: and that for many reasons.

First, Because it will be an infallible assurance that there will never be any relapse in succeeding ages to a separation.

Secondly, *Dulcis tractus pari jugo.* If the draught lie most upon us, and the yoke lie lightest on them, it is not equal.

Thirdly, the qualities, and, as I may term it, the elements of their laws and ours are such, as do promise an excellent temperature in the compounded body: for if the prerogative here be too indefinite, it may be the liberty there is too unbounded; if our laws and proceedings be too prolix and formal, it may be theirs are too informal and summary.

Fourthly, I do discern to my understanding, there will be no great difficulty in this work; for their laws, by that I can learn, compared with ours, are like their language compared with ours: for as their language hath the same roots that ours hath, but hath a little more mixture of Latin and French; so their laws and customs have the like grounds that ours have, with a little more mixture of the civil law and French customs.

Lastly, The mean to this work seemeth to me no less excellent than the work itself: for if both laws shall be united, it is of necessity for preparation and inducement thereunto, that our own laws be reviewed and re-compiled; than the which I think there cannot be a work, that his majesty can undertake in these his times of peace, more politic, more honourable, and more beneficial to his subjects for all ages:

*Pace data terris, animam ad civilia vertit
 Jura suam, legibus tulit justissimus auctor.*

For this continual heaping up of laws without digesting them, maketh but a chaos and confusion, and turneth the laws many times to become but snares for

the people, as it is said in the Scripture, *Pluet super eos laqueos.* Now *Non sunt peiores laquei, quam laquei legum.* And therefore this work I esteem to be indeed a work, rightly to term it, heroical. So that for this good with of union of laws I do consent to the full: And I think you may perceive by that which I have said, that I come not in this to the opinion of others, but that I was long ago settled in it myself: nevertheless as this is moved out of zeal, so I take it to be moved out of time, as commonly zealous motions are, while men are so fast carried on to the end, as they give no attention to the mean: for if it be time to talk of this now, it is either because the business now in hand cannot proceed without it, or because in time and order this matter should be precedent, or because we shall lose some advantage towards this effect so much desired, if we should go on in the course we are about. But none of these three in my judgment are true; and therefore the motion, as I said, unseasonable.

For first, that there may not be a naturalization without an union in laws, cannot be maintained. Look into the example of the church, and the union thereof. You shall see several churches, that join in one faith, one baptism, which are the points of spiritual naturalization, do many times in policy, constitutions, and customs differ: and therefore one of the fathers made an excellent observation upon the two mysteries; the one, that in the gospel the garment of Christ is said to have been without seam; the other, that in the psalm, where the garment of the queen is said to have been of divers colours; and concludeth, *In veste varietas fit, scissura non fit.* So in this case, Mr. Speaker, we are now in hand to make this monarchy of one piece, and not of one colour. Look again into the example of foreign countries, and take that next us of France, and there you shall find that they have this distribution, *pais du droit escrit,* and *pais du droit coutumier.* For Gascoigne, Languedoc, Provence, Dauphiny, are countries governed by the letter or text of the civil law: but the isle of France, Tourain, Berry, Anjou, and the rest, and most of all Brittainy and Normandy, are governed by customs, which amount to a municipal law, and use the civil law but only for grounds, and to decide new and rare cases; and yet nevertheless naturalization passeth through all.

Secondly, That this union of laws should precede the naturalization, or that it should go on *pari passu,* hand in hand, I suppose likewise, can hardly be maintained: but the contrary, that naturalization ought to precede: of which my opinion, as I could yield many reasons, so because all this is but a digression, and therefore ought to be short, I will hold myself now only to one, which is briefly and plainly this; that the union of laws will ask a great time to be perfected, both for the compiling and for the passing. During all which time, if this mark of strangers should be denied to be taken away, I fear it may induce such a habit of strangeness, as will rather be an impediment than a preparation to farther proceeding: for he was a wise man that said, *Opportum magnis conatibus transire rerum,* and in these cases, *non progredi, est regredi.* And like as in a pair of tables, you must put out the former writing before you can put in new; and again, that which you write in, you write letter by letter; but that which you put out, you put out at once: so we have now to deal with the tables of mens hearts, wherein it is in vain to think you can enter the willing acceptance of our laws and customs, except you first put forth all notes either of hostility or foreign condition: and these are to be put out *simul et semel,* at once without gradations: whereas the other points are to be impainted and engraven distinctly and by degrees.

Thirdly,

Thirdly, Whereas it is conceived by some, that the communication of our benefits and privileges is a good hold that we have over them to draw them to submit themselves to our laws, it is an argument of some probability, but yet to be answered many ways. For first, the intent is mistaken, which is not, as I conceive it, to draw them wholly to a subjection to our laws, but to draw both nations to one uniformity of law. Again, to think that there should be a kind of articulate and indented contract, that they should receive our laws to obtain our privileges, it is a matter in reason of estate not to be expected, being that which scarcely a private man will acknowledge, if it come to that whereof Seneca speaketh, *Beneficium accipere est libertatem vendere*. No, but courses of estate do describe and delineate another way, which is, to win them either by benefit or by custom: for we see in all creatures that men do feed them first, and reclaim them after. And so in the first institution of kingdoms, kings did first win people by many benefits and protections, before they prest any yoke. And for custom, which the poet calls *imponere morem*; who doubts but that the seat of the kingdom, and the example of the king resting here with us, our manners will quickly be there, to make all things ready for our laws? And lastly, the naturalization, which is now propounded, is qualified with such restrictions as there will be enough kept back to be used at all times for an adamant of drawing them farther on to our desires. And therefore to conclude, I hold this motion of union of laws very worthy, and arising from very good minds; but yet not proper for this time.

To come therefore to that, which is now in question, it is no more but whether there should be a difference made, in this privilege of naturalization, between the *ante-nati* and the *post-nati*, not in point of law, for that will otherwise be decided, but only in point of convenience; as if a law were now to be made *de novo*. In which question I will at this time only answer two objections, and use two arguments, and so leave it to your judgment.

The first objection hath been, that if a difference should be, it ought to be in favour of the *ante-nati*, because they are persons of merit, service, and proof; whereas the *post-nati* are infants, that, as the Scripture saith, know not the right hand from the left.

This were a good reason, Mr. Speaker, if the question were of naturalizing some particular persons by a private bill; but it hath no proportion with the general case: for now we are not to look to respects that are proper to some, but to those which are common to all. Now then how can it be imagined, but that those which took their first breath since this happy union, inherent in his majesty's person, must be more assured and affectionate to this kingdom, than those generally can be presumed to be, which were sometimes strangers? for *Nemo subito fingitur*: the conversions of minds are not so swift as the conversions of times. Nay in effects of grace, which exceed far the effects of nature, we see St. Paul makes a difference between those he calls Neophytes, that is, newly grafted into christianity, and those that are brought up in the faith. And so we see by the laws of the church, that the children of christians shall be baptized in regard of the faith of their parents: but the child of an ethnic may not receive baptism till he be able to make an understanding profession of his faith.

Another objection hath been made, that we ought to be more provident and reserved to restrain the *post-nati* than the *ante-nati*; because during his majesty's time, being a prince of so approved wisdom and judgment, we need no better cau-

tion than the confidence we may repose in him; but in the future reigns of succeeding ages, our caution must be *in re*, and not *in persona*.

But, Mr. Speaker, to this I answer, that as we cannot expect a prince hereafter less like to err in respect of his judgment; so again, we cannot expect a prince so like to exceed, if I may so term it, in this point of beneficence to that nation, in respect of the occasion. For whereas all princes and all men are won either by merit or conversation, there is no appearance, that any of his majesty's descendents can have either of these causes of bounty towards that nation in so ample degree as his majesty hath. And these be the two objections, which seemed to me most material, why the *post-nati* should be left free, and not be concluded in the same restrictions with the *ante-nati*; whereunto you have heard the answers.

The two reasons, which I will use on the other side, are briefly these; the one, being a reason of common sense; the other, a reason of estate.

We see, Mr. Speaker, the time of the nativity is in most cases principally regarded. In nature, the time of planting and setting is chiefly observed; and we see the astrologers pretend to judge of the fortune of the party by the time of the nativity. In laws, we may not unjustly apply the case of legitimation to the case of naturalization; for it is true, that the common canon-law doth put the *ante-natus* and the *post-natus* in one degree. But when it was moved to the parliament of England, *Barones una voce responderunt, Nolumus leges Angliæ mutare*. And though it must be confessed, that the *ante-nati* and *post-nati* are in the same degree in dignities; yet were they never so in abilities: for no man doubts, but the son of an earl or baron, before his creation or call, shall inherit the dignity, as well as the son born after. But the son of an attainted person, born before the attainder, shall not inherit, as the after born shall, notwithstanding charter of pardon.

The reason of estate is, that any restriction of the *ante-nati* is temporary, and expireth with this generation; but if you make it in the *post-nati* also, you do but in substance pen a perpetuity of separation.

Mr. Speaker, in this point I have been short, because I little expected this doubt, as to point of convenience; and therefore will not much labour, where I suppose there is no greater opposition.

CERTAIN
 CONSIDERATIONS
 TOUCHING THE
 PLANTATIONS
 IN
 IRELAND.

Presented to his MAJESTY, 1606.

To the KING.

IT seemeth, God hath reserved to your majesty's times two works, which amongst the acts of kings have the supreme preeminence; the union, and the plantation of kingdoms. For although it be a great fortune for a king to deliver or recover his kingdom from long continued calamities: yet in the judgment of those that have distinguished of the degrees of sovereign honour, to be a founder of estates or kingdoms, excelleth all the rest. For, as in arts and sciences, to be the first inventor is more than to illustrate or amplify: and as in the works of God, the creation is greater than the preservation; and as in the works of nature, the birth and nativity is more than the continuance: so in kingdoms, the first foundation or plantation is of more noble dignity and merit than all that followeth. Of which foundations there being but two kinds; the first, that maketh one of more; and the second, that maketh one of none: the latter resembling the creation of the world, which was *de nihilo ad quid*; and the former, the edification of the church, which was *de multiplici ad simplex, vel ad unum*. It hath pleased the divine providence, in singular favour to your majesty, to put both these kinds of foundations or regenerations into your hand. The one, in the union of the island of Britain; the other, in the plantation of great and noble parts of the island of Ireland. Which enterprizes happily accomplished, then that which was uttered by one of the best orators, in one of the worst verses, *O fortunatam natam me consule Roman!* may be far more truly and properly applied to your majesty's acts; *natam te rege Britanniam; natam Hiberniam*. For he spake improperly of deliverance and preservation. But in these acts of yours it may be verified more naturally. For indeed unions and plantations are the very nativities or birth-days of kingdoms. Wherein likewise your majesty hath yet a fortune extraordinary and differing from former examples in the same kind. For most part of unions and plantations of kingdoms have been founded in the effusion of blood. But your majesty shall build *in solo puro, et in area pura*, that shall need no sacrifices expiatory for blood; and

OF THE PLANTATIONS IN IRELAND.

and therefore, no doubt, under an higher and more assured blessing. Wherefore, as I adventured, when I was less known and less particularly bound to your majesty, than since by your undeserved favour I have been, to write somewhat touching the union, which your majesty was pleased graciously to accept, and which since I have to my power seconded by my travails, not only in discourse, but in action: so I am thereby encouraged to do the like, touching this matter of plantation; hoping that your majesty will, through the weakness of mine ability, discern the strength of mine affection, and the honest and fervent desire I have to see your majesty's person, name, and times, blessed and exalted above those of your royal progenitors. And I was the rather invited this to do, by the remembrance, that when the lord Chief Justice deceased Popham, served in the place wherein I now serve, and afterwards in the attorney's place; he laboured greatly in the last project, touching the plantation of Munster: which nevertheless, as it seemeth, hath given more light by the errors thereof, what to avoid, than by the direction of the same, what to follow.

First therefore, I will speak somewhat of the excellency of the work; and then, of the means to compass and effect it.

For the excellency of the work, I will divide it into four noble and worthy consequences that will follow thereupon.

The first of the four, is honour; whereof I have spoken enough already were it not that the harp of Ireland puts me in mind of that glorious emblem or allegory, wherein the wisdom of antiquity did figure and shadow out works of this nature. For the poets feigned that Orpheus, by the virtue and sweetness of his harp, did call and assemble the beasts and birds, of their nature savage and wild, to stand about him as in a theatre; forgetting their affections of fierceness, of lust, and of prey; and listening to the tunes and harmonies of the harp; and soon after called likewise the stones and woods to remove, and stand in order about him: which fable was anciently interpreted of the reducing and plantation of kingdoms; when people of barbarous manners are brought to give over and discontinue their customs of revenge and blood, and of dissolute life, and of theft, and rapine; and to give ear to the wisdom of laws and governments; whereupon immediately followed the calling of stones for building and habitation; and of trees for the seats of houses, orchards, and inclosures, and the like. This work therefore, of all other most memorable and honourable, your majesty hath now in hand; especially, if your majesty join the harp of David, in casting out the evil spirit of superstition, with the harp of Orpheus, in casting out desolation and barbarism.

The second consequence of this enterprize, is the avoiding of an inconvenience, which commonly attendeth upon happy times, and is an ill effect of a good cause. The revolution of this present age seemeth to incline to peace, almost generally in these parts; and your majesty's most christian and virtuous affections do promise the same more especially to these your kingdoms. An effect of peace in fruitful kingdoms, where the stock of people, receiving no contumption nor diminution by war, doth continually multiply and increase, must in the end be a surcharge or overflow of people more than the territory can well maintain; which many times, insinuating a general necessity and want of means into all estates, doth turn external peace into internal troubles and seditions. Now what an excellent diversion of this inconvenience is ministred, by God's providence, to your majesty, in this plantation of Ireland? wherein so many families may receive sus-

tentation

tentation and fortunes; and the discharge of them also out of England and Scotland may prevent many seeds of future perturbations: so that it is, as if a man were troubled for the avoidance of water from the place where he hath built his house, and afterwards should advise with himself to cast those waters, and to turn them into fair pools or streams, for pleasure, provision, or use. So shall your majesty in this work have a double commodity, in the avoidance of people here, and in making use of them there.

The third consequence is the great safety that is like to grow to your majesty's estate in general by this act; in discomfiting all hostile attempts of foreigners, which the weakness of that kingdom hath heretofore invited: wherein I shall not need to fetch reasons afar off, either for the general or particular. For the general, because nothing is more evident than that, which one of the Romans said of Peloponnesus: *Testudo intra tegumen tuta est*; the tortoise is safe within her shell: but if she put forth any part of her body, then it endangereth not only the part that is so put forth, but all the rest. And so we see in armour, if any part be left naked, it puts in hazard the whole person. And in the natural body of man, if there be any weak or affected part, it is enough to draw rheums or malign humours unto it, to the interruption of the health of the whole body.

And for the particular, the example is too fresh, that the indisposition of that kingdom hath been a continual attractive of troubles and infestations upon this estate; and though your majesty's greatness doth in some sort discharge this fear, yet with your increase of power it cannot be, but envy is likewise increased.

The fourth and last consequence is the great profit and strength which is like to redound to your crown, by the working upon this unpolished part thereof: whereof your majesty, being in the strength of your years, are like, by the good pleasure of almighty God, to receive more than the first-fruits; and your posterity a growing and springing vein of riches and power. For this island being another Britain, as Britain was said to be another world, is endowed with so many dowries of nature, considering the fruitfulness of the soil, the ports, the rivers, the fishings, the quarries, the woods, and other materials; and specially the race and generation of men, valiant, hard, and active, as it is not easy, no not upon the continent, to find such confluence of commodities, if the hand of man did join with the hand of nature. So then for the excellency of the work, in point of honour, policy, safety, and utility, here I cease.

FOR the means to effect this work, I know your majesty shall not want the information of persons expert and industrious, which have served you there, and know the region: nor the advice of a grave and prudent council of estate here, which know the pulses of the hearts of people, and the ways and passages of conducting great actions: besides that which is above all, which is that fountain of wisdom and universality which is in yourself: yet notwithstanding in a thing of so public a nature, it is not amiss for your majesty to hear variety of opinion: for, as Demosthenes saith well, the good fortune of a prince or state doth sometimes put a good motion into a fool's mouth. I do think therefore the means of accomplishing this work consisteth of two principal parts. The first, the invitation and encouragement of undertakers: the second, the order and policy of the project itself. For as in all engines of the hand, there is somewhat that giveth the motion and force, and the rest serveth to guide and govern the same: so it is in these enterprises

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temples or engines of estate. As for the former of these, there is no doubt, but next unto the providence and finger of God, which writeth these virtuous and excellent desires in the tables of your majesty's heart; your authority and affection is *summa ratio* in this cause: and therefore, the more strongly and fully your majesty shall declare yourself in it, the more shall you animate and quicken the whole proceedings. For this is an action, which as the worthiness of it doth bear it, so the nature of it requireth it to be carried in some height of reputation, and fit, in mine opinion, for pulpits and parliaments, and all places to ring and rebound of it. For that which may seem vanity in some things, I mean matter of fame, is of great efficacy in this case.

But now let me descend to the inferior spheres, and speak what co-operation in the subjects or undertakers may be raised and kindled, and by what means. Therefore to take plain grounds, which are the surest: all men are drawn into actions by three things, pleasure, honour, and profit. But before I pursue these three motives, it is fit in this place to interlace a word or two of the quality of the undertakers; wherein mine opinion simply is, that if your majesty shall make these portions of land, which are to be planted, as rewards or as suits, or as fortunes for those that are in want, and are likeliest to seek them: that they will not be able to go thorough with the charge of good and substantial plantations, but will *deficere in opere medio*; and then this work will succeed, as Tacitus saith, *acribus initiis, sine incurioso*. So that this must rather be an adventure for such as are full, than a setting up of those that are low of means: for those men indeed are fit to perform their undertakings, which were fit to purchase dry reversions after lives or years, or such as were fit to put out money upon long returns.

I do not say, but that I think the undertakers themselves will be glad to have some captains, or men of service intermixed among them for their safety; but I speak of the generality of undertakers, which I wish were men of estate and plenty.

Now therefore it followeth well to speak of the aforefaid three motives. For it will appear the more, how necessary it is to allure by all means undertakers: since those men will be least fit, which are like to be most in appetite of themselves: and those most fit, which are like least to desire it.

First therefore for pleasure: in this region or tract of soil, there are no warm winters, nor orange-trees, nor strange beasts, or birds, or other points of curiosity or pleasure, as there are in the Indies and the like: so as there can be found no foundation made upon matter of pleasure, otherwise than that the very general desire of novelty and experiment in some stirring natures may work somewhat; and therefore it is the other two points, of honour and profit, whereupon we are wholly to rest.

For honour or countenance, if I shall mention to your majesty, whether in wisdom you shall think convenient, the better to express your affection to the enterprise, and for a pledge thereof, to add the earldom of Ulster to the prince's titles, I shall but learn it out of the practice of king Edward I. who first used the like course, as a mean the better to reclaim the country of Wales: and I take it, the prince of Spain hath an addition of a province in the kingdom of Naples. And other precedents I think there are, and it is like to put more life and encouragement into the undertakers.

Also,

Also, considering the large territories which are to be planted, it is not unlike your majesty will think of raising some nobility there; which if it be done merely upon new titles of dignity, having no manner of reference to the old: and if it be done also without putting too many portions into one hand; and lastly, if it be done without any great franchises or commands, I do not see any peril can ensue thereof. As on the other side, it is like it may draw some persons of great estate and means into the action, to the great furtherance and supply of the charges thereof.

And lastly for knighthood, to such persons as have not attained it; or otherwise knighthood, with some new difference and precedence, it may no doubt work with many. And if any man think, that these things which I propound, are *aliquid nimis* for the proportion of this action, I confess plainly, that if your majesty will have it really and effectually performed, mine opinion is, you cannot bestow too much sun-shine upon it. For *lunæ radiis non maturefcit botrus*. Thus much for honour.

For profit, it will consist in three parts:

First, The easy rates that your majesty shall be pleased to give the undertakers of the land they shall receive.

Secondly, The liberties which you may be pleased to confer upon them. When I speak of liberties, I mean not liberties of jurisdiction; as counties palatine, or the like, which as it seemeth hath been the error of the ancient donations and plantations in that country, but I mean only liberties tending to commodity; as liberty to transport any of the commodities growing upon the countries now planted; liberty to import from hence all things appertaining to their necessary use, custom-free; liberty to take timber and other materials in your majesty's woods there, and the like.

The third is, ease of charge; that the whole mass of charge do not rest upon the private purse of the undertakers.

For the two former of these, I will pass them over; because in that project, which with good diligence and providence hath been presented to your majesty by your ministers of that kingdom, they are in mine opinion well handled.

For the third, I will never despair, but that the parliament of England, if it may perceive, that this action is not a flash, but is a solid and settled pursuit, will give aid to a work so religious, so politic, and so profitable. And the distribution of charge, if it be observed, falleth naturally into three kinds of charge, and every of those charges respectively ought to have his proper fountain and issue. For as there proceedeth from your majesty's royal bounty and munificence, the gift of the land, and the other materials; together with the endowment of liberties; and as the charge which is private, as building of houses, stocking of grounds, victual, and the like, is to rest upon the particular undertakers: so whatsoever is public, as building of churches, walling of towns, town-houses, bridges, causeways, or highways, and the like, ought not so properly to lie upon particular persons, but to come from the public estate of this kingdom; to which this work is like to return so great an addition of glory, strength, and commodity.

For the project itself, I shall need to speak the less, in regard it is so considerably digested already for the county of Tyrone: and therefore my labour shall be but in those things wherein I shall either add to, or dissent from that which is set down; which will include five points or articles.

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First, they mention a commission for this plantation : which of all things is most necessary, both to direct, and appease controversies, and the like.

To this I add two propositions : the one, that which perhaps is meant, though not expressed, that the commissioners should for certain times reside and abide in some habitable town in Ireland, near in distance to the country where the plantation shall be ; to the end, both that they may be more at hand, for the execution of the parts of their commission ; and withal it is like, by drawing a concourse of people and tradesmen to such towns, it will be some help and commodity to the undertakers for things they shall stand in need of : and likewise, it will be a more safe place of receipt and store, wherein to unlade and depolite such provisions as are after to be employed.

The second is, that your majesty would make a correspondency between the commission there, and a council of plantation here ; wherein I warrant myself by the precedent of the like council of plantation for Virginia ; an enterprize in mine opinion differing as much from this, as Amadis de Gaul differs from Caesar's Commentaries. But when I speak of a council of plantation, I mean some persons chosen by way of reference, upon whom the labour may rest, to prepare and so report things to the council of estate here, that concern that business. For although your majesty have a grave and sufficient council in Ireland ; from whom, and upon whom, the commissioners are to have assistance and dependence ; yet that supplies not the purpose whereof I speak. For considering, that upon advertisements, as well of the commissioners, as of the council of Ireland itself, there will be many occasions to crave directions from your majesty, and your privy council here, which are busied with a world of affairs ; it cannot but give greater expedition, and some better perfection unto such directions and resolutions, if the matters may be considered of aforehand by such as may have a continual care of the cause. And it will be likewise a comfort and satisfaction to some principal undertakers, if they may be admitted of that council.

Secondly, There is a clause wherein the undertakers are restrained, that they shall execute the plantation in person ; from which I must dissent, if I will consent with the grounds I have already taken. For it is not probable that men of great means and plentiful estate will endure the travel, diseasements, and adventures of going thither in person ; but rather, I suppose, many will undertake portions as an advancement for their younger children or kinsfolks ; or for the sweetness of the expectation of a great bargain in the end, when it is overcome. And therefore, it is like they will employ sons, kinsfolks, servants, or tenants, and yet be glad to have the estate in themselves. And it may be some again will join their purses together, and make as it were a partnership or joint-adventure ; and yet man forth some one person by consent, for the executing of the plantation.

Thirdly, There is a main point, wherein I fear the project made hath too much of the line and compass, and will not be so natural and easy to execute, nor yet so politic and convenient : and that is, that the buildings should be *sparfim* upon every portion ; and the castle or principal house should draw the tenements and farms about it as it were into villages, hamlets, or endships ; and that there should be only four corporate towns for the artificers and tradesmen.

My opinion is, that the buildings be altogether in towns, to be compounded as well of husbandries as of arts. My reasons are,

First,

First, When men come into a country waste, and void of all things necessary for the use of man's life, if they set up together in a place, one of them will the better supply the wants of another: work-folks of all sorts will be the more continually set a work without loss of time; when, if work fail in one place, they may have it fast by; the ways will be made more passable for carriages to those seats or towns, than they can be to a number of dispersed solitary places; and infinite other helps and easements, scarcely to be comprehended in cogitation, will ensue of vicinity and society of people; whereas if they build scattered, as is projected, every man must have a *cornucopia* in himself for all things he must use; which cannot but breed much difficulty, and no less waste.

Secondly, it will draw out of the inhabited country of Ireland provisions and victuals, and many necessities; because they shall be sure of utterance. Whereas in the dispersed habitations, every man must reckon only upon that that he brings with him, as they do in provisions of ships.

Thirdly, the charge of bawnes as they call them, to be made about every castle or house, may be spared, when the habitation shall be congregated into towns.

And lastly, it will be a means to secure the country against future perils, in case of any revolt and defection: for by a slight fortification of no great charge, the danger of any attempts of kierns and sword-men may be prevented; the omission of which point, in the last plantation of Munster, made the work of years to be but the spoil of days. And if any man think it will draw people too far off from the grounds they are to labour, it is to be understood, that the number of the towns be increased accordingly; and likewise, the situation of them be as in the center, in respect of the portions assigned to them: for in the champion countries of England, where the habitation useth to be in towns, and not dispersed, it is no new thing to go two miles off to plough part of their grounds; and two miles compass will take up a good deal of country.

The fourth point, is a point wherein I shall differ from the project rather in quantity and proportion, than in matter. There is allowed to the undertaker, within the five years of restraint, to alien a third part in fee farm, and to demise another third for forty years: which I fear will mangle the portions, and will be but a shift to make money of two parts; whereas, I am of opinion, the more the first undertaker is forced to keep in his own hands, the more the work is like to prosper. For first, the person liable to the state here to perform the plantation, is the immediate undertaker. Secondly, the more his profit dependeth upon the annual and springing commodity, the more sweetness he will find in putting forward manurance and husbanding of the grounds, and therefore is like to take more care of it. Thirdly, since the natives are excluded, I do not see that any persons are like to be drawn over of that condition, as are like to give fines, and undertake the charge of building. For I am persuaded, that the people transported, will consist of gentlemen and their servants, and of labourers and hinds, and not of yeomen of any wealth. And therefore the charge of buildings, as well of the tenements, and of the farms, as of the capital houses themselves, is like to rest upon the principal undertakers. Which will be recompensed in the end to the full, and with much advantage, if they make no long estates or leases. And therefore this article to receive some qualification.

Fifthly, I should think it requisite that men of experience in that kingdom should enter into some particular consideration of the charges and provisions of all

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kinds, that will be incident to the plantation ; to the end, that thereupon some advice may be taken for the furnishing and accommodating them most conveniently, aiding private industry and charge, with public care and order.

Thus I have expressed to your majesty those simple and weak cogitations, which I have had in myself touching this cause, wherein I most humbly desire your pardon, and gracious acceptance of my good affection and attention. For I hold it for a rule, that there belongeth to great monarchs, from faithful servants, not only the tribute of duty, but the oblations of chearfulness of heart. And so I pray the Almighty to bless this great action, with your majesty's care ; and your care with happy success.



A

R E P O R T

MADE BY

Sir FRANCIS BACON, Knight,

In the HOUSE of COMMONS,

Of a speech delivered by the earl of Salisbury in parliament ; and another
speech delivered by the earl of Northampton, at a conference concerning the

Petition of the merchants upon the Spanish Grievances.

[Parliament 5 JACOBI.]

AND it please you, Mr. Speaker, I do not find myself any ways bound to report that which passed at the last conference touching the Spanish grievances, having been neither employed to speak, nor appointed to report in that cause. But because it is put upon me by a silent expectation, grounded upon nothing, that I know, more than that I was observed diligently to take notes ; I am content, if that provision which I made for mine own remembrance may serve this house for a report, not to deny you that sheaf that I have in haste bound up. It is true, that one of his majesty's principal counsellors in causes of estate did use a speech that contained a world of matter ; but how I shall be able to make a globe of that world, therein I fear mine own strength.

His lordship took the occasion of this, which I shall now report, upon the answer which was by us made to the amendments propounded upon the bill of hostile laws ; quitting that business with these few words ; that he would discharge our expectation of reply, because their lordships had no warrant to dispute. Then continuing his speech, he fell into this other cause, and said ; that being now to make answer to a proposition of ours, as we had done to one of theirs, he wished it could be passed over with like brevity. But he did foresee his way, that it would prove not only long, but likewise hard to find, and hard to keep ; this cause being so to be carried, as above all no wrong be done to the king's sovereignty and authority : and in the second place, no misunderstanding do ensue between the two houses. And therefore that he hoped that his words should receive a benign interpretation ; knowing well that pursuit and drift of speech, and multitude of matter, might breed words to pass from him beyond the compass of his intention : and therefore he placed more assurance and caution in the innocency of his own
meaning,

meaning, and in the experience of our favours, than in any his wariness or watchfulness over his own speech.

This respective preface used, his lordship descended to the matter itself; which he divided into three considerations: for he said he would consider of the petition,

First, As it proceeded from the merchants.

Secondly, As from them it was offered to the lower house.

And thirdly, As from the lower house it was recommended to the higher house.

In the first of these considerations there fell out naturally a subdivision into the persons of the petitioners, and the matter and parts of the petition. In the persons of the merchants his lordship made, as I have collected them, in number eight observations, whereof the three first respected the general condition of merchants; and the five following were applied to the particular circumstances of the merchants now complaining.

His lordship's first general observation was, that merchants were of two sorts, the one sought their fortunes, as the verse saith, *per fida, per ignes*; and, as it is said in the same place, *extremos currit mercator ad Indos*; subjecting themselves to weather and tempest; to absence, and, as it were, exile, out of their native countries; to arrest in entrances of war; to foreign injustice and rigour in times of peace; and many other sufferances and adventures. But that there were others that took a more safe, but a less generous course in raising their fortunes. He taxed none, but did attribute much more respect to the former.

The second general observation which his lordship made was, that the complaints of merchants were usually subject to much error, in regard that they spake, for the most part, but upon information; and that carried through many hands; and of matters done in remote parts; so as a false or factious factor might oftentimes make great tragedies upon no great ground. Whereof, towards the end of his speech, he brought an instance of one trading into the Levant, that complained in a vehement and bitter fashion; desiring and pressing some present expostulatory letters touching the same. Whereupon some counsellors, well acquainted with the like heats, and forwardness in complaints, happened to say to him out of conjecture, and not out of any intelligence, "What will you say if your ship, which you complain to be under arrest, be now under sail in way homewards?" Which fell out accordingly; the same person confessing, six days after, to the lords, that she was indeed in her way homewards.

The third general observation which his lordship made was this, in effect; that although he granted that the wealth and welfare of the merchant was not without a sympathy with the general stock and state of a nation, especially an island; yet nevertheless, it was a thing too familiar with the merchant, to make the case of his particular profit, the public case of the kingdom.

There follow the particular observations, which have a reference and application to the merchants that trade to Spain and the Levant; wherein his lordship did first honourably and tenderly acknowledge, that their grievances were great, that they did multiply, and that they do deserve compassion and help; but yet nevertheless, that he must use that loving plainness to them as to tell them, that in many things they were authors of their own miseries. For since the dissolving of the company, which was termed the monopoly, and was set free by the special instance of this house,

house, there hath followed such a confusion and relaxation in order and government amongst them, as they do not only incur many inconveniencies, and commit many errors; but in the pursuit of their own remedies and suits they do it so impolitically, and after such a fashion, as, except lieger ambassadors, which are the eyes of kings in foreign parts, should leave their sentinel, and become merchants' factors and solicitors, their causes can hardly prosper. And, which is more, such is now the confusion in the trade, as shop-keepers and handycraftsmen become merchants there; who being bound to no orders, seek base means, by gifts and bribery, to procure favours at the hands of officers there. So as the honest merchant, that trades like a substantial merchant, and loves not to take servile courses to buy the right due to him by the amity of the princes, can have no justice without treading in their steps.

Secondly, His lordship did observe some improbability that the wrongs should be so great, considering trading into those parts was never greater; whereas if the wrongs and griefs were so intolerable and continual as they propound them and voiced them, it would work rather a general discouragement and coldness of trade in fact, than an earnest and hot complaint in words.

Thirdly, His lordship did observe, that it is a course, howsoever it may be with a good intent, yet, of no small presumption, for merchants upon their particular grievances to urge things tending to a direct war, considering that nothing is more usual in treaties, than that such particular damages and molestations of subjects are left to a form of justice to be righted: and that the more high articles do retain nevertheless their vigour inviolably; and that the great bargain of the kingdom for war and peace may in no wise depend upon such petty forfeitures, no more than in common assurance between man and man it were fit that, upon every breach of covenants, there should be limited a re-entry.

Fourthly, His lordship did observe, in the manner of preferring their petition, they had inverted due order, addressing themselves to the foot, and not to the head. For, considering that they prayed no new law for their relief, and that it concerned matter of inducement to war or peace, they ought to have begun with his majesty; unto whose royal judgment, power, and office did properly belong the discerning of that which was desired, the putting in act of that which might be granted, and the thanks for that which might be obtained.

Fifthly, His lordship did observe, that as they had not preferred their petition as it should be, so they had not pursued their own direction as it was. For having directed their petition to the king, the lords spiritual and temporal, and the commons in parliament assembled, it imported, as if they had offered the like petition to the lords; which they never did: contrary not only to their own direction, but likewise to our conceit, who pre-supposed, as it should seem by some speech that passed from us at a former conference, that they had offered several petitions of like tenor to both houses. So have you now those eight observations, part general, part special, which his lordship made touching the persons of those which exhibited the petition, and the circumstances of the same.

For the matter of the petition itself, his lordship made this division, that it consisteth of three parts.

First, Of the complaints of the wrongs in fact.

Secondly, Of the complaints of the wrongs in law, as they may be truly termed, that is, of the inequality of laws which do regulate the trade.

And

And thirdly, The remedy desired by letters of mart.

The wrongs in fact receive a local distribution of three. In the trade to Spain, in the trade to the West-Indies, and in the trade to the Levant.

Concerning the trade to Spain; although his lordship did use much signification of compassion of the injuries which the merchants received; and attributed so much to their profession and estate, as from such a mouth in such a presence they ought to receive for a great deal of honour and comfort, which kind of demonstration he did interlace throughout his whole speech, as proceeding *ex abundantia cordis*, yet nevertheless he did remember four exculations, or rather extenuations of those wrongs.

The first was, that the injustices complained of were not in the highest degree, because they were delays and hard proceedings, and not inique sentences, or definitive condemnations: wherein I called to mind what I heard a great bishop say, that courts of justice, though they did not turn justice into wormwood by corruption, yet they turned it into vinegar by delays, which soured it. Such a difference did his lordship make, which, no question, is a difference *secundum majus et minus*.

Secondly, His lordship ascribed these delays, not so much to malice or alienation of mind towards us, as to the nature of the people and nation, which is proud and therefore dilatory: for all proud men are full of delays, and must be waited on; and especially to the multitudes and diversities of tribunals and places of justice, and the number of the king's councils, full of referrals, which ever prove of necessity to be deferrals; besides the great distance of territories: all which have made the delays of Spain to come into a by-word through the world. Wherein I think his lordship might allude to the proverb of Italy, *Mi venga la morte di Spagna*, Let my death come from Spain, for then it is sure to be long a coming.

Thirdly, his lordship did use an extenuation of these wrongs, drawn from the nature of man, *nemo subito fugitur*. For that we must make an account, that though the fire of enmity be out between Spain and us, yet it vapoureth: the utter extinguishing whereof must be the work of time.

But lastly, his lordship did fall upon that extenuation, which of all the rest was most forcible; which was, that many of these wrongs were not sustained without some aspersion of the merchants own fault in mismanaging the occasion, which grew chiefly in this manner.

There is contained an article in the treaty between Spain and us, that we shall not transport any native commodities of the Low Countries into Spain; nay more, that we shall not transport any *opificia*, manufactures of the same countries: so that if an English cloth take but a dye in the Low Countries, it may not be transported by the English. And the reason is, because even those manufactures, although the materials come from other places, do yield unto them a profit and sustentation, in regard their people are set on work by them; they have a gain likewise in the price; and they have a custom in the transporting. All which the policy of Spain is to debar them of; being no less desirous to suffocate the trade of the Low Countries, than reduce their obedience. This article the English merchant either doth not or will not understand: but being drawn with his threefold cord of love, hate, and gain, they do venture to transport the Low Country commodities of these natures, and so draw upon themselves these arrests and troubles.

For

For the trade to the Indies, his lordship did discover unto us the state of it to be thus: the policy of Spain doth keep that treasury of theirs under such lock and key, as both confederates, yea, and subjects, are excluded of trade into those countries; insomuch as the French king, who hath reason to stand upon equal terms with Spain, yet nevertheless is by express capitulation debarred. The subjects of Portugal, whom the state of Spain hath studied by all means to content, are likewise debarred: such a vigilant dragon is there that keepeth this golden fleece; yet nevertheless, such was his majesty's magnanimity in the debate and conclusion of the last treaty, as he would never condescend to any article, importing the exclusion of his subjects from that trade; as a prince that would not acknowledge that any such right could grow to the crown of Spain by the donative of the pope, whose authority he disclaimeth; or by the title of a dispersed and punctual occupation of certain territories in the name of the rest; but stood firm to reserve that point in full question to farther times and occasions; so as it is left by the treaty in suspense, neither debarred nor permitted: the tenderness and point of honour whereof was such, as they that went thither must run their own peril. Nay farther, his lordship affirmed, that if yet at this time his majesty would descend to a course of intreaty for the release of the arrests in those parts, and so confess an exclusion, and quit the point of honour, his majesty might have them forthwith released. And yet his lordship added, that the offences and scandals of some had made this point worse than it was, in regard that this very last voyage to Virginia, intended for trade and plantation, where the Spaniard hath no people nor possession, is already become infamed for piracy. Witness Bingley, who first insinuating his purpose to be an actor in that worthy action of enlarging trade and plantations, is become a pirate, and hath been so pursued, as his ship is taken in Ireland, though his person is not yet in hold.

For the trade to the Levant, his lordship opened unto us that the complaint consisted in effect but of two particulars: the one, touching the arrest of a ship called the Trial, in Sicily; the other, of a ship called the Vineyard, in Sardinia. The first of which arrests was upon pretence of piracy: the second, upon pretence of carrying ordnance and powder to the Turk. That process concerning the Trial had been at the merchants instance drawn to a review in Spain, which is a favour of exceeding rare precedent, being directly against the liberties and privileges of Sicily. That of the Vineyard, notwithstanding it be of that nature, as, if it should be true, tendeth to the great dishonour of our nation, whereof hold hath been already taken by the French ambassador residing at Constantinople, who entred into a scandalous expostulation with his majesty's ambassador there, upon that and the like transportations of munition to the Turk, yet nevertheless there is an answer given, by letters from the king's ambassador lieger in Spain, that there shall be some course taken to give reasonable contentment in that cause, as far as may be: in both which ships, to speak truly, the greatest mass of loss may be included; for the rest are mean, in respect of the value of those two vessels. And thus much his lordship's speech comprehended concerning the wrongs in fact.

Concerning the wrongs in law; that is to say, the rigour of the Spanish laws extended upon his majesty's subjects that traffick thither, his lordship gave this answer. That they were no new statutes or edicts devised for our people, or our times; but were the ancient laws of that kingdom: *Suus cuique mos*. And therefore, as travellers must endure the extremities of the climate, and temper of the

A REPORT OF THE

air where they travel; so merchants must bear with the extremities of the laws, and temper of the estate where they trade. Whereunto his lordship added, That even our own laws here in England were not exempted from the like complaints in foreign parts; especially in point of marine causes and depredations, and that same swift alteration of property, which is claimed by the admiralty in case of goods taken in pirates hands. But yet we were to understand thus much of the King of Spain's care and regard of our nation; that he had written his letters to all corregidores, officers of ports, and other his ministers, declaring his will and pleasure to have his majesty's subjects used with all freedom and favour; and with this addition, that they should have more favour when it might be shewed, than any other. Which words, howsoever the effects prove, are not suddenly to be required with peremptory resolutions, till time declare the direct issue.

For the third part of the matter of the petition, which was the remedy sought by letters of mart, his lordship seemed desirous to make us capable of the inconvenience of that which was desired, by setting before us two notable exceptions thereunto: the one, that the remedy was utterly incompetent and vain; the other, that it was dangerous and pernicious to our merchants, and in consequence to the whole state.

For the weakness of the remedy, his lordship wished us to enter into consideration what the remedy was, which the statute of Henry the fifth, which was now sought to be put in execution, gave in this case: which was thus; That the party grieved should first complain to the keeper of the privy seal, and from him should take letters unto the party that had committed the spoil for restitution; and in default of restitution to be made upon such letters served, then to obtain of the chancellor letters of mart or reprisal: which circuit of remedy promised nothing but endless and fruitless delay, in regard that the first degree prescribed was never likely to be effected: it being so wild a chace, as to serve process upon the wrong doer in foreign parts. Wherefore his lordship said, that it must be the remedy of state, and not the remedy of statute, that must do good in this case; which useth to proceed by certificates, attestations, and other means of information; not depending upon a privy seal to be served upon the party, whom haply they must seek out in the West-Indies.

For the danger of the remedy, his lordship directed our considerations to take notice of the proportions of the merchants goods in either kingdom: as that the stock of goods of the Spaniard, which is within his majesty's power and distress, is a trifle; whereas the stock of English goods in Spain is a mass of mighty value. So as if this course of letters of mart should be taken to satisfy a few hot pursuitors here, all the goods of the English subjects in Spain shall be exposed to seizure and arrest; and we have little or nothing in our hands on this side to mend ourselves upon. And thus much, Mr. Speaker, is that which I have collected out of that excellent speech, concerning the first main part, which was the consideration of the petition as it proceeded from the merchants.

There followeth the second part, considering the petition as it was offered in this house. Wherein his lordship, after an affectionate commemoration of the gravity, capacity, and duty, which he generally found in the proceedings of this house, desired us nevertheless to consider with him, how it was possible that the entertaining petitions concerning private injuries, and of this nature, could avoid these three inconveniences: the first, of injustice; the second, of derogation from
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his majesty's supreme and absolute power of concluding war or peace; and the third, of some prejudice in reason of estate.

For injustice, it is plain, and cannot be denied, that we hear but the one part: whereas the rule, *Audi alteram partem*, is not of the formality, but of the essence of justice: which is therefore figured with both eyes shut, and both ears open; because she should hear both sides, and respect neither. So that if we should hap to give a right judgment, it might be *justum*, but not *juste*, without hearing both parties.

For the point of derogation, his lordship said, he knew well we were no less ready to acknowledge than himself, that the crown of England was ever invested, amongst other prerogatives not disputable, of an absolute determination and power of concluding and making war and peace: which that it was no new dotation, but of an ancient foundation in the crown, he would recite unto us a number of precedents in the reigns of several kings, and chiefly of those kings which come nearest his majesty's own worthiness; wherein he said, that he would not put his credit upon cyphers and dates; because it was easy to mistake the year of a reign, or number of a roll, but he would avouch them in substance to be perfect and true, as they are taken out of the records. By which precedents it will appear, that petitions made in parliament to kings of this realm, his majesty's progenitors, intermeddling with matter of war or peace, or inducement thereunto, received small allowance or success, but were always put off with dilatory answers; sometimes referring the matter to their council, sometimes to their letters, sometimes to their farther pleasure and advice, and such other forms; expressing plainly, that the kings meant to reserve matter of that nature entirely to their own power and pleasure.

In the eighteenth year of king Edward I. complaint was made by the commons, against the subjects of the earl of Flanders, with petition of redress. The king's answer was, *Rex nihil aliud potest, quam eodem modo petere*: that is, That the king could do no more but make request to the earl of Flanders, as request had been made to him; and yet nobody will imagine but king Edward the first was potent enough to have had his reason of a count of Flanders by a war; and yet his answer was, *Nihil aliud potest*; as giving them to understand, that the entering into a war was a matter transcendent, that must not depend upon such controversies.

In the fourteenth year of king Edward III. the commons petitioned, that the king would enter into certain covenants and capitulations with the duke of Brabant; in which petition there was also inserted somewhat touching a money matter. The king's answer was, That for that that concerned the monies, they might handle it and examine it; but touching the peace, he would do as to himself seemed good.

In the eighteenth year of king Edward III. the commons petitioned, that they might have the trial and proceeding with certain merchants strangers as enemies to the state. The king's answer was, It should remain as it did till the king had taken farther order.

In the forty-fifth year of king Edward III. the commons complained that their trade with the Latherlings was not upon equal terms, which is one of the points insisted upon in the present petition, and prayed an alteration and reduction. The king's answer was, It shall be so as occasion shall require.

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In the fiftieth year of the same king, the commons petitioned to the king for remedy against the subjects of Spain, as they now do. The king's answer was, That he would write his letter for remedy. Here are letters of request, no letters of grant: *Nihil petat nisi eodem modo petere.*

In the same year the merchants of York petitioned in parliament against the Hollanders, and desired their ships might be stayed both in England and at Calais. The king's answer was; Let it be declared unto the king's council, and they shall have such remedy as is according to reason.

In the second year of king Richard II. the merchants of the sea-coast did complain of divers spoils upon their ships and goods by the Spaniard. The king's answer was, that with the advice of his council he would procure remedy.

His lordship cited two other precedents; the one, in the second year of king Henry IV. of a petition against the merchants of Genoa; the other, in the eleventh year of king Henry VI. of a petition against the merchants of the still-yard, which I omit, because they contain no variety of answer.

His lordship farther cited two precedents concerning other points of prerogative, which are likewise flowers of the crown; the one, touching the king's supremacy ecclesiastical, the other, touching the order of weights and measures. The former of them was in the time of king Richard II. at what time the commons complained against certain encroachments and usurpations of the pope; and the king's answer was, "The king hath given order to his council to treat with the bishops thereof." The other was in the eighteenth year of king Edward I. at which time complaint was made against uneven weights: and the king's answer was, *Vocentur partes ad placita regis, et fiat justitia*: whereby it appeared, that the kings of this realm still used to refer causes petitioned in parliament to the proper places of cognizance and decision. But for the matter of war and peace, as appears in all the former precedents, the kings ever kept it *in suis palatiis*, in the shrines of their own breast, assisted and advised by their council of estate.

Inasmuch as his lordship did conclude his enumeration of precedents with a notable precedent in the seventeenth year of king Richard II. a prince of no such glory nor strength; and yet when he made offer to the commons in parliament that they should take into their considerations matter of war and peace then in hand; the commons, in modesty, excused themselves, and answered, "The commons will not presume to treat of so high a charge." Out of all which precedents his lordship made this inference, that as *dies diem docet*, so by these examples wise men will be admonished to forbear those petitions to princes, which are not likely to have either a welcome hearing, or an effectual answer.

And for prejudice that might come of handling and debating matter of war and peace in parliament, he doubted not, but that the wisdom of this house did conceive upon what secret considerations and motives that point did depend. For that there is no king which will providently and maturely enter into a war, but will first balance his own forces; seek to anticipate confederacies and alliances, revoke his merchants, find an opportunity of the first breach, and many other points; which, if they once do but take wind, will prove vain and fruitless. And therefore that this matter, which is *arcantum imperii*, one of the highest mysteries, must be suffered to be kept within the veil: his lordship adding, that he knew not well whether in that which he had already said out of an extreme desire to give us satisfaction, he had not communicated more particulars than perhaps was requisite.

Nevertheless,

Nevertheless, he confessed, that sometimes parliaments have been made acquainted with matters of war and peace in a generality; but it was upon one of these two motives; when the king and council conceived, that either it was material to have some declaration of the zeal and affection of the people; or else when the king needed to demand moneys and aids for the charge of the wars; wherein if things did sort to war, we were sure enough to hear of it: his lordship hoping that his majesty would find in us no less readiness to support it than to persuade it.

Now, Mr. Speaker, for the last part; wherein his lordship considered the petition, as it was recommended from us to the upper house; his lordship delivered thus much from their lordships; that they would make a good construction of our desires, as those which they conceived did rather spring out of a feeling of the king's strength, and out of a feeling of the subject's wrongs; nay more, out of a wisdom and depth, to declare our forwardness, if need were, to assist his majesty's future resolutions, which declaration might be of good use for his majesty's service, when it should be blown abroad; rather, I say, than that we did in any sort determine by this their overture, to do that wrong to his highness's supreme power, which haply might be inferred by those that were rather apt to make evil than good illations of our proceedings. And yet, that their lordships, for the reasons before made, must plainly tell us, that they neither could nor would concur with us, nor approve the course; and therefore concluded, that it would not be amiss for us, for our better contentment, to behold the conditions of the last peace with Spain, which were of a strange nature to him that duly observes them; no forces recalled out of the Low Countries; no new forces, as to voluntaries, restrained to go thither; so as the king may be in peace, and never a subject in England but may be in war: and then to think thus with ourselves, that that king, which would give no ground in making his peace, will not lose any ground, upon just provocation, to enter into an honourable war. And that in the mean time we should know thus much, that there could not be more forcible negotiation on the king's part, but blows, to procure remedy of those wrongs; nor more fair promises on the king of Spain's part, to give contentment concerning the same; and therefore that the event must be expected.

And thus, Mr. Speaker, have I passed over the speech of this worthy lord, whose speeches, as I have often said, in regard of his place and judgment, are extraordinary lights to this house; and have both the properties of light, that is, conducting, and comforting. And although, Mr. Speaker, a man would have thought nothing had been left to be said, yet I shall now give you account of another speech, full of excellent matter and ornaments, and without iteration: which, nevertheless, I shall report more compendiously, because I will not offer the speech that wrong, as to report it at large, when your minds perchance and attentions are already wearied.

The other earl, who usually doth bear a principal part upon all important occasions, used a speech, first of preface, then of argument. In his preface he did deliver, that he was persuaded that both houses did differ rather in credulity and belief, than in intention and desire: for it might be their lordships did not believe the information so far, but yet desired the reformation as much.

His lordship said farther, that the merchants were a state and degree of persons, not only to be respected, but to be prayed for, and graced them with the best additions; that they were the convoys of our supplies, the vents of our abundance, Neptune's alms-men, and fortune's adventurers. His lordship proceeded and said,
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this question was new to us, but ancient to them; assuring us, that the king did not bear in vain the device of the thistle, with the word, *Nemo me lacessit impune*; and that as the multiplying of his kingdoms maketh him feel his own power; so the multiplying of our loves and affections made him to feel our griefs.

For the arguments or reasons, they were five in number, which his lordship used for satisfying us why their lordships might not concur with us in this petition. The first was the composition of our house, which he took in the first foundation thereof to be merely democratical, consisting of knights of shires and burgessees of towns, and intended to be of those that have their residence, vocation, and employment in the places for which they serve: and therefore to have a private and local wisdom, according to that compass, and so not fit to examine or determine secrets of estate, which depend upon such variety of circumstances; and therefore added to the precedent formerly vouched, of the seventeenth of king Richard II. when the commons disclaimed to intermeddle in matters of war and peace; that their answer was, that they would not presume to treat of so high and variable a matter. And although his lordship acknowledged that there be divers gentlemen, in the mixture of our house, that are of good capacity and insight in matters of estate; yet that was the accident of the person, and not the intention of the place; and things were to be taken in the institution, not in the practice.

His lordship's second reason was, that both by philosophy and civil law *ordinatio belli et pacis est absoluti imperii*, a principal flower of the crown; which flowers ought to be so dear unto us, as we ought, if need were, to water them with our blood: for if those flowers should, by neglect, or upon facility and good affection, wither and fall, the garland would not be worth the wearing.

His lordship's third reason was, that kings did so love to imitate *primum mobile*, as that they do not like to move in borrowed motions: so that in those things that they do most willingly intend, yet they indure not to be prevented by request: whereof he did alledge a notable example in king Edward III. who would not hearken to the petition of his commons, that belought him to make the black prince prince of Wales: but yet, after that repulie of their petition, out of his own mere motion he created him.

His lordship's fourth reason was, that it might be some scandal to step between the king and his own virtue; and that it was the duty of subjects rather to take honours from kings servants and give them to kings, than to take honours from kings and give them to their servants: which he did very elegantly set forth in the example of Joab, who, lying at the siege of Rabbah, and finding it could not hold out, writ to David to come and take the honour of taking the town.

His lordship's last reason was, that it may cast some aspersion upon his majesty; implying, as if the king slept out the sobs of his subjects until he was awaked with the thunderbolt of a parliament.

But his lordship's conclusion was very noble, which was with a protestation, that what civil threats, contestation, art, and argument, can do, hath been used already to procure remedy in this cause; and a promise, that if reason of state did permit, as their lordships were ready to spend their breath in the pleading of that we desire, so they would be ready to spend their bloods in the execution thereof.

This was the substance of that which passed.

A

CERTIFICATE to his MAJESTY,

Touching the projects of Sir STEPHEN PROCTOR relating to the

P E N A L L A W S.

It may please your sacred Majesty,

WITH the first free time from your majesty's service of more present dispatch, I have perused the projects of Sir Stephen Proctor, and do find it a collection of extreme diligence and inquisition, and more than I thought could have met in one man's knowledge. For though it be an easy matter to run over many offices and professions, and to note in them general abuses or deceits; yet, nevertheless, to point at and trace out the particular and covert practices, shifts, devices, tricks, and, as it were, stratagems in the meaner sort of the ministers of justice or public service, and to do it truly and understandingly, is a discovery whereof great good use may be made for your majesty's service and good of your people. But because this work, I doubt not, hath been to the gentleman the work of years, whereas my certificate must be the work but of hours or days, and that it is commonly and truly said, that he that imbraceth much, straineth and holdeth the less, and that propositions have wings, but operation and execution have leaden feet; I most humbly desire pardon of your majesty, if I do for the present only select some one or two principal points, and certify my opinion thereof; reserving the rest as a sheaf by me to draw out, at further time, further matter for your majesty's information for so much as I shall conceive to be fit or worthy the consideration.

For that part therefore of these projects which concerneth penal laws, I do find the purpose and scope to be, not to press a greater rigour or severity in the execution of penal laws; but to repress the abuses in common informers, and some clerks and under-ministers, that for common gain partake with them: for if it had tended to the other point, I for my part should be very far from advising your majesty to give ear unto it. For as it is said in the psalm, *If thou, Lord, should be extreme to mark what is done amiss, who may abide it?* So it is most certain, that your people are so insnared in a multitude of penal laws, that the execution of them cannot be borne. And as it followeth; *But with thee is mercy, that thou mayest be feared:* so it is an intermixture of mercy and justice that will bring you fear and obedience: for too much rigour makes people desperate. And therefore to leave this, which was the only blemish of king Henry VII's reign, and the unfortunate service of Empson and Dudley, whom the people curses rather than any law, brought to overthrow; the other work is a work not only of profit to your majesty, but of piety towards your people. For if it be true in any proportion, that within these five years of your majesty's happy reign, there hath not five hundred pounds benefit come to your majesty by penal laws,

CERTIFICATE TOUCHING

laws, the fines of the Star-chamber, which are of a higher kind, only excepted, and yet, nevertheless, there hath been a charge of at least fifty thousand pounds, which hath been laid upon your people, it were more than time it received a remedy.

This remedy hath been sought by divers statutes, as principally by a statute in 18, and another of 31, of the late queen of happy memory. But I am of opinion that the appointing of an officer proper for that purpose, will do more good than twenty statutes, and will do that good effectually, which these statutes aim at intentionally.

And this I do allow of the better, because it is none of those new superintendencies, which I see many times offered upon pretence of reformation, as if judges did not their duty, or ancient and sworn officers did not their duty and the like: but it is only to set a *custos* or watchman, neither over judges nor clerks, but only over a kind of people that cannot be sufficiently watched or overlooked, and that is, the common promoters or informers; the very awe and noise whereof will do much good, and the practice much more.

I will therefore set down first, what is the abuse or inconvenience, and then what is the remedy which may be expected from the industry of this officer. And I will divide it into two parts, the one, for that that may concern the ease of your people, for with that will I crave leave to begin, as knowing it to be principal in your majesty's intention, and the other for that, that may concern your majesty's benefit.

Concerning the ease of his Majesty's subjects, polled and vexed by common informers.

The abuses or inconveniences.

1. An informer exhibits an information, and in that one information he will put an hundred several subjects of this information. Every one shall take out copies, and every one shall put in his several answer. This will cost perhaps a hundred marks: that done, no farther proceeding. But the clerks have their fees, and the informer hath his dividend for bringing the water to the mill.

It is to be noted, that this vexation is not met with by any statute. For it is no composition, but a discontinuance; and in that case there is no penalty, but costs: and the poor subject will never sue for his costs, lest it awake the informer to revive his information, and so it escapeth clearly.

2. Informers receive pensions of divers persons to forbear them. And this is commonly of principal offenders, and of the wealthiest sort of tradesmen. For if one

The remedies by the industry of the officer.

1. The officer by his diligence finding this case, is to inform the court thereof, who thereupon may grant good costs against the informer, to every of the subjects vexed: and withal not suffer the same informer to revive his information against any of them; and lastly, fine him, as for a misdemeanor and abuse of justice: and by that time a few of such examples be made, they will be soon weary of that practice.

2. This is an abuse that appeareth not by any proceeding in court, because it is before suit commenced, and therefore requireth a particular inquiry.
tradesman

tradesman may presume to break the law, and another not, he will be soon richer than his fellows. As for example, if one draper may use tenters, because he is in fee with an informer, and others not, he will soon outstrip the good tradesman that keeps the law.

And if it be thought strange that any man should seek his peace by one informer, when he lieth open to all, the experience is otherwise: for one informer will bear with the friend of another, looking for the like measure.

And besides, they have devices to get priority of information, and to put in an information *de bene esse*, to prevent others, and to protect their pensioners.

And if it be said this is a pillory matter to the informer, and therefore he will not attempt it; although therein the statute is a little doubtful: yet, if hanging will not keep thieves from stealing, it is not pillory will keep informers from polling.

And herein Sir Stephen addeth a notable circumstance: that they will peruse a trade, as of brewers or victuallers, and if any stand out, and will not be in fee, they will find means to have a dozen informations come upon him at once.

3. The subject is often for the same offence vexed by several informations: sometimes the one informer not knowing of the other; and often by confederacy, to weary the party with charge: upon every of which goeth process, and of every of them he must take copies, and make answers, and so relieve himself by motion of the court if he can; all which multiplieth charge and trouble.

But when it shall be the care and cogitation of one man to overlook informers, these things are easily discovered: for let him but look who they be that the informer calls in question, and hearken who are of the same trade in the same place and are spoken, and it will be easy to trace a bargain.

In this case, having discovered the abuse, he ought to inform the barons of the exchequer, and the king's learned counsel, that by the Star-chamber, or otherwise, such taxers of the king's subjects may be punished.

3. The officer keeping a book of all the informations put in, with a brief note of the matter, may be made acquainted with all informations to come in: and if he find a precedent for the same cause, he may inform some of the barons, that by their order the receiving of the latter may be stayed without any charge to the party at all; so as it appear by the due prosecution of the former, that it is not a suit by collusion to protect the party.

Concerning the King's benefit, which may grow by a moderate prosecution of some penal laws.

The abuses or inconveniencies.

1. After an information is exhibited and answered, for so the statute requires, the

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The remedies.

1. The officer in this point is to perform his greatest service to the

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informers for the most part groweth to composition with the defendant: which he cannot do without peril of the statute, except he have licence from the court, which licence he ought to return by order and course of the court, together with a declaration upon his oath of the true sum that he takes for the composition. Upon which licence so returned, the court is to tax a fine for the king.

This ought to be, but as it is now used, the licence is seldom returned. And although it contain a clause that the licence shall be void, if it be not duly returned; yet the manner is to suggest that they are still in terms of composition, and so to obtain new days, and to linger it on till a parliament and a pardon come.

Also, when the licence is returned, and thereupon the judge or baron to seffe a fine; there is none for the king to inform them of the nature of the offence; of the value to grow to the king if the suit prevail; of the ability of the person, and the like. By reason whereof, the fine that is set is but a trifle, as 20, 30, or 40s. and it runs in a form likewise which I do not well like: for it is *ut parcatur misis*, which purporteth, as if the party did not any way submit himself, and take the composition as of grace of the court, but as if he did justify himself, and were content to give a trifle to avoid charge.

Which point of form hath a shrewd consequence: for it is some ground that the fine is set too weak.

And as for the informer's oath touching his composition, which is commonly a trifle, and is the other ground of the smallness of the fine, it is no doubt taken with an equivocation: as taking such a sum in name of a composition, and some greater matter by some indirect or collateral mean.

Also, these fines, light as they be, are seldom answered and put in process.

2. An information goeth on to trial, and passeth for the king. In this case of

king, in soliciting for the king in such sort as licences be duly returned, the deceits of these fraudulent compositions disallowed, and moneys may be set for the king in some good proportion, having respect to the values both of the matter and the person: for the king's fines are not to be delivered, as moneys given by the party *ad redimendam vexationem*, but as moneys given *ad satisfactionem expensarum factarum legum*; and ought to be in such quantity, as may not make the laws altogether trampled down and contemned. Therefore the officer ought first to be made acquainted with every licence, that he may have an eye to the sequel of it: then ought he to be the person that ought to prefer unto the judges or barons, as well the bills for the taxations of the fines, as the orders for giving further days, to the end that the court may be duly informed both of the weight of causes, and the delays therein used; and lastly, he is to see that the fines seffed be duly put in process, and answered.

2. The officer is to follow for the king, that the fines be returned.

recovery,

recovery, the informer will be satisfied, and will take his whole moiety, for that he accounts to be no composition: that done, none will be at charge to return the *petit*, and to procure judgment and execution for the king. For the informer hath that he sought for, the clerks will do nothing without fees paid, which there being no man to prosecute, there can be no man likewise to pay; and so the king loseth his moiety, when his title appears by verdict.

3. It falleth out sometimes in informations of weight, and worthy to be prosecuted, the informer dieth, or falls to poverty, or his mouth is stopped, and yet so as no man can charge him with composition, and so the matter dieth.

4. There be sundry seizures, made in case where the laws give seizures, which are released by agreements underhand, and so money wrested from the subject, and no benefit to the king.

All seizures once made ought not to be discharged, but by order of the court, and therefore some entry ought to be made of them.

THERE be other points wherein the officer may be of good use, which may be comprehended in his grant or instructions, wherewith I will not now trouble your majesty, for I hold these to be the principal.

Thus have I, according to your majesty's reference, certified my opinion of that part of Sir Stephen Proctor's projects, which concerneth penal laws: which I do wholly and most humbly submit to your majesty's high wisdom and judgment, wishing withal that some conference may be had by Mr. Chancellor and the barons, and the rest of the learned counsel, to draw the service to a better perfection. And most specially, that the travels therein taken may be considered and discerned of by the lord Treasurer, whose care and capacity is such, as he doth always either find or choose that which is best for your majesty's service.

The recompense unto the gentleman, it is not my part to presume to touch, otherwise than to put your majesty in remembrance of that proportion, which your majesty is pleased to give to others out of the profits they bring in, and perhaps with a great deal less labour and charge.

3. The officer in such case is to inform the king's learned counsel, that they may prosecute if they think fit.

4. The officer is to take knowledge of such seizures, and to give information to the court concerning them.

This is of more difficulty, because seizures are matter in fact, whereas suits are matter of record: and it may require more persons to be employed, as at the ports, where is much abuse.

A

S P E E C H used to the K I N G,

B Y

His MAJESTY'S SOLICITOR,

Being chosen by the COMMONS as their Mouth and Messenger, for the
presenting to his Majesty the Instrument or Writing of their

G R I E V A N C E S.

In the Parliament 7 JACOBI.

Most gracious Sovereign,

THE knights, citizens, and burgesſes aſſembled in parliament, in the houſe of your commons, in all humbleneſs do exhibit and preſent unto your moſt ſacred majeſty, in their own words, though by my hand, their petitions and grievances. They are here conceived and ſet down in writing, according to ancient cuſtom of parliament: they are alſo preſaced according to the manner and taſte of theſe later times. Therefore for me to make any additional preface, were neither warranted nor convenient; eſpecially ſpeaking before a king, the exactneſs of whoſe judgment ought to ſcatter and chaſe away all unneceſſary ſpeech as the ſun doth a vapour. This only I muſt ſay; ſince this ſeſſion of parliament we have ſeen your glory in the ſolemnity of the creation of this moſt noble prince; we have heard your wiſdom in ſundry excellent ſpeeches which you have delivered amongſt us: now we hope to find and feel the effects of your goodneſs, in your gracious answer to theſe our petitions. For this we are perſuaded, that the attribute which was given by one of the wiſeſt writers to two of the beſt emperors, *Imperio Neruæ et ſeu Trajani*, ſo ſaith Tacitus, *res omni imperiales miſuerunt, imperium et libertatem*; may be truly applied to your majeſty. For never was there ſuch a conſervator of regality in a crown, nor ever ſuch a protector of lawful freedom in a ſubject.

Only thi, excellent ſovereign, let not the ſound of grievances, though it be ſad, ſeem harſh to your princely ears: it is but *gemitus columbae*, the mourning of a dove: with that patience and humility of heart which appertameth to loving and loyal ſubjects. And far be it from us, but that in the miſt of the ſenſe of our grievances we ſhould remember and acknowledge the infinite benefits, which by your majeſty, next under God, we do enjoy; which bind us to wiſh unto your life
fulneſs

fulness of days ; and unto your line royal a succession and continuance even unto the world's end.

It resteth, that unto these petitions here included I do add one more that goeth to them all : which is, that if in the words and frame of them there be any thing offensive ; or that we have expressed ourselves otherwise than we should or would ; that your majesty would cover it and cast the veil of your grace upon it ; and accept of our good intentions, and help them by your benign interpretation.

Lastly, I am most humbly to crave a particular pardon for myself that have used these few words ; and scarcely should have been able to have used any at all, in respect of the reverence which I bear to your person and judgment, had I not been somewhat relieved and comforted by the experience, which in my service and access I have had of your continual grace and favour.



A

SPEECH of the King's SOLICITOR,

Used unto the Lords at a conference by commission from the Commons, moving and perswading the Lords to join with the Commons in petition to the King, to obtain liberty to treat of a composition with his majesty for

W A R D S and T E N U R E S.

In the Parliament 7 JACOBI.

THE knights, citizens, and burgesſes of the houſe of commons have commanded me to deliver to your lordſhips the cauſes of the conference by them prayed, and by your lordſhips aſſented, for the ſecond buſineſs of this day. They have had report made unto them faithfully of his majeſty's answer declared by my lord Treafurer, touching their humble deſire to obtain liberty from his majeſty to treat of compounding for tenures. And firſt, they think themſelves much bound unto his majeſty, that in *re nova*, in which caſe princes uſe to be apprehenſive, he hath made a gracious conſtruction of their propoſition. And ſo much they know of that, that belongs to the greatneſs of his majeſty and the greatneſs of the cauſe, as themſelves acknowledge they ought not to have expected a preſent reſolution, though the wiſe man ſaith, *Hope deferred is the fainting of the ſoul*. But they know their duty to be to attend his majeſty's times at his good pleaſure. And this they do with the more comfort, becauſe in that his majeſty's answer, matching the times, and weighing the paſſages thereof, they conceive, in their opinion, rather hope than diſcouragement.

But the principal cauſes of the conference now prayed, beſides theſe ſignifications of duty not to be omitted, are two propoſitions. The one, matter of excuſe of themſelves; the other, matter of petition. The former of which grows thus. Your lordſhip, my lord Treafurer, in your laſt declaration of his majeſty's answer, which, according to the attribute then given unto it by a great counſellor, had *imaginem Caefaris* fair and lively graven, made this true and effectual diſtribution, that there depended upon tenures, conſiderations of honour, of conſcience, and of utility. Of theſe three, utility, as his majeſty ſet it by for the preſent, out of the greatneſs of his mind, ſo we ſet it by, out of the juſtneſs of our deſires: for we never meant but a goodly and worthy augmentation of the profit now received, and not a diminution. But, to ſpeak truly, that conſideration falleth naturally to be examined when liberty of treaty is granted: but the former two indeed may exclude treaty, and cut it off before it be admitted.

Nevertheless, in this, that we ſhall ſay concerning thoſe two, we deſire to be conceived rightly: we mean not to diſpute with his majeſty what belongeth to ſove-

reign

reign honour, or his princely conscience; because we know, we are not capable to discern of them otherwise, than as men use to measure the depth of the sea in a pail of water. But this we say for ourselves, God forbid that we, knowingly, should have propounded any thing, that might in our sense and persuasion touch either or both; and therefore herein we desire to be heard, not to inform or persuade his majesty, but to free and excuse ourselves.

And first, in general, we acknowledge, that this tree of tenures was planted into the prerogative by the ancient common law of this land: that it hath been fenced in and preserved by many statutes; and that it yieldeth at this day to the king the fruit of a great revenue. But yet, notwithstanding, if upon the stem of this tree may be raised a pillar of support to the crown permanent and durable as the marble, by investing the crown with a more ample, more certain, and more loving dowry, than this of tenures; we hope we propound no matter of disservice.

But to speak distinctly of both, and first of honour: wherein I pray your lordships, give me leave, in a subject that may seem *supra nos*, to handle it rather as we are capable, than as the matter perhaps may require. Your lordships well know the various mixtures and composition of our house. We have in our house learned civilians that profess a law, that we reverence and sometimes consult with: they can tell us, that all the laws *de feodis* are but additional to the ancient civil law; and that the Roman emperors, in the full height of their monarchy, never knew them; so that they are not imperial. We have grave professors of the common law, who will define unto us that those are parts of sovereignty, and of the regal prerogative, which cannot be communicated with subjects: but for tenures in substance, there is none of your lordships but have them, and few of us but have them. The king indeed hath a priority or first service of his tenures; and some more amplitude of profit in that we call tenure in chief: but the subject is capable of tenures; which shews that they are not regal, nor any point of sovereignty. We have gentlemen of honourable service in the wars both by sea and land, who can inform us, that when it is in question, who shall set his foot foremost towards the enemy: it is never asked, Whether he holds in knight's service or in socage? So have we many deputy lieutenants to your lordships, and many commissioners that have been for musters and levies, that can tell us, that the service and defence of the realm hath in these days little dependence upon tenures. So then we perceive that it is no bond or ligament of government; no spur of honour, no bridle of obedience. Time was, when it had other uses, and the name of knight's service imports it: but *vocabula manent, res fugiunt*. But all this, which we have spoken, we confess to be but in a vulgar capacity; which nevertheless may serve for our excuse, though we submit the thing itself wholly to his majesty's judgment.

For matter of conscience, far be it from us to cast in any thing willingly, that may trouble that clear fountain of his majesty's conscience. We do confess it is a noble protection, that these young birds of the nobility and good families should be gathered and clucked under the wings of the crown. But yet *Naturae vis maxima*: and *Suus cuique discretus sanguis*. Your lordships will favour me, to observe my former method. The common law itself, which is the best bounds of our wisdom, doth, even *in hoc individuo*, prefer the prerogative of the father before the prerogative of the king: for if lands descend, held in chief from an ancestor on the part of a mother, to a man's eldest son, the father being alive, the father shall have the custody of the body, and not the king. It is true, that this

is only for the father, and not any other parent or ancestor : but then if you look to the high law of tutelage and protection, and of obedience and duty, which is the relative thereunto ; it is not said, “ Honour thy father alone,” but *Honour thy father and thy mother*, etc. Again, the civilians can tell us, that there was a special use of the pretorian power for pupils, and yet no tenures. The citizens of London can tell us, there be courts of orphans, and yet no tenures. But all this while we pray your lordships to conceive, that we think ourselves not competent to discern of the honour of his majesty’s crown, or the shrine of his conscience ; but leave it wholly unto him, and alledge these things but in our own excuse.

For matter of petition, we do continue our most humble suit, by your lordship’s loving conjunction, that his majesty will be pleased to open unto us this entrance of his bounty and grace, as to give us liberty to treat. And lastly, we know his majesty’s times are not subordinate at all but to the globe above. About this time the sun hath got even with the night, and will rise apace ; and we know Solomon’s temple, whereof your lordship, my lord Treasurer, spake, was not built in a day : and if we shall be so happy as to take the ax to hew, and the hammer to frame, in this case, we know it cannot be without time ; and therefore, as far as we may with duty, and without importunity, we most humbly desire an acceleration of his majesty’s answer, according to his good time and royal pleasure.



A FRAME OF
 D E C L A R A T I O N
 F O R T H E
 M A S T E R of the W A R D S,
 A T H I S
 F I R S T S I T T I N G.

THE king, whose virtues are such, as if we, that are his ministers, were able duly to correspond unto them, it were enough to make a golden time, hath commanded certain of his intentions to be published, touching the administration of this place, because they are somewhat differing from the usage of former times, and yet not by way of novelty, but by way of reformation, and reduction of things to their ancient and true institution.

Wherein nevertheless it is his majesty's express pleasure it be signified, that he understands this to be done, without any derogation from the memory or service of those great persons, which have formerly held this place, of whose doings his majesty retaineth a good and gracious remembrance, especially touching the sincerity of their own minds.

But now that his majesty meaneth to be as it were master of the wards himself, and that those that he useth be as his substitutes, and move wholly in his motion; he doth expect things be carried in a sort worthy his own care.

First therefore his majesty hath had this princely consideration with himself, that as he is *pater patriae*, so he is by the ancient law of this kingdom *pater pupillorum*, where there is any tenure of knight's service of himself; which extendeth almost to all the great families noble and generous of this kingdom: and therefore being a representative father, his purpose is to imitate, and approach as near as may be to the duties and offices of a natural father, in the good education, well bestowing in marriage, and preservation of the houses, woods, lands, and estates of his wards.

For as it is his majesty's direction, that that part which concerns his own profit and right, be executed with moderation; so on the other side, it is his princely will that that other part, which concerneth protection, be overspread and extended to the utmost.

Wherein his majesty hath three persons in his eye, the wards themselves, idiots, and the rest of like nature; the suitors in this court; and the subjects at large.

For the first, his majesty hath commanded special care be taken in the choice of the persons, to whom they be committed, that the same be found in religion, such whose houses and families are not noted for dissolute, no greedy persons, no step-

DIRECTIONS FOR THE MASTER OF THE WARDS.

mothers, nor the like; and with these qualifications, of the nearest friends: nay further, his majesty is minded not to delegate his trust to the committees, but that he will have once in the year at least, by persons of credit in every county, a view and inspection taken of the persons, houses, woods, and lands of the wards, and other persons under the protection of this court, and certificate to be made thereof accordingly.

For the suitors, which is the second; his majesty's princely care falls upon two points of reformation; the first, that there be an examination of fees, what are due and ancient, and what are new and exacted; and those of the latter kind put down: the other, that the court do not entertain causes too long upon continuances of liveries after the parties are come of full age, which serveth but to waste the parties in suit, considering the decrees cannot be perpetual, but temporary; and therefore controversies here handled, are seldom put in peace, till they have past a trial and decision in other courts.

For the third, which is the subject at large; his majesty hath taken into his princely care the unnecessary vexations of his people by feodaries, and other inferior ministers of like nature, by colour of his tenures; of which part I say nothing for the present, because the parties whom it concerns are for the most part absent: but order shall be given, that they shall give their attendance the last day of the term, then to understand further his majesty's gracious pleasure.

Thus much by his majesty's commandment; now we may proceed to the business of the court.

D I R E C T I O N S

For the MASTER of the WARDS to observe,

For his Majesty's better service, and the general good.

FIRST, that he take an account how his majesty's last instructions have been pursued; and of the increase of benefit accrued to his majesty thereby, and the proportion thereof.

Wherein first in general it will be good to cast up a year's benefit, *viz.* from February 1610, which is the date of the instructions under the great seal, to February 1611; and to compare the total with former years before the instructions, that the tree may appear by the fruit, and it may be seen how much his majesty's profit is redoubled or increased by that course.

Secondly, It will not be amiss to compute not only the yearly benefit, but the number of wardships granted that year, and to compare that with the number of former years; for though the number be a thing casual, yet if it be apparently less than in former years, then it may be justly doubted, that men take advantage upon the last clause in the instructions, of exceptions of wards concealed, to practise delays and misfinding of offices, which is a thing most dangerous.

Thirdly, in particular it behoveth to peruse and review the bargains made, and to consider the rates, mens estates being things which for the most part cannot be hid, and thereby to discern what improvements and good husbandry have been used, and how much the king hath more now when the whole benefit is supposed to go to him, than he had when three parts of the benefit went to the committee.

Fourthly,

Fourthly, It is requisite to take consideration what commissions have been granted for copyholds for lives, which are excepted by the instructions from being leased, and what profit hath been raised thereby.

Thus much for the time past, and upon view of these accounts, *res dabit consilium* for further order to be taken.

For the time to come, first it is fit that the master of the wards, being a meaner person, be usually present as well at the treaty and beating of the bargain, as at the concluding, and that he take not the business by report.

Secondly, when suit is made, the information by survey and commission is but one image, but the way were by private diligence to be really informed: neither is it hard for a person that liveth in an inn of court, where there be understanding men of every county of England, to obtain by care certain information.

Thirdly, This kind of promise of preferring the next akin, doth much obscure the information, which before by competition of divers did better appear; and therefore it may be necessary for the matter of the wards sometimes to direct letters to some persons near the ward living, and to take certificate from them: it being always intended the subject be not racked too high, and that the nearest friends that be found in religion, and like to give the ward good education, be preferred.

Fourthly, That it be examined carefully whether the ward's revenues consist of copyholds for lives, which are not to be comprised in the lease, and that there be no neglect to grant commissions for the same, and that the master take order to be certified of the profits of former courts held by the ward's ancestor, that it may be a precedent and direction for the commissioners.

Fifthly, That the master make account every six months, the state appoints one in the year, to his majesty; and that when he bringeth the bill of grants of the body for his majesty's signature, he bring a schedule of the truth of the state of every one of them, as it hath appeared to him by information, and acquaint his majesty both with the rates and states.

Thus much concerning the improvement of the king's profit, which concerneth the king as *pater familias*; now as *pater patriae*.

First, for the wards themselves, that there be special care taken in the choice of the committee, that he be found in religion, his house and family not dissolute, no greedy person, no step-mother, nor the like.

Further, that there be letters written once every year to certain principal gentlemen of credit in every county, to take view not only of the person of the wards in every county, and their education; but of their houses, woods, grounds, and estate, and the same to certify; that the committees may be held in some awe, and that the blessing of the poor orphans and the pupils may come upon his majesty and his children.

Secondly, for the suitors; that there be a strait examination concerning the raising and multiplication of fees in that court, which is much scandalized with opinion thereof, and all exacted fees put down.

Thirdly, for the subjects at large; that the vexation of escheators and feodaries be repressed, which, upon no substantial ground of record, vex the country with inquisitions and other extortions: and for that purpose that there be one set day at the end of every term appointed for examining the abuses of such inferior officers, and that the master of wards take special care to receive private information from gentlemen of quality and conscience in every shire touching the same.

A

SPEECH of the King's SOLICITOR,

PERSUADING

The HOUSE of COMMONS

To desist from farther question of receiving the

KING'S MESSAGES,

By their Speaker, and from the body of the Council, as well as from
the King's person.

In the Parliament 7 JACOBI.

IT is my desire, that if any the king's business, either of honour or profit, shall pass the house, it may be not only with external prevailing, but with satisfaction of the inward man. For in content, where tongue-strings, not heart-strings, make the music, that harmony may end in discord. To this I shall always bend my endeavours.

The king's sovereignty, and the liberty of parliament, are as the two elements and principles of this estate; which, though the one be more active, the other more passive, yet they do not cross or destroy the one the other; but they strengthen and maintain the one the other. Take away liberty of parliament, the griefs of the subject will bleed inwards: sharp and eager humours will not evaporate; and then they must exulcerate; and so may endanger the sovereignty itself. On the other side, if the king's sovereignty receive diminution, or any degree of contempt with us that are born under an hereditary monarchy, so as the motions of our estate cannot work in any other frame or engine, it must follow, that we shall be a meteor, or *corpus imperfecte mixtum*; which kind of bodies come speedily to confusion or dissolution. And herein it is our happiness, that we may make the same judgment of the king, which Tacitus made of Nerva: *Divus Nerva res olim dissociabiles miscuit, imperium et libertatem*. Nerva did temper things, that before were thought incompatible, or insociable, sovereignty and liberty. And it is not amiss in a great council and a great cause to put the other part of the difference, which was significantly expressed by the judgment which Apollonius made of Nero; which was thus: when Vespasian came out of Judaea towards Italy to receive the empire, as he passed by Alexandria he spake with Apollonius, a man much admired, and asked him a question of state: "What was the cause of Nero's fall or overthrow?" Apollonius answered again, "Nero could tune the harp well: but in government he always either wound up the pins too high, and
" straited

“strained the strings too far; or let them down too low, and slackened the strings too much.” Here we see the difference between regular and able princes, and irregular and incapable, Nerva, and Nero. The one tempers and mingles the sovereignty with the liberty of the subject wisely; and the other doth interchange it, and vary it unequally and absurdly. Since therefore we have a prince of so excellent wisdom and moderation, of whose authority we ought to be tender, as he is likewise of our liberty, let us enter into a true and indifferent consideration, how far forth the case in question may touch his authority, and how far forth our liberty: and, to speak clearly, in my opinion it concerns his authority much, and our liberty nothing at all.

The questions are two: the one, whether our speaker be exempted from delivery of a message from the king without our licence? The other, whether it is not all one whether he receive it from the body of the council, as if he received it immediately from the king? And I will speak of the last first, because it is the circumstance of the present case.

First, I say, let us see how it concerns the king, and then how it concerns us. For the king, certainly, if it be observed, it cannot be denied, but if you may not receive his pleasure by his representative body, which is his council of his estate, you both straiten his majesty in point of conveniency, and weaken the reputation of his council. All kings, though they be Gods on earth, yet, as he said, they are Gods of earth, frail as other men; they may be children; they may be of extreme age; they may be indisposed in health; they may be absent. In these cases, if their council may not supply their persons, to what infinite accidents do you expose them? Nay more, sometimes in policy kings will not be seen, but cover themselves with their council; and if this be taken from them, a great part of their safety is taken away. For the other point, of weakening the council; you know they are nothing without the king: they are no body-politic; they have no commission under seal. So as, if you begin to distinguish and disjoin them from the king, they are *corpus opacum*; for they have *lumen de lumine*: and so by distinguishing you extinguish the principal engine of the estate. For it is truly affirmed, that *Concilium non habet potestatem delegatam, sed inhaerentem*: and it is but *Rex in cathedra*, the king in his chair or consistory, where his will and decrees, which are in privacy more changeable, are settled and fixed.

Now for that which concerns ourselves. First, for dignity; no man must think this a disparagement to us: for the greatest kings in Europe, by their ambassadors, receive answers and directions from the council in the king's absence; and if that negotiation be fit for the fraternity and parity of kings, it may much less be excepted to by subjects.

For use or benefit, no man can be so raw and unacquainted in the affairs of the world, as to conceive there should be any disadvantage in it, as if such answers were less firm and certain. For it cannot be supposed, that men of so great caution, as counsellors of estate commonly are, whether you take caution for wisdom or providence, or for pledge of estate or fortune, will ever err, or adventure so far as to exceed their warrant. And therefore I conclude, that in this point there can be unto us neither disgrace nor disadvantage.

For the point of the speaker. First, on the king's part, it may have a shrewd illation: for it hath a shew, as if there could be a stronger duty, than the duty of a subject to a king. We see the degrees and differences of duties in families, between

OF RECEIVING THE KING'S MESSAGES.

tween father and son, master and servant; in corporate bodies, between commonalties and their officers, recorders, stewards, and the like; yet all these give place to the king's commandments. The bonds are more special, but not so forcible. On our part, it concerns us nothing. For first it is but *de canali*, of the pipe; how the king's message shall be conveyed to us, and not of the matter. Neither hath the speaker any such great dominion, as that coming out of his mouth, it presseth us more than out of a privy counsellor's. Nay, it seems to be a great trust of the king's towards the house, when the king doubteth not to put his message into their mouth, as if he should speak to the city by their recorder: therefore, methinks, we should not entertain this unnecessary doubt. It is one use of wit to make clear things doubtful; but it is a much better use of wit to make doubtful things clear; and to that I would men would bend themselves.



A N
A R G U M E N T
O F
Sir FRANCIS BACON, the King's Solicitor,
In the lower House of PARLIAMENT,
P R O V I N G

The King's right of impositions on merchandises imported and exported*.

AND it please you, Mr. Speaker, this question touching the right of impositions is very great; extending to the prerogative of the king on the one part, and the liberty of the subject on the other; and that in a point of profit and value, and not of conceit or fancy. And therefore, as weight in all motions increaseth force, so I do not marvel to see men gather the greatest strength of argument they can to make good their opinions. And so you will give me leave likewise, being strong in mine own persuasion that it is the king's right, to shew my voice as free as my thought. And for my part I mean to observe the true course to give strength to this cause, which is, by yielding those things which are not tenable, and keeping the question within the true state and compass; which will discharge many popular arguments, and contract the debate into a less room.

Wherefore I do deliver the question, and exclude or set by, as not in question, five things. First, the question is *de portorio*, and not *de tributo*, to use the Roman words for explanation sake; it is not, I say, touching any taxes within the land, but of payments at the ports. Secondly, it is not touching any impost from port to port, but where *claves regni*, the keys of the kingdom, are turned to let in from foreign parts, or to send forth to foreign parts; in a word, matter of commerce and intercourse, not simply of carriage or vecture. Thirdly, the question is, as the distinction was used above in another case, *de vero et falso*, and not *de bono et malo*, of the legal point, and not of the inconvenience, otherwise than as it serves to decide the law. Fourthly, I do set apart three commodities, wools, woolfells, and leather, as being in different case from the rest; because the custom upon them is *antiqua custodia*. Lastly, the question is not, whether in matter of imposing the king may alter the law by his prerogative, but whether the king have not such a prerogative by law.

The state of the question being thus cleared and freed, my proposition is, that the king by the fundamental laws of this kingdom hath a power to impose upon

* This matter was much debated by the lawyers and gentlemen in the parliament 1610, and 1614, etc. and afterwards given up by the crown in 1641.

merchandise and commodities both native and foreign. In my proof of this proposition all that I shall say, be it to confirm or confute, I will draw into certain distinct heads or considerations which move me, and may move you.

The first is an universal negative: there appeareth not in any of the king's courts any one record, wherein an imposition laid at the ports hath been overthrown by judgment; nay more, where it had been questioned by pleading. This plea, *quod summa praedicta minus juste imposita fuit, et contra leges et consuetudines regni huius Angliae, unde idem Bates illam solvere recusavit prout ei bene licuit*; is *primae impressionis*. Bates was the first man *ab origine mundi*, for any thing that appeareth, that ministred that plea; whereupon I offer this to consideration: the king's acts that grieve the subject are either against law, and so void, or according to strictness of law, and yet grievous. And according to these several natures of grievance, there be several remedies: Be they against law? Overthrow them by judgment: Be they too strait and extreme, though legal? Propound them in parliament. Forasmuch then as impositions at the ports, having been so often laid, were never brought into the king's courts of justice, but still brought to parliament, I may most certainly conclude, that they were conceived not to be against law. And if any man shall think that it was too high a point to question by law before the judges, or that there should want fortitude in them to aid the subject; no, it shall appear from time to time in cases of equal reach, where the king's acts have been indeed against law, the course of law hath run, and the judges have worthily done their duty.

12 H. 4.

13 H. 4.

4^o AB. E.

2 H. 4.

Scrogg's case.

43 H. 4.

As in the case of an imposition upon linen cloth for the alnage; overthrown by judgment.

The case of a commission of arrest and committing of subjects upon examination without conviction by jury, disallowed by the judges.

A commission to determine the right of the exigenter's place, *secundum sanam discretionem*, disallowed by the judges.

The case of the monopoly of cards overthrown and condemned by judgment.

I might make mention of the jurisdiction of some courts of discretion, wherein the judges did not decline to give opinion. Therefore, had this been against law, there would not have been *altam silentium* in the king's courts. Of the contrary judgments I will not yet speak; thus much now, that there is no judgment, no nor plea against it. Though I said no more, it were enough, in my opinion, to induce you to a *non liquet*, to leave it a doubt.

The second consideration is, the force and continuance of payments made by grants of merchants, both strangers and English, without consent of parliament. Herein I lay this ground, that such grants considered in themselves are void in law: for merchants, either strangers or subjects, they are no body corporate, but singular and dispersed persons; they cannot bind succession, neither can the major part bind the residue: how then should their grants have force? No otherwise but thus; that the king's power of imposing was only the legal virtue and strength of those grants; and that the consent of a merchant is but a concurrence, the king is *principalis agens*, and they are but as the patient, and so it becomes a binding act out of the king's power.

Now if any man doubt that such grants of merchants should not be of force, I will alledge but two memorable records, the one for the merchants strangers, the other for the merchants English. That for the strangers is upon the grant

of

of *chart. mercator.* of three pence in value *ultra antiquas custumas*; which grant is in use and practice at this day. For it is well known to the merchants, that that which they call stranger's custom, and erroneously double custom, is but three pence in the pound more than English. Now look into the statutes of subsidy of tonnage and poundage, and you shall find, a few merchandise only excepted, the poundage equal upon alien and subject; so that this difference or excess of three pence hath no other ground than that grant. It falleth to be the same in quantity; there is no statute for it, and therefore it can have no strength but from the merchants grants; and the merchants grants can have no strength but from the king's power to impose.

For the merchants English, take the notable record in 17 E. III. where the commons complained of the forty shillings upon the sack of wool as a mal-toll set by the assent of the merchants without consent of parliament; nay, they dispute and say it were hard that the merchants consent should be in damage of the commons. What saith the king to them? doth he grant it or give way to it? No; but replies upon them, and saith, It cannot be rightly construed to be in prejudice of the commons, the rather because provision was made, that the merchants should not work upon them, by colour of that payment to increase their price; in that there was a price certain set upon the wools. And there was an end of that matter: which plainly affirmeth the force of the merchants grants. So then the force of the grants of merchants both English and strangers appeareth, and their grants being not corporate, are but noun adjectives without the king's power to impose.

The third consideration is, of the first and most ancient commencement of customs; wherein I am somewhat to seek; for, as the poet saith, *Ingrediturque solo, et caput inter nubila condit*, the beginning of it is obscure: but I rather conceive that it is by common law, than by grant in parliament. For, first, Mr. Dyer's opinion was, that the ancient custom for exportation was by the common laws; and goeth further, that that ancient custom was the custom upon wools, woollens, and leather: he was deceived in the particular, and the diligence of your search hath revealed it; for that custom upon these three merchandises grew by grant of parliament 3 E. I. but the opinion in general was found; for there was a custom before that: for the records themselves which speak of that custom do term it a new custom, *Aientour del novel custome*, As concerning the new custom granted, *etc.* this is pregnant, there was yet a more ancient. So for the strangers, the grant in 31 E. I. *chart. mercator.* is, that the three pence granted by the strangers should be *ultra antiquas custumas*, which hath no affinity with that custom upon the three species, but presupposeth more ancient customs in general. Now if any man think that those more ancient customs were likewise by act of parliament, it is but a conjecture: it is never recited *ultra antiquas custumas prius concessas*, and acts of parliament were not much stirring before the great charter, which was 9 H. III. And therefore I conceive with Mr. Dyer, that whatsoever was the ancient custom, was by the common law. And if by the common law, then what other means can be imagined of the commencement of it but by the king's imposing?

The fourth consideration is, of the manner that was held in parliament in the abolishing of impositions laid: wherein I will consider, first, the manner of the petitions exhibited in parliament; and more specially the nature of the king's answers. For the petitions I note two things; first, that to my remembrance there

was never any petition made for the revoking of any imposition upon foreign merchants only. It pleased the Decemviri in 5 E. II. to deface *chart. mercator.* and to the imposition upon strangers, as against law: but the opinion of these reformers I do not much trust, for they of their gentleness did likewise bring in doubt the demy-mark, which it is manifest was granted by parliament, and pronounced by them the king should have it, *s'il avoit le droit*: but this is declared void by 1 E. III. which reneweth *chart. mercator.* and void must it needs be, because it was an ordinance by commission only, and that in the time of a weak king, and never either warranted or confirmed by parliament. Secondly, I note that petitions were made promiscuously for taking away impositions set by parliament as well as without parliament; nay, that very tax of the *neufieme*, the ninth sheaf or fleece, which is recited to be against the king's oath and in blenchment of his crown, was an act of parliament, 14 E. III. So then to infer that impositions were against law, because they are taken away by succeeding parliaments, it is no argument at all; because the impositions set by the parliaments themselves, which no man will say were against law, were nevertheless afterwards pulled down by parliament. But indeed the argument holdeth rather the other way, that because they took not their remedy in the king's courts of justice, but did fly to the parliament, therefore they were thought to stand with law.

Now for the king's answers: if the impositions complained of had been against law, then the king's answer ought to have been simple, *tanquam responsio categorica, non hypothetica*; as, Let them be repealed, or, Let the law run: but contrariwise, they admit all manner of diversities and qualifications: for

Sometimes the king disputeth the matter and doth nothing; as 17 E. III.

Sometimes the king distinguisheth of reasonable and not reasonable, as 38 E. III.

Sometimes he abolisheth them in part, and letteth them stand in part, as 11 E. II. the record of the *mutuum*, and 14 E. III. the printed statute, whereof I shall speak more anon.

Sometimes that no imposition shall be set during the time that the grants made of subsidies by parliament shall continue, as 47 E. III.

Sometimes that they shall cease *ad voluntatem nostram*.

And sometimes that they shall hold over their term prefixed or assented.

All which sheweth that the king did not disclaim them as unlawful, for *actus legitimus non recipit tempus aut conditionem*. If it had been a disaffirmance by law, they must have gone down *in facto*, but now you see they have been tempered and qualified as the king saw convenient.

The fifth consideration is of that which is offered by way of objection; which is, first, that such grants have been usually made by consent of parliament; and secondly, that the statutes of subsidies of tonnage and poundage have been made as a kind of stint and limitation, that the king should hold himself unto the proportion so granted and not impose further; the rather because it is expressed in some of these statutes of tonnage and poundage, sometimes by way of protestation, and sometimes by way of condition, that they shall not be taken in precedent, or that the king shall not impose any further rates or novelties, as 6 R. II. 9 R. II. 13 H. IV. 1 H. V. which subsidies of tonnage and poundage have such clauses and cautions.

To

To this objection I give this answer. First, that it is not strange with kings, for their own better strength, and the better contentment of their people, to do those things by parliament, which nevertheless have perfection enough without parliament. We see their own rights to the crown which are inherent, yet they take recognition of them by parliament. And there was a special reason why they should do it in this case, for they had found by experience that if they had not consent in parliament to the setting of them up, they could not have avoided suit in parliament for the taking of them down. Besides, there were some things requisite in the manner of the levy for the better strengthening of the same, which percase could not be done without parliament, as the taking the oath of the party touching the value, the inviting of the discovery of concealment of custom by giving the moiety to the informer, and the like.

Now in special for the statutes of subsidies of tonnage and poundage, I note three things. First, that the consideration of the grant is not laid to be for the restraining of impositions, but expressly for the guarding of the sea. Secondly, that it is true that the ancient form is more peremptory, and the modern more submissive; for in the ancient form sometimes they insert a flat condition that the king shall not further impose; in the latter they humbly pray that the merchants may be demeaned without oppression, paying those rates; but whether it be supplication, or whether it be condition, it rather implieth the king hath a power; for else both were needless, for *conditio annexitur ubi libertas praesumitur*, and the word oppression seemeth to refer to excessive impositions. And thirdly, that the statutes of tonnage and poundage are but *cumulative* and not *privative* of the king's power precedent, appeareth notably in the three pence overplus, which is paid by the merchants strangers, which should be taken away quite, if those statutes were taken to be limitations; for in that, as was touched before, the rates are equal in the generality between subjects and strangers, and yet that imposition, notwithstanding any supposed restriction of these acts of subsidies of tonnage and poundage, remaineth at this day.

The sixth consideration is likewise of an objection, which is matter of practice, *viz.* that from R. II's. time to Q. Mary, which is almost 200 years, there was an intermission of impositions, as appeareth both by records and the custom-books.

To which I answer; both that we have in effect an equal number of years to countervail them, namely, 100 years in the times of the three kings Edwards added to 60 of our last years; and *extrema obruunt media*; for we have both the reverence of antiquity and the possession of the present times, and they but the middle times; and besides, in all true judgment there is a very great difference between an usage to prove a thing lawful, and a non-usage to prove it unlawful: for the practice plainly implieth consent; but the discontinuance may be either because it was not needful, though lawful; or because there was found a better means, as I think it was indeed in respect of the double customs by means of the staple at Calais.

A

B R I E F S P E E C H

In the End of the Session of Parliament 7 JACOBI,

P E R S U A D I N G

Some Supply to be given to his M A J E S T Y ;

Which seem'd then to stand in doubtful terms, and pass'd upon this
speech.

THE proportion of the king's supply is not now in question: for when that shall be, it may be I shall be of opinion, that we should give so now, as we may the better give again. But as things stand for the present, I think the point of honour and reputation is that which his majesty standeth most upon, that our gift may at least be like those showers, that may serve to lay the winds, though they do not sufficiently water the earth.

To labour to persuade you, I will not: for I know not into what form to cast my speech. If I should enter into a laudative, though never so due and just, of the king's great merits, it may be taken for flattery: if I should speak of the strait obligations which intercede between the king and the subject, in case of the king's want, it were a kind of concluding the house: if I should speak of the dangerous consequence which want may reverberate upon subjects, it might have a shew of a secret menace.

These arguments are, I hope, needless, and do better in your minds than in my mouth. But this give me leave to say, that whereas the example of Cyrus was used, who sought his supply from those upon whom he had bestowed his benefits; we must always remember, that there are as well benefits of the scepter as benefits of the hand, as well of government as liberality. These, I am sure, we will acknowledge to have come *plena manu* amongst us all, and all those whom we represent; and therefore it is every man's head in this case that must be his counsellor, and every man's heart his orator; and to those inward powers more forcible than any man's speech. I leave it, and wish it may go to the question.

A

A
C E R T I F I C A T E
 T O T H E
L O R D S of the **C O U N C I L,**

Upon information given touching the
Scarcity of S I L V E R at the **M I N T,**

A N D

Reference to the two Chancellors, and the King's Solicitor.

It may please your Lordships;

ACCORDING unto your lordships letters unto us directed, grounded upon the information which his majesty hath received concerning the scarcity of silver at the Mint, we have called before us as well the officers of the Mint, as some principal merchants, and spent two whole afternoons in the examination of the business; wherein we kept this order, first to examine the fact, then the causes, with the remedies.

And for the fact, we directed the officers of the Mint to give unto us a distinguished account how much gold and silver hath yearly been brought into the Mint, by the space of six whole years last past, more specially for the last three months succeeding the last proclamation touching the price of gold; to the end we might by the suddenness of the fall discern, whether that proclamation might be thought the efficient cause of the present scarcity. Upon which account it appears to us, that during the space of six years aforesaid, there have been still degrees of decay in quantity of the silver brought to the mint, but yet so, as within these last three months it hath grown far beyond the proportion of the former time, insomuch as there comes in now little or none at all. And yet, notwithstanding, it is some opinion, as well amongst the officers of the Mint as the merchants, that the state need be the less apprehensive of this effect, because it is like to be but temporary, and neither the great flush of gold that is come into the Mint since the proclamation, nor on the other side the great scarcity of silver, can continue in proportion as it now doth.

Another point of the fact, which we thought fit to examine; was, whether the scarcity of silver appeared generally in the realm, or only at the Mint; wherein it was confessed by the merchants, that silver is continually imported into the realm, and is found stirring amongst the goldsmiths, and otherwise, much like as in former times, although, in respect of the greater price which it hath with the goldsmith, it cannot find the way to the Mint. And thus much for the fact.

For

CERTIFICATE RELATING

For the causes with the remedies, we have heard many propositions made, as well by the lord Kneset, who assisted us in this conference, as by the merchants; of which propositions few were new unto us, and much less can be new to your lordships; but yet although upon former consultations, we are not unacquainted what is more or less likely to stand with your lordships grounds and opinions, we thought it nevertheless the best fruit of our diligence to set them down in articles, that your lordships with more ease may discard or entertain the particulars, beginning with those which your lordships do point at in your letters, and so descending to the rest.

The first proposition is, touching the disproportion of the price between gold and silver, which is now brought to bed, upon the point of fourteen to one, being before but twelve to one. This we take to be an evident cause of scarcity of silver at the Mint, but such a cause as will hardly receive a remedy; for either your lordships must draw down again the price of gold, or advance the price of silver; whereof the one is going back from that which is so lately done, and whereof you have found good effect, and the other is a thing of dangerous consequence in respect of the lois to all moneyed men in their debts, gentlemen in their rents, the king in his customs, and the common subject in raising the price of things vendible. And upon this point it is fit we give your lordships understanding what the merchants intimated unto us, that the very voicing or suspect of the raising of the price of silver, if it be not cleared, would make such a deadness and retention of money this vacation, as, to use their own words, will be a misery to the merchants: so that we were forced to use protestation, that there was no such intent.

The second proposition is touching the charge of coinage; wherein it was confidently avouched by the merchants, that if the coinage were brought from two shillings unto eighteen pence, as it was in queen Elizabeth's time, the king would gain more in the quantity than he should lose in the price: and they aided themselves with that argument, that the king had been pleased to abate his coinage in the other metal, and found good of it: which argument, though it doth admit a difference, because that abatement was coupled with the raising of the price, whereas this is to go alone; yet nevertheless it seemed the officers of the Mint were not unwilling to give way to some abatement, although they presumed it would be of small effect, because that abatement would not be equivalent to that price which Spanish silver bears with the goldsmith; but yet it may be used as an experiment of state, being recoverable at his majesty's pleasure.

The third proposition is, concerning the exportation of silver more than in former times, wherein we fell first upon the trade into the East Indies; concerning which it was materially in our opinions answered by the merchants of that company, that the silver which supplies that trade, being generally Spanish moneys, would not be brought in but for that trade, so that it sucks in as well as it draws forth. And it was added likewise, that as long as the Low-Countries maintained that trade in the Indies, it would help little though our trade were dissolved, because that silver which is exported immediately by us to the Indies would be drawn out of this kingdom for the Indies immediately by the Dutch: and for the silver exported to the Levant, it was thought to be no great matter. As for other exportation, we saw no remedy but the execution of the laws, specially those of employment being by some mitigation made agreeable to the times. And these three remedies are of that nature, as they serve to remove the causes of this scarcity.

There

There were other propositions of policies and means, directly to draw silver to the Mint.

The fourth point thereof was this : It is agreed that the silver which hath heretofore fed the Mint, principally hath been Spanish money. This now comes into the realm plentifully, but not into the Mint. It was propounded in imitation of some precedent in France, that his majesty would by proclamation restrain the coming in of this money *sub modo*, that is, that either it be brought to the Mint, or otherwise to be cut and defaced, because that now it passeth in payments in a kind of currency. To which it was colourably objected, that this would be the way to have none brought in at all, because the gain ceasing, the importation would cease ; but this objection was well answered, that it is not gain altogether, but a necessity of speedy payment, that causeth the merchant to bring in silver to keep his credit, and to drive his trade : so that if the king keep his fourteen days payment at the Mint, as he always hath done, and have likewise his exchangers for those moneys in some principal parts, it is supposed that all Spanish moneys, which is the bulk of silver brought into this realm, would by means of such a proclamation come into the Mint ; which may be a thing considerable.

The fifth proposition was this : It was warranted by the laws of Spain to bring in silver for corn or victuals ; it was propounded that his majesty would restrain exportation of corn *sub modo*, except they bring the silver which resulted thereof unto his Mint ; that trade being commonly so beneficial, as the merchant may well endure the bringing of the silver to the Mint, although it were at the charge of coinage, which it now beareth further, as incident to this matter. There was revived by the merchants, with some instance, the ancient proposition concerning the erection of granaries for foreign corn, forasmuch as by that increase of trade in corn, the importation of silver would likewise be multiplied.

The sixth proposition was, That upon all licence of forbidden commodities, there shall be a rate set of silver to be brought into the Mint : which nevertheless may seem somewhat hard, because it imposeth upon the subject that which causeth him to incur peril of confiscation in foreign parts. To trouble your lordships further with discourses which we had of making foreign coins current, and of varying the king's standard to weight, upon the variations in other states, and repressing surfeit of foreign commodities, that our native commodities, surmounting the foreign, may draw in treasure by way of overplus ; they be common places so well known to your lordships, as it is enough to mention them only.

There is only one thing more, which is, to put your lordships in mind of the extreme excess in the wasting of both metals, both of gold and silver foliate, which turns the nature of these metals, which ought to be perdurable, and makes them perishable, and by consumption must be a principal cause of scarcity in them both ; which we conceive may receive a speedy remedy by his majesty's proclamation.

Lastly, We are humble suitors to your lordships, that for any of these propositions, that your lordships should think fit to entertain in consultations, your lordships would be pleased to hear them debated before yourselves, as being matters of greater weight than we are able to judge of. And so craving your lordships pardon for troubling you so long, we commend your lordships to God's goodness.

A D V I C E .

A D V I C E to the K I N G,
T O U C H I N G
M r . S U T T O N ' s E S T A T E .

May it please your Majesty,

I Find it a positive precept of the old law, that there should be no sacrifice without salt: the moral whereof, besides the ceremony, may be, that God is not pleased with the body of a good intention, except it be seasoned with that spiritual wisdom and judgment, as it be not easily subject to be corrupted and perverted: for salt, in the Scripture, is a figure both of wisdom and lasting. This cometh into my mind upon this act of Mr. Sutton, which seemeth to me as a sacrifice without salt; having the materials of a good intention, but not powdered with any such ordinances and institutions as may preserve the same from turning corrupt, or at least from becoming unsavory, and of little use. For though the choice of the feoffees be of the best, yet neither can they always live; and the very nature of the work itself, in the vast and unfit proportions thereof, being apt to provoke a mis-employment; it is no diligence of theirs, except there be a digression from that model, that can excuse it from running the same way that gifts of like condition have heretofore done. For to design the Charterhouse, a building fit for a prince's habitation, for an hospital, is all one as if one should give in alms a rich embroidered cloak to a beggar. And certainly a man may see, *tanquam quae oculis cernuntur*, that if such an edifice, with six thousand pounds revenue, be erected into one hospital, it will in small time degenerate to be made a preferment of some great person to be master, and he to take all the sweet, and the poor to be stinted, and take but the crumbs; as it comes to pass in divers hospitals of this realm, which have but the names of hospitals, and are only wealthy benefices in respect of the mastership; but the poor, which is the *propter quid*, little relieved. And the like hath been the fortune of much of the alms of the Roman religion in their great foundations, which being begun in vain-glory and ostentation, have had their judgment upon them, to end in corruption and abuse. This meditation hath made me presume to write these few lines to your majesty; being no better than good wishes, which your majesty's great wisdom may make something or nothing of.

Wherein I desire to be thus understood, that if this foundation, such as it is, be perfect and good in law, then I am too well acquainted with your majesty's disposition, to advise any course of power or profit that is not grounded upon a right: nay farther, if the defects be such as a court of equity may remedy and cure, then I wish that as St. Peter's shadow did cure diseases, so the very shadow of a good intention may cure defects of that nature. But if there be a right, and birth-right planted in the heir, and not remediable by courts of equity, and that right be submitted to your majesty, whereby it is both in your power and grace
what

what to do; then I do wish that this rude mass and chaos of a good deed were directed rather to a solid merit, and durable charity, than to a blaze of glory, that will but crackle a little in talk, and quickly extinguish.

And this may be done, observing the species of Mr. Sutton's intent, though varying *in individuo*: for it appears that he had in notion a triple good, an hospital, and a school, and maintaining of a preacher: which individuals refer to these three general heads; relief of poor, advancement of learning, and propagation of religion. Now then if I shall set before your majesty, in every of these three kinds, what it is that is most wanting in your kingdom; and what is like to be the most fruitful and effectual use of such a beneficence, and least like to be perverted; that, I think, shall be no ill scope of my labour, how meanly soever performed; for out of variety represented, election may be best grounded.

Concerning the relief of the poor; I hold some number of hospitals, with competent endowments, will do far more good than one hospital of an exorbitant greatness: for though the one course will be more seen, yet the other will be the more felt. For if your majesty erect many, besides the observing the ordinary maxim, *Bonum, quo communius, eo melius*, choice may be made of those towns and places where there is most need, and so the remedy may be distributed as the disease is dispersed. Again, greatness of relief, accumulated in one place, doth rather invite a swarm and surcharge of poor, than relieve those that are naturally bred in that place; like to ill-tempered medicines, that draw more humour to the part than they evacuate from it. But chiefly I rely upon the reason that I touched in the beginning, that in these great hospitals the revenues will draw the use, and not the use the revenues; and so, through the mass of the wealth, they will swiftly tumble down to a mis-employment. And if any man say, that in the two hospitals in London there is a precedent of greatness concurring with good employment; let him consider that those hospitals have annual governors, that they are under the superior care and policy of such a state as the city of London; and chiefly, that their revenues consist not upon certainties, but upon casualties and free gifts; which gifts would be withheld, if they appeared once to be perverted; so as it keepeth them in a continual good behaviour and awe to employ them aright; none of which points do match with the present case.

The next consideration may be, whether this intended hospital, as it hath a more ample endowment than other hospitals, should not likewise work upon a better subject than other poor; as that it should be converted to the relief of maimed soldiers, decayed merchants, and householders aged, and destitute churchmen, and the like; whose condition, being of a better sort than loose people and beggars, deserveth both a more liberal stipend and allowance, and some proper place of relief, not intermingled or coupled with the basest sort of poor; which project, though specious, yet in my judgment, will not answer the designment in the event, in these our times. For certainly few men in any vocation, which have been somebody, and bear a mind somewhat according to the conscience and remembrance of that they have been, will ever descend to that condition, as to profess to live upon alms, and to become a corporation of declared beggars; but rather will choose to live obscurely, and as it were to hide themselves with some private friends: so that the end of such an institution will be, that it will make the place a receptacle of the worst, idlest, and most dissolute persons of every profession, and to become a cell of loiterers, and cast serving-men, and drunkards, with scandal rather than

ADVICE ABOUT THE CHARTERHOUSE.

fruit to the commonwealth. And of this kind I can find but one example with us, which is the alms-knights of Windsor; which particular would give a man small encouragement to follow that precedent.

Therefore the best effect of hospitals is, to make the kingdom, if it were possible, capable of that law, that there be no beggar in Brack: for it is that kind of people that is a burthen, an eye-sore, a scandal, and a seed of perill and tumult in a state. But chiefly it were to be wished, such a beneficence towards the relief of the poor were to be used, as not only the mere and naked poor should be taken care of, but also, that the honest person which hath hard means to live, upon whom the poor are now charged, should be in some sort eased: for that were a work generally acceptable to the kingdom, if the public hand of alms might save the private hand of tax: and therefore, of all other employments of that kind, I commend most houses of relief and correction, which are mixt hospitals, where the impotent person is relieved, and the sturdy beggar buckled to work; and the unable person also not maintained to be idle, which is ever joined with drunkenness and impurity, but is sorted with such work as he can manage and perform; and where the uses are not distinguished, as in other hospitals; whereof some are for aged and impotent, and some for children, and some for correction of vagabonds; but are general and promiscuous: that may take off poor of every sort from the country as the country breeds them: and thus the poor themselves shall find the provision, and other people the sweetness of the abatement of the tax. Now if it be objected, that houses of correction in all places have not done the good expected, as it cannot be denied, but in most places they have done much good, it must be remembered that there is a great difference between that which is done by the distracted government of justices of peace, and that which may be done by a settled ordinance, subject to a regular visitation, as this may be. And besides, the want hath been commonly in houses of correction of a competent and certain stock, for the materials of the labour, which in this case may be likewise supplied.

Concerning the advancement of learning, I do subscribe to the opinion of one of the wisest and greatest men of your kingdom: That for grammar schools there are already too many, and therefore no providence to add where there is excess: for the great number of schools which are in your highness's realm, doth cause a want, and doth cause likewise an overflow; both of them inconvenient, and one of them dangerous. For by means thereof they find want in the country and towns, both of servants for husbandry, and apprentices for trade: and on the other side, there being more scholars bred, than the state can prefer and employ; and the active part of that life not bearing a proportion to the preparative, it must needs fall out, that many persons will be bred unfit for other vocations, and unprofitable for that in which they are brought up; which fills the realm full of indigent, idle, and wanton people, which are but *materia rerum novarum*.

Therefore, in this point, I wish Mr. Sutton's intention were exalted a degree; that that which he meant for teachers of children, your majesty should make for teachers of men; wherein it hath been my ancient opinion and observation, that in the universities of this realm, which I take to be of the best endowed universities of Europe; there is nothing more wanting towards the flourishing state of learning, than the honourable and plentiful salaries of readers in arts and professions. In which point, as your majesty's bounty already hath made a beginning,

fo this occasion is offered of God to make a proceeding. Surely, readers in the chair are as the parents in sciences, and deserve to enjoy a condition not inferior to their children that embrace the practical part; else no man will sit longer in the chair, than till he can walk to a better preferment: and it will come to pass as Virgil saith,

Et patrum invalidi referant j'junia nati.

For if the principal readers, through the meanness of their entertainment, be but men of superficial learning, and that they shall take their place but in passage, it will make the mass of sciences want the chief and solid dimension, which is depth; and to become but pretty and compendious habits of practice. Therefore I could wish that in both the universities, the lectures as well of the three professions, divinity, law, and physic; as of the three heads of science, philosophy, arts of speech, and the mathematics; were raised in their pensions unto 100*l. per annum* apiece; which though it be not near so great as they are in some other places, where the greatness of the reward doth whistle for the ablest men out of all foreign parts to supply the chair; yet it may be a portion to content a worthy and able man; if he be likewise contemplative in nature, as those spirits are that are fittest for lectures. Thus may learning in your kingdom be advanced to a farther height; learning, I say, which under your majesty, the most learned of kings, may claim some degree of elevation.

Concerning propagation of religion, I shall in few words set before your majesty three propositions; none of them devices of mine own, otherwise than I ever approved them; two of which have been in agitation of speech, and the third acted.

The first a college for controversies, whereby we shall not still proceed single, but shall, as it were, double our files; which certainly will be found in the encounter.

The second a receipt, I like not the word seminary, in respect of the vain vows, and implicit obedience, and other things tending to the perturbation of states, involved in that term, for converts to the reformed religion, either of youth or otherwise; for I doubt not but there are in Spain, Italy, and other countries of the papists, many whose hearts are touched with a sense of those corruptions, and an acknowledgment of a better way; which grace is many times smothered and choked, through a worldly consideration of necessity; men not knowing where to have succour and refuge. This likewise I hold a work of great piety, and a work of great consequence; that we also may be wise in our generation; and that the watchful and silent night may be used as well for sowing of good seed, as of tares.

The third is, the imitation of a memorable and religious act of queen Elizabeth; who finding a part of Lancashire to be extremely backward in religion, and the benefices swallowed up in impropriations, did, by decree in the duchy, erect four stipends of 100*l. per annum* apiece for preachers well chosen to help the harvest; which have done a great deal of good in the parts where they have laboured. Neither do there want other corners in the realm, that would require for a time the like extraordinary help.

Thus have I briefly delivered unto your majesty mine opinion touching the employment of this charity; whereby that mass of wealth, which was in the owner little better than a stack or heap of muck, may be spread over your kingdom to many fruitful purposes; your majesty planting and watering, and God giving the increase.

A

S P E E C H

Delivered by the King's Attorney,

Sir F R A N C I S B A C O N,

In the LOWER HOUSE,

When the house was in great heat, and much troubled about the

U N D E R T A K E R S ;

Which were thought to be some able and forward gentlemen ; who, to ingratiate themselves with the King, were said to have undertaken, that the King's business should pass in that house as his majesty could wish.

[In the Parliament 12 JACOBI.]

Mr. Speaker,

I Have been hitherto silent in this matter of undertaking, wherein, as I perceive, the house is much enwrapped.

First, because, to be plain with you, I did not well understand what it meant, or what it was ; and I do not love to offer at that, that I do not thoroughly conceive. That private men should undertake for the commons of England ! why, a man might as well undertake for the four elements. It is a thing so giddy, and so vast, as cannot enter into the brain of a sober man : and especially in a new parliament ; when it was impossible to know who should be of the parliament : and when all men, that know never so little the constitution of this house, do know it to be so open to reason, as men do not know when they enter into their doors, what mind themselves will be of, until they hear things argued and debated. Much less can any man make a policy of assurance, what ship shall come safe home into the harbour in these seas. I had heard of undertakings in several kinds. There were undertakers for the plantations of Derry and Colerane in Ireland, the better to command and bridle those parts. There were, not long ago, some undertakers for the north-west passage : and now there are some undertakers for the project of dyed and dressed cloths ; and, in short, every novelty useth to be strengthened and made good by a kind of undertaking : but for the ancient parliament of England, which moves in a certain manner and sphere, to be undertaken, it passes my reach to conceive what it should be. Must we be all dyed and dressed, and no pure whites amongst us ? Or must there be a new pas-
sage

stage found for the king's business by a point of the compass that was never failed by before? Or must there be some forts built in this house that may command and contain the rest? Mr. Speaker, I know but two forts in this house which the king ever hath; the fort of affection, and the fort of reason: the one commands the hearts, and the other commands the heads; and others I know none. I think Æsop was a wise man that described the nature of the fly that sat upon the spoke of the chariot wheel, and said to herself, "What a dust do I raise?" So, for my part, I think that all this dust is raised by light rumours and buzzes, and not upon any solid ground.

The second reason that made me silent was, because this suspicion and rumour of undertaking settles upon no person certain. It is like the birds of Paradise that they have in the Indies, that have no feet; and therefore they never light upon any place, but the wind carries them away: and such a thing do I take this rumour to be.

And lastly, when that the king had in his two several speeches freed us from the main of our fears, in affirming directly, that there was no undertaking to him; and that he would have taken it to be no less derogation to his own majesty than to our merits, to have the acts of his people transferred to particular persons; that did quiet me thus far, that these vapours were not gone up to the head, howsoever they might glow and estuate in the body.

Nevertheless, since I perceive that this cloud still hangs over the house, and that it may do hurt, as well in fame abroad as in the king's ear, I resolved with myself to do the part of an honest voice in this house, to counsel you what I think to be for the best.

Wherein first, I will speak plainly of the pernicious effects of the accident of this bruit and opinion of undertaking, towards particulars, towards the house, towards the king, and towards the people.

Secondly, I will tell you, in mine opinion, what undertaking is tolerable, and how far it may be justified with a good mind; and on the other side, this same ripping up of the question of undertakers, how far it may proceed from a good mind, and in what kind it may be thought malicious and dangerous.

Thirdly, I will give you my poor advice, what means there are to put an end to this question of undertaking; not falling for the present upon a precise opinion, but breaking it, how many ways there be by which you may get out of it, and leaving the choice of them to a debate at the committee.

And lastly, I will advise you how things are to be handled at the committee, to avoid distraction and loss of time.

For the first of these, I can say to you but as the Scripture saith, *Si invicem mordetis, ab invicem consumemini*; if ye fret and gall one another's reputation, the end will be, that every man shall go hence, like coin cried down, of less price than he came hither. If some shall be thought to fawn upon the king's business openly, and others to cross it secretly, some shall be thought practisers that would pluck the cards, and others shall be thought papists that would shuffle the cards: what a misery is this, that we should come together to fool one another, instead of procuring the public good!

And this ends not in particulars, but will make the whole house contemptible: for now I hear men say, that this question of undertaking is the predominant matter of this house. So that we are now, according to the parable of Jotham in the case

case of the trees of the forest, that when question was, Whether the vine should reign over them? that might not be: and whether the olive should reign over them? that might not be: but we have accepted the bramble to reign over us. For it seems that the good vine of the king's graces, that is not so much in esteem; and the good oil, whereby we should salve and relieve the wants of the estate and crown, that is laid aside too: and this bramble of contention and emulation; this Abimelech, which, as was truly said by an understanding gentleman, is a bastard, for every fame that wants a head, is *filius populi*, this must reign and rule amongst us.

Then for the king, nothing can be more opposite, *ex diametro*, to his ends and hopes, than this: for you have heard him profess like a king, and like a gracious king, that he doth not so much respect his present supply, as this demonstration that the peoples hearts are more knit to him than before. Now then if the issue shall be this, that whatsoever shall be done for him, shall be thought to be done but by a number of persons that shall be laboured and packed; this will rather be a sign of diffidence and alienation, than of a natural benevolence and affection in his people at home; and rather matter of disreputation, than of honour abroad. So that, to speak plainly to you, the king were better call for a new pair of cards, than play upon these if they be packed.

And then for the people, it is my manner ever to look as well beyond a parliament, as upon a parliament; and if they abroad shall think themselves betrayed by those that are their deputies and attorneys here, it is true we may bind them and conclude them, but it will be with such murmur and dissatisfaction as I would be loth to see.

These things might be dissembled, and so things left to bleed inwards; but that is not the way to cure them. And therefore I have searched the fore, in hope that you will endeavour the medicine.

But this to do more thoroughly, I must proceed to my second part, to tell you clearly and distinctly what is to be set on the right hand, and what on the left in this business.

First, if any man hath done good offices to advise the king to call a parliament, and to increase the good affection and confidence of his majesty towards his people; I say, that such a person doth rather merit well, than commit any error. Nay farther, if any man hath, out of his own good mind, given an opinion touching the minds of the parliament in general; how it is probable they are like to be found, and that they will have a due feeling of the king's wants, and will not deal drily or illiberally with him; this man, that doth but think of other mens minds, as he finds his own, is not to be blamed. Nay farther, if any man hath coupled this with good wishes and propositions, that the king do comfort the hearts of his people, and testify his own love to them, by filing off the harshness of his prerogative, retaining the substance and strength; and to that purpose, like the good householder in the Scripture, that brought forth old store and new, hath revolved the petitions and propositions of the last parliament, and added new; I say, this man hath sown good seed; and he that shall draw him into envy for it, sows tares. Thus much of the right hand. But on the other side, if any shall mediate or immediately infuse into his majesty, or to others, that the parliament is, as Cato said of the Romans, "like sheep, that a man were better drive a flock of them than one of them:" and however they may be wise men severally, yet in this

this assembly they are guided by some few, which, if they be made and assured, the rest will easily follow: this is a plain robbery of the king or honour, and his subjects of thanks, and it is to make the parliament vile and servile in the eyes of their sovereign; and I count it no better than a supplanting of the king and kingdom. Again, if a man shall make this impression, that it shall be enough for the king to send us some things of shew that may serve for colours, and let some eloquent tales be told of them, and that will serve *ad faciendum populum*; any such person will find that this house can well skill of false lights, and that it is no wrong tokens, but the true love already planted in the breasts of the subjects, that will make them do for the king. And this is my opinion touching those that may have persuaded a parliament. Take it on the other side, for I mean in all things to deal plainly, if any man hath been diffident touching the call of a parliament, thinking that the best means were first for the king to make his utmost trial to subtilty of himself, and his own means; I say, an honest and faithful heart might consent to that opinion, and the event, it seems, doth not greatly discredit it hitherto. Again, if any man shall have been of opinion, that it is not a particular party that can bind the house; nor, that it is not shews or colours can please the house; I say, that man, though his speech tend to discouragement, yet it is coupled with providence. But, by your leave, if any man, since the parliament was called, or when it was in speech, shall have laid plots to cross the good will of the parliament to the king, by possessing them that a few shall have the thanks, and that they are, as it were, bought, and sold, and betrayed; and that that which the king offers them are but baits prepared by particular persons; or have raised rumours that it is a packed parliament; to the end nothing may be done, but that the parliament may be dissolved, as gamesters use to call for new cards, when they mistrust a pack: I say, these are engines and devices naught, malign, and seditious.

Now for the remedy; I shall rather break the matter, as I said in the beginning, than advise positively. I know but three ways. Some message of declaration to the king; some entry or protestation amongst ourselves; or some strict and punctual examination. As for the last of these, I assure you I am not against it, if I could tell where to begin, or where to end. For certainly I have often seen it, that things when they are in smother trouble more than when they break out. Smoke blinds the eyes, but when it blazeth forth into flame it gives light to the eyes. But then if you fall to an examination, some person must be charged, some matter must be charged; and the manner of that matter must be likewise charged; for it may be in a good fashion, and it may be in a bad, in as much difference as between black and white: and then how far men will ingenuously confess, how far they will politicly deny, and what we can make and gather upon their confession, and how we shall prove against their denial; it is an endless piece of work, and I doubt that we shall grow weary of it.

For a message to the king, it is the course I like best, so it be carefully and considerately handled: for if we shall represent to the king the nature of this body as it is, without the veils or shadows that have been cast upon it, I think we shall do him honour, and ourselves right.

For any thing that is to be done amongst ourselves, I do not see much gained by it, because it goes no farther than ourselves; yet if any thing can be wisely conceived to that end, I shall not be against it; but I think the purpose of it is fittest

A SPEECH ABOUT UNDERTAKERS.

fittest to be, rather that the house conceives that all this is but a misunderstanding, than to take knowledge that there is indeed a just ground, and then to seek, by a protestation, to give it a remedy. For protestations, and professions, and apologies, I never found them very fortunate; but they rather increase suspicion than clear it.

Why then the last part is, that these things be handled at the committee seriously and temperately; wherein I wish that these four degrees of questions were handled in order.

First, whether we shall do any thing at all in it, or pass by it, and let it sleep?

Secondly, whether we shall enter into a particular examination of it?

Thirdly, whether we shall content ourselves with some entry or protestation among ourselves?

And fourthly, whether we shall proceed to a message to the king; and what?

Thus I have told you my opinion. I know it had been more safe and politic to have been silent; but it is perhaps more honest and loving to speak. The old verse is *Nam nulli tacuisse nocet, nocet esse locutum*. But, by your leave, David saith, *Silui a bonis, et dolor meus renovatus est*. When a man speaketh, he may be wounded by others; but if he hold his peace from good things, he wounds himself. So I have done my part, and leave it to you to do that which you shall judge to be the best.



HIS LORDSHIP'S SPEECH
 In the PARLIAMENT,
 BEING
 LORD CHANCELLOR,
 TO THE
 SPEAKER'S EXCUSE.

Mr. Serjeant RICHARDSON,

THE king hath heard and observed your grave and decent speech, tending to the excuse and disablement of yourself for the place of speaker. In answer whereof, his majesty hath commanded me to say to you, that he doth in no sort admit of the same.

First, Because if the party's own judgment should be admitted in case of elections, touching himself, it would follow, that the most confident and overweening persons would be received; and the most considerate men, and those that understand themselves best, would be rejected.

Secondly, His majesty doth so much rely upon the wisdoms and discretions of those of the house of commons, that have chosen you with an unanimous consent, that his majesty thinks not good to swerve from their opinion in that wherein themselves are principally interested.

Thirdly, You have disabled yourself in so good and decent a fashion, as the manner of your speech hath destroyed the matter of it.

And therefore the king doth allow of the election, and admit you for speaker.

To the SPEAKER'S ORATION.

Mr. SPEAKER,

THE king hath heard and observed your eloquent discourse, containing much good matter, and much good will: wherein you must expect from me such an answer only as is pertinent to the occasion, and compassed by due respect of time.

I may divide that which you have said into four parts.

The first was a commendation, or laudative of monarchy.

The second was indeed a large field, containing a thankful acknowledgment of his majesty's benefits, attributes, and acts of government.

The third was some passages touching the institution and use of parliaments.

CHANCELLOR'S SPEECH TO

The fourth and last was certain petitions to his majesty on the behalf of the house and yourself.

For your commendation of monarchy, and preferring it before other estates, it needs no answer: the schools may dispute it; but time hath tried it, and we find it to be the best. Other states have curious frames soon put out of order; and they that are made fit to last, are not commonly fit to grow or spread: and contrariwise those that are made fit to spread and enlarge, are not fit to continue and endure. But monarchy is like a work of nature, well composed both to grow and to continue. From this I pass.

For the second part of your speech, wherein you did with no less truth than affection acknowledge the great felicity which we enjoy by his majesty's reign and government, his majesty hath commanded me to say unto you, that praises and thanksgivings he knoweth to be the true oblations of hearts and loving affections: but that which you offer him he will join with you, in offering it up to God, who is the author of all good; who knoweth also the uprightneſs of his heart; who he hopeth will continue and increase his blessings both upon himself and his posterity, and likewise upon his kingdoms and the generations of them.

But I for my part must say unto you, as the Grecian orator said long since in the like case: *Solus dignus harum rerum laudator tempus*; Time is the only commender and encomiastic worthy of his majesty and his government.

Why time? For that in the revolution of so many years and ages as have passed over this kingdom, notwithstanding, many noble and excellent effects were never produced until his majesty's days, but have been reserved as proper and peculiar unto them.

And because this is no part of a panegyric, but merely story, and that they be so many articles of honour fit to be recorded, I will only mention them, extracting part of them out of what you, Mr. Speaker, have said: they be in number eight.

First, His majesty is the first, as you noted it well, that hath laid *lapis angularis*, the corner-stone of these two mighty kingdoms of England and Scotland, and taken away the wall of separation: whereby his majesty is become the monarch of the most puissant and military nations of the world; and, if one of the ancient wise men was not deceived, iron commands gold.

Secondly, The plantation and reduction to civility of Ireland, the second island of the ocean Atlantic, did by God's providence wait for his majesty's times; being a work resembling indeed the works of the ancient heroes: no new piece of that kind in modern times.

Thirdly, This kingdom now first in his majesty's times hath gotten a lot or portion in the new world by the plantation of Virginia and the Summer islands. And certainly it is with the kingdoms on earth as it is in the kingdom of heaven: sometimes a grain of mustard-seed proves a great tree. Who can tell?

Fourthly, His majesty hath made that truth which was before titularly, in that he hath verified the stile of Defender of the faith: wherein his majesty's pen hath been so happy, as though the deaf adder will not hear, yet he is charmed that he doth not hiss. I mean in the graver sort of those that have answered his majesty's writings.

Fifthly, It is most certain, that since the conquest, ye cannot assign twenty years, which is the time that his majesty's reign now draws tail upon, of inward
and

and outward peace. Infomuch, as the time of queen Elizabeth, of happy memory, and always magnified for a peaceable reign, was nevertheless interrupted the first twenty years with a rebellion in England; and both first and last twenty years with rebellions in Ireland. And yet I know, that his majesty will make good both his words, as well that of *Nemo me laceffit impune*, as that other of *Beati pacifici*.

Sixthly, That true and primitive office of kings, which is, to sit in the gate and to judge the people, was never performed in like perfection by any of the king's progenitors: whereby his majesty hath shewed himself to be *lex loquens*, and to sit upon the throne, not as a dumb statue, but as a speaking oracle.

Seventhly, For his majesty's mercy, as you noted it well, shew me a time wherein a king of this realm hath reigned almost twenty years, as I said, in his white robes without the blood of any peer of this kingdom: the ax turned once or twice towards a peer, but never struck.

Lastly, The flourishing of arts and sciences re-created by his majesty's countenance and bounty, was never in that height, especially that art of arts, divinity: for that we may truly to God's great glory confess, that since the primitive times, there were never so many stars, for so the Scripture calleth them, in that firmament.

These things, Mr. Speaker, I have partly chosen out of your heap, and are so far from being vulgar, as they are in effect singular and proper to his majesty and his times. So that I have made good, as I take it, my first assertion; that the only worthy commender of his majesty is time: which hath so set off his majesty's merits by the shadows of comparison, as it passeth the lustre or commendation of words.

How then shall I conclude? Shall I say, *O fortunatos nimium sua si bona norint?* No, for I see ye are happy in enjoying them, and happy again in knowing them. But I will conclude this part with that saying, turned to the right hand: *Si gratum dixeris, omnia dixeris*. Your gratitude contains in a word all that I can say to you touching this parliament.

Touching the third point of your speech, concerning parliaments, I shall need to say little: for there was never that honour done to the institution of a parliament, that his majesty did it in his last speech, making it in effect the perfection of monarchy; for that although monarchy was the more ancient, and be independent, yet by the advice and assistance of parliament it is the stronger and the surer built.

And therefore I shall say no more of this point; but as you, Mr. Speaker, did well note, that when the king sits in parliament, and his prelates, peers, and commons attend him, he is in the exaltation of his orb: so I wish things may be so carried, that he may be then in greatest serenity and benignity of aspect; shining upon his people both in glory and grace. Now you know well, that the shining of the sun fair upon the ground, whereby all things exhilarate and do fructify, is either hindered by clouds above or mists below; perhaps by brambles and briars that grow upon the ground itself. All which I hope at this time will be dispelled and removed.

I come now to the last part of your speech, concerning the petitions: but before I deliver his majesty's answer respectively in particular, I am to speak to you some

CHANCELLOR'S SPEECH TO

few words in general; wherein, in effect, I shall but glean, his majesty having so excellently and fully expressed himself.

For that, that can be spoken pertinently, must be either touching the subject or matter of parliament business; or of the manner and carriage of the same; or lastly of the time, and the husbanding and marshalling of time.

For the matters to be handled in parliament, they are either of church, state, laws, or grievances.

For the first two, concerning church or state, ye have heard the king himself speak; and as the Scripture saith, *Who is he that in such things shall come after the king?* For the other two, I shall say somewhat, but very shortly.

For laws, they are things proper for your own element; and therefore therein ye are rather to lead than to be led. Only it is not amiss to put you in mind of two things: the one, that ye do not multiply or accumulate laws more than ye need. There is a wise and learned civilian that applies the curse of the prophet, *Pluit super eos laqueos*, to multiplicity of laws: for they do but ensnare and entangle the people. I wish rather, that ye should either revive good laws that are fallen and discontinued, or provide against the slack execution of laws which are already in force; or meet with the subtle evasions from laws which time and craft hath undetermined, than to make *novas creaturas legum*, laws upon a new mould.

The other point, touching laws, is, that ye busy not yourselves too much in private bills, except it be in cases wherein the help and arm of ordinary justice is too short.

For grievances, his majesty hath with great grace and benignity opened himself. Nevertheless, the limitations, which may make up your grievances, not to beat the air only but to sort to a desired effect, are principally two. The one, to use his majesty's term, that ye do not hunt after grievances, such as may seem rather to be stirred here when ye are met, than to have sprung from the desires of the country: ye are to represent the people; ye are not to personate them.

The other, that ye do not heap up grievances, as if numbers should make a shew where the weight is small; or as if all things amiss, like Plato's commonwealth, should be remedied at once. It is certain, that the best governments, yea, and the best men, are like the best precious stones, wherein every flaw or icicle or grain are seen and noted more than in those that are generally foul and corrupted.

Therefore contain yourselves within that moderation as may appear to bend rather to the effectual ease of the people, than to a discursive envy, or scandal upon the state.

As for the manner of carriage of parliament business, ye must know, that ye deal with a king that hath been longer king than any of you have been parliament men; and a king that is no less sensible of forms than of matter; and is as far from enduring diminution of majesty, as from regarding flattery or vain-glory; and a king that understandeth as well the pulse of the hearts of people as his own orb. And therefore, both let your grievances have a decent and reverend form and stile; and, to use the words of former parliaments, let them be *tanquam gemitus columbae*, without pique or harshness: and on the other side, in that ye do for the king, let it have a mark of unity, alacrity, and affection; which will be of this force, that whatsoever ye do in substance, will be doubled in reputation abroad, as in a crystal glass.

For

For the time, if ever parliament was to be measured by the hour-glass, it is this; in regard of the instant occasion flying away irrecoverably. Therefore let your speeches in the house be the speeches of counsellors, and not of orators; let your committees tend to dispatch, not to dispute; and so marshal the times as the public business, especially the proper business of the parliament be put first, and private bills be put last, as time shall give leave, or within the spaces of the public.

For the four petitions, his majesty is pleased to grant them all as liberally as the ancient and true custom of parliament doth warrant, and with the cautions that have ever gone with them; that is to say, That the privilege be not used for defrauding of creditors and defeating of ordinary justice: that liberty of speech turn not into licence, but be joined with that gravity and discretion, as may taste of duty and love to your sovereign, reverence to your own assembly, and respect to the matters ye handle: that your accesses be at such fit times, as may stand best with his majesty's pleasure and occasions: that mistakings and misunderstandings be rather avoided and prevented, as much as may be, than salved or cleared.



OF THE
TRUE GREATNESS
 OF THE
KINGDOM OF BRITAIN.
 TO KING JAMES.

Fortunatos nimium sua si bona nôrint.

THE greatness of kingdoms and dominions in bulk and territory doth fall under measure and demonstration that cannot err: but the just measure and estimate of the forces and power of an estate is a matter, than the which there is nothing among civil affairs more subject to error, nor that error more subject to perilous consequence. For hence may proceed many inconsiderate attempts and insolent provocations in states that have too high an imagination of their own forces: and hence may proceed, on the other side, a toleration of many fair grievances and indignities, and a loss of many opportunities, in states that are not sensible enough of their own strength. Therefore, that it may the better appear what greatness your majesty hath obtained of God, and what greatness this island hath obtained by you, and what greatness it is, that by the gracious pleasure of almighty God you shall leave and transmit to your children and generations as the first founder; I have thought good, as far as I can comprehend, to make a true survey and representation of the greatness of this your kingdom of Britain; being for mine own part persuaded, that the supposed prediction, *Videò selem orientem in occidente*, may be no less a true vision applied to Britain, than to any other kingdom of Europe; and being out of doubt that none of the great monarchies, which in the memory of times have risen in the habitable world, had so fair seeds and beginnings as hath this your estate and kingdom, whatsoever the event shall be, which must depend upon the dispensation of God's will and providence, and his blessing upon your descendents. And because I have no purpose vainly or assentatorily to represent this greatness, as in water, which shews things bigger than they are, but rather, as by an instrument of art, helping the sense to take a true magnitude and dimension: therefore I will use no hidden order, which is fitter for insinuations than sound proofs, but a clear and open order. First by confuting the errors, or rather correcting the excesses of certain immoderate opinions, which ascribe too much to some points of greatness, which are not so essential, and by reducing those points to a true value and estimation: then by propounding and confirming those other points of greatness which are more solid and principal, though in popular discourse less observed: and incidently by making a brief application, in both these parts, of the general principles and positions of policy

policy unto the state and condition of these your kingdoms. Of these the former part will branch itself into these articles.

First, That in the measuring or balancing of greatness, there is commonly too much ascribed to largeness of territory.

Secondly, That there is too much ascribed to treasure or riches.

Thirdly, That there is too much ascribed to the fruitfulness of the soil, or affluence of commodities.

And fourthly, That there is too much ascribed to the strength and fortification of towns, or holds.

The latter will fall into this distribution :

First, That true greatness doth require a fit situation of the place or region.

Secondly, That true greatness consisteth essentially in population and breed of men.

Thirdly, That it consisteth also in the valour and military disposition of the people it breedeth ; and in this, that they make profession of arms.

Fourthly, That it consisteth in this point, that every common subject by the poll be fit to make a soldier, and not only certain conditions or degrees of men.

Fifthly, That it consisteth in the temper of the government fit to keep the subjects in good heart and courage, and not to keep them in the condition of servile vassals.

And sixthly, That it consisteth in the commandment of the sea.

AND let no man so much forget the subject propounded, as to find strange, that here is no mention of religion, laws or policy. For we speak of that which is proper to the amplitude and growth of states, and not of that which is common to their preservation, happiness, and all other points of well-being. First, therefore, touching largeness of territories, the true greatness of kingdoms upon earth is not without some analogy with the kingdom of heaven, as our Saviour describes it : which he doth resemble, not to any great kernel or nut, but to one of the least grains ; but yet such a one, as hath a property to grow and spread. For as for large countries and multitude of provinces, they are many times rather matters of burden than of strength, as may manifestly appear both by reason and example. By reason thus. There be two manners of securing of large territories, the one by the natural arms of every province, and the other by the protecting arms of the principal estate, in which case commonly the provincials are held disarm'd. So are there two dangers incident unto every estate, foreign invasion, and inward rebellion. Now such is the nature of things, that these two remedies of estate do fall respectively into these two dangers, in case of remote provinces. For if such an estate rest upon the natural arms of the provinces, it is sure to be subject to rebellion or revolt ; if upon protecting arms, it is sure to be weak against invasion : neither can this be avoided.

Now for examples, proving the weakness of states possessed of large territories, I will use only two, eminent and selected. The first shall be of the kingdom of Persia, which extended from Egypt, inclusive, unto Bactria, and the borders of the East India ; and yet nevertheless was over-run and conquered, in the space of seven years, by a nation not much bigger than this isle of Britain, and newly grown into name, having been utterly obscure till the time of Philip the son of Amyntas.

Neither.

Neither was this effected by any rare or heroic prowess in the conqueror, as is vulgarly conceived, for that Alexander the Great goeth now for one of the wonders of the world; for those that have made a judgment grounded upon reason of estate, do find that conceit to be merely popular, for so Livy pronounceth of him, *Nihil aliud quam bene acie raro contentum*. Wherein he judgeth of vastness of territory as a vanity that may astonish a weak mind, but no ways trouble a sound resolution. And those that are conversant attentively in the histories of those times, shall find that this purchase which Alexander made and compassed, was offered by fortune twice before to others, though by accident they went not through with it; namely, to Agesilaus, and Jason of Thessaly: for Agesilaus, after he had made himself master of most of the low provinces of Asia, and had both design and commission to invade the higher countries, was diverted and called home upon a war excited against his country by the states of Athens and Thebes, being incensed by their orators and counsellors, which were bribed and corrupted from Persia; as Agesilaus himself avouched pleasantly, when he said, That an hundred thousand archers of the king of Persia had driven him home: understanding it, because an archer was the stamp upon the Persian coin of gold. And Jason of Thessaly, being a man born to no greatness, but one that made a fortune of himself, and had obtained by his own vivacity of spirit, joined with the opportunities of time, a great army compounded of voluntaries and adventurers, to the terror of all Greece, that continually expected where that cloud would fall; disclosed himself in the end, that his design was for an expedition into Persia, the same which Alexander not many years after achieved, wherein he was interrupted by a private conspiracy against his life, which took effect. So that it appeareth, as was said, that it was not any miracle of accident that raised the Macedonian monarchy, but only the weak composition of that vast state of Persia, which was prepared for a prey to the first resolute invader.

The second example that I will produce, is of the Roman empire, which had received no diminution in territory, though great in virtue and forces, till the time of Jovianus. For so it was alledged by such as opposed themselves to the rendering Nilbis upon the dishonourable retreat of the Roman army out of Persia. At which time it was avouched, that the Romans, by the space of 800 years, had never, before that day, made any cession or renunciation of any part of their territory, whereof they had once had a constant and quiet possession. And yet, nevertheless, immediately after the short reign of Jovianus, and towards the end of the joint reign of Valentinianus and Valens, which were his immediate successors, and much more in the times succeeding, the Roman empire, notwithstanding the magnitude thereof, became no better than a carcase, whereupon all the vultures and birds of prey of the world did seize and ravine for many ages, for a perpetual monument of the essential difference between the scale of miles, and the scale of forces. And therefore, upon these reasons and examples, we may fully conclude, that largeness of territory is so far from being a thing inseparable from greatness of power, as it is many times contrary and incompatible with the same. But to make a reduction of that error to a truth, it will stand thus, that then greatness of territory addeth strength, when it hath these four conditions:

First, That the territories be compacted, and not dispersed.

Secondly,

Secondly, That the region which is the heart and seat of the state, be sufficient to support those parts, which are but provinces and additions.

Thirdly, That the arms or martial virtue of the state be in some degree answerable to the greatness of dominion.

And lastly, That no part or province of the state be utterly unprofitable, but do confer some use or service to the state.

The first of these is manifestly true, and scarcely needeth any explication. For if there be a state that consisteth of scattered points instead of lines, and slender lines instead of latitudes; it can never be solid, and in the solid figure is strength. But what speak we of mathematical principles? The reason of state is evident, that if the parts of an estate be disjointed and remote, and so be interrupted with the provinces of another sovereignty; they cannot possibly have ready succours in case of invasion, nor ready suppression in case of rebellion, nor ready recovery in case of loss or alienation by either or both means. And therefore we see what an endless work the king of Spain hath had to recover the Low-Countries, although it were to him patrimony and not purchase; and that chiefly in regard of the great distance. So we see that our nation kept Calais a hundred years space after it lost the rest of France, in regard of the near situation; and yet in the end they that were nearer, carried it by surprise, and over-ran succour.

Therefore Titus Quintius made a good comparison of the state of the Achaians to a tortoise, which is safe when it is retired within the shell, but if any part be put forth, then the part exposed endangereth all the rest. For so it is with states that have provinces dispersed, the defence whereof doth commonly consume and decay, and sometimes ruin the rest of the estate. And so likewise we may observe, that in all the great monarchies, the Persians, the Romans, and the like of the Turks, they had not any provinces to the which they needed to demand access through the country of another: neither had they any long races or narrow angles of territory, which were environed or clasped in with foreign states; but their dominions were continued and entire, and had thickness and squareness in their orb or contents. But these things are without contradiction.

For the second, concerning the proportion between the principal region, and those which are but secondary, there must evermore distinction be made between the body or stem of the tree, and the boughs and branches. For if the top be over great, and the stalk too slender, there can be no strength. Now, the body is to be accounted so much of an estate, as is not separated or distinguished with any mark of foreigners, but is united specially with the bond of naturalization; and therefore we see that when the state of Rome grew great, they were enforced to naturalize the Latins or Italians, because the Roman stem could not bear the provinces and Italy both as branches: and the like they were contented after to do to most of the Gauls. So on the contrary part we see in the state of Lacedæmon, which was nice in that point, and would not admit their confederates to be incorporate with them, but rested upon the natural-born subjects of Sparta, how that a small time after they had embraced a larger empire, they were presently furcharged, in respect to the slenderness of the stem. For so in the defection of the Thebans and the rest against them, one of the principal revolters spake most aptly, and with great efficacy in the assembly of the associates, telling them, That the state of Sparta was like a river, which, after that it had run a great way, and taken other rivers and streams into it, ran strong and mighty, but about the head and fountain of it

OF THE TRUE GREATNESS

was shallow and weak ; and therefore advised them to assail and invade the main of Sparta, knowing they should there find weak resistance either of towns or in the field : of towns, because upon confidence of their greatness they fortified not upon the main ; in the field, because their people was exhausted by garisons and services far off. Which counsel proved sound, to the astonishment of all Græcia at that time.

For the third, concerning the proportion of the military forces of a state to the amptude of empire, it cannot be better demonstrated than by the two first examples which we produced of the weakness of large territory, if they be compared within themselves according to difference of time. For Persia at a time was strengthened with large territory, and at another time weakened ; and so was Rome. For while they flourished in arms, the largeness of territory was a strength to them, and added forces, added treasures, added reputation : but when they decayed in arms, then greatness became a burden. For their protecting forces did corrupt, corrupt, and enervate the natural and proper forces of all their provinces, which relied and depended upon the succours and directions of the state above. And when that waxed impotent and slothful, then the whole state laboured with her own magnitude, and in the end fell with her own weight. And that no question was the reason of the strange inundations of people which both from the east and northwell overwhelmed the Roman empire in one age of the world, which a man upon the sudden would attribute to some constellation or fatal revolution of time, being indeed nothing else but the declination of the Roman empire, which having effeminated and made vile the natural strength of the provinces, and not being able to supply it by the strength imperial and sovereign, did, as a lure cast abroad, invite and entice all the nations adjacent, to make their fortunes upon her decays. And by the same reason, there cannot but ensue a dissolution to the state of the Turk, in regard of the largeness of empire, whensoever their martial virtue and discipline shall be further relaxed, whereof the time seemeth to approach. For certainly like as great stature in a natural body is some advantage in youth, but is but burden in age ; so it is with great territory, which when a state beginneth to decline, doth make it stoop and buckle so much the faster.

For the fourth and last, it is true, that there is to be required and expected as in the parts of a body, so in the members of a state, rather propriety of service, than equality of benefit. Some provinces are more wealthy, some more populous, and some more warlike ; some situate aptly for the exclusion or expulsion of foreigners, and some for the annoying and bridling of suspected and tumultuous subjects ; some are profitable in present, and some may be converted and improved to profit by plantations and good policy. And therefore true consideration of estate can hardly find what to reject, in matter of territory, in any empire, except it be some glorious conquests obtained sometime in the bravery of wars, which cannot be kept without excessive charge and trouble ; of which kind were the purchases of king Henry VIII. that of Tournay, and that of Bologne ; and of the same kind are infinite other the like examples almost in every war, which for the most part upon treaties of peace are restored.

Thus have we now defined where the largeness of territory addeth true greatness, and where not. The application of these positions unto the particular or supposition of this your majesty's kingdom of Britain, requireth few words. For, as I
 professed

professed in the beginning, I mean not to blazon or amplify, but only to observe and express matter.

First, Your majesty's dominion and empire comprehendeth all the islands of the northwest ocean, where it is open, until you come to the imbarred or frozen sea, towards Iceland; in all which tract, it hath no intermixture or interposition of any foreign land, but only of the sea, whereof you are also absolutely master.

Secondly, The quantity and content of these countries is far greater than have been the principal or fundamental regions of the greatest monarchies, greater than Persia proper, greater than Macedon, greater than Italy. So as here is potentially body and stem enough for Nabuchodonosor's tree, if God should have so ordained.

Thirdly, The prowess and valour of your subjects is able to master and wield far more territory than fallieth to their lot. But that followeth to be spoken of in the proper place.

And lastly, it must be confessed, that whatsoever part of your countries and regions shall be counted the meanest, yet is not inferior to those countries and regions, the people whereof some ages since over-ran the world. We see further by the uniting of the continent of this island, and the shutting up of the postern, as it was not unfitly termed, all entrance of foreigners is excluded: and we see again, that by the fit situation and configuration of the north of Scotland toward the north of Ireland, and the reputation, commodity and terror thereof, what good effects have ensued for the better quieting of the troubles of Ireland. And so we conclude this first branch touching largeness of territory.

THE second article was,

That there is too much ascribed to treasure or riches in the balancing of greatness.

Wherein no man can be ignorant of the idolatry that is generally committed in these degenerate times to money, as if it could do all things public and private: but leaving popular errors, this is likewise to be examined by reason and example; and such reason, as is no new conceit or invention, but hath formerly been discerned by the sounder sort of judgments. For we see that Solon, who was no contemplative wise man, but a statesman and a lawgiver, used a memorable censure to Croæus, when he shewed him great treasures, and store of gold and silver that he had gathered, telling him, that whensoever another should come that had better iron than he, he would be master of all his gold and silver. Neither is the authority of Machiavel to be despised, specially in a matter whereof he saw the evident experience before his eyes in his own times and country, who derideth the received and current opinion and principle of estate taken first from a speech of Mutianus the lieutenant of Vespasian, That money was the sinews of war; affirming, that it is a mockery, and that there are no other true sinews of war, but the sinews and muscles of mens arms: and that there was never any war, wherein the more valiant people had to deal with the more wealthy, but that the war, if it were well conducted, did nourish and pay itself. And had he not reason so to think, when he saw a needy and ill-provided army of the French, though needy rather by negligence, than want of means, as the French manner oftentimes is, make their passage only by the reputation of their swords by their sides undrawn, thorough the whole length of Italy, at that time abounding in wealth after a long peace, and that

without resistance, and to seize and leave what countries and places it pleased them? But it was not the experience of that time alone, but the records of all times that do concur to falsify that conceit, that wars are decided not by the sharpest sword, but by the greatest purse. And that very text or saying of Mutianus which was the original of this opinion, is misvouched, for his speech was, *Pecuniae sicut nervus belli civilis*, which is true, for that civil wars cannot be between people of differing valour; and again because in them men are as oft bought as vanquished. But in case of foreign wars, you shall scarcely find any of the great monarchies of the world, but have had their foundations in poverty and contemptible beginnings, being in that point also conform to the heavenly kingdom, of which it is pronounced, *Regnum Dei non venit cum observatione*. Persia, a mountainous country, and a poor people in comparison of the Medes, and other provinces which they subdued. The state of Sparta, a state wherein poverty was enacted by law and ordinance; all use of gold and silver and rich furniture being interdicted. The state of Macedonia, a state mercenary and ignoble until the time of Philip. The state of Rome, a state that had poor and pastoral beginnings. The state of the Turks, which hath been since the terror of the world, founded upon a transmigration of some bands of Sarmatian Scythes, that descended in a vagabond manner upon the province that is now termed Turcomannia; out of the remnants whereof, after great variety of fortune, sprang the Otoman family. But never was any position of estate so visibly and substantially confirmed as this, touching the preeminence, yea and predominancy of valour above treasure, as by the two descents and inundations of necessitous and indigent people, the one from the east, and the other from the west, that of the Arabians or Saracens, and that of the Goths, Vandals, and the rest: who, as if they had been the true inheritors of the Roman empire, then dying, or at least grown impotent and aged, entered upon Egypt, Asia, Graecia, Africk, Spain, France, coming to these nations, not as to a prey, but as to a patrimony; not returning with spoil, but seating and planting themselves in a number of provinces, which continue their progeny, and bear their names till this day. And all these men had no other wealth but their adventures, nor no other title but their swords, nor no other pres but their poverty. For it was not with most of these people as it is in countries reduced to a regular civility, that no man almost marrieth except he see he have means to live; but population went on, howsoever sustentation followed, and taught by necessity, as some writers report, when they found themselves furcharged with people, they divided their inhabitants into three parts, and one third, as the lot fell, was sent abroad and left to their adventures. Neither is the reason much unlike, though the effect hath not followed in regard of a special diversion, in the nation of the Swisses, inhabiting a country, which in regard of the mountainous situation, and the popular estate, doth generate faster than it can sustain. In which people, it well appeared what an authority iron had over gold at the battle of Granson, at what time one of the principal jewels of Burgundy was sold for twelve pence, by a poor Swiss, that knew no more of a precious stone than did Aesop's cock. And although this people have made no plantations with their arms, yet we see the reputation of them such, as not only their forces have been employed and waged, but their alliance sought and purchased, by the greatest kings and states of Europe. So as though fortune, as it fares sometimes with princes to their servants, hath denied them a grant of lands, yet she hath granted them liberal pensions, which are made memorable and
renowned

renowned to all posterity, by the event which ensued to Lewis the twelfth; who, being pressed uncivilly by message from them for the inhauncing their pensions, entered into choler and broke out into these words, "What! will these villains of the mountains put a tax upon me?" which words cost him his dutchy of Milan, and utterly ruined his affairs in Italy. Neither was it indeed possible at this day, that that nation should subsist without descents and impressions upon their neighbours, were it not for the great utterance of people which they make into the services of foreign princes and estates, thereby discharging not only number, but in that number such spirits as are most stirring and turbulent.

And therefore we may conclude, that as largeness of territory, severed from military virtue, is but a burden; so, that treasure and riches severed from the same, is but a prey. It resteth therefore to make a reduction of this error also unto a truth by distinction and limitation, which will be in this manner:

Treasure and moneys do then add true greatness and strength to a state, when they are accompanied with these three conditions:

First, The same condition which hath been annexed to largeness of territory, that is, that they be joined with martial prowess and valour.

Secondly, That treasure doth then advance greatness, when it is rather in mediocrity than in great abundance. And again better, when some part of the state is poor, than when all parts of it are rich.

And lastly, That treasure in a state is more or less serviceable, as the hands are in which the wealth chiefly resteth.

For the first of these, it is a thing that cannot be denied, that in equality of valour, the better purse is an advantage. For like as in wrestling, between man and man, if there be a great overmatch in strength, it is to little purpose though one have the better breath; but, if the strength be near equal, then he that is shorter winded will, if the wager consist of many falls, in the end have the worst: so it is in the wars, if it be a match between a valiant people and a cowardly, the advantage of treasure will not serve; but if they be near in valour, then the better monied state will be the better able to continue the war, and so in the end to prevail. But if any man think that money can make those provisions at the first encounters, that no difference of valour can countervail, let him look back but into those examples which have been brought, and he must confess, that all those furnitures whatsoever are but shews and mummeries, and cannot shrowd fear against resolution. For there shall he find companies armed with armour of proof taken out of the stately armories of kings who spared no cost, overthrown by men armed by private bargain and chance as they could get it: there shall he find armies appointed with horses bred of purpose, and in choice races, chariots of war, elephants, and the like terrors, mastered by armies meanly appointed. So of towns strongly fortified, basely yielded, and the like; all being but sheep in a lion's skin, where valour faileth.

For the second point, that competency of treasure is better than surfeit, is a matter of common place or ordinary discourse; in regard that excess of riches, neither in public nor private, ever hath any good effects, but maketh men either slothful and effeminate, and so no enterprisers; or insolent and arrogant, and so over-great embracers; but most generally cowardly and fearful to lose, according to the adage, *Timidus Plutus*; so as this needeth no further speech. But a part of that assertion requireth a more deep consideration, being a matter not so familiar,
but

but yet most assuredly true. For it is necessary in a state that shall grow and enlarge, that there be that composition which the poet speaks of, *Motis utile bellum*: an ill condition of a state, no question, if it be meant of a civil war, as it was spoken, but a condition proper to a state that shall increase, if it be taken of a foreign war. For except there be a spur in the state, that shall excite and prick them on to wars, they will but keep their own, and seek no further. And in all experience and stories you shall find but three things that prepare and dispose an estate to war: the ambition of governors, a state of soldiers professed, and the hard means to live of many subjects. Whereof the last is the most forcible and the most constant. And this is the true reason of that event which we observed and rehearsed before, that most of the great kingdoms of the world have sprung out of hardness and scarceness of means, as the strongest herbs out of the barrenest soils.

For the third point, concerning the placing and distributing of treasure in a state, the position is simple; that then treasure is greatest strength to a state, when it is so disposed, as it is readiest and easiest to come by for public service and use: which one position doth infer three conclusions.

First, that there be quantity sufficient of treasure as well in the treasury of the crown or state, as in the purse of the private subject.

Secondly, that the wealth of the subject be rather in many hands than in few.

And thirdly, that it be in those hands, where there is likeliest to be greatest sparing and increase, and not in those hands, wherein there useth to be greatest expence and consumption.

For it is not the abundance of treasure in the subjects hands that can make sudden supply of the want of a state; because reason tells us and experience both, that private persons have least will to contribute when they have most cause; for when there is noise or expectation of wars, then are always the dearest times for monies, in regard every man restraineth and holdeth fast his means for his own comfort and succour, according as Solomon saith, *The riches of a man are as a stronghold in his own imagination*; and therefore we see by infinite examples, and none more memorable than that of Constantinus the last emperor of the Greeks, and the citizens of Constantinople, that subjects do often choose rather to be frugal dispensers for their enemies, than liberal lenders to their prince. Again, wheresoever the wealth of the subject is ingrossed into few hands, it is not possible it should be so respondent and yielding to payments and contributions for the public, both because the true estimation or assessment of great wealth is more obscure and uncertain; and because the burden seemeth lighter when the charge lieth upon many hands; and further, because the same greatness of wealth is for the most part not collected and obtained without sucking it from many, according to the received similitude of the spleen, which never swelleth but when the rest of the body pineth and abateth. And lastly, it cannot be that any wealth should leave a second overplus for the public that doth not first leave an overplus to the private stock of him that gathers it; and therefore nothing is more certain, than that those states are least able to aid and defray great charge for wars, or other public disbursements, whose wealth resteth chiefly in the hands of the nobility and gentlemen. For what by reason of their magnificence and waste in expence, and what by reason of their desire to advance and make great their own families, and again upon the coincidence of the former reason, because they are always the fewest; small is the help, as to payments or charge, that can be levied or expected from them towards the occasions

sions of a state. Contrary it is of such states whose wealth resteth in the hands of merchants, burghers, tradesmen, freeholders, farmers in the country, and the like, whereof we have a most evident and present example before our eyes, in our neighbours of the Low-Countries, who could never have endured and continued so inestimable and insupportable charge, either by their natural frugality, or by their mechanical industry, were it not also that there was a concurrence in them of this last reason, which is, that their wealth was dispersed in many hands, and not ingrossed into few; and those hands were not much of the nobility, but most and generally of inferior conditions.

To make application of this part concerning treasure to your majesty's kingdoms :

First, I suppose I cannot err, that as to the endowment of your crown, there is not any crown of Europe, that hath so great a proportion of demesne and land revenue. Again, he that shall look into your prerogative shall find it to have as many streams to feed your treasury, as the prerogative of any of the said kings, and yet without oppression or taxing of your people. For they be things unknown in many other states, that all rich mines should be yours, though in the soil of your subjects; that all wardships should be yours, where a tenure in chief is, of lands held of your subjects; that all confiscations and escheats of treason should be yours, though the tenure be of the subject; that all actions popular, and the fines and casualties thereupon may be informed in your name, and should be due unto you, and a moiety at the least where the subject himself informs. And further, he that shall look into your revenues at the ports of the sea, your revenues in courts of justice, and for the stirring of your seals, the revenues upon your clergy, and the rest, will conclude, that the law of England studied how to make a rich crown, and yet without levies upon your subject. For merchandising, it is true, it was ever by the kings of this realm despised, as a thing ignoble and indign for a king, though it is manifest, the situation and commodities of this island considered, it is infinite, what your majesty might raise, if you would do as a king of Portugal doth, or a duke of Florence, in matter of merchandise. As for the wealth of the subject* :

To proceed to the articles affirmative, the first was,

That the true greatness of an estate consisteth in the natural and fit situation of the region or place.

Wherein I mean nothing superstitiously touching the fortunes or fatal destiny of any places, nor philosophically touching their configuration with the superior globe. But I understand proprieties and respects merely civil and according to the nature of human actions, and the true considerations of estate. Out of which duly weighed, there doth arise a triple distribution of the fitness of a region for a great monarchy. First, that it be of hard access. Secondly, that it be seated in no extreme angle, but commodiously in the midst of many regions. And thirdly, that it be maritime, or at the least upon great navigable rivers; and be not inland or mediterrane. And that these are not conceits, but notes of event, it appeareth manifestly, that all great monarchies and states have been seated in such manner, as, if you would place them again, observing these three points which I have mentioned, you cannot place them better; which shews the preeminence of nature, unto which human industry or accident cannot be equal, specially in any continuance of time. Nay, if a man look into these things more attentively, he shall see divers of these

* Memorandum, Here was a blank side left, to continue the sense.

* Mem. To
add the rea-
sons of the
three Propo-
sitions.

seats of monarchies, how fortune hath hovered still about the places, coming and going only in regard of the fixed reason of the conveniency of the place, which is immutable. And therefore, first we see the excellent situation of Egypt; which seemeth to have been the most ancient monarchy, how conveniently it stands upon a neck of land commanding both seas on either side, and embracing, as it were with two arms, Asia and Afric, besides the benefit of the famous river of Nilus. And therefore we see what hath been the fortune of that country, there having been two mighty returns of fortune, though at great distance of time; the one in the times of Scythris, and the other in the empire of the Mamalukes, besides the middle greatness of the kingdom of the Ptolemys, and of the greatness of the caliphs and sultans in the latter times. And this region, we see likewise, is of strait and defensible access, being commonly called of the Romans, *Clausura Aegypti* *. Consider in like manner the situation of Babylon, being planted most strongly in regard of lakes and overflowing grounds between the two great navigable rivers of Euphrates and Tigris, and in the very heart of the world; having regard to the four *cardines* of east and west and northern and southern regions. And therefore we see, that although the sovereignty alter, yet the seat still of the monarchy remains in that place. For after the monarchies of the kings of Assyria, which were natural kings of that place, yet when the foreign kings of Persia came in, the seat remained. For although the mansion of the persons of the kings of Persia were sometimes at Susa, and sometimes at Ecbatana, which were termed their winter and their summer parlours, because of the mildness of the air in the one, and the freshness in the other; yet the city of estate continued to be Babylon. Therefore we see, that Alexander the Great, according to the advice of Calanus the Indian, that shewed him a bladder, which, if it were born down at one end, would rise at the other, and therefore wished him to keep himself in the middle of his empire, chose accordingly Babylon for his seat, and died there. And afterwards likewise in the family of Seleucus and his descendents, kings of the east, although divers of them, for their own glory, were founders of cities of their own names, as Antiochia, Seleucia, and divers others, which they sought by all means to raise and adorn, yet the greatness still remained according unto nature with the ancient seat. Nay, further on, the same remained during the greatness of the kings of Parthia, as appeareth by the verse of Lucian, who wrote in Nero's time:

Cumque superba staret Babylon spolianda trophaeis.

And after that, again it obtained the seat of the highest caliph or successors of Mahomet. And at this day, that which they call Bagdat, which joins to the ruin of the other, containeth one of the greatest satrapies of the Levant. So again Persia, being a country imbarred with mountains, open to the seas, and in the middle of the world, we see hath had three memorable revolutions of great monarchies. The first in the time of Cyrus; the second in the time of the new Artaxerxes, who raised himself in the reign of Alexander Severus emperor of Rome; and now of late memory, in Imael the sophy, whose descendents continue in empire and competition with the Turks to this day.

So again Constantinople, being one of the most excellent seats of the world, in the confines of Europe and Asia.

A D V I C E

T O

Sir G E O R G E V I L L I E R S,

A F T E R W A R D S

D U K E O F B U C K I N G H A M,

When he became

F A V O U R I T E to King J A M E S.

Recommending many important Instructions how to govern
himself in the station of Prime Minister.

Written by Sir F R A N C I S B A C O N, on the importunity of his Patron
and Friend.

NOBLE SIR,

WHAT you requested of me by word, when I last waited on you, you have since renewed by your letters. Your requests are commands unto me; and yet the matter is of that nature, that I find myself very unable to serve you therein as you desire. It hath pleased the king to cast an extraordinary eye of favour upon you, and you express yourself very desirous to win upon the judgment of your master, and not upon his affections only. I do very much commend your noble ambition herein; for favour so bottomed is like to be lasting; whereas, if it be built but upon the sandy foundation of personal respects only, it cannot be long-lived.

[My lord, when the blessing of God, to whom in the first place I know you ascribe your preferment, and the king's favour, purchased by your noble parts, promising as much as can be expected from a gentleman, had brought you to this high pitch of honour, to be in the eye, and ear, and even in the bosom of your gracious master; and you had found by experience the trouble of all mens concurrence, and for all matters, to yourself, as a mediator between them and their sovereign, you were pleased to lay this command upon me: first in general, to give you my poor advice for your carriage in so eminent a place, and of so much danger if not wisely discharged: next in particular by what means to give dispatches to

What is said in crochets is borrowed from the original edition published in 4to, 1661.

ADVICE TO SIR GEORGE VILLIERS.

suitors of all sorts, for the king's best service, the suitors satisfaction, and your own ease. I humbly return you mine opinion in both these, such as an hermit rather than a courtier can render.]

Yet in this you have erred, in applying yourself to me the most unworthy of your servants, to give assistance upon so weighty a subject.

You know I am no courtier, nor versed in state-affairs; my life, hitherto, hath rather been contemplative than active; I have rather studied books than men; I can but guess, at the most, at these things, in which you desire to be advised: nevertheless, to shew my obedience, though with the hazard of my discretion, I shall yield unto you.

Sir, In the first place, I shall be bold to put you in mind of the present condition you are in; you are not only a courtier, but a bed-chamber man, and so are in the eye and ear of your master; but you are also a favourite; the favourite of the time, and so are in his bosom also; the world hath so voted you, and doth so esteem of you: for kings and great princes, even the wisest of them, have had their friends, their favourites, their privadoes in all ages; for they have their affections as well as other men. Of these they make several uses; sometimes to communicate and debate their thoughts with them, and to ripen their judgments thereby; sometimes to ease their cares by imparting them; and sometimes to interpose them between themselves and the envy or malice of their people; for kings cannot err, that must be discharged upon the shoulders of their ministers; and they who are nearest unto them must be content to bear the greatest load. [Remember then what your true condition is: the king himself is above the reach of his people, but cannot be above their censures; and you are his shadow, if either he commit an error, and is loth to avow it, but excuses it upon his ministers, of which you are first in the eye; or you commit the fault or have willingly permitted it, and must suffer for it: and so perhaps you may be offered a sacrifice to appease the multitude.] But truly, Sir, I do not believe or suspect that you are chosen on this eminency, out of the last of these considerations: for you serve such a master, who by his wisdom and goodness is as free from the malice or envy of his subjects, as I think, I may truly say, ever any king was, who hath sat upon his throne before him: but I am confident, his majesty hath cast his eyes upon you, as finding you to be such as you should be, or hoping to make you to be such as he would have you to be; for this I may say without flattery, your outside promiseth as much as can be expected from a gentleman: but be it in the one respect or other, it belongeth to you to take care of yourself, and to know well what the name of a favourite signifies. If you be chosen upon the former respects, you have reason to take care of your actions and deportment, out of your gratitude, for the king's sake; but if out of the latter, you ought to take the greater care for your own sake.

You are as a new-risen star, and the eyes of all men are upon you; let not your own negligence make you fall like a meteor.

[Remember well the great trust you have undertaken; you are as a continual centinel, always to stand upon your watch to give him true intelligence. If you flatter him you betray him; if you conceal the truth of those things from him which concern his justice or his honour, although not the safety of his person, you are as dangerous a traitor to his state, as he that riseth in arms against him. A false friend is more dangerous than an open enemy: kings are stiled gods upon earth, not absolute, but *Dei, Dei igitur*; and the next words are, *sed non sicut homines*;

homines; they shall die like men, and then all their thoughts perish. They cannot possibly see all things with their own eyes, nor hear all things with their own ears; they must commit many great trusts to their ministers. Kings must be answerable to God almighty, to whom they are but vassals, for their actions and for their negligent omissions: but the ministers to kings, whose eyes, ears, and hands they are, must be answerable to God and man for the breach of their duties, in violation of their trusts, whereby they betray them. Opinion is a master-wheel in these cases: that courtier who obtained a boon of the emperor, that he might every morning at his coming into his presence humbly whisper him in the ear and say nothing, asked no unprofitable suit for himself: but such a fancy raised only by opinion cannot be long-lived, unless the man have solid worth to uphold it; otherwise when once discovered it vanisheth suddenly. But when a favourite in court shall be raised upon the foundation of merits, and together with the care of doing good service to the king, shall give good dispatches to the suitors, then can he not choose but prosper.]

The contemplation then of your present condition must necessarily prepare you for action: what time can be well spared from your attendance on your master, will be taken up by suitors, whom you cannot avoid nor decline without reproach. For if you do not already, you will soon find the throng of suitors attend you; for no man, almost, who hath to do with the king, will think himself safe, unless you be his good angel, and guide him; or at least that you be not a *malus genius* against him: so that, in respect of the king your master, you must be very wary that you give him true information; and if the matter concern him in his government, that you do not flatter him; if you do, you are as great a traitor to him in the court of heaven, as he that draws his sword against him: and in respect of the suitors which shall attend you, there is nothing will bring you more honour and more ease, than to do them what right in justice you may, and with as much speed as you may: for believe it, Sir, next to the obtaining of the suit, a speedy and gentle denial, when the case will not bear it, is the most acceptable to suitors: they will gain by their dispatch; whereas else they shall spend their time and money in attending; and you will gain, in the ease you will find in being rid of their importunity. But if they obtain what they reasonably desired, they will be doubly bound to you for your favour; *Bis dat, qui cito dat*, it multiplies the courtesy, to do it with good words and speedily.

That you may be able to do this with the best advantage, my humble advice is this; when suitors come unto you, set apart a certain hour in a day to give them audience: if the business be light and easy, it may by word only be delivered, and in a word be answered; but if it be either of weight or of difficulty, direct the suitor to commit it to writing, if it be not so already, and then direct him to attend for his answer at a set time to be appointed, which should constantly be observed, unless some matter of great moment do interrupt it. When you have received the petitions, and it will please the petitioners well, to have access unto you to deliver them into your own hand, let your secretary first read them, and draw lines under the material parts thereof, for the matter, for the most part, lies in a narrow room. The petitions being thus prepared, do you constantly set apart an hour in a day to peruse those petitions; and after you have ranked them into several files, according to the subject matter, make choice of two or three friends, whose judgments and fidelities you believe you may trust in a business of that nature; and re-

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commend it to one or more of them, to inform you of their opinions, and of their reasons for or against the granting of it. And if the matter be of great weight indeed, then it would not be amiss to send several copies of the same petition to several of your friends, the one not knowing what the other doth, and desire them to return their answers to you by a certain time, to be prefixed, in writing; so shall you receive an impartial answer, and by comparing the one with the other, as out of *responſa prudentium*, you shall both discern the abilities and faithfulness of your friends, and be able to give a judgment thereupon as an oracle. But by no means trust to your own judgment alone; for no man is omniscient: nor trust only to your servants, who may mislead you or misinform you; by which they may perhaps gain a few crowns, but the reproach will lie upon yourself, if it be not rightly carried.

For the facilitating of your dispatches, my advice is farther, that you divide all the petitions, and the matters therein contained, under several heads: which, I conceive, may be fitly ranked into these eight sorts.

- I. Matters that concern religion, and the church and churchmen.
- II. Matters concerning justice, and the laws, and the professors thereof.
- III. Counsellors, and the council table, and the great offices and officers of the kingdom.
- IV. Foreign negotiations and embassies.
- V. Peace and war, both foreign and civil, and in that the navy and forts, and what belongs to them.
- VI. Trade at home and abroad.
- VII. Colonies, or foreign plantations.
- VIII. The court and curiality.

And whatsoever will not fall naturally under one of these heads, believe me, Sir, will not be worthy of your thoughts, in this capacity, we now speak of. And of these sorts, I warrant you, you will find enough to keep you in business.

I BEGIN with the first, which concerns religion.

1. In the first place, be you yourself rightly persuaded and settled in the true protestant religion, professed by the church of England; which doubtless is as sound and orthodox in the doctrine thereof, as any christian church in the world.

[For religion, if any thing be offered to you touching it, or touching the church, or church-men, or church-government, rely not only upon yourself, but take the opinion of some grave and eminent divines, especially such as are sad and discreet men, and exemplary for their lives.]

2. In this you need not be a monitor to your gracious master the king: the chiefest of his imperial titles is, to be The Defender of the Faith, and his learning is eminent, not only above other princes, but above other men; be but his scholar, and you are safe in that.

[If any question be moved concerning the doctrine of the church of England expressed in the thirty nine articles, give not the least ear to the movers thereof: that is so soundly and so orthodoxly settled, as cannot be questioned without extreme danger to the honour and stability of our religion; which hath been sealed with the blood of so many martyrs and confessors, as are famous through the christian world. The enemies and underminers thereof are the Romish catholic, so styling themselves, on the one hand, whose tenets are inconsistent with the truth
of

of religion professed and protected by the church of England, whence we are called protestants; and the anabaptists, and separatists, and sectaries on the other hand, whose tenets are full of schism, and inconsistent with monarchy: for the regulating of either, there needs no other coercion than the due execution of the laws already established by parliament.]

3. For the discipline of the church of England by bishops, *etc.* I will not positively say, as some do, that it is *jure divino*; but this I say and think *ex animo*, that it is the nearest to apostolical truth; and confidently I shall say, it is fittest for monarchy of all others. I will use no other authority to you, than that excellent proclamation set out by the king himself in the first year of his reign, and annexed before the book of Common-prayer, which I desire you to read; and if at any time there shall be the least motion made for innovation, to put the king in mind to read it himself: it is most dangerous in a state, to give ear to the least alterations in government.

[If any attempt be made to alter the discipline of our church, although it be not an essential part of our religion, yet it is so necessary not to be rashly altered, as the very substance of religion will be interested in it: therefore I desire you before any attempt be made of an innovation by your means, or by any intercession to your master, that you will first read over, and his majesty call to mind that wise and weighty proclamation, which himself penned, and caused to be published in the first year of his reign, and is prefixed in print before the book of Common-prayer, of that impression, in which you will find so prudent, so weighty reasons, not to hearken to innovations, as will fully satisfy you, that it is dangerous to give the least ear to such innovators; but it is desperate to be misled by them: and to settle your judgment, mark but the admonition of the wisest of men, king Solomon, Prov. xx.v. 21. *My son, fear God and the king, and meddle not with those who are given to change.*]

4. Take heed, I beseech you, that you be not an instrument to countenance the Romish catholics. I cannot flatter, the world believes that some near in blood to you are too much of that persuasion; you must use them with fit respects, according to the bonds of nature; but you are of kin, and so a friend to their persons, not to their errors.

5. The archbishops and bishops, next under the king, have the government of the church and ecclesiastical affairs: be not you the mean to prefer any to those places for any by-respects; but only for their learning, gravity, and worth: their lives and doctrine ought to be exemplary.

6. For deans, and canons or prebends of cathedral churches: in their first institution they were of great use in the church; they were not only to be of counsel with the bishop for his revenue, but chiefly for his government in causes ecclesiastical: use your best means to prefer such to those places who are fit for that purpose, men eminent for their learning, piety, and discretion, and put the king often in mind thereof; and let them be reduced again to their first institution.

7. You will be often solicited, and perhaps importuned to prefer scholars to church livings: you may further your friends in that way, *caeteris paribus*; otherwise remember, I pray, that these are not places merely of favour; the charge of souls lies upon them; the greatest account whereof will be required at their own hands; but they will share deeply in their faults who are the instruments of their preferment.

8. Besides

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8. Besides the Romish catholics, there is a generation of sectaries, the anabaptists, brownists, and others of their kinds; they have been several times very busy in this kingdom, under the colour of zeal for reformation of religion: the king your master knows their disposition very well; a small touch will put him in mind of them; he had experience of them in Scotland, I hope he will beware of them in England; a little countenance or connivency sets them on fire.

9. Order and decent ceremonies in the church are not only comely, but commendable; but there must be great care not to introduce innovations, they will quickly prove scandalous; men are naturally over-prone to suspicion; the true protestant religion is seated in the golden mean; the enemies to her are the extremes on either hand.

10. The persons of church-men are to be had in due respect for their work's sake, and protected from scorn; but if a clergyman be loose and scandalous, he must not be patronized nor winked at; the example of a few such corrupt many.

11. Great care must be taken, that the patrimony of the church be not sacrilegiously diverted to lay uses: his majesty in his time hath religiously stopped a leak that did much harm, and would else have done more. Be sure, as much as in you lies, stop the like upon all occasions.

12. Colleges and schools of learning are to be cherished and encouraged, there to breed up a new stock to furnish the church and commonwealth when the old store are transplanted. This kingdom hath in later ages been famous for good literature; and if preferment shall attend the deservers, there will not want supplies.

II. NEXT to religion, let your care be to promote justice. By justice and mercy is the king's throne established.

1. Let the rule of justice be the laws of the land, an impartial arbiter between the king and his people, and between one subject and another: I shall not speak superlatively of them, lest I be suspected of partiality, in regard of my own profession; but this I may truly say, They are second to none in the christian world.

[They are the best, the equallest in the world between prince and people; by which the king hath the justest prerogative, and the people the best liberty: and if at any time there be an unjust deviation, *Hominis est vitium, non professionis.*]

2. And, as far as it may lie in you, let no arbitrary power be intruded: the people of this kingdom love the laws thereof, and nothing will oblige them more, than a confidence of the free enjoying of them; what the nobles upon an occasion once said in parliament, *Nolumus leges Angliæ mutare*, is imprinted in the hearts of all the people.

3. But because the life of the laws lies in the due execution and administration of them, let your eye be, in the first place, upon the choice of good judges: these properties had they need to be furnished with; to be learned in their profession, patient in hearing, prudent in governing, powerful in their elocution to persuade and satisfy both the parties and hearers; just in their judgment; and to sum up all, they must have these three attributes; they must be men of courage, fearing God, and hating covetousness; an ignorant man cannot, a coward dares not be a good judge.

4. By no means be you persuaded to interpose yourself, either by word or letter, in any cause depending, or like to be depending in any court of justice, nor suffer any other great man to do it where you can hinder it, and by all means dissuade the

the king himself from it, upon the importunity of any for themselves or their friends: if it should prevail, it perverts justice: but if the judge be so just, and of such courage, as he ought to be, as not to be inclined thereby, yet it always leaves a taint of suspicion behind it; judges must be as chaste as Cæsar's wife, neither to be, nor to be suspected to be unjust; and, Sir, the honour of the judges in their judicature is the king's honour, whose person they represent.

5. There is great use of the service of the judges in their circuits, which are twice in the year held throughout the kingdom: the trial of causes between party and party, or delivering of the gaols in the several counties, are of great use for the expedition of justice; yet they are of much more use for the government of the counties through which they pass, if that were well thought upon.

6. For if they had instructions to that purpose, they might be the best intelligencers to the king of the true state of his whole kingdom, of the disposition of the people, of their inclinations, of their intentions and motions, which are necessary to be truly understood.

7. To this end I could wish, that against every circuit all the judges should, sometimes by the king himself, and sometimes by the lord Chancellor or lord Keeper, in the king's name, receive a charge of those things which the present times did much require; and at their return should deliver a faithful account thereof, and how they found and left the counties through which they passed, and in which they kept their assizes.

8. And that they might the better perform this work, which might be of great importance, it will not be amiss that sometimes this charge be public, as it useth to be in the Star-chamber, at the end of the terms next before the circuit begins, where the king's care of justice, and the good of his people, may be published; and that sometimes also it may be private, to communicate to the judges some things not fit to be publicly delivered.

9. I could wish also, that the judges were directed to make a little longer stay in a place than usually they do; a day more in a county would be a very good addition; although their wages for their circuits were increased in proportion: it would stand better with the gravity of their employment; whereas now they are sometimes enforced to rise over-early, and to sit over-late, for the dispatch of their business, to the extraordinary trouble of themselves and of the people, their times indeed not being *horæ juridicæ*; and, which is the main, they would have the more leisure to inform themselves, *quasi aliud agentes*, of the true estate of the country.

10. The attendance of the sheriffs of the counties, accompanied with the principal gentlemen, is comely, not a costly equipage, upon the judges of assize at their coming to the place of their sitting, and at their going out, is not only a civility, but of use also: it raiseth a reverence to the persons and places of the judges, who coming from the king himself on so great an errand, should not be neglected.

11. If any sue to be made a judge, for my own part, I should suspect him: but if either directly or indirectly he should bargain for a place of judicature, let him be rejected with shame; *Vendere jura potest, emerat ille prius*.

12. When the place of a chief judge of a court becomes vacant, a puisne judge of that court, or of another court, who hath approved himself fit and deserving, should

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should be sometimes preferred; it would be a good encouragement for him, and for others by his example.

13. Next to the judge, there would be care used in the choice of such as are called to the degree of serjeants at law, for such they must be first before they be made judges; none should be made serjeants but such as probably might be held fit to be judges afterwards, when the experience at the bar hath fitted them for the bench: therefore by all means cry down that unworthy course of late times used, that they should pay monies for it; it may satisfy some courtiers, but it is no honour to the person so preferred, nor to the king, who thus prefers them.

14. For the king's counsel at the law, especially his attorney and solicitor general, I need say nothing: their continual use for the king's service, not only for his revenue, but for all the parts of his government, will put the king, and those who love his service, in mind to make choice of men every way fit and able for that employment; they had need to be learned in their profession, and not ignorant in other things; and to be dexterous in those affairs whereof the dispatch is committed to them.

15. The king's attorney of the court of wards is in the true quality of the judges; therefore what hath been observed already of judges, which are intended principally of the three great courts of law at Westminster, may be applied to the choice of the attorney of this court.

16. The like for the attorney of the duchy of Lancaster, who partakes of both qualities, partly of a judge in that court, and partly of an attorney general for so much as concerns the proper revenue of the duchy.

17. I must not forget the judges of the four circuits in the twelve shires of Wales, who although they are not of the first magnitude, nor need be of the degree of the coif, only the chief justice of Chester, who is one of their number, is so, yet are they considerable in the choice of them, by the same rules as the other judges are; and they sometimes are, and fitly may be, transplanted into the higher courts.

18. There are many courts, as you see, some superior, some provincial, and some of a lower orb: it were to be wished, and is fit to be so ordered, that every of them keep themselves within their proper spheres. The harmony of justice is then the sweetest, when there is no jarring about the jurisdiction of the courts; which methinks wisdom cannot much differ upon, their true bounds being for the most part so clearly known.

19. Having said thus much of the judges, somewhat will be fit to put you in mind concerning the principal ministers of justice: and in the first, of the high sheriffs of the counties, which have been very ancient in this kingdom; I am sure before the conquest: the choice of them I commend to your care, and that at fit times you put the king in mind thereof; that as near as may be they be such as are fit for those places: for they are of great trust and power; the *posse comitatus*, the power of the whole county being legally committed unto him.

20. Therefore it is agreeable with the intention of the law, that the choice of them should be by the commendation of the great officers of the kingdom, and by the advice of the judges, who are presumed to be well read in the condition of the gentry of the whole kingdom: and although the king may do it of himself, yet the

21. But I utterly condemn the practice of the later times, which hath lately crept into the court, at the back-stairs, that some who are pricked for sheriffs, and were fit, should get out of the bill; and others who were neither thought upon, nor worthy to be, should be nominated; and both for money.

22. I must not omit to put you in mind of the lords lieutenants and deputy lieutenants of the counties: their proper use is for ordering the military affairs, in order to an invasion from abroad, or a rebellion or sedition at home; good choice should be made of them, and prudent instructions given to them, and as little of the arbitrary power, as may be, left unto them; and that the muster-masters, and other officers under them, incroach not upon the subject; that will detract much from the king's service.

23. The justices of peace are of great use. Anciently there were conservators of the peace; these are the same, saving that several acts of parliament have altered their denomination, and enlarged their jurisdiction in many particulars: the fitter they are for the peace of the kingdom, the more heed ought to be taken in the choice of them.

24. But negatively, this I shall be bold to say, that none should be put into either of those commissions with an eye of favour to their persons, to give them countenance or reputation in the places where they live, but for the king's service sake; nor any put out for the disfavour of any great man: it hath been too often used, and hath been no good service to the king.

25. A word more, if you please to give me leave, for the true rules of moderation of justice on the king's part. The execution of justice is committed to his judges, which seemeth to be the severer part; but the milder part, which is mercy, is wholly left in the king's immediate hand: and justice and mercy are the true supporters of his royal throne.

26. If the king shall be wholly intent upon justice, it may appear with an over-rigid aspect; but if he shall be over-remiss and easy, it draweth upon him contempt. Examples of justice must be made sometimes for terror to some; examples of mercy sometimes, for comfort to others; the one procures fear, and the other love. A king must be both feared and loved, else he is lost.

27. The ordinary courts of justice I have spoken of, and of their judges and judicature: I shall put you in mind of some things touching the high court of parliament in England, which is superlative; and therefore it will behove me to speak the more warily thereof.

28. For the institution of it, it is very ancient in this kingdom: it consisteth of the two houses, of peers and commons, as the members; and of the king's majesty, as the head of that great body: by the king's authority alone, and by his writs, they are assembled, and by him alone are they prorogued and dissolved; but each house may adjourn itself.

29. They being thus assembled, are more properly a council to the king, the great council of the kingdom, to advise his majesty in those things of weight and difficulty, which concern both the king and people, than a court.

30. No new laws can be made, nor old laws abrogated or altered, but by common consent in parliament, where bills are prepared and presented to the two houses, and then delivered, but nothing is concluded but by the king's royal assent; they are but embryos, it is he that giveth life unto them.

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31. Yet the house of peers hath a power of judicature in some cases: properly to examine, and then to affirm; or, if there be cause, to reverse the judgments which have been given in the court of king's bench, which is the court of highest jurisdiction in the kingdom for ordinary judicature; but in these cases it must be done by writ of error *in parlamento*: and thus the rule of their proceedings is not *absoluta potestas*, as in making new laws, in that conjuncture as before, but *limitata potestas*, according to the known laws of the land.

32. But the house of commons have only power to censure the members of their own house, in point of election, or misdemeanors in or towards that house; and have not, nor ever had power so much as to administer an oath to prepare a judgment.

33. The true use of parliaments in this kingdom is very excellent; and they should be often called, as the affairs of the kingdom shall require; and continued as long as is necessary and no longer: for then they be but burdens to the people, by reason of the privileges justly due to the members of the two houses and their attendants; which their just rights and privileges are religiously to be observed and maintained: but if they should be unjustly enlarged beyond their true bounds, they might lessen the just power of the crown, it borders so near upon popularity.

34. All this while I have spoken concerning the common laws of England, generally and properly so called, because it is most general and common to almost all cases and causes, both civil and criminal: but there is also another law, which is called the civil or ecclesiastical law, which is confined to some few heads, and that is not to be neglected: and although I am a professor of the common law, yet am I so much a lover of truth and of learning, and of my native country, that I do heartily persuade that the professors of that law, called civilians, because the civil law is their guide, should not be discountenanced nor discouraged: else whensoever we shall have ought to do with any foreign king or state, we shall be at a miserable loss for want of learned men in that profession.

III. I COME now to the consideration of those things which concern counsellors of state, the council table, and the great offices and officers of the kingdom; which are those who for the most part furnish out that honourable board.

1. Of counsellors there are two sorts: the first, *consilarii nati*, as I may term them, such are the prince of Wales, and others of the king's sons, when he hath more, of these I speak not, for they are naturally born to be counsellors to the king, to learn the art of governing betimes.

2. But the ordinary sort of counsellors are such as the king, out of a due consideration of their worth and abilities, and withal, of their fidelities to his person and to his crown, calleth to be of council with him in his ordinary government. And the council-table is so called from the place where they ordinarily assemble and sit together; and their oath is the only ceremony used to make them such, which is solemnly given unto them at their first admission: these honourable persons are from thenceforth of that board and body: they cannot come until they be thus called, and the king at his pleasure may spare their attendance; and he may dispense with their presence there, which at their own pleasure they may not do.

3. This

3. This being the quality of their service, you may easily judge what care the king should use in his choice of them. It behoveth that they be persons of great trust and fidelity, and also of wisdom and judgment, who shall thus assist in bearing up the king's throne, and of known experience in public affairs.

4. Yet it may not be unfit to call some of young years, to train them up in that trade, and to fit them for those weighty affairs against the time of greater maturity; and some also for the honour of their persons: but these two sorts are not to be tied to so strict attendance as the others, from whom the present dispatch of business is expected.

5. I could wish that their number might not be so over-great; the persons of the counsellors would be the more venerable: and I know that queen Elizabeth, in whose time I had the happiness to be born and to live many years, was not so much observed for having a numerous as a wise council.

6. The duty of a privy counsellor to a king, I conceive, is not only to attend the council-board at the times appointed, and there to consult of what shall be propounded; but also to study those things which may advance the king's honour and safety, and the good of the kingdom, and to communicate the same to the king, or to his fellow-counsellors, as there shall be occasion. And this, Sir, will concern you more than others, by how much you have a larger share in his affections.

7. And one thing I shall be bold to desire you to recommend to his majesty: that when any new thing shall be propounded to be taken into consideration, that no counsellor should suddenly deliver any positive opinion thereof: it is not so easy with all men to retract their opinions, although there shall be cause for it: but only to hear it, and at the most but to break it at first, that it may be the better understood against the next meeting.

8. When any matter of weight hath been debated, and seemeth to be ready for a resolution; I wish it may not be at that fitting concluded, unless the necessity of the time press it, lest upon second cogitations there should be cause to alter; which is not for the gravity and honour of that board.

9. I wish also that the king would be pleased sometimes to be present at that board; it adds a majesty to it: and yet not to be too frequently there; that would render it less esteemed when it is become common: besides, it may sometimes make the counsellors not be so free in their debates in his presence as they would be in his absence.

10. Besides the giving of counsel, the counsellors are bound by their duties *ex vi termini*, as well as by their oaths, to keep counsel; therefore are they called *de privato consilio regis*, and *à secretioribus consiliis regis*.

11. One thing I add, in the negative, which is not fit for that board, the entertaining of private causes of *meum et tuum*; those should be left to the ordinary course and courts of justice.

12. As there is great care to be used for the counsellors themselves to be chosen; so there is of the clerks of the council also, for the secreting of their consultations: and methinks, it were fit that his majesty be speedily moved to give a strict charge, and to bind it with a solemn order, if it be not already so done, that no copies of the orders of that table be delivered out by the clerks of the council but by the order of the board; nor any, not being a counsellor, or a clerk of the council, or his clerk, to have access to the council books: and to that purpose,

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that the servants attending the clerks of the council be bound to secrecy, as well as their masters.

13. For the great offices and officers of the kingdom, I shall say little; for the most part of them are such as cannot well be severed from the counsellorship; and therefore the same rule is to be observed for both, in the choice of them. In the general, only, I advise this, let them be set in those places for which they are probably the most fit.

14. But in the quality of the persons, I conceive it will be most convenient to have some of every sort, as in the time of queen Elizabeth it was: one bishop at the least, in respect of questions touching religion or church government; one or more skilled in the laws; some for martial affairs; and some for foreign affairs: by this mixture one will help another in all things that shall there happen to be moved. But if that should fail, it will be a safe way, to consult with some other able persons well versed in that point which is the subject of their consultation; which yet may be done so warily, as may not discover the main end therein.

IV. In the next place, I shall put you in mind of foreign negotiations, and embassies to or with foreign princes or states; wherein I shall be little able to serve you.

1. Only, I will tell you what was the course in the happy days of queen Elizabeth, whom it will be no dis-reputation to follow: she did vary, according to the nature of the employment, the quality of the persons she employed; which is a good rule to go by.

2. If it were an embassy of gratulation or ceremony, which must not be neglected, choice was made of some noble person eminent in place and able in purse; and he would take it as a mark of favour, and discharge it without any great burden to the queen's coffers, for his own honour's sake.

3. But if it were an embassy of weight, concerning affairs of state, choice was made of some grave person of known judgment, wisdom, and experience; and not of a young man not weighed in state matters; nor of a mere formal man, whatsoever his title or outside were.

4. Yet in company of such, some young towardly noblemen or gentlemen were usually sent also, as assistants or attendants, according to the quality of the persons; who might be thereby prepared and fitted for the like employment, by this means, at another turn.

5. In their company were always sent some grave and sedate men, skilful in the civil laws, and some in the languages, and some who had been formerly conversant in the courts of those princes, and knew their ways; these were assistants in private, but not trusted to manage the affairs in public; that would detract from the honour of the principal ambassador.

6. If the negotiation were about merchants affairs, then were the persons employed for the most part doctors of the civil law, assisted with some other discreet men; and in such, the charge was ordinarily defrayed by the company or society of merchants whom the negotiation concerned.

7. If lieger ambassadors or agents were sent to remain in or near the courts of those princes or states, as it was ever held fit, to observe the motions, and to hold correspondence with them, upon all occasions, such were made choice of as were
presumed

presumed to be vigilant, industrious, and discreet men, and had the language of the place whither they were sent; and with these were sent such as were hopeful to be worthy of the like employment at another time.

8. Their care was, to give true and timely intelligence of all occurrences, either to the queen herself, or the secretaries of state, unto whom they had their immediate relation.

9. Their charge was always borne by the queen, duly paid out of the exchequer, in such proportion, as, according to their qualities and places, might give them an honourable subsistence there: but for the reward of their service, they were to expect it upon their return, by some such preferment as might be worthy of them, and yet be little burden to the queen's coffers or revenues.

10. At their going forth they had their general instructions in writing, which might be communicated to the ministers of that state whither they were sent; and they had also private instructions upon particular occasions: and at their return, they did always render an account of some things to the queen herself, of some things to the body of the council, and of some others to the secretaries of state; who made use of them, or communicated them as there was cause.

11. In those days there was a constant course held, that by the advice of the secretaries, or some principal counsellors, there were always sent forth into several parts beyond the seas some young men, of whom good hopes were conceived of their towardliness, to be trained up, and made fit for such public employments, and to learn the languages. This was at the charge of the queen, which was not much; for they travelled but as private gentlemen: and as by their industry their deserts did appear, so were they farther employed or rewarded. This course I shall recommend unto you, to breed up a nursery of such public plants.

V. For peace and war, and those things which appertain to either; I in my own disposition and profession am wholly for peace, if please God to bless this kingdom therewith, as for many years past he hath done: and,

1. I presume I shall not need to persuade you to the advancing of it; nor shall you need to persuade the king your master therein, for that he hath hitherto been another Solomon in this our Israel, and the motto which he hath chosen, *Beati pacifici*, shews his own judgment: but he must use the means to preserve it, else such a jewel may be lost.

2. God is the God of peace; it is one of his attributes, therefore by him alone we must pray, and hope to continue it: there is the foundation.

3. And the king must not neglect the just ways for it; justice is the best protector of it at home, and providence for war is the best prevention of it from abroad.

4. Wars are either foreign or civil; for the foreign war by the king upon some neighbour nation, I hope we are secure; the king in his pious and just disposition is not inclinable thereunto; his empire is long enough, bounded with the ocean, as if the very situation thereof had taught the king and people to set up their reits, and say, *Ne plus ultra*.

5. And for a war of invasion from abroad; only we must not be over-secure: that is the way to invite it.

6. But

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6. But if we be always prepared to receive an enemy, if the ambition or malice of any should incite him, we may be very confident we shall long live in peace and quietness, without any attempts upon us.

7. To make the preparations hereunto the more assured: in the first place, I will recommend unto you the care of our out-works, the navy royal and shipping of our kingdom, which are the walls thereof: and every great ship is as an impregnable fort; and our many safe and commodious ports and havens, in each of these kingdoms, are as the redoubts to secure them.

8. For the body of the ships, no nation of the world doth equal England for the chosen timber wherewith to build them; and we need not borrow of any other iron for spikes, or nails to fasten them together; but there must be a great deal of providence used, that our ship timber be not unnecessarily wasted.

9. But for tackling, as sails and cordage, we are beholden to our neighbours for them, and do buy them for our money; that must be foreseen and laid up in store against a time of need, and not sought for when we are to use them: but we are much to blame that we make them not at home; only pitch and tar we have not of our own.

10. For the true art of building of ships, for burden and service both, no nation in the world exceeds us: ship-wrights and all other artificans belonging to that trade must be cherished and encouraged.

11. Powder and ammunition of all sorts we can have at home, and in exchange for other home commodities we may be plentifully supplied from our neighbours, which must not be neglected.

12. With mariners and seamen this kingdom is plentifully furnished: the constant trade of merchandising will furnish us at a need; and navigable rivers will repair the store, both to the navy royal and to the merchants, if they be set on work, and well paid for their labour.

13. Sea captains and commanders and other officers must be encouraged, and rise by degrees, as their fidelity and industry deserve it.

[Let brave spirits that have fitted themselves for command, either by sea or land, not be laid by, as persons unnecessary for the time; let arms and ammunition of all sorts be provided and stored up, as against a day of battle; let the ports and forts be fitted so as if by the next wind we should hear of an alarm: such a known providence is the surest protection. But of all wars, let both prince and people pay against a war in our own bowels: the king by his wisdom, justice, and moderation, must foresee and stop such a storm, and if it fall must allay it; and the people by their obedience must decline it. And for a foreign war intended by an invasion to enlarge the bounds of our empire, which are large enough, and are naturally bounded with the ocean, "I have no opinion either of the justness or fitness of it; and it were a very hard matter to attempt it with hope of success, since the subjects of this kingdom believe it is not legal for them to be enforced to go beyond the seas without their own consent, upon hope of an unwarranted conquest; but to resist an invading enemy, or to suppress rebels, the subject may and must be commanded out of the counties where they inhabit. The whole kingdom is but one intire body; else it will necessarily be ventied, which elsewhere was asserted, *Dem flagula pugnamus, omnes vincimus.*]

14. Our strict league of amity and alliance with our near neighbours the Hollenders is a mutual strength to both; the shipping of both, in conjuncture, being

so powerful, by God's blessing, as no foreigners will venture upon; this league and friendship must inviolably be observed.

15. From Scotland we have had in former times some alarms, and inroads into the northern parts of this kingdom; but that happy union of both kingdoms under one sovereign, our gracious king, I hope, hath taken away all occasions of breach between the two nations. Let not the cause arise from England, and I hope the Scots will not adventure it; or if they do, I hope they will find, that although to our king they were his first-born subjects, yet to England belongs the birthright: but this should not be any cause to offer any injury to them, nor to suffer any from them.

16. There remains then no danger, by the blessing of God, but a civil war, from which God of his mercy defend us, as that which is most desperate of all others. The king's wisdom and justice must prevent it, if it may be; or if it should happen, *quod avjūt*, he must quench that wild-fire with all the diligence that possibly can be.

17. Competition to the crown there is none, nor can be, therefore it must be a fire within the bowels, or nothing; the cures whereof are these, *remedium praeveniens*, which is the best physic, either to a natural body or to a state, by just and equal government to take away the occasion; and *remedium puniens*, if the other prevail not: the service and vigilancy of the deputy lieutenants in every county, and of the high sheriff, will contribute much herein to our security.

18. But if that should not prevail, by a wise and timous inquisition, the peccant humours and humorists must be discovered, and purged or cut off; mercy, in such a case, in a king is true cruelty.

19. Yet if the heads of the tribes can be taken off, and the misled multitude will see their error, and return to their obedience, such an extent of mercy is both honourable and profitable.

20. A king, against a storm, must foresee to have a convenient stock of treasure; and neither be without money, which is the sinews of war, nor to depend upon the courtesy of others, which may fail at a pinch.

21. He must also have a magazine of all sorts, which must be had from foreign parts, or provided at home, and to commit them to several places, under the custody of trusty and faithful ministers and officers, if it be possible.

22. He must make choice of expert and able commanders to conduct and manage the war, either against a foreign invasion, or a home rebellion; which must not be young and giddy, which dare, not only to fight, but to swear, and drink, and curse, neither fit to govern others, nor able to govern themselves.

23. Let not such be discouraged, if they deserve well, by misinformation, or for the satisfying the humours or ambition of others, perhaps, out of envy, perhaps out of treachery, or other sinister ends. A steady hand in governing of military affairs is more requisite than in times of peace, because an error committed in war may, perhaps, prove irremediable.

24. If God shall bless these endeavours, and the king return to his own house in peace, when a civil war shall be at an end, those who have been found faithful in the land must be regarded, yea, and rewarded also; the traitorous, or treacherous, who have misled others, severely punished; and the neutrals and false-hearted friends and followers, who have started aside like a broken bow, be noted *carbōne nigro*. And so I shall leave them, and this part of the work.

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VI. I COME to the sixth part, which is trade; and that is either at home or abroad. And I begin with that which is at home, which enableth the subjects of the kingdom to live, and layeth a foundation to a foreign trade by traffic with others, which enableth them to live plentifully and happily.

1. For the home trade, I first commend unto your consideration the encouragement of tillage, which will enable the kingdom for corn for the natives, and to spare for exportation: and I myself have known, more than once, when, in times of dearth, in queen Elizabeth's days, it drained much coin out of the kingdom, to furnish us with corn from foreign parts.

2. Good husbands will find the means, by good husbandry, to improve their lands, by lime, chalk, marl, or sea-sand, where it can be had: but it will not be amiss, that they be put in mind thereof, and encouraged in their industries.

3. Planting of orchards, in a soil and air fit for them, is very profitable, as well as pleasurable; cider and perry are notable beverages in sea voyages.

4. Gardens are also very profitable, if planted with artichokes, roots, and such other things as are fit for food; whence they be called kitchen gardens, and that very properly.

5. The planting of hop-yards, sowing of woad and rape-feed, are found very profitable for the planters, in places apt for them, and consequently profitable for the kingdom, which for divers years was furnished with them from beyond the seas.

6. The planting and preserving of woods, especially of timber, is not only profitable, but commendable, therewith to furnish posterity, both for building and shipping.

7. The kingdom would be much improved by draining of drowned lands, and gaining that in from the overflowing of salt waters and the sea, and from fresh waters also.

8. And many of those grounds would be exceeding fit for dairies, which, being well housewived, are exceeding commodious.

9. Much good land might be gained from forests and chases, more remote from the king's access, and from other commonable places, so as always there be a due care taken, that the poor commoners have no injury by such improvement.

10. The making of navigable rivers would be very profitable; they would be as so many in-draughts of wealth, by conveying of commodities with ease from place to place.

11. The planting of hemp and flax would be an unknown advantage to the kingdom, many places therein being as apt for it, as any foreign parts.

12. But add hereunto, that if it be converted into linen-cloth or cordage, the commodity thereof will be multiplied.

13. So it is of the wools and leather of the kingdom, if they be converted into manufactures.

14. Our English dames are much given to the wearing of costly laces; and, if they be brought from Italy, or France, or Flanders, they are in great esteem; whereas, if the like laces were made by the English, so much thread as would make a yard of lace, being put into that manufacture, would be five times, or perhaps ten or twenty times the value.

15. The breeding of cattle is of much profit, especially the breed of horses, in many places, not only for travel, but for the great saddle; the English horse, for
strength

strength, and courage, and swiftness together, not being inferior to the horses of any other kingdom.

16. The minerals of the kingdom, of lead, iron, copper, and tin, especially, are of great value, and set many able-bodied subjects on work; it were great pity they should not be industriously followed.

17. But of all minerals, there is none like to that of fishing upon the coasts of these kingdoms, and the seas belonging to them: our neighbours, within half a day's sail of us, with a good wind, can shew us the use and value thereof; and, doubtless, there is sea-room enough for both nations without offending one another; and it would exceedingly support the navy.

18. This realm is much enriched, of late years, by the trade of merchandise which the English drive in foreign parts; and, if it be wisely managed, it must of necessity very much increase the wealth thereof: care being taken, that the exportation exceed in value the importation: for then the balance of trade must of necessity be returned in coin or bullion.

19. This would easily be effected, if the merchants were persuaded or compelled to make their returns in solid commodities, and not too much thereof in vanity, tending to excess.

20. But especially care must be taken, that monopolies, which are the cankers of all trading, be not admitted under specious colours of public good.

21. To put all these into a regulation, if a constant commission to men of honesty and understanding were granted, and well pursued, to give order for the managing of these things, both at home and abroad, to the best advantage; and that this commission were subordinate to the council-board; it is conceived it would produce notable effects.

VII. THE next thing is that of colonies and foreign plantations, which are very necessary as outlets to a populous nation, and may be profitable also if they be managed in a discreet way.

1. First, in the choice of the place, which requireth many circumstances; as the situation, near the sea, for the commodiousness of an intercourse with England; the temper of the air and climate, as may best agree with the bodies of the English, rather inclining to cold than heat; that it be stored with woods, mines, and fruits, which are naturally in the place; that the soil be such as will probably be fruitful for corn and other conveniencies, and for breeding of cattle; that it hath rivers, both for passage between place and place, and for fishing also, if it may be; that the natives be not so many, but that there may be elbow-room enough for them, and for the adventives also: all which are likely to be found in the West-Indies.

2. It should be also such as is not already planted by the subjects of any christian prince or state, nor over-nearly neighbouring to their plantation. And it would be more convenient, to be chosen by some of those gentlemen or merchants which move first in the work, than to be designed unto them from the king; for it must proceed from the option of the people, else it sounds like an exile; so the colonies must be raised by the leave of the king, and not by his command.

3. After the place is made choice of, the first step must be, to make choice of a fit governor; who, although he have not the name, yet he must have the power of a viceroy; and if the person who principally moved in the work be not fit for

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that trust, yet he must not be excluded from command; but then his defect in the governing part must be supplied by such assistants as shall be joined with him, or as he shall very well approve of.

4. As at their setting out they must have their commission or letters patents from the king, that so they may acknowledge their dependency upon the crown of England, and under his protection; so they must receive some general instructions, how to dispose of themselves when they come there, which must be in nature of laws unto them.

5. But the general law, by which they must be guided and governed, must be the common law of England; and to that end, it will be fit that some man reasonably studied in the law, and otherwise qualified for such a purpose, be persuaded, if not thereunto inclined of himself, which were the best, to go thither as chancellor amongst them, at first; and when the plantation were more settled, then to have courts of justice there as in England.

6. At the first planting, or as soon after as they can, they must make themselves defensible both against the natives and against strangers; and to that purpose they must have the assistance of some able military man, and convenient arms and ammunition for their defence.

7. For the discipline of the church in those parts, it will be necessary, that it agree with that which is settled in England, else it will make a schism and a rent in Christ's coat which must be seamless; and, to that purpose, it will be fit, that by the king's supreme power in causes ecclesiastical, within all his dominions, they be subordinate under some bishop and bishoprick of this realm.

8. For the better defence against a common enemy, I think it would be best, that foreign plantations should be placed in one continent, and near together; whereas, if they be too remote the one from the other they will be disunited, and so the weaker.

9. They must provide themselves of houses, such as for the present they can, and at more leisure such as may be better; and they first must plant for corn and cattle, *etc.* for food and necessary sustenance; and after, they may enlarge themselves for those things which may be for profit and pleasure, and to traffick withal also.

10. Woods for shipping, in the first place, may doubtless be there had, and minerals there found, perhaps, of the richest; howsoever, the mines out of the fruits of the earth, and seas and waters adjoining, may be found in abundance.

11. In a short time they may build vessels and ships also for traffick with the parts near adjoining, and with England also, from whence they may be furnished with such things as they may want, and, in exchange or barter, send from thence other things, with which quickly, either by nature or art, they may abound.

12. But these things should by all means be prevented; that no known bankrupt, for shelter, nor known murderer or other wicked person, to avoid the law; nor known heretic or schismatic, be suffered to go into those countries; or, if they do creep in there, not to be harboured or continued: else, the place would receive them naught, and return them into England, upon all occasions, worse.

13. That no merchant, under colour of driving a trade thither or from thence, be suffered to work upon their necessities.

14. And

14. And that to regulate all these inconveniencies, which will insensibly grow upon them, that the king be pleased to erect a subordinate council in England, whose care and charge shall be, to advise, and put in execution, all things which shall be found fit for the good of those new plantations; who, upon all occasions, shall give an account of their proceedings to the king, or to the council-board, and from them receive such directions as may best agree with the government of that place.

15. That the king's reasonable profit be not neglected, partly upon reservation of moderate rents and services; and partly upon customs; and partly upon importation and exportation of merchandise; which for a convenient time after the plantation begin, would be very easy to encourage the work; but, after it is well settled, may be raised to a considerable proportion, worthy the acceptation.

[Yet these cautions are to be observed in these undertakings.

1. That no man be compelled to such an employment; for that were a banishment, and not a service fit for a free man.

2. That if any transplant themselves into plantations abroad, who are known schismatics, outlaws, or criminal persons, that they be sent for back upon the first notice; such persons are not fit to lay the foundation of a new colony.

3. To make no extirpation of the natives under pretence of planting religion: God surely will no way be pleased with such sacrifices.

4. That the people sent thither be governed according to the laws of this realm, whereof they are, and still must be subjects.

5. To establish there the same purity of religion, and the same discipline for church-government, without any mixture of popery or anabaptism, lest they should be drawn into factions and schisms, and that place receive them there bad, and send them back worse.

6. To employ them in profitable trades and manufactures, such as the clime will best fit, and such as may be useful to this kingdom, and return to them an exchange of things necessary.

7. That they be furnished and instructed for the military part, as they may defend themselves; lest, on a sudden, they be exposed as a prey to some other nation, when they have fitted the colony for them.

8. To order a trade thither, and thence, in such a manner as some few merchants and tradesmen, under colour of furnishing the colony with necessaries, may not grind them, so as shall always keep them in poverty.

9. To place over them such governors as may be qualified in such manner as may govern the place, and lay the foundation of a new kingdom.

10. That care be taken, that when the industry of one man hath settled the work, a new man, by insinuation or misinformation, may not supplant him without a just cause, which is the discouragement of all faithful endeavours.

11. That the king will appoint commissioners in the nature of a council, who may superintend the works of this nature, and regulate what concerns the colonies, and give an account thereof to the king, or to his council of state.

Again, For matter of trade, I confess, it is out of my profession; yet in that I shall make a conjecture also, and propound some things to you, whereby, if I am not much mistaken, you may advance the good of your country and profit of your master.

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1. Let the foundation of a profitable trade be thus laid, that the exportation of home commodities be more in value than the importation of foreign; so we shall be sure that the stocks of the kingdom shall yearly increase, for then the balance of trade must be returned in money or bullion.

2. In the importation of foreign commodities, let not the merchant return toys and vanities, as sometimes it was elsewhere apes and peacocks, but solid merchandise, first for necessity, next for pleasure, but not for luxury.

3. Let the vanity of the times be restrained, which the neighbourhood of other nations have induced; and we strive apace to exceed our pattern: let vanity in apparel, and, which is more vain, that of the fashion be avoided. I have heard, that in Spain, a grave nation, whom in this I wish we might imitate, they do allow the players and courtesans the vanity of rich and costly clothes; but to sober men and matrons they permit it not upon pain of infamy; a severer punishment upon ingenuous natures than a pecuniary mulct.

4. The excess of diet in costly meats and drinks fetched from beyond the seas should be avoided: wise men will do it without a law, I would there might be a law to restrain fools. The excess of wine costs the kingdom much, and returns nothing but surfeits and diseases; were we as wise as easily we might be, within a year or two at the most, if we would needs be drunk with wines, we might be drunk with half the cost.

5. If we must be vain and superfluous in laces and embroideries, which are more costly than either warm or comely, let the curiosity be the manufacture of the natives; then it should not be verified of us, *materiam superabat opus*.

6. But instead of crying up all things, which are either brought from beyond sea or wrought here by the hands of strangers, let us advance the native commodities of our own kingdom, and employ our countrymen before strangers; let us turn the wools of the land into clothes and stuffs of our own growth, and the hemp and flax growing here into linen cloth and cordage; it would set many thousand hands on work, and thereby one shilling worth of the materials would by industry be multiplied to five, ten, and many times to twenty times more in the value being wrought.

7. And of all sorts of thrift for the public good, I would above all others commend to your care the encouragement to be given to husbandry, and the improving of lands for tillage; there is no such usury as this. The king cannot enlarge the bounds of these islands, which make up his empire, the ocean being the unremovable wall which incloseth them; but he may enlarge and multiply the revenue thereof by this honest and harmless way of good husbandry.

8. A very great help to trade are navigable rivers; they are so many indraughts to attain wealth: wherefore by art and industry let them be made; but let them not be turned to private profit.

9. In the last place, I beseech you, take into your serious consideration that Indian wealth, which this island and the seas thereof excel in, the hidden and rich treasure of fishing. Do we want an example to follow? I may truly say to the English, *Go to the pyrene, thou sluggard*. I need not expound the text; half a day's sail with a good wind, will shew the mineral and the miners.

10. To regulate all these it will be worthy the care of a subordinate council, to whom the ordering of these things may be committed, and they give an account thereof to the state.

VIII. I COME to the last of those things which I propounded, which is, the court and curiality.

The other did properly concern the king, in his royal capacity, as *pater patriae*; this more properly as *pater-familias*: and herein,

1. I shall in a word, and but in a word only, put you in mind, that the king in his own person, both in respect of his household or court, and in respect of his whole kingdom, for a little kingdom is but as a great household, and a great household as a little kingdom, must be exemplary, *Regis ad exemplum, etc.* But for this, God be praised, our charge is easy; for our gracious master, for his learning and piety, justice and bounty, may be, and is, not only a precedent to his own subjects, but to foreign princes also; yet he is still but a man, and seasonable *mementos* may be useful; and, being discreetly used, cannot but take well with him.

2. But your greatest care must be, that the great men of his court, for you must give me leave to be plain with you, for so is your injunction laid upon me, yourself in the first place, who are first in the eye of all men, give no just cause of scandal; either by light, or vain, or by oppressive carriage.

3. The great officers of the king's household had need be both discreet and provident persons, both for his honour and for his thrift; they must look both ways, else they are but half-sighted: yet in the choice of them there is more latitude left to affection, than in the choice of counsellors, and of the great officers of state before touched, which must always be made choice of merely out of judgment; for in them the public hath a great interest.

[And yet in these, the choice had need be of honest and faithful servants, as well as of comely outsides, who can bow the knee, and kiss the hand, and perform other services, of small importance compared with this of public employment. King David, Psal. ci. 6, 7. propounded a rule to himself for the choice of his courtiers. He was a wise and a good king; and a wise and a good king shall do well to follow such a good example; and if he find any to be faulty, which perhaps cannot suddenly be discovered, let him take on him this resolution as king David did, *There shall no deceitful person dwell in my house.* But for such as shall bear office in the king's house, and manage the expences thereof, it is much more requisite to make a good choice of such servants, both for his thrift and for his honour.]

4. For the other ministerial officers in court, as, for distinction sake, they may be termed, there must also be an eye unto them and upon them. They have usually risen in the household by degrees, and it is a noble way to encourage faithful service: but the king must not bind himself to a necessity herein, for then it will be held *ex debito*: neither must he alter it, without an apparent cause for it: but to displace any who are in, upon displeasure, which for the most part happeneth upon the information of some great man, is by all means to be avoided, unless there be a manifest cause for it.

5. In these things you may sometimes interpose, to do just and good offices; but for the general, I should rather advise, meddle little, but leave the ordering of those household affairs to the white-staffs, which are those honourable persons, to whom it properly belongeth to be answerable to the king for it; and to those other officers of the green-cloth, who are subordinate to them, as a kind of council and a court of justice also.

6. Yet

ADVICE TO SIR GEORGE VILLIERS.

6. Yet for the green-cloth law, take it in the largest sense, I have no opinion of it, farther than it is regulated by the just rules of the common laws of England.

7. Towards the support of his majesty's own table, and of the prince's, and of his necessary officers, his majesty hath a good help by purveyance, which justly is due unto him; and, if justly used, is no great burden to the subject; but by the purveyors and other under-officers is many times abused. In many parts of the kingdom, I think, it is already reduced to a certainty in money; and if it be indifferently and discreetly managed, it would be no hard matter to settle it so throughout the whole kingdom; yet to be renewed from time to time: for that will be the best and safest, both for the king and people.

8. The king must be put in mind to preserve the revenues of his crown, both certain and casual, without diminution, and to lay up treasure in store against a time of extremity; empty coffers give an ill sound, and make the people many times forget their duty, thinking that the king must be beholden to them for his supplies.

9. I shall by no means think it fit, that he reward any of his servants with the benefit of forfeitures, either by fines in the court of Star-chamber, or high commission courts, or other courts of justice, or that they should be farmed out, or bestowed upon any, so much as by promise, before judgment given; it would neither be profitable nor honourable.

10. Besides matters of serious consideration, in the courts of princes, there must be times for pastimes and disports: when there is a queen and ladies of honour attending her, there must sometimes be masques, and revels, and interludes; and when there is no queen, or princess, as now; yet at festivals, and for entertainment of strangers, or upon such occasions, they may be fit also: yet care should be taken, that in such cases they be set off more with wit and activity than with costly and wasteful expences.

11. But for the king and prince, and the lords and chivalry of the court, I rather commend, in their turns and seasons, the riding of the great horse, the tilts, the barriers, tennis, and hunting, which are more for the health and strength of those who exercise them, than in an effeminate way to please themselves and others.

And now the prince groweth up fast to be a man, and is of a sweet and excellent disposition; it would be an irreparable stain and dishonour upon you, having that access unto him, if you should mislead him, or suffer him to be misled by any loose or flattering parasites: the whole kingdom hath a deep interest in his virtuous education; and if you, keeping that distance which is fit, do humbly interpose yourself, in such a case he will one day give you thanks for it.

12. Yet dice and cards may sometimes be used for recreation, when field-sports cannot be had; but not to use it as a mean to spend the time, much less to mispend the thrift of the gamesters.

SIR, I shall trouble you no longer; I have run over these things as I first propounded them; please you to make use of them, or any of them, as you shall see occasion; or to lay them by, as you shall think best, and to add to them, as you daily may, out of your experience.

I must

I must be bold, again, to put you in mind of your present condition ; you are in the quality of a centinel ; if you sleep or neglect your charge, you are an undone man, and you may fall much faster than you have risen.

I have but one thing more to mind you of, which nearly concerns yourself ; you serve a great and gracious master, and there is a most hopeful young prince, whom you must not desert ; it behoves you to carry yourself wisely and evenly between them both : adore not so the rising son, that you forget the father, who raised you to this height ; nor be you so obsequious to the father, that you give just cause to the son to suspect that you neglect him : but carry yourself with that judgment, as, if it be possible, may please and content them both ; which, truly, I believe, will be no hard matter for you to do : so may you live long beloved of both.

[If you find in these or any other your observations, which doubtless are much better than these loose collections, any thing which you would have either the father or the son to take to heart, an admonition from a dead author, or a caveat from an impartial pen, whose aim neither was nor can be taken to be at any particular by design, will prevail more and take better impression than a downright advice ; which perhaps may be mistaken as if it were spoken magisterially.

Thus may you live long an happy instrument for your king and country : you shall not be a meteor or a blazing star, but *stella fixa* : happy here and more happy hereafter. *Deus manu sua te ducat :*] which is the hearty prayer of

Your most obliged and devoted Servant.



A N
 A D V E R T I S E M E N T
 T O U C H I N G A N
 H O L Y W A R.

To the Right Reverend Father in God,

LANCELOT ANDREWS, Lord Bishop of Winchester, and Coun-
 fellow of Estate to his MAJESTY.

MY LORD,

AMONGST consolations, it is not the least to represent to a man's self like examples of calamity in others. For examples give a quicker impression than arguments; and besides they certify us that which the Scripture also tendereth for satisfaction; *that no new thing is happened unto us.* This they do the better, by how much the examples are liker in circumstances to our own case; and more especially if they fall upon persons that are greater and worthier than ourselves. For as it favoureth of vanity, to match ourselves highly in our own conceit; so on the other side it is a good sound conclusion, that if our betters have sustained the like events, we have the less cause to be grieved.

In this kind of consolation I have not been wanting to myself: though as a christian, I have tasted, through God's great goodness, of higher remedies. Having therefore, through the variety of my reading, set before me many examples both of ancient and later times, my thoughts, I confess, have chiefly stayed upon three particulars, as the most eminent and the most resembling. All three persons that had held chief place of authority in their countries; all three ruined, not by war, or by any other disaster, but by justice and sentence, as delinquents and criminals; all three famous writers, insomuch as the remembrance of their calamity is now as to posterity but as a little picture of night-work, remaining amongst the fair and excellent tables of their acts and works: and all three, if that were any thing to the matter, fit examples to quench any man's ambition of rising again; for that they were every one of them restored with great glory, but to their farther ruin and destruction, ending in a violent death. The men were Demosthenes, Cicero, and Seneca; persons that I durst not claim affinity with, except the similitude of our fortunes had contracted it. When I had cast mine eyes upon these examples, I was carried on farther to observe, how they did bear their fortunes, and principally, how they did employ their times, being banished and disabled for public business: to the end, that I might learn by them; and that they might be as well my counsellors as my comforters. Whereupon I happened to note, how diversly their fortunes wrought upon them; especially in that point at which I did most aim, which was the employing of their times and pens.

In

in Cicero, I ſaw that during his baniſhment, which was almoſt two years, he was ſo ſoftened and dejected, as he wrote nothing but a few womanish epistles. And yet, in mine opinion, he had leaſt reaſon of the three to be diſcouraged: for that although it was judged, and judged by the higheſt kind of judgment, in form of a ſtatute or law, that he ſhould be baniſhed, and his whole eſtate confiscated and ſeized, and his houſes pulled down, and that it ſhould be highly penal for any man to propound a repeal; yet his caſe even then had no great blot of ignominy; for it was thought but a tempeſt of popularity which overthrew him. Demoiſthenes contrariwiſe, though his caſe was foul, being condemned for bribery, and not ſimple bribery, but bribery in the nature of treaſon and diſloyalty; yet nevertheless took ſo little knowledge of his fortune, as during his baniſhment he did much buſy himſelf, and intermeddle with matters of ſtate; and took upon him to counſel the ſtate, as if he had been ſtill at the helm, by letters; as appears by ſome epistles of his which are extant. Seneca indeed, who was condemned for many corruptions and crimes, and baniſhed into a ſolitary iſland, kept a mean; and though his pen did not freeze, yet he abſtained from intruding into matters of buſineſs; but ſpent his time in writing books of excellent argument and uſe for all ages; though he might have made better choice, ſometimes, of his dedications.

Theſe examples confirmed me much in a reſolution, whereunto I was otherwiſe inclined, to ſpend my time wholly in writing; and to put forth that poor talent, or half talent, or what it is, that God hath given me, not as heretofore to particular exchanges, but to banks or mounts of perpetuity, which will not break. Therefore having not long ſince ſet forth a part of my *Inſtauration*; which is the work, that in mine own judgment, *ſi nunquam fallit imago*, I do moſt eſteem; I think to proceed in ſome new parts thereof. And although I have received from many parts beyond the ſeas, teſtimonies touching that work, ſuch as beyond which I could not expect at the firſt in ſo abſtruſe an argument; yet nevertheless I have juſt cauſe to doubt, that it flies too high over mens heads: I have a purpoſe therefore, though I break the order of time, to draw it down to the ſenſe, by ſome patterns of a *Natural ſtory* and *Inquiſition*. And again, for that my book of *Advancement of learning* may be ſome preparative, or key, for the better opening of the *Inſtauration*; becauſe it exhibits a mixture of new conceits and old; whereas the *Inſtauration* gives the new unmixed, otherwiſe than with ſome little aſperſion of the old for taſte's ſake; I have thought good to procure a tranſlation of that book into the general language, not without great and ample additions, and enrichment thereof, eſpecially in the ſecond book, which handleth the partition of ſciences; in ſuch ſort, as I hold it may ſerve in lieu of the firſt part of the *Inſtauration*, and acquit my promiſe in that part. Again, becauſe I cannot altogether deſert the civil perſon that I have born; which if I ſhould forget, enow would remember; I have alſo entred into a work touching *Laws*, propounding a character of juſtice in a middle term, between the ſpeculative and reverend diſcourſes of philoſophers, and the writings of lawyers, which are tied and obnoxious to their particular laws. And although it be true, that I had a purpoſe to make a particular digeſt, or recompilement of the laws of mine own nation; yet becauſe it is a work of aſſiſtance, and that which I cannot maſter by my own forces and pen, I have laid it aſide. Now having in the work of my *Inſtauration* had in contemplation the general good of men in their very being, and the dowries of nature;

D E D I C A T I O N.

and in my work of laws, the general good of men likewise in society, and the dowries of government; I thought in duty I owed somewhat unto my own country, which I ever loved; inſomuch as although my place hath been far above my deſert, yet my thoughts and cares concerning the good thereof were beyond, and over, and above my place: ſo now being, as I am, no more able to do my country ſervice, it remained unto me to do it honour: which I have endeavoured to do in my work of *The reign of king Henry the ſeventh*. As for my *Eſſays*, and ſome other particulars of that nature, I count them but as the recreations of my other ſtudies, and in that ſort purpoſe to continue them; though I am not ignorant that thoſe kind of writings would, with leſs pains and embracement, perhaps, yield more luſtre and reputation to my name, than thoſe other which I have in hand. But I account the uſe that a man ſhould ſeek of the publiſhing of his own writings before his death, to be but an untimely anticipation of that which is proper to follow a man, and not to go along with him.

But revolving with myſelf my writings, as well thoſe which I have publiſhed, as thoſe which I had in hand, methought they went all into the city, and none into the temple; where, becauſe I have found ſo great conſolation, I deſire likewiſe to make ſome poor oblation. Therefore I have choſen an argument, mixt of religious and civil conſiderations; and likewiſe mixt between contemplative and active. For who can tell whether there may not be an *exoriere aliquis*? Great matters, eſpecially if they be religious, have, many times, ſmall beginnings: and the platform may draw on the building. This work, becauſe I was ever an enemy to flattering dedications, I have dedicated to your lordſhip, in reſpect of our ancient and private acquaintance; and becauſe amongſt the men of our times I hold you in ſpecial reverence.

Your lordſhip's loving friend,

FR. ST. ALBAN.



AN
 A D V E R T I S E M E N T
 T O U C H I N G A N
 H O L Y W A R .

Written in the Year MDCXXII.

The PERSONS that speak.

EUSEBIUS, GAMALIEL, ZEBEDÆUS, MARTIUS, EUPOLIS, POLLIO.

THERE met at Paris, in the house of Eupolis, *Eusebius, Zebedæus, Gamaliel, Martius, all persons of eminent quality, but of several dispositions. Eupolis himself was also present; and while they were set in conference, Pollio came in to them from court; and as soon as he saw them, after his witty and pleasant manner, he said,

Pollio. Here be four of you, I think, were able to make a good world; for you are as differing as the four elements, and yet you are friends. As for Eupolis, because he is temperate, and without passion, he may be the fifth essence.

Eupolis. If we five, Pollio, make the great world, you alone make the little; because you profess, and practise both, to refer all things to yourself. *Pollio.*

And what do they that practise it and profess it not? *Eupolis.* They are the less

hardy, and the more dangerous. But come and sit down with us, for we were speaking of the affairs of Christendom at this day; wherein we would be glad also to have your opinion. *Pollio.* My lords, I have journeyed this morning, and it

is now the heat of the day; therefore your lordships discourses had need content my ears very well, to make them intreat mine eyes to keep open. But yet if you will give me leave to awake you, when I think your discourses do but sleep, I will keep watch the best I can. *Eupolis.* You cannot do us a greater favour. Only

I fear you will think all our discourses to be but the better sort of dreams; for good wishes, without power to effect, are not much more. But, Sir, when you came in, Martius had both raised our attentions, and affected us with some speech he had begun; and it falleth out well, to shake off your drowsiness; for it seemed to be the trumpet of a war. And therefore, Martius, if it please you to begin again; for the speech was such, as deserveth to be heard twice; and I assure you, your auditory is not a little amended by the presence of Pollio. *Martius.* When you come in, Pollio, I was saying freely to these lords, that I had observed, how by the space now of half a century of years, there had been, if I may speak it, a kind

* Characters of the Persons. Eusebius beareth the character of a moderate divine: Gamaliel of a protestant zealot: Zebedæus of a Roman catholic zealot: Martius of a military man: Eupolis of a politician: Pollio of a courtier.

of meanness in the designs and enterprises of Christendom. Wars with subjects, like an angry suit for a man's own, that might be better ended by accord. Some petty acquets of a town, or a spot of territory; like a farmer's purchase of a close or nook of ground, that lay fit for him. And although the wars had been for a Naples, or a Milan, or a Portugal, or a Bohemia, yet these wars were but as the wars of heathens, of Athens, or Sparta, or Rome, for secular interest, or ambition, not worthy the warfare of Christians. The church, indeed, maketh her missions into the extreme parts of the nations and isles, and it is well: but this is *Ecce unus gladius hic*. The christian princes and potentates are they that are wanting to the propagation of the faith by their arms. Yet our Lord, that said on earth, to the disciples, *Ite et predicare*, said from heaven to Constantine, *In hoc signo vince*. What christian soldier is there, that will not be touched with a religious emulation, to see an order of Jesus, or of St. Francis, or of St. Augustine, do such service, for enlarging the christian borders; and an order of St. Jago, or St. Michael, or St. George, only to robe, and feast, and perform rites and observances? Surely the merchants themselves shall rise in judgment against the princes and nobles of Europe; for they have made a great path in the seas, unto the ends of the world; and set forth ships, and forces, of Spanish, English, and Dutch, enough to make China tremble; and all this, for pearl, or stone, or spices: but for the pearl of the kingdom of heaven, or the stones of the heavenly Jerusalem, or the spices of the spouse's garden, not a mast hath been set up: nay, they can make shift to shed christian blood so far off amongst themselves, and not a drop for the cause of Christ. But let me recall myself; I must acknowledge, that within the space of fifty years, whereof I spake, there have been three noble and memorable actions upon the infidels, wherein the christian hath been the invader: for where it is upon the defensive, I reckon it a war of nature, and not of piety. The first was, that famous and fortunate war by sea, that ended in the victory of Lepanto; which hath put a hook into the nostrils of the Ottomans to this day; which was the work, chiefly, of that excellent pope Pius Quintus, whom I wonder his successors have not declared a saint. The second was, the noble, though unfortunate, expedition of Sebastian king of Portugal upon Africa, which was atchieved by him alone; so alone, as left somewhat for others to excuse. The last was, the brave incursions of Sigismund the Transylvanian prince, the thread of whose prosperity was cut off by the christians themselves, contrary to the worthy and paternal monitories of pope Clement the eighth. More than these, I do not remember. *Pellio*. No! What say you to the extirpation of the Moors of Valentia? At which sudden question, Martius was a little at a stop; and Gamaliel prevented him, and said: *Gamaliel*. I think Martius did well in omitting that action, for I, for my part, never approved it; and it seems, God was not well pleased with that deed; for you see the king, in whose time it passed, whom you catholics count a saint-like and immaculate prince, was taken away in the flower of his age: and the author, and great counsellor of that rigour, whose fortunes seemed to be built upon the rock, is ruined: and it is thought by some, that the reckonings of that business are not yet cleared with Spain; for that numbers of those supposed Moors, being tried now by their exile, continue constant in the faith, and true christians in all points, save in the thirst of revenge. • *Zebed*. Make not hasty judgment, Gamaliel, of that great action, which was as Christ's fan in those countries, except you could shew some such covenant from the crown of Spain, as

Joshua

Joshua made with the Gibeonites; that that cursed seed should continue in the land. And you see it was done by edict, not tumultuously; the sword was not put into the peoples hand. *Eupol.* I think Martius did omit it, not as making any judgment of it either way, but because it sorted not aptly with action of war, being upon subjects, and without resistance. But let us, if you think good, give Martius leave to proceed in his discourse; for methought he spake like a divine in armour. *Martius.* It is true, Eupolis, that the principal object which I have before mine eyes, in that whereof I speak, is piety and religion. But, nevertheless, if I should speak only as a natural man, I should persuade the same thing. For there is no such enterprise, at this day, for secular greatness, and terrene honour, as a war upon infidels. Neither do I in this propound a novelty, or imagination, but that which is proved by late examples of the same kind, though perhaps of less difficulty. The Castilians, the age before that wherein we live, opened the new world; and subdued and planted Mexico, Peru, Chili, and other parts of the West-Indies. We see what floods of treasure have flowed into Europe by that action; so that the cense or rates of Christendom are raised since ten times, yea twenty times told. Of this treasure, it is true, the gold was accumulate, and store treasure, for the most part; but the silver is still growing. Besides, infinite is the access of territory and empire, by the same enterprise. For there was never an hand drawn, that did double the rest of the habitable world, before this; for so a man may truly term it, if he shall put to account, as well that that is, as that which may be hereafter, by the farther occupation and colonizing of those countries. And yet it cannot be affirmed, if one speak ingenuously, that it was the propagation of the christian faith that was the adamant of that discovery, entry, and plantation; but gold and silver, and temporal profit and glory: so that what was first in God's providence, was but second in man's appetite and intention. The like may be said of the famous navigations and conquests of Emanuel, king of Portugal, whose arms began to circle Africa and Asia; and to acquire, not only the trade of spices, and stones, and musk, and drugs, but footing, and places, in those extreme parts of the east. For neither in this was religion the principal, but amplification and enlargement of riches and dominion. And the effect of these two enterprises is now such, that both the East and the West Indies being met in the crown of Spain, it is come to pass, that, as one saith in a brave kind of expression, the sun never sets in the Spanish dominions, but ever shines upon one part or other of them: which, to say truly, is a beam of glory, though I cannot say it is so solid a body of glory, wherein the crown of Spain surpasseth all the former monarchies. So as, to conclude, we may see, that in these actions, upon gentiles or infidels, only or chiefly, both the spiritual and temporal honour and good have been in one pursuit and purchase conjoined. *Pollio.* Methinks, with your favour, you should remember, Martius, that wild and savage people are like beasts and birds, which are *ferae naturae*, the property of which passeth with the possession, and goeth to the occupant; but of civil people, it is not so. *Martius.* I know no such difference amongst reasonable souls; but that whatsoever is in order to the greatest and most general good of people, may justify the action, be the people more or less civil. But, Eupolis, I shall not easily grant, that the people of Peru or Mexico were such brute savages as you intend; or that there should be any such difference between them, and many of the infidels which are now in other parts. In Peru, though they were unappareled people, according to the
clime,

came, and had some customs very barbarous, yet the government of the Incas had many parts of humanity and civility. They had reduced the nations from the adoration of a multitude of idols and fancies, to the adoration of the sun. And, as I remember, the book of Wisdom noteth degrees of idolatry; making that of worshipping petty and vile idols, more gross than simply the worshipping of the creature. And some of the prophets, as I take it, do the like, in the metaphor of more ugly and bestial fornication. The Peruvians also, under the Incas, had magnificent temples of their superstition; they had strict and regular justice; they bare great faith and obedience to their kings; they proceeded in a kind of martial justice with their enemies, offering them their law, as better for their own good, before they drew their sword. And much like was the state of Mexico, being an elective monarchy. As for those people of the east, Goa, Calcutte, Malacca, they were a fine and dainty people; frugal and yet elegant, though not military. So that, if things be rightly weighed, the empire of the Turks may be truly affirmed to be more barbarous than any of these. A cruel tyranny, bathed in the blood of their emperors upon every succession; a heap of vassals and slaves; no nobles; no gentlemen; no freemen; no inheritance of land; no stirp or ancient families; a people that is without natural affection; and, as the Scripture saith, that *regardeth not the desires of women*: and without piety, or care towards their children: a nation without morality, without letters, arts, or sciences; that can scarce measure an acre of land, or an hour of the day: base and stuttish in buildings, diets, and the like; and in a word, a very reproach of human society; and yet this nation hath made the garden of the world a wilderness: for that, as it is truly said concerning the Turks, where Ottoman's horse sets his foot, people will come up very thin.

Pollio. Yet in the midst of your invective, Martius, do the Turks this right, as to remember that they are no idolaters: for if, as you say, there be a difference between worshipping a base idol, and the sun, there is a much greater difference between worshipping a creature, and the Creator. For the Turks do acknowledge God the father, creator of heaven and earth, being the first person in the Trinity, though they deny the rest. At which speech, when Martius made some pause, Zebedæus replied with a countenance of great reprehension and severity. *Zebed.* We must take heed, Pollio, that we fall not at unawares into the heresy of Manuel Comnenus emperor of Græcia, who affirmed, that Mahomet's God was the true God: which opinion was not only rejected and condemned by the synod, but imputed to the emperor as extreme madness; being reproached to him also by the bishop of Thessalonica, in those bitter and strange words, as are not to be named. *Martius.* I confess that it is my opinion, that a war upon the Turk is more worthy than upon any other gentiles, infidels, or savages, that either have been, or now are, both in point of religion, and in point of honour; though facility, and hope of success, might, perhaps invite some other choice. But before I proceed, I myself would be glad to take some breath; and I shall frankly desire, that some of your lordships would take your turn to speak, that can do it better. But chiefly, for that I see here some that are excellent interpreters of the divine law, though in several ways; and that I have reason to distrust mine own judgment, both as weak in itself, and as that which may be overborn by my zeal and affection to this cause. I think it were an error to speak farther, till I may see some sound foundation

of the lawfulness of the action, by them that are better versed in that argument.

Eupolis. I am glad, Martius, to see in a person of your profession so great moderation, in that you are not transported in an action that warms the blood, and is appearing holy, to blanch or take for admitted the point of lawfulness. And because, methinks, this conference prospers, if your lordships will give me leave, I will make some motion touching the distribution of it into parts. Unto which when they all assented, *Eupolis* said: *Eupolis.* I think it would not fort amiss, if Zebedæus would be pleased to handle the question, Whether a war for the propagation of the christian faith, without other cause of hostility, be lawful or no, and in what cases? I confess also I would be glad to go a little farther, and to hear it spoken to concerning the lawfulness, not only permissively, but whether it be not obligatory to christian princes and states to design it: which part, if it please Gamaliel to undertake, the point of the lawfulness taken simply will be complete. Yet there resteth the comparative: that is, it being granted, that it is either lawful or binding, yet whether other things be not to be preferred before it; as extirpation of heresies, reconcilements of schisms, pursuit of lawful temporal rights and quarrels, and the like; and how far this enterprise ought either to wait upon these other matters, or to be mingled with them, or to pass by them, and give law to them, as inferior unto itself? And because this is a great part, and Eusebius hath yet said nothing, we will by way of mulct or pain, if your lordships think good, lay it upon him. All this while, I doubt much that Pollio, who hath a sharp wit of discovery towards what is solid and real, and what is specious and airy, will esteem all this but impossibilities, and eagles in the clouds: and therefore we shall all intreat him to crush this argument with his best forces; that by the light we shall take from him, we may either cast it away if it be found but a bladder, or discharge it of so much as is vain and not speckable. And because I confess I myself am not of that opinion, although it be an hard encounter to deal with Pollio, yet I shall do my best to prove the enterprise possible; and to shew how all impediments may be either removed or overcome. And then it will be fit for Martius, if we do not desert it before, to resume his farther discourse, as well for the persuasive, as for the consult, touching the means, preparations, and all that may conduce unto the enterprise. But this is but my wish, your lordships will put it into better order. They all not only allowed the distribution, but accepted the parts: but because the day was spent, they agreed to defer it till the next morning. Only Pollio said;

Pollio. You take me right, *Eupolis*, for I am of opinion, that except you could bray Christendom in a mortar, and mould it into a new paste, there is no possibility of an holy war. And I was ever of opinion, that the philosophers stone, and an holy war, were but the rendezvous of cracked brains, that wore their feather in their head, instead of their hat. Nevertheless, believe me of courtesy, that if you five shall be of another mind, especially after you have heard what I can say, I shall be ready to certify with Hippocrates, that Athens is mad, and Democritus is only sober. And, lest you shall take me for altogether adverse, I will frankly contribute to the business now at first. Ye, no doubt, will amongst you devise and discourse many solemn matters: but do as I shall tell you. This pope is decrepit, and the bell goeth for him. Take order, that when he is dead, there be chosen a pope of fresh years, between fifty and threescore; and see that he take the name of Urban, because a pope of that name did first institute the

crusades.

proclaim'd, and, as with an holy trumpet, did stir up the voyage for the Holy Land. *Eupolis.* You say well; but be, I pray you, a little more serious in this conference.

The next day the same persons met as they had appointed; and after they were set, and that there had pass'd some sporting speeches from Pollio, how the war was already begun; for that, he said, he had dreamt of nothing but Janizaries, and Tartars, and Sultans all the night long: *Martius* said. *Martius.* The distribution of this conference, which was made by Eupolis yesternight, and was by us approved, seemeth to me perfect, save in one point; and that is, not in the number, but in the placing of the parts. For it is so disposed, that Pollio and Eupolis shall debate the possibility or impossibility of the action, before I shall deduce the particulars of the means and manner by which it is to be achieved. Now I have often observed in deliberations, that the entering near hand into the manner of performance, and execution of that which is under deliberation, hath quite overturned the opinion formerly conceived, of the possibility or impossibility. So that things, that at the first shew seem'd possible, by ripping up the performance of them, have been convicted of impossibility; and things that on the other side have shew'd impossible, by the declaration of the means to effect them, as by a back light have appeared possible, the way through them being discern'd. This I speak not to alter the order, but only to desire Pollio and Eupolis not to speak peremptorily, or conclusively, touching the point of possibility, till they have heard me deduce the means of the execution: and that done, to reserve themselves at liberty for a reply, after they had before them, as it were, a model of the enterprize. This grave and solid advertisement and caution of *Martius* was much commended by them all. Whereupon *Eupolis* said. *Eupolis.* Since *Martius* hath begun to refine that which was yesternight resolv'd; I may the better have leave, especially in the mending of a proposition, which was mine own, to remember an omission which is more than a misplacing. For I doubt we ought to have added or insert'd into the point of lawfulness, the question, how far an holy war is to be pursued, whether to displanting and extermination of people? And again, whether to enforce a new belief, and to vindicate or punish infidelity; or only to subject the countries and people; and so by the temporal sword to open a door for the spiritual sword to enter, by persuasion, instruction, and such means as are proper for souls and consciences? But it may be, neither is this necessary to be made a part by itself; for that *Zebedæus*, in his wisdom, will fall into it as an incident to the point of lawfulness, which cannot be handled without limitations and distinctions. *Zebedæus.* You encourage me, *Eupolis*, in that I perceive, how in your judgment, which I do so much esteem, I ought to take that course, which of myself I was purpos'd to do. For as *Martius* not'd well, that it is but a loose thing to speak of possibilities, without the particular designs; so is it to speak of lawfulness without the particular cases. I will therefore first of all distinguish the cases; though you shall give me leave, in the handling of them, not to fever them with too much preciseness; for both it would cause needless length; and we are not now in arts or methods, but in a conference. It is therefore first to be put to question in general, as *Eupolis* propounded it, whether it be lawful for christian princes or states, to make an invasive war, only and simply for the propagation of the faith, without other cause of hostility, or circumstance that may provoke and induce the war?

Secondly,

Secondly, whether, it being made part of the case, that the countries were once christian, and members of the church, and where the golden candlesticks did stand, though now they be utterly alienated, and no christians left; it be not lawful to make a war to restore them to the church, as an ancient patrimony of Christ? Thirdly, if it be made a farther part of the case, that there are yet remaining in the countries multitudes of christians, whether it be not lawful to make a war to free them, and deliver them from the servitude of the infidels? Fourthly, whether it be not lawful to make a war for the purging and recovery of consecrated places being now polluted and profaned; as the holy city and sepulchre, and such other places of principal adoration and devotion? Fifthly, whether it be not lawful to make a war for the revenge or vindication of blasphemies and reproaches against the Deity and our blessed Saviour; or for the effusion of christian blood and cruelties against christians, though ancient and long since past; considering that God's visits are without limitation of time; and many times do but expect the fulness of the sin? Sixthly, it is to be considered, as Eupolis now last well remembered, whether a holy war, which, as in the worthiness of the quarrel, so in the justness of the prosecution, ought to exceed all temporal wars, may be pursued, either to the expulsion of people, or the enforcement of consciences, or the like extremities; or how to be moderated and limited; lest whilst we remember we are christians, we forget that others are men? But there is a point that precedeth all these points recited; nay, and in a manner dischargeth them, in the particular of a war against the Turk: which point, I think, would not have come into my thought, but that Martius giving us yesterday a representation of the empire of the Turks, with no small vigour of words, which you, Pollio, called an invective, but was indeed a true charge, did put me in mind of it: and the more I think upon it, the more I settle in opinion, that a war to suppress that empire, though we set aside the cause of religion, were a just war. After Zebedæus had said this, he made a pause, to see whether any of the rest would say any thing: but when he perceived nothing but silence, and signs of attention to what he would farther say, he proceeded thus.

Zebedæus. Your lordships will not look for a treatise from me, but a speech of consultation; and in that brevity and manner will I speak. First, I shall agree, that as the cause of a war ought to be just, so the justice of that cause ought to be evident; not obscure, not scrupulous. For by the consent of all laws, in capital causes, the evidence must be full and clear: and if so where one man's life is in question, what say we to a war, which is ever the sentence of death upon many? We must beware therefore how we make a Moloch, or an heathen idol, of our blessed Saviour, in sacrificing the blood of men to him by an unjust war. The justice of every action consisteth in the merits of the cause, the warrant of the jurisdiction, and the form of the prosecution. As for the inward intention, I leave it to the court of heaven. Of these things severally, as they may have relation to the present subject of a war against infidels; and namely, against the most potent and most dangerous enemy of the faith, the Turk. I hold, and I doubt not but I shall make it plain, as far as a sum or brief can make a cause plain, that a war against the Turk is lawful, both by the laws of nature and nations, and by the law divine, which is the perfection of the other two. As for the laws positive and civil of the Romans, or others whatsoever, they are too small engines to move the weight of this question. And therefore, in my judgment, many of the late school-

men, though excellent men, take not the right way in disputing this question; except they had the gift of Navius, that they could, *cotem novacula scindere*, hew stones with pen-knives. First, for the law of nature. The philosopher Aristotle is no ill interpreter thereof. He hath set many men on work with a witty speech of *natura dominus*, and *natura servus*; affirming expressly and positively, that from the very nativity some things are born to rule, and some things to obey: which oracle hath been taken in divers senses. Some have taken it for a speech of ostentation, to intitle the Grecians to an empire over the barbarians; which indeed was better maintained by his scholar Alexander. Some have taken it for a speculative platform, that reason and nature would that the best should govern; but not in any wise to create a right. But for my part, I take it neither for a brag, nor for a wish; but for a truth as he limiteth it. For he saith, that if there can be found such an inequality between man and man, as there is between man and beast, or between soul and body, it investeth a right of government: which seemeth rather an impossible case than an untrue sentence. But I hold both the judgment true, and the case possible; and such as hath had, and hath a being, both in particular men and nations. But ere we go farther, let us confine ambiguities and mistaking, that they trouble us not. First, to say that the more capable, or the better deserver, hath such right to govern, as he may compulsorily bring under the less worthy, is idle. Men will never agree upon it, who is the more worthy. For it is not only in order of nature, for him to govern that is the more intelligent, as Aristotle would have it; but there is no less required for government, courage to protect; and above all, honesty and probity of the will to abstain from injury. So fitness to govern is a perplexed business. Some men, some nations, excel in the one ability, some in the other. Therefore the position which I intend, is not in the comparative, that the wiser, or the stouter, or the juster nation should govern; but in the privative, that where there is an heap of people, though we term it a kingdom or state, that is altogether unable or indigne to govern; there it is a just cause of war for another nation, that is civil or politic, to subdue them: and this, though it were to be done by a Cyrus or a Cæsar, that were no Christian. The second mistaking to be banished is, that I understand not this of a personal tyranny, as was the state of Rome under a Caligula, or a Nero, or a Commodus: shall the nation suffer for that wherein they suffer? But when the constitution of the state, and the fundamental customs and laws of the same, if laws they may be called, are against the laws of nature and nations, then, I say, a war upon them is lawful. I shall divide the question into three parts. First, whether there be, or may be any nation or society of men, against whom it is lawful to make a war, without a precedent injury or provocation? Secondly, what are those breaches of the law of nature and nations, which do forfeit and divest all right and title in a nation to govern? And thirdly, whether those breaches of the law of nature and nations be found in any nation at this day; and namely in the empire of the Ottomans? For the first, I hold it clear that such nations, or states, or societies of people, there may be and are. There cannot be a better ground laid to declare this, than to look into the original donation of government. Observe it well, especially the inducement, or preface. Saith God: *Let us make man after our own image, and let him have dominion over the fishes of the sea, and the fowls of the air, and the beasts of the land, etc.* Hereupon De Victoria, and with him some others, infer excellently, and extract a most true and divine aphorism,

Non

Non fundatur dominium, nisi in imagine Dei. Here we have the charter of foundation: it is now the more easy to judge of the forfeiture or re seizure. Deface the image, and you divest the right. But what is this image, and how is it defaced? The poor men of Lyons, and some fanatical spirits, will tell you, that the image of God is purity; and the defacement, sin. But this subverteth all government: neither did Adam's sin, or the curse upon it, deprive him of his rule, but left the creatures to a rebellion or reluctance. And therefore if you note it attentively, when this charter was renewed unto Noah and his sons, it is not by the words, *You shall have dominion*; but *Your fear shall be upon all the beasts of the land, and the birds of the air, and all that moveth*: not regrating the sovereignty, which stood firm; but protecting it against the reluctance. The sound interpreters therefore expound this image of God, of natural reason; which if it be totally or mostly defaced, the right of government doth cease: and if you mark all the interpreters well, still they doubt of the case, and not of the law. But this is properly to be spoken to in handling the second point, when we shall define of the defacements. To go on: The prophet Hosea, in the person of God, saith of the Jews; *They have reigned, but not by me; they have set a seigniory over themselves, but I knew nothing of it.* Which place proveth plainly, that there are governments which God doth not avow. For though they be ordained by his secret providence, yet they are not acknowledged by his revealed will. Neither can this be meant of evil governors or tyrants: for they are often avowed and established, as lawful potentates; but of some perverseness and defection in the very nation itself; which appeareth most manifestly in that the prophet speaketh of the seigniory *in abstracto*, and not of the person of the Lord. And although some heretics of those we speak of have abused this text, yet the sun is not soiled in passage. And again, if any man infer upon the words of the prophet following, which declare this rejection, and, to use the words of the text, rescission of their estate to have been for their idolatry, that by this reason the governments of all idolatrous nations should be also dissolved, which is manifestly untrue, in my judgment it followeth not. For the idolatry of the Jews then, and the idolatry of the Heathens then and now, are sins of a far differing nature, in regard of the special covenant, and the clear manifestations wherein God did contract and exhibit himself to that nation. This nullity of policy, and right of estate in some nations, is yet more significantly expressed by Moses in his canticle; in the person of God to the Jews: *Ye have incensed me with gods that are no gods, and I will incense you with a people that are no people*: Such as were, no doubt, the people of Canaan, after seisin was given of the land of promise to the Israelites. For from that time their right to the land was dissolved, though they remained in many places unconquered. By this we may see, that there are nations in name, that are no nations in right; but multitudes only, and swarms of people. For like as there are particular persons outlawed and proscribed by civil laws of several countries; so are there nations that are outlawed and proscribed by the law of nature and nations, or by the immediate commandment of God. And as there are kings *de facto*, and not *de jure*, in respect of the nullity of their title; so are there nations that are occupants *de facto*, and not *de jure*, of their territories, in respect of the nullity of their policy or government. But let us take in some examples into the midst of our proofs; for they will prove as much as put after, and illustrate more. It was never doubted, but a war upon pirates may be lawfully made by any nation, though not infested or violated by

them. Is it because they have not *certas sedes* or *lares*? In the piratical war which was achieved by Pompey the Great, and was his truest and greatest glory, the pirates had some cities, sundry ports, and a great part of the province of Cilicia; and the pirates now being, have a receptacle and mansion in Algiers. Beasts are not the less savage because they have dens. Is it because the danger hovers as a cloud, that a man cannot tell where it will fall; and so it is every man's case? The reason is good, but it is not all, nor that which is most alledged. For the true received reason is, that pirates are *communes humani generis hostes*; whom all nations are to prosecute, not so much in the right of their own fears, as upon the band of human society. For as there are formal and written leagues, respective to certain enemies; so is there a natural and tacit confederation amongst all men, against the common enemy of human society. So as there needs no intimation, or denunciation of the war; there needs no request from the nation grieved: but all these formalities the law of nature supplies in the case of pirates. The same is the case of rovers by land; such as yet are some cantons in Arabia, and some petty kings of the mountains, adjacent to straits and ways. Neither is it lawful only for the neighbour princes to destroy such pirates and rovers, but if there were any nation never so far off, that would make it an enterprise of merit and true glory, as the Romans that made a war for the liberty of Græcia from a distant and remote part, no doubt they might do it. I make the same judgment of that kingdom of the assassins now destroyed, which was situate upon the borders of Saraca; and was for a time a great terror to all the princes of the Levant. There the custom was, that upon the commandment of their king, and a blind obedience to be given thereunto, any of them was to undertake, in the nature of a votary, the insidious murder of any prince, or person, upon whom the commandment went. This custom, without all question, made their whole government void, as an engine built against human society, worthy by all men to be fired and pulled down. I say the like of the anabaptists of Munster; and this, although they had not been rebels to the empire: and put case likewise that they had done no mischief at all actually, yet if there shall be a congregation and consent of people, that shall hold all things to be lawful, not according to any certain laws or rules, but according to the secret and variable motions and instincts of the spirit; this is indeed no nation, no people, no feigniory, that God doth know: any nation that is civil and policied, may, if they will not be reduced, cut them off from the face of the earth. Now let me put a feigned case, and yet antiquity makes it doubtful whether it were fiction or history, of a land of Amazons, where the whole government public and private, yea, the militia itself, was in the hands of women. I demand, is not such a preposterous government against the first order of nature, for women to rule over men, in itself void, and to be suppressed? I speak not of the reign of women, for that is supplied by counsel, and subordinate magistrates matuline, but where the regiment of state, justice, families, is all managed by women. And yet this last case differeth from the other before, because in the rest there is terror of danger, but in this there is only error of nature. Neither should I make any great difficulty to affirm the same of the sultanry of the Mamelukes; where slave, and none but slaves, bought for money, and of unknown descent, reigned over families of freemen. And much like were the case, if you suppose a nation, where the custom were, that after full age the sons should expulse their fathers and mothers out of their possessions, and put them to their penions: for these

these cafes, of women to govern men, fons the fathers, slaves freemen, are much in the fame degree ; all being total violations and perversions of the laws of nature and nations. For the West-Indies, I perceive, Martius, you have read Garcilazzo de Viega, who himfelf was defcended of the race of the Incas, a Mellizo, and is willing to make the beft of the virtues and manners of his country : and yet in troth he doth it foberly and credibly enough. Yet you fhall hardly edify me, that thofe nations might not by the law of nature have been fubdued by any nation, that had only policy and moral virtue ; though the propagation of the faith, whereof we fhall fpeak in the proper place, were fet by, and not made part of the cafe. Surely their nakednefs, being with them, in moft parts of that country, without all veil or covering, was a great defacement : for in the acknowledgement of nakednefs was the firft fenfe of fin ; and the herefy of the Adamites was ever accounted an affront of nature. But upon thefe I ftand not ; nor yet upon their idiocy, in thinking that horfes did eat their bits, and letters fpeak, and the like : nor yet upon their forceries, which are, almoft, common to all idolatrous nations. But I fay, their facrificing, and more efpecially their eating of men, is fuch an abomination as, methinks, a man's face fhould be a little confused, to deny, that this cuftom, joined with the reft, did not make it lawful for the Spaniards to invade their territory, forfeited by the law of nature ; and either to reduce them or difplant them. But far be it from me, yet nevertheless, to juftify the cruelties which were at firft ufed towards them : which had their reward foon after, there being not one of the principal of the firft conquerors, but died a violent death himfelf ; and was well followed by the deaths of many more. Of examples enough : except we fhould add the labours of Hercules ; an example, which though it be flourifhed with much fabulous matter, yet fo much it hath, that it doth notably fet forth the confent of all nations and ages, in the approbation of the extirpating and debellating of giants, monfters, and foreign tyrants, not only as lawful, but as meritorious even of divine honour : and this although the deliverer came from the one end of the world unto the other. Let us now fet down fome arguments to prove the fame ; regarding rather weight than number, as in fuch a conference as this is fit. The firft argument fhall be this. It is a great error, and a narrownefs or ftraitnefs of mind, if any man think, that nations have nothing to do one with another, except there be either an union in fovereignty, or a conjunction in pacts or leagues. There are other bands of fociety, and implicit confederations. That of colonies, or transmigrants, towards their mother nation. *Gentes unius labii* is fomewhat ; for as the confufion of tongues was a mark of feparation, fo the being of one language is a mark of union. To have the fame fundamental laws and cuftoms in chief is yet more, as it was between the Grecians in refpect of the barbarians. To be of one feft or worfhip ; if it be a falfe worfhip, I fpeak not of it, for that is but *fratres in malo*. But above all thefe, there is the fupreme and indiffoluble confanguinity and fociety between men in general : of which the heathen poet, whom the apoftle calls to witnefs, faith, *We are all his generation*. But much more we chriftians, unto whom it is revealed in particularity, that all men came from one lump of earth ; and that two fingular perfons were the parents from whom all the generations of the world are defcended : we, I fay, ought to acknowledge, that no nations are wholly aliens and ftrangers the one to the other ; and not to be lefs charitable than the perfon introduced by the comic poet, *Homo fum, humani niki! à me alienum puto*. Now if there be fuch a tacit league or confederation,

federation, sure it is not idle; it is against somewhat, or somebody: who should they be? Is it against wild beasts; or the elements of fire and water? No, it is against such routs and shoals of people, as have utterly degenerated from the laws of nature; as have in their very body and frame of estate a monstrosity; and may be truly accounted, according to the examples we have formerly recited, common enemies and grievances of mankind; or disgraces and reproaches to human nature. Such people, all nations are interested, and ought to be resenting to suppress; considering that the particular states themselves, being the delinquents, can give no redress. And this, I say, is not to be measured so much by the principles of jurists, as by *lex charitatis*; *lex proximi*, which includes the Samaritan as well as the Levite; *lex filiorum Adae de massa una*: upon which original laws this opinion is grounded: which to deny, if a man may speak freely, were almost to be a schismatic in nature.

The rest was not perfected.

The Lord BACON'S QUESTIONS

About the Lawfulness of a

WAR for the Propagating of RELIGION.

Questions wherein I desire opinion, joined with arguments and authorities.

Tenison's
Baconiana,
P. 179.

WHETHER a war be lawful against infidels, only for the propagation of the christian faith, without other cause of hostility?

Whether a war be lawful, to recover the church countries which formerly have been christian, though now alienated, and christians utterly extirpated?

Whether a war be lawful to free and deliver christians that yet remain in servitude and subjection to infidels?

Whether a war be lawful to revenge blasphemy, or in vindication of reproaches against the Deity and our Saviour? Or for the ancient effusion of christian blood, and cruelties upon christians?

Whether a war be lawful for the restoring and purging of the holy land, the sepulchre, and other principal places of adoration and devotion?

Whether, in the cases aforesaid, it be not obligatory to christian princes to make such a war, and not permissive only?

Whether the making of a war against the infidels be not first in order of dignity, and to be preferred before extirpations of heresies, reconcilements of schisms, reformation of manners, pursuits of just temporal quarrels, and the like actions for the public good; except there be either a more urgent necessity, or a more evident facility in those interior actions, or except they may both go on together in some degree?

NOTES

NOTES OF A

SPEECH concerning a War with SPAIN.

THAT ye conceive there will be little difference in opinion, but that all will advise the king not to entertain further a treaty wherein he hath been so manifestly and so long deluded.

That the difficulty therefore will be in the consequences thereof; for to the breach of treaty, doth necessarily succeed a despair of recovering the Palatinate by treaty and so the business falleth upon a war. And to that you will apply your speech, as being the point of importance, and besides, most agreeable to your profession and place.

To a war, such as may promise success, there are three things required: a just quarrel; sufficient forces and provisions; and a prudent and politic choice of the designs and actions whereby the war shall be managed.

For the quarrel, there cannot be a more just quarrel by the laws both of nature and nations, than for the recovery of the ancient patrimony of the king's children, gotten from them by an usurping sword, and an insidious treaty.

But further, that the war well considered is not for the Palatinate only, but for England and Scotland; for if we stay till the Low Countrymen be ruined, and the party of the papists within the realm be grown too strong, England, Scotland, and Ireland, are at the stake.

Neither doth it concern the state only, but our church: other kings, papists, content themselves to maintain their religion in their own dominions; but the kings of Spain run a course to make themselves protectors of the popish religion, even amongst the subjects of other kings: almost like the Ottomans, that profess to plant the law of Mahomet by the sword; and so the Spaniards do of the pope's law. And therefore if either the king's blood, or our own blood, or Christ's blood be dear unto us, the quarrel is just, and to be embraced.

For the point of sufficient forces, the balancing of the forces of these kingdoms and their allies, with Spain and their allies, you know to be a matter of great and weighty consideration; but yet to weigh them in a common understanding, for your part, you are of opinion that Spain is no such giant; or if he be a giant, it will be but like Goliath and David, for God will be on our side.

But to leave these spiritual considerations: you do not see in true discourse of peace and war, that we ought to doubt to be overmatched. To this opinion you are led by two things which lead all men; by experience, and by reason.

For experience; you do not find that for this age, take it for 100 years, there was ever any encounter between Spanish and English of importance, either by sea or land, but the English came off with the honour; witness the Lammas-day, the retreat of Gaunt, the battle of Newport, and some others: but there have been some actions, both by sea and land, so memorable as scarce suffer the less to be spoken of. By sea, that of eighty-eight, when the Spaniards, putting themselves most upon their stirrups, sent forth that invincible Armada which should have swallowed up England quick; the success whereof was, that although the fleet
swam

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swam like mountains upon our seas, yet they did not so much as take a cock-boat of ours at sea, nor fire a cottage at land, but came through our channel, and were driven, as Sir Walter Raleigh says, by squibs, fire-boats he means, from Calais, and were soundly beaten by our ships in fight, and many of them sunk, and finally durst not return the way they came, but made a scattered perambulation, full of ship-wrecks, by the Irish and Scottish seas to get home again; just according to the curse of the Scripture, *that they came out against us one way, and fled before us jeron* *ways*. By land, who can forget the two voyages made upon the continent itself of Spain, that of Lisbon, and that of Calais, when in the former we knocked at the gates of the greatest city either of Spain or Portugal, and came off without seeing an enemy to look us in the face? And though we failed in our foundation, for that Antonio, whom we thought to replace in his kingdom, found no party at all, yet it was a true trial of the gentleness of Spain, which suffered us to go and come without any dispute. And for the latter, of Calais, it ended in victory; we ravished a principal city of wealth and strength in the high countries, sacked it, fired the Indian fleet that was in the port, and came home in triumph; and yet to this day were never put in suit for it, nor demanded reason for our doings. You ought not to forget the battle of Kinsale in Ireland, what time the Spanish forces were joined with the Irish, good soldiers as themselves, or better, and exceeded us far in number, and yet they were soon defeated, and their general D'Avila taken prisoner, and that war by that battle quenched and ended.

And it is worthy to be noted how much our power in those days was inferior to our present state. Then, a lady old, and owner only of England, intangled with the revolt of Ireland, and her confederates of Holland much weaker, and in no conjuncture. Now a famous king, and strengthened with a prince of singular expectation, and in the prime of his years, owner of the entire isle of Britain, enjoying Ireland populate and quiet, and infinitely more supported by confederates of the Low Countries, Denmark, divers of the princes of Germany, and others. As for the comparison of Spain as it was then, and as it is now, you will for good respects forbear to speak; only you will say this, that Spain was then reputed to have the wisest council of Europe, and not a council that will come at the whistle of a favourite.

Another point of experience you would not speak of, if it were not that there is a wonderful erroneous observation, which walketh about, contrary to all the true account of time; and it is, that the Spaniard where he once gets in, will seldom or never be got out again; and they give it an ill-favoured simile which you will not name, but nothing is less true: they got footing at Brest, and some other parts in Britain, and quitted it: they had Calais, Ardes, Amiens, and were part beaten out, and part they rendred: they had Vercelles in Savoy, and fairly left it: they had the other day the Valtoline, and now have put it in deposit. What they will do at Ormus we shall see. So that, to speak truly of latter times, they have rather poached and offered at a number of enterprizes, than maintained any constantly. And for Germany, in more ancient time, their great emperor Charles, after he had Germany almost in his fist, was forced in the end to go from Isburgh as it were in a mask by torch-light, and to quit every foot of his new acquisitions in Germany, which you hope likewise will be the hereditary issue of this late purchase of the Palatinate. And thus much for experience.

For

For reason: it hath many branches; you will but extract a few first. It is a nation thin sown of men, partly by reason of the sterility of their soil; and partly because their natives are exhausted by so many employments in such vast territories as they possess, so that it hath been counted a kind of miracle to see together ten or twelve thousand native Spaniards in an army. And although they have at this time great numbers of miscellany soldiers in their armies and garisons, yet, if there should be the misfortune of a battle, they are ever long about it to draw on supplies.

They tell a tale of a Spanish ambassador that was brought to see their treasury of St. Mark at Venice, and still he looked down to the ground; and being asked the reason, said, "he was looking to see whether the treasure had any root, so that, if that were spent, it would grow again; as his master's had." But, howsoever it be of their treasure, certainly their forces have scarcely any root, or at least such a root as putteth forth very poorly and slowly; whereas there is not in the world again such a spring and seminary of military people as is England, Scotland, and Ireland; nor of seamen as is this island and the Low Countries: so as if the wars should mow them down, yet they suddenly may be supplied and come up again.

A second reason is, and it is the principal, that if we truly consider the greatness of Spain, it consisteth chiefly in their treasure, and their treasure in their Indies, and their Indies, both of them, is but an accession to such as are masters by sea; so as this axle-tree, whereupon their greatness turns, is soon cut in two by any that shall be stronger than they at sea. So then you report yourself to their opinions, and the opinions of all men, enemies or whosoever; whether that the maritime forces of Britain and the Low Countries, are not able to beat them at sea. For if that be, you see the chain is broken from shipping to Indies, from Indies to treasure, and from treasure to greatness.

The third reason, which hath some affinity with this second, is a point comfortable to hear in the state that we now are; wars are generally causes of poverty and consumption. The nature of this war, you are persuaded, will be matter of restorative and enriching; so that, if we go roundly on with supplies and provisions at the first, the war in continuance will find itself. That you do but point at this, and will not enlarge it.

Lastly, That it is not a little to be considered, that the greatness of Spain is not only distracted extremely, and therefore of less force; but built upon no very sound foundations, and therefore they can have the less strength by any assured and confident confederacy. With France they are in competition for Navarre, Milan, Naples, and the Franche County of Burgundy; with the see of Rome, for Naples also; for Portugal, with the right heirs of that line; for that they have in their Low Countries, with the United Provinces; for Ormus, now, with Persia; for Valencia, with the Moors expelled and their confederates; for the East and West Indies, with all the world. So that if every bird had his feather, Spain would be left wonderful naked. But yet there is a greater confederation against them than by means of any of these quarrels or titles; and that is contracted by the fear that almost all nations have of their ambition, whereof men see no end. And thus much for the balancing of their forces.

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For the last point, which is the choice of the designs and enterprizes, in which to conduct the war; you will not now speak, because you should be forced to descend to divers particulars, whereof some are of a more open, and some of a more secret nature. But that you would move the house to make a selected committee for that purpose; not to estrange the house in any sort, but to prepare things for them, giving them power and commission to call before them, and to confer with any martial men or others that are not of the house, that they shall think fit, for their advice and information: and so to give an account of the business to a general committee of the whole house.



C O N S I D E R A T I O N S
T O U C H I N G
A W A R with S P A I N.

Inscribed to Prince CHARLES, anno MDCXXIV.

YOUR highness hath an imperial name. It was a Charles that brought the empire first into France; a Charles that brought it first into Spain; why should not Great Britain have its turn? But to lay aside all that may seem to have a shew of fumes and fancies, and to speak solids: a war with Spain, if the king shall enter into it, is a mighty work; it requireth strong materials, and active motions. He that saith not so, is zealous, but not according to knowledge. But nevertheless Spain is no such giant: and he that thinketh Spain to be some great over-match for this estate, assisted as it is, and may be, is no good mintman; but takes greatness of kingdoms according to their bulk and currency, and not after their intrinsic value. Although therefore I had wholly sequestered my thoughts from civil affairs, yet because it is a new case, and concerneth my country infinitely, I obtained of myself to set down, out of long continued experience in business of estate, and much conversation in books of policy and history, what I thought pertinent to this business; and in all humbleness present it to your highness: hoping that at least you will discern the strength of my affection through the weakness of my abilities: for the Spaniard hath a good proverb, *De suario si empre con la calentura*; there is no heat of affection, but is joined with some idleness of brain.

To a war are required, a just quarrel; sufficient forces and provisions; and a prudent choice of the designs. So then, I will first justify the quarrel; secondly, balance the forces; and lastly, propound variety of designs for choice, but not advise the choice; for that were not fit for a writing of this nature; neither is it a subject within the level of my judgment; I being, in effect, a stranger to the present occurrences.

Wars, I speak not of ambitious predatory wars, are suits of appeal to the tribunal of God's justice, where there are no superiors on earth to determine the cause: and they are, as civil pleas are, complaints, or defences. There are therefore three just grounds of war with Spain; one complaint, two upon defence. Solomon saith, *A cord of three is not easily broken*: but especially when every of the lines would hold single by itself. They are these: the recovery of the Palatinate; a just fear of the subversion of our civil estate; a just fear of the subversion of our church and religion. For in the handling of the two last grounds of war, I shall make it plain, that wars preventive upon just fears, are true defensives, as well as upon actual invasions: and again, that wars defensive for religion, I speak not of rebellion, are most just; though offensive wars for religion are seldom to

be approved, or never, unless they have some mixture of civil titles. But all that I shall say in this whole argument, will be but like bottoms of thread close wound up, which with a good needle, perhaps, may be flourished into large works.

For the asserting of the justice of the quarrel for the recovery of the Palatinate, I shall not go so high as to discuss the right of the war of Bohemia; which if it be freed from doubt on our part, then there is no colour nor shadow why the Palatinate should be retained; the ravishing whereof was a mere excursion of the first wrong, and a super-injustice. But I do not take myself to be so perfect in the customs, transactions, and privileges of that kingdom of Bohemia, as to be fit to handle that part: and I will not offer at that I cannot master. Yet this I will say, in passage, positively and resolutely; that it is impossible an elective monarchy should be so free and absolute as an hereditary; no more than it is possible for a father to have so full power and interest in an adoptive son as in a natural; *quia naturalis obligatio fortior civili*. And again, that received maxim is almost unshaken and infallible; *Nil magis naturae consentaneum est, quam ut iisdem modis res differantur, quibus constituuntur*. So that if the part of the people or estate be somewhat in the election, you cannot make them nulls or ciphers in the privation or translation. And if it be said, that this is a dangerous opinion for the pope, emperor, and elective kings; it is true it is a dangerous opinion, and ought to be a dangerous opinion, to such personal popes, emperors, or elective kings, as shall transcend their limits, and become tyrannical. But it is a safe and sound opinion for their sees, empires, and kingdoms; and for themselves also, if they be wise; *plenitudo potestatis est plenitudo tempestatis*. But the chief cause why I do not search into this point is, because I need it not. And in handling the right of a war, I am not willing to intermix matter doubtful with that which is out of doubt. For as in capital causes, wherein but one man's life is in question, *in favorem vitae*, the evidence ought to be clear; so much more in a judgment upon a war, which is capital to thousands. I suppose therefore the worst, that the offensive war upon Bohemia had been unjust; and then make the case, which is no sooner made than resolved; if it be made not enwrapped, but plainly and perspicuously. It is this *in the fact*. An offensive war is made, which is unjust in the aggressor; the prosecution and race of the war carrieth the defendent to assail and invade the ancient and indubitate patrimony of the first aggressor, who is now turned defendent; shall he sit down, and not put himself in defence? Or if he be dispossessed, shall he not make a war for the recovery? No man is so poor of judgment as will affirm it. The castle of Cadmus was taken, and the city of Thebes itself invested by Phœbidas the Lacedæmonian, insidiously, and in violation of league: the proceeds of this action drew on a surprize of the castle by the Thebans, a recovery of the town, and a current of the war even unto the walls of Sparta. I demand, was the defence of the city of Sparta, and the expulsion of the Thebans out of the ancient Laconian territories, unjust? The sharing of that part of the duchy of Milan, which lieth upon the river of Adda, by the Venetians, upon contract with the French, was an ambitious and unjust purchase. This wheel set on going, did pour a war upon the Venetians with such a tempest, as Padua and Trevigi were taken from them, and all their dominions upon the continent of Italy abandoned, and they confined within the salt waters. Will any man say, that the memorable recovery and defence of Padua, when the gentlemen of Venice, unused to the wars,

OF A WAR WITH SPAIN.

out of the love of their country, became brave and martial the first day, and so likewise the readeption of Trevigi, and the rest of their dominions, was matter of scruple, whether just or no, because it had source from a quarrel ill begun? The war of the duke of Urbin, nephew to pope Julius the second, when he made himself head of the Spanish mutineers, was as unjust as unjust might be; a support of desperate rebels; an invasion of St. Peter's patrimony; and what you will. The race of this war fell upon the loss of Urbin itself, which was the duke's undoubted right; yet, in this case, no penitentiary, though he had enjoined him never so strict penance to expiate his first offence, would have counselled him to have given over the pursuit of his right for Urbin; which, after, he prosperously reobtained, and hath transmitted to his family until this day. Nothing more unjust than the invasion of the Spanish Armada in 1588, upon our seas; for our land was holy land to them, they might not touch it; shall I say therefore, that the defence of Lisbon, or Cales, afterwards, was unjust? There be thousands of examples; *ut or in re non dubia exemplis non necessariis*: the reason is plain; wars are *vindictae*, revenges, reparations. But revenges are not infinite, but according to the measure of the first wrong or damage. And therefore when a voluntary offensive war, by the design or fortune of the war, is turned to a necessary defensive war, the scene of the tragedy is changed, and it is a new act to begin. For the particular actions of war, though they are complicate in fact, yet are they separate and distinct in right; like to cross suits in civil pleas, which are sometimes both just. But this is so clear, as needeth no farther to be insisted upon. And yet if in things so clear, it were fit to speak of more or less clear in our present cause, it is the more clear on our part, because the possession of Bohemia is settled with the emperor. For though it be true, than *non datur compensatio injuriarum*; yet were there somewhat more colour to detain the Palatinate, as in the nature of a recovery, in value or compensation, if Bohemia had been lost, or were still the stage of war. Of this therefore I speak no more. As for the title of proscription or forfeiture, wherein the emperor, upon the matter, hath been judge and party, and hath justified himself, God forbid but that it should well endure an appeal to a war. For certainly the court of heaven is as well a chancery to save and debar forfeitures, as a court of common law to decide rights; and there would be work enough in Germany, Italy, and other parts, if imperial forfeitures should go for good titles.

Thus much for the first ground of war with Spain, being in the nature of a plaint for the recovery of the Palatinate; omitting here that which might be the seed of a larger discourse, and is verified by a number of examples; that whatsoever is gained by an abusive treaty, ought to be restored *in integrum*: as we see the daily experience of this in civil pleas; for the images of great things are best seen contracted into small glasses: we see, I say, that all pretorian courts, if any of the parties be entertained or laid asleep, under pretence of arbitrement or accord, and that the other party, during that time, doth cautelously get the start and advantage at common-law, though it be to judgment and execution; yet the pretorian court will set back all things *in statu quo prius*, no respect had to such eviction or dispossession. Lastly, let there be no mistaking; as if when I speak of a war for the recovery of the Palatinate, I meant, that it must be *in linea recta*, upon that place: for look into *jus faeciale*, and all examples, and it will be found to be without scruple, that after a legation *ad res repetendas*, and a refusal, and a denunciation or induction of a war, the war is no more confined to the place of the quarrel,

quand, but is left at large and to choice, as to the particular conducting design, as opportunities and advantages shall invite.

To proceed therefore to the second ground of a war with Spain, we have let it down to be, a just fear of the subversion of our civil estate. So then, the war is not for the Palatinate only, but for England, Scotland, Ireland, our king, our prince, our nation, all that we have. Wherein two things are to be proved. The one, that a just fear, without an actual invasion or offence, is a sufficient ground of a war, and in the nature of a true defensive: the other, that we have towards Spain cause of just fear; I say, just fear: for as the civilians do well define, that the legal fear is *justus metus qui cadit in constantem virum*, in private causes: so there is *justus metus qui cadit in constantem senatum, in causa publica*; not out of umbrages, light jealousies, apprehensions afar off, but out of clear foresight of imminent danger.

Concerning the former proposition, it is good to hear what time saith. Thucydides, in his inducement to his story of the great war of Peloponnesus, sets down in plain terms, that the true cause of that war was the overgrowing greatness of the Athenians, and the fear that the Lacedæmonians stood in thereby; and doth not doubt to call it, a necessity imposed upon the Lacedæmonians of a war; which are the words of a mere defensive: adding, that the other causes were but specious and popular. *Verissimam quidem, sed minime sermone celebratam, arborer extitisse belli causam, Athenienses, magnos effectos et Lacedæmonitis formidabilis, necessitatem illis impulisse bellandi: quæ autem propalam ferebantur utrinque causæ, istæ fuerant, etc.* “The truest cause of this war, though least voiced, I conceive to have been this; that the Athenians, being grown great, to the terror of the Lacedæmonians, did impose upon them a necessity of a war: but the causes that went abroad in speech were these,” etc. Sulpitius Galba, consul, when he persuaded the Romans to a preventive war with the later Philip king of Macedon, in regard of the great preparations which Philip had then on foot, and his designs to ruin some of the confederates of the Romans, confidently saith, that they who took that for an offensive war, understood not the state of the question. *Ignorare ceterum nulli, Spiritus, non, utrum bellum an pacem habebatis, vos consuli, neque enim illud in illi volis permittet Philippus, qui terra marique ingens bellum meditat, sed utrum in Macedoniam legiones transportetis, an hostem in Italiam recipiatis.* “Ye seem to me, ye Romans, not to understand, that the consultation before you is not, whether you shall have war or peace, for Philip will take order you shall be no choosers. who prepareth a mighty war both by land and sea, but whether you shall transport the war into Macedon, or receive it into Italy.” Antiochus, when he incited Prusias king of Bithynia, at that time in league with the Romans, to join with him in war against them, setteth before him a just fear of the overspreading greatness of the Romans, comparing it to a fire that continually took, and spread from kingdom to kingdom: *Ventre Romanos ad omnia regna tollenda, ut non iam ullam orbis terrarum nisi Romanorum imperium esset: Philippum et Nabis ex-pressis, ut tertium peti, ut quisque proximus ab oppresso sit, per omnes velut continens incendium pervaserum:* “That the Romans came to pull down all kingdoms, and to make the state of Rome an universal monarchy; that Philip and Nabis were already ruined, and now was his turn to be assailed: so that as every state lay next to the other that was oppressed, so the fire perpetually grazed.” Wherein it is well to be noted, that towards ambitious states, which are noted to aspire to great

great monarchies, and to seek upon all occasions to enlarge their dominions, *et sunt argumenta justæ metus*; all particular fears do grow and multiply out of the contemplation of the general courtes and practice of such states. Therefore, in deliberations of war against the Turk, it hath been often, with great judgment, maintained, that Christian princes and states have always a sufficient ground of invasive war against the enemy: not for cause of religion, but upon a just fear; forasmuch as it is a fundamental law in the Turkish empire, that they may, without any other provocation, make war upon Christendom for the propagation of their law; so that there lieth upon the Christians a perpetual fear of a war, hanging over their heads, from them; and therefore they may at all times, as they think good, be upon the prevention. Demosthenes expoileth to scorn wars which are not preventive, comparing those that make them to country fellows in a fencing-school, that never ward till the blow be past: *Ut barbari pugiles dimicare solent, ita vos bellum geritis cum Philippo: ex his enim is, qui vitus est, telui semper inhaeret: quod si cum alibi verberes, illo manus transfert; istum autem depellere, aut prospicere, neque scit neque vult.* “As country fellows use to do when they play at wasters, such a kind of war do you, Athenians, make with Philip; for with them he that gets a blow, straight falleth to ward when the blow is passed; and if you strike him in another place, thither goes his hand likewise: but to put by, or foresee a blow, they neither have the skill, nor the will.”

Clinias the Candian, in Plato, speaks desperately and wildly, as if there were no such thing as peace between nations; but that every nation expects but his advantage to war upon another. But yet in that excess of speech there is thus much that may have a civil construction; namely, that every state ought to stand upon its guard, and rather prevent than be prevented. His words are, *Quam rem fere vocant pacem, nudum et inane nomen est; revera autem omnibus, adversus omnes civitates, bellum sempiternum perdurat.* “That which men for the most part call peace, is but a naked and empty name; but the truth is, that there is ever between all estates a secret war.” I know well this speech is the objection and not the decision, and that it is after refuted; but yet, as I said before, it bears thus much of truth, that if that general malignity, and predisposition to war, which he untruly figureth to be in all nations, be produced and extended to a just fear of being oppressed, then it is no more a true peace, but a name of a peace.

As for the opinion of Iphicrates the Athenian, it demands not so much towards a war as a just fear, but rather cometh near the opinion of Clinias; as if there were ever amongst nations a brooding of a war, and that there is no sure league but impuissance to do hurt. For he, in the treaty of peace with the Lacedæmonians, speaketh plain language; telling them, there could be no true and secure peace, except the Lacedæmonians yielded to those things, which being granted, it would be no longer in their power to hurt the Athenians, though they would: and to say truth, if one mark it well, this was in all memory the main piece of wisdom, in strong and prudent counsels, to be in perpetual watch, that the states about them should neither by approach, nor by increase of dominion, nor by ruining confederates, nor by blocking of trade, nor by any the like means, have it in their power to hurt or annoy the states they serve; and whensoever any such cause did but appear, straightways to buy it out with a war, and never take up peace at credit and upon interest. It is so memorable, as it is yet as fresh as

if it were done yesterday, how that triumvirate of kings, Henry the eighth of England, Francis the first of France, and Charles the fifth emperor and king of Spain, were in their times so provident, as scarce a palm of ground could be gotten by either of the three, but that the other two would be sure to do their best, to set the balance of Europe upright again. And the like diligence was used in the age before by that league, wherewith Guicciardine beginneth his story, and maketh it, as it were, the calendar of the good days of Italy, which was contracted between Ferdinando king of Naples, Lorenzo of Medici potentate of Florence, and Lodovico Sforza duke of Milan, designed chiefly against the growing power of the Venetians; but yet so, as the confederates had a perpetual eye one upon another, that none of them should overtop. To conclude therefore; howsoever some schoolmen, otherwise reverend men, yet fitter to guide penknives than swords, seem precisely to stand upon it, that every offensive war must be *ultio*, a revenge, that presupposeth a precedent assault or injury; yet neither do they descend to this point, which we now handle, of a just fear; neither are they of authority to judge this question against all the precedents of time. For certainly, as long as men are men, the sons, as the poets allude, of Prometheus, and not of Epimetheus, and as long as reason is reason, a just fear will be a just cause of a preventive war; but especially if it be part of the case, that there be a nation that is manifestly detected to aspire to monarchy and new acquets; then other states, assuredly, cannot be justly accused for not staying for the first blow; or for not accepting Polyphemus's courtesy, to be the last that shall be eaten up.

Nay, I observe farther, that in that passage of Plato which I cited before, and even in the tenet of that person that beareth the resolving part, and not the objecting part, a just fear is justified for a cause of an invasive war, though the same fear proceed not from the fault of the foreign state to be assailed: for it is there insinuated, that if a state, out of the distemper of their own body, do fear sedition and intestine troubles to break out amongst themselves, they may discharge their own ill humours upon a foreign war for a cure. And this kind of cure was tendered by Jasper Coligni, admiral of France, to Charles the ninth the French king, when by a lively and forcible persuasion he moved him to a war upon Flanders, for the better extinguishment of the civil wars of France; but neither was that counsel prosperous; neither will I maintain that position: for I will never set politics against ethics; especially for that true ethics are but as a handmaid to divinity and religion. Surely St. Thomas, who had the largest heart of the school divines, bendeth chiefly his style against the depraved passions which reign in making wars, speaking out of St. Augustine: *Nocendi cupiditas, ulciscendi crudelitas, implacatus et implacabilis animus, feritas rebellandi, libido dominandi, et si quae sunt similia, haec sunt quae in bellis jure culpantur.* And the same St. Thomas, in his own text, defining of the just causes of a war, doth leave it upon very general terms: *Requiritur ad bellum causa justa, ut scilicet illi, qui impugnantur, propter aliquam culpam impugnationem mereantur;* for *impugnatio culpae* is a far more general word, than *ultio injuriae*. And thus much for the first proposition, of the second ground of a war with Spain: namely, that a just fear is a just cause of a war; and that a preventive war is a true defensive.

The second or minor proposition was this; that this kingdom hath cause of just fear of overthrow from Spain. Wherein it is true, that fears are ever seen in dimmer lights than facts. And on the other side, fears use, many times, to be represented

represented in such an imaginary fashion, as they rather dazzle mens eyes than open them : and therefore I will speak in that manner which the subject requires ; that is, probably, and moderately, and briefly. Neither will I deduce these fears to present occurrences ; but point only at general grounds, leaving the rest to more secret counsels.

Is it nothing, that the crown of Spain hath enlarged the bounds thereof within this last sixscore years, much more than the Ottomans ? I speak not of matches or unions, but of arms, occupations, invasions. Granada, Naples, Milan, Portugal, the East and West Indies ; all these are actual additions to that crown. They had a mind to French Britain, the lower Part of Picardy, and Piedmont ; but they have let fall their bit. They have, to this day, such a hovering possession of the Valtoline, as an hobby hath over a lark : and the Palatinate is in their talons : so that nothing is more manifest, than that this nation of Spain runs a race still of empire, when all other states of christendom stand in effect at a stay. Look then a little farther into the titles whereby they have acquired, and do now hold these new portions of their crown ; and you will find them of so many varieties, and such natures, to speak with due respect, as may appear to be easily minted, and such as can hardly at any time be wanting. And therefore, so many new conquests and purchases, so many strokes of the alarm bell of fear and awaking to other nations ; and the facility of the titles, which hand-over-head have served their turn, doth ring the peal so much the sharper and louder.

Shall we descend from their general disposition to enlarge their dominions, to their particular disposition and eye of appetite which they have had towards us : they have now twice fought to impatronise themselves of this kingdom of England ; once by marriage with queen Mary ; and the second time by conquest in 1588, when their forces by sea and land were not inferior to those they have now. And at that time in 1588, the counsel and design of Spain was by many advertisements revealed and laid open to be, that they found the war upon the Low Countries so churlish and longsome, as they grew then to a resolution, that as long as England stood in state to succour those countries, they should but consume themselves in an endless war ; and therefore there was no other way but to assail and depress England, which was as a back of steel to the Flemings. And who can warrant, I pray, that the same counsel and design will not return again ? So as we are in a strange dilemma of danger : for if we suffer the Flemings to be ruined, they are our outwork, and we shall remain naked and dismantled : if we succour them strongly, as is fit, and set them upon their feet, and do not withal weaken Spain, we hazard to change the scene of the war, and to turn it upon Ireland or England : like unto rheums and defluxions, which if you apply a strong repercussive to the place affected, and do not take away the cause of the disease, will shift and fall straightways to another joint or place. They have also twice invaded Ireland ; once under the pope's banner, when they were defeated by the lord Gray : and after in their own name, when they were defeated by the lord Mountjoy. So as let this suffice for a taste of their disposition towards us. But it will be said, this is an almanack for the old year ; since 1588 all hath been well ; Spain hath not assailed this kingdom, howsoever by two several invasions from us mightily provoked. It is true : but then consider, that immediately after 1588, they were imbroiled for a great time in the protection of the league of France, whereby they had their hands full ; after being brought extreme low by their vast

and continual imbracements, they were enforced to be quiet that they might take breath, and do reparations upon their former wastes. But now of late, things seem to come apace to their former estate; nay, with far greater disadvantage to us; for now that they have almost continued, and, as it were, arched their dominions from Milan, by the Valtoline and Palatinate, to the Low Countries, we see how they thirst and pant after the utter ruin of those states; having in contempt almost the German nation, and doubting little opposition except it come from England: whereby either we must suffer the Dutch to be ruined, to our own manifest prejudice; or put it upon the hazard I spake of before, that Spain will cast at the fairest. Neither is the point of internal danger, which groweth upon us, to be forgotten; this, that the party of the papists in England are become more knotted, both in dependence towards Spain and amongst themselves, than they have been. Wherein again comes to be remembered the case of 1588: for then also it appeared by divers secret letters, that the design of Spain was, for some years before the invasion attempted, to prepare a party in this kingdom to adhere to the foreigner at his coming. And they bragged, that they doubted not so to abuse and lay asleep the queen and council of England, as to have any fear of the party of papists here; for that they knew, they said, the state would but cast the eye and look about to see whether there were any eminent head of that party, under whom it might unite itself; and finding none worth the thinking on, the state would rest secure and take no apprehension: whereas they meant, they said, to take a course to deal with the people, and particulars, by reconcilements, and confessions, and secret promises, and cared not for any head of party. And this was the true reason, why after that the seminaries began to blossom, and to make missions into England, which was about the three and twentieth year of queen Elizabeth, at what time also was the first suspicion of the Spanish invasion, then, and not before, grew the sharp and severe laws to be made against the papists. And therefore the papists may do well to change their thanks; and whereas they thank Spain for their favours, to thank them for their perils and miseries if they should fall upon them: for that nothing ever made their case so ill as the doubt of the greatness of Spain, which adding reason of state to matter of conscience and religion, did what the laws against them. And this case also seemeth, in some sort, to return again at this time; except the clemency of his majesty, and the state, do superabound; as for my part I do wish it should: and that the proceedings towards them may rather tend to security, and providence, and point of state, than to persecution for religion. But to conclude; these things briefly touched, may serve as in a subject conjectural and future, to represent how just cause of fear this kingdom may have towards Spain: omitting, as I said before, all present and more secret occurrences.

The third ground of a war with Spain, I have set down to be, a just fear of the subversion of our church and religion: which needeth little speech. For if this war be a defensive, as I have proved it to be, no man will doubt, that a defensive war against a foreigner for religion is lawful. Of an offensive war there is more dispute. And yet in that instance of the war for the Holy Land and sepulchre, I do wonder sometimes, that the schoolmen want words to defend that, which S. Bernard wanted words to commend. But I, that in this little extract of a treatise do omit things necessary, am not to handle things unnecessary. No man, I say, will doubt, but if the pope or king of Spain would demand of us to forsake

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our religion upon pain of a war, it were as unjust a demand, as the Persians made to the Grecians of land and water; or the Amorites to the Israelites of their right eyes. And we see all the heathen did stile their defensive wars, *pro aris et focis*; placing their altars before their hearths. So that it is in vain of this to speak farther. Only this is true; that the fear of the subversion of our religion from Spain is the more just, for that all other catholic princes and states content and contain themselves to maintain their religion within their own dominions, and meddle not with the subjects of other states; whereas the practice of Spain hath been, both in Charles the fifth's time, and in the time of the league in France, by war; and now with us, by conditions of treaty, to intermeddle with foreign states, and to declare themselves protectors general of the party of catholics, through the world. As if the crown of Spain had a little of this, that they would plant the pope's laws by arms, as the Ottomans do the law of Mahomet. Thus much concerning the first main point of justifying the quarrel, if the king shall enter into a war; for this that I have said, and all that followeth to be said, is but to shew what he may do.

The second main part of that I have propounded to speak of, is the balance of forces between Spain and us. And this also tendeth to no more, but what the king may do. For what he may do is of two kinds: what he may do as just; and what he may do as possible. Of the one I have already spoken; of the other I am now to speak. I said, Spain was no such giant; and yet if he were a giant, it will be but as it was between David and Goliath, for *God is on our side*. But to leave all arguments that are supernatural, and to speak in an human and politic sense, I am led to think that Spain is no over-match for England, by that which leadeth all men; that is, experience and reason. And with experience I will begin, for there all reason beginneth.

Is it fortune, shall we think, that, in all actions of war or arms, great and small, which have happened these many years, ever since Spain and England have had any thing to debate one with the other, the English upon all encounters have perpetually come off with honour, and the better? It is not fortune sure; she is not so constant. There is somewhat in the nation and natural courage of the people, or some such thing. I will make a brief list of the particulars themselves in an historical truth, no ways strouted, nor made greater by language. This were a fit speech, you will say, for a general, in the head of an army, when they were going to battle: yes; and it is no less fit speech to be spoken in the head of a council, upon a deliberation of entrance into a war. Neither speak I this to disparage the Spanish nation, whom I take to be of the best soldiers in Europe: but that forteth to our honour, if we still have had the better hand.

In the year 1578, was that famous lammas day, which buried the reputation of Don John of Austria, himself not surviving long after. Don John being superior in forces, assisted by the prince of Parma, Mondragon, Mansell, and other the best commanders of Spain, confident of victory, charged the army of the States near Rimentant, bravely and furiously at the first; but after a fight maintained by the space of a whole day, was repulsed, and forced to a retreat, with great slaughter of his men; and the course of his farther enterprises was wholly arrested; and this chiefly by the prowess and virtue of the English and Scottish troops, under the conduct of Sir John Norris and Sir Robert Stuart, colonels: which troops came to the army but the day before, harassed with a long and

wearisome march; and, as it is left for a memorable circumstance in all stories, the soldiers being more sensible of a little heat of the sun, than of any cold fear of death, cast away their armour and garments from them, and fought in their shirts: and, as it was generally conceived, had it not been that the count of Bossu was slack in charging the Spaniards upon their retreat, this fight had sorted to an absolute defeat. But it was enough to chastise Don John for his insidious treaty of peace, wherewith he had abused the States at his first coming. And the fortune of the day, besides the testimony of all stories, may be the better ascribed to the service of the English and Scottish, by comparison of this charge near Rimebant, where the English and Scottish in great numbers came in action, with the like charge given by Don John half a year before at Glenblours, where the success was contrary: there being at that time in the army but a handful of English and Scottish, and they put in disaray by the horsemen of their own fellows.

The first dart of war which was thrown from Spain or Rome upon the realm of Ireland, was in the year 1580; for the design of Stukely blew over into Afric; and the attempt of Saunders and Fitz-Maurice had a spice of madness. In that year Ireland was invaded by Spanish and Italian forces, under the pope's banner, and the conduct of San Josepho, to the number of 700 or better, which landed at Smerwick in Kerry. A poor number it was to conquer Ireland to the pope's use; for their design was no less: but withal they brought arms for 5000 men above their own company, intending to arm so many of the rebels of Ireland. And their purpose was, to fortify in some strong place of the wild and desolate country, and there to nestle till greater succours came; they being hastened unto this enterprise upon a special reason of state, not proper to the enterprise itself; which was by the invasion of Ireland, and the noise thereof, to trouble the council of England, and to make a diversion of certain aids, that then were preparing from hence for the Low Countries. They chose a place where they erected a fort, which they called the *Fort de l'Or*; and from thence they bolted like beasts of the forest, sometimes into the woods and fastnesses, and sometimes back again to their den. Soon after siege was laid to the fort by the lord Gray, then deputy, with a smaller number than those were within the fort; venturously indeed; but haste was made to attack them before the rebels came in to them. After the siege of four days only, and two or three sallies, with loss on their part, they that should have made good the fort for some months, till new succours came from Spain, or at least from the rebels of Ireland, yielded up themselves without conditions at the end of those four days. And for that they were not in the English army enough to keep every man a prisoner, and for that also the deputy expected instantly to be assailed by the rebels; and again, there were no barks to throw them into and send them away by sea; they were all put to the sword; with which queen Elizabeth was afterwards much displeas'd.

In the year 1582, was that memorable retreat of Gaunt; than the which there hath not been an exploit of war more celebrated. For in the true judgment of men of war, honourable retreats are no ways inferior to brave charges; as having less of fortune, more of discipline, and as much of valour. There were to the number of three hundred horse, and as many thousand foot English, commanded by Sir John Norris, charged by the prince of Parma, coming upon them with seven thousand horse; besides that the whole army of Spaniards was ready to march on. Nevertheless Sir John Norris maintained a retreat without disarray,

array, by the space of some miles, part of the way champaign, unto the city of Gaunt, with less loss of men than the enemy: the duke of Anjou, and the prince of Orange, beholding this noble action from the walls of Gaunt, as in a theatre, with great admiration.

In the year 1585, followed the prosperous expedition of Drake and Carlile into the West-Indies, in the which I set aside the taking of S. Jago and S. Domingo in Hispaniola, as surprises rather than encounters. But that of Carthagena, where the Spaniards had warning of our coming, and had put themselves in their full strength, was one of the hottest services, and most dangerous assaults that hath been known. For the access to the town was only by a neck of land, between the sea on the one part, and the harbour water or inner sea on the other; fortified clean over with a strong rampier and barricado; so as upon the ascent of our men, they had both great ordnance and small shot, that thundred and showered upon them from the rampier in front, and from the galleys that lay at sea in flank. And yet they forced the passage, and won the town, being likewise very well manned. As for the expedition of Sir Francis Drake, in the year 1587, for the destroying of the Spanish shipping and provision upon their own coast; as I cannot say that there intervened in that enterprise any sharp fight or encounter; so, nevertheless, it did strangely discover, either that Spain is very weak at home, or very slow to move; when they suffered a small fleet of English to make an hostile invasion or incursion upon their havens and roads, from Cadiz to Capa Sacra, and thence to Cascais; and to fire, sink, and carry away at least ten thousand ton of their great shipping, besides fifty or sixty of their small vessels; and that in the fight, and under the favour of their forts; and almost under the eye of their great admiral, the best commander of Spain by sea, the marquis de Santa Cruz, without ever being disputed with by any fight of importance. I remember Drake, in the vaunting stile of a soldier, would call this enterprise, the singeing of the king of Spain's beard.

The enterprise of 1588, deserveth to be stood upon a little more fully, being a miracle of time. There armed from Spain, in the year 1588, the greatest navy that ever swam upon the sea: for though there have been far greater fleets for number, yet for the bulk and building of the ships, with the furniture of great ordnance and provisions, never the like. The design was to make not an invasion only, but an utter conquest of this kingdom. The number of vessels were one hundred and thirty, whereof galliasses and galleons seventy two goodly ships, like floating towers or castles, manned with thirty thousand soldiers and mariners. This navy was the preparation of five whole years, at the least: it bare itself also upon divine assistance; for it received special blessing from pope Sixtus, and was assigned as an apostolical mission for the reducement of this kingdom to the obedience of the see of Rome. And, in farther token of this holy warfare, there were amongst the rest of these ships, twelve, called by the names of the twelve apostles. But it was truly conceived, that this kingdom of England could never be overwhelmed, except the land waters came in to the sea tides. Therefore was there also in readiness in Flanders, a mighty strong army of land forces, to the number of fifty thousand veteran soldiers, under the conduct of the duke of Parma, the best commander, next the French king Henry the fourth, of his time. These were designed to join with the forces at sea; there being prepared a number of flat-bottomed boats to transport the land forces, under the wing and protection of the

the great navy. For they made no account, but that the navy should be absolute master of the seas. Against these forces, there were prepared on our part, to the number of near one hundred ships; not so great of bulk indeed, but of a more nimble motion, and more serviceable; besides a less fleet of thirty ships, for the custody of the narrow seas. There were also in readiness at land two armies; besides other forces, to the number of ten thousand, dispersed amongst the coast in the southern parts. The two armies were appointed; one of them consisting of twenty-five thousand horse and foot, for the repulsing of the enemy at their landing; and the other of twenty-five thousand for safeguard and attendance about the court and the queen's person. There were also other dormant musters of soldiers throughout all parts of the realm, that were put in readiness, but not drawn together. The two armies were assigned to the leading of two generals, noble persons, but both of them rather courtiers, and adured to the state, than martial men; yet lined and assisted with subordinate commanders of great experience and valour. The fortune of the war made this enterprize at first a play at base. The Spanish navy set forth out of the Groyne in May, and was dispersed and driven back by weather. Our navy set forth somewhat later out of Plymouth, and bare up towards the coast of Spain to have fought with the Spanish navy; and partly by reason of contrary winds, partly upon advertisement that the Spaniards were gone back, and upon some doubt also that they might pass by towards the coast of England, whilst we were seeking them afar off, returned likewise into Plymouth about the middle of July. At that time came more confident advertisement, though false, not only to the lord Admiral, but to the court, that the Spaniards could not possibly come forward that year; whereupon our navy was upon the point of disbanding, and many of our men gone ashore: at which very time the Invincible Armada, for so it was called in a Spanish ostentation, throughout Europe, was discovered upon the western coast. It was a kind of surprize; for that, as was said, many of our men were gone to land, and our ships ready to depart. Nevertheless the admiral, with such ships only as could suddenly be put in readiness, made forth towards them; inasmuch as of one hundred ships, there came scarce thirty to work. Howbeit, with them, and such as came daily in, we set upon them, and gave them the chase. But the Spaniards, for want of courage, which they called commission, declined the fight, casting themselves continually into roundels, their strongest ships walling in the rest, and in that manner they made a flying march towards Calais. Our men by the space of five or six days followed them close, fought with them continually, made great slaughter of their men, took two of their great ships, and gave divers others of their ships their death's wounds, whereof soon after they sank and perished; and, in a word, distressed them almost in the nature of a defeat; we ourselves in the mean time receiving little or no hurt. Near Calais the Spaniards anchored, expecting their land forces, which came not. It was afterwards alledged, that the duke of Parma did artificially delay his coming: but this was but an invention and pretension given out by the Spaniards; partly upon a Spanish envy against that duke, being an Italian, and his son a competitor to Portugal; but chiefly to save the monstrous scorn and disreputation, which they and their nation received by the success of that enterprize. Therefore their colours and excuses, forsooth, were, that their general by sea had a limited commission, not to fight until the land forces were come in to them: and that the duke of Parma had particular reaches

reaches and ends of his own underhand, to cross the design. But it was both a strange commission, and a strange obedience to a commission; for men in the midst of their own blood, and being so furiously assailed, to hold their hands, contrary to the laws of nature and necessity. And as for the duke of Parma, he was reasonably well tempted to be true to that enterprise, by no less promise than to be made a feudatary or beneficiary king of England, under the feignory, in chief, of the pope, and the protection of the king of Spain. Besides, it appeared that the duke of Parma held his place long after in the favour and trust of the king of Spain, by the great employments and services that he performed in France: and again, it is manifest, that the duke did his best to come down, and to put to sea. The truth was, that the Spanish navy, upon those proofs of fight which they had with the English, finding how much hurt they received, and how little hurt they did, by reason of the activity and low building of our ships, and skill of our seamen; and being also commanded by a general of small courage and experience, and having lost at the first two of their bravest commanders at sea, Pedro de Valdez, and Michael de Oquenda; durst not put it to a battle at sea, but set up their rest wholly upon the land enterprise. On the other side, the transporting of the land forces failed in the very foundation: for whereas the council of Spain made full account, that their navy should be master of the sea, and therefore able to guard and protect the vessels of transportation; when it fell out to the contrary that the great navy was distressed, and had enough to do to save itself; and again, that the Hollanders impounded their land forces with a brave fleet of thirty sail, excellently well appointed; things, I say, being in this state, it came to pass that the duke of Parma must have flown if he would have come into England, for he could get neither bark nor mariner to put to sea: yet certain it is, that the duke looked still for the coming back of the Armada, even at that time when they were wandering, and making their perambulation upon the northern seas. But to return to the Armada, which we left anchored at Calais: from thence, as Sir Walter Raleigh was wont prettily to say, they were suddenly driven away with squibs; for it was no more but a stratagem of fire boats, manless, and sent upon them by the favour of the wind in the night time, that did put them in such terror, as they cut their cables, and left their anchors in the sea. After they hovered some two or three days about Graveling, and there again were beaten in a great fight; at what time our second fleet, which kept the narrow seas, was come in and joined to our main fleet. Thereupon the Spaniards entering into farther terror, and finding also divers of their ships every day to sink, lost all courage, and instead of coming up into the Thames' mouth for London, as their design was, fled on towards the north to seek their fortunes; being still chased by the English navy at the heels, until we were fain to give them over for want of powder. The breath of Scotland the Spaniards could not endure; neither durst they as invaders land in Ireland; but only ennobled some of the coasts thereof with shipwrecks. And so going northwards aloof, as long as they had any doubt of being pursued, at last, when they were out of reach, they turned, and crossed the ocean to Spain, having lost fourscore of their ships and the greater part of their men. And this was the end of that sea-giant, the Invincible Armada: which, having not so much as fired a cottage of ours by land, nor taken a cock-boat of ours at sea, wandered through the wilderness of the northern seas; and, according to the curse in the Scripture, *came out against us one way, and fled before us seven ways.* Serving only to make
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good the judgment of an astrologer long before given, *et tuagesimus octavus mirabilis annus*: or rather, to make good, even to the astonishment of all posterity, the wonderful judgments of God poured down commonly upon vast and proud aspirings.

In the year that followed, of 1589, we gave the Spaniards no breath, but turned challengers, and invaded the main of Spain. In which enterprize, although we failed in our end, which was to settle Don Antonio in the kingdom of Portugal, yet a man shall hardly meet with an action that doth better reveal the great secret of the power of Spain: which power well fought into, will be found rather to consist in a veteran army, such as upon several occasions and pretensions they have ever had on foot, in one part or other of Christendom, now by the space of almost sixscore years, than in the strength of their dominions and provinces. For what can be more strange, or more to the disvaluation of the power of the Spaniard upon the continent, than that with an army of eleven thousand English land-followers, and a fleet of twenty six ships of war, besides some weak vessels for transportation, we should, within the hour-glass of two months, have won one town of importance by seado, battered and assaulted another, overthrown great forces in the field, and that upon the disadvantage of a bridge strongly barricadoed, landed the army in three several places of his kingdom, marched seven days in the heart of his countries, lodged three nights in the suburbs of his principal city, beaten his forces into the gates thereof, possessed two of his frontier forts, and come off after all this with small loss of men, otherwise than by sickness? And it was verily thought, that had it not been for four great disfavours of that voyage, that is to say, the failing in sundry provisions that were promised, especially of cannons for battery; the vain hopes of Don Antonio, concerning the people of the country to come in to his aid; the disappointment of the fleet that was directed to come up the river of Lisbon; and lastly, the diseases which spread in the army by reason of the heat of the season, and of the soldiers misrule in diet, the enterprize had succeeded, and Lisbon had been carried. But howsoever it makes proof to the world, that an invasion of a few English upon Spain may have just hopes of victory, at least of passport to depart safely.

In the year 1591 was that memorable fight of an English ship called the Revenge, under the command of Sir Richard Greenvil; memorable, I say, even beyond credit, and to the height of some heroical fable: and though it were a defeat, yet it exceeded a victory; being like the act of Samson, that killed more men at his death, than he had done in the time of all his life. This ship, for the space of fifteen hours, sat like a stag among hounds at the bay, and was sieged, and fought with, in turn, by fifteen great ships of Spain, part of a navy of fifty five ships in all; the rest like abettors looking on afar off. And amongst the fifteen ships that fought, the great S. Philippo was one; a ship of fifteen hundred ton, prince of the twelve sea apostles, which was right glad when she was shifted off from the Revenge. This brave ship the Revenge, being manned only with two hundred, soldiers and mariners, whereof eighty lay sick; yet nevertheless after a fight maintained, as was said, of fifteen hours, and two ships of the enemy sunk by her side, besides many more torn and battered, and great slaughter of men, never came to be entred, but was taken by composition; the enemies themselves laying in admiration the virtue of the commander, and the whole tragedy of that ship.

In the year 1596 was the second invasion that we made upon the main territories of Spain; prosperously achieved by that worthy and famous Robert earl of Essex, in concert with the noble earl of Nottingham that now liveth, then admiral. This journey was like lightning; for in the space of fourteen hours the king of Spain's navy was destroyed, and the town of Cadiz taken. The navy was no less than fifty tall ships, besides twenty galleys to attend them. The ships were straightways beaten, and put to flight with such terror, as the Spaniards in the end were their own executioners, and fired them all with their own hands. The galleys, by the benefit of the shores and shallows, got away. The town was a fair, strong, well built, and rich city; famous in antiquity, and now most spoken of for this disaster. It was manned with four thousand soldiers foot, and some four hundred horse; it was sacked and burned, though great clemency was used towards the inhabitants. But that which is no less strange than the sudden victory, is the great patience of the Spaniards; who though we stayed upon the place divers days, yet never offered us any play then, nor ever put us in suit by any action of revenge or reparation at any time after.

In the year 1600 was the battle of Newport in the Low-Countries, where the armies of the archduke, and the states, tried it out by a just battle. This was the only battle that was fought in those countries these many years. For battles in the French wars have been frequent, but in the wars of Flanders rare, as the nature of a defensive requireth. The forces of both armies were not much unequal: that of the States exceeded somewhat in number, but that again was recompensed in the quality of the soldiers; for those of the Spanish part were of the flower of all their forces. The archduke was the assailant, and the preventer, and had the fruit of his diligence and celerity. For he had charged certain companies of Scottish men, to the number of eight hundred, sent to make good a passage, and thereby severed from the body of the army, and cut them all in pieces: for they, like a brave infantry, when they could make no honourable retreat, and would take no dishonourable flight, made good the place with their lives. This entrance of the battle did whet the courage of the Spaniards, though it dulled their swords; so as they came proudly on, confident to defeat the whole army. The encounter of the main battle which followed, was a just encounter, not hastening to a sudden rout, nor the fortune of the day resting upon a few forward ranks, but fought out to the proof by several squadrons, and not without variety of success; *Stat pedi pes, densusque viro vir*. There fell out an error in the Dutch army, by the over-hasty meddling of some of their men with the enemies, which hindered the playing of their great ordnance. But the end was, that the Spaniards were utterly defeated, and near five thousand of their men in the fight, and in the execution, slain and taken; amongst whom were many of the principal persons of their army. The honour of the day was, both by the enemy and the Dutch themselves, ascribed unto the English; of whom Sir Francis Vere, in a private commentary which he wrote of that service, leaveth testified, that of fifteen hundred in number, for they were no more, eight hundred were slain in the field: and, which is almost incredible in a day of victory, of the remaining seven hundred, two men only came off unhurt. Amongst the rest Sir Francis Vere himself had the principal honour of the service, unto whom the prince of Orange, as is said, did transmit the direction of the army for that day; and in the next place Sir Horace Vere his brother, that now liveth, who was the principal in the active part.

The service also of Sir Edward Cecil, Sir John Ogle, and divers other brave gentlemen, was eminent.

In the year 1691 followed the battle of Kinfales in Ireland. By this Spanish invasion of Ireland, which was in September that year, a man may guess how long time a Spaniard will live in Irish ground; which is a matter of a quarter of a year, or four months at most. For they had all the advantages in the world; and no man would have thought, considering the small forces employed against them, that they could have been driven out so soon. They obtained, without resistance, in the end of September, the town of Kinfales; a small garrison of one hundred and fifty English leaving the town upon the Spaniards approach, and the townsmen receiving the foreigners as friends. The number of Spaniards that put themselves into Kinfales, was two thousand men, soldiers of old bands, under the command of Don John d'Aquila, a man of good valour. The town was strong of itself; neither wanted there any industry to fortify it on all parts, and make it tenable, according to the skill and discipline of Spanish fortification. At that time the rebels were proud, being encouraged upon former successes; for though the then deputy, the lord Mountjoy, and Sir George Carew, president of Munster, had performed divers good services to their prejudice; yet the defeat they had given the English at Blackwater, not long before, and their treaty, too much to their honour, with the earl of Essex, was yet fresh in their memory. The deputy lost no time, but made haste to have recovered the town before new succours came, and sat down before it in October, and laid siege to it by the space of three winter months or more: during which time sallies were made by the Spaniard, but they were beaten in with loss. In January came fresh succours from Spain, to the number of two thousand more, under the conduct of Alonzo d'Ocampo. Upon the comforts of these succours, Tyrone and Odonnell drew up their forces together, to the number of seven thousand, beside the Spanish regiments, and took the field, resolved to rescue the town, and to give the English battle. So here was the case: an army of English, of some six thousand, wasted and tired with a long winter's siege, engaged in the midst, between an army of a greater number than themselves, fresh and in vigour, on the one side; and a town strong in fortification, and strong in men, on the other. But what was the event? This in few words: that after the Irish and Spanish forces had come on, and shewed themselves in some bravery, they were content to give the English the honour to charge them first; and when it came to the charge, there appeared no other difference between the valour of the Irish rebels and the Spaniards, but that the one ran away before they were charged, and the other straight after. And again, the Spaniards that were in the town had so good memories of their losses in their former sallies, as the confidence of an army, which came for their deliverance, could not draw them forth again. To conclude: there succeeded an absolute victory for the English, with the slaughter of above two thousand of the enemy; the taking of nine ensigns, whereof six Spanish; the taking of the Spanish general, d'Ocampo, prisoner; and this with the loss of so few of the English as is scarce credible; being, as hath been rather confidently than credibly reported, but of one man, the cornet of Sir Richard Greame; though not a few hurt. There followed immediately after the defeat a present yielding up of the town by composition; and not only so, but an avoiding, by express articles of treaty accorded, of all other Spanish forces throughout all Ireland, from the places and nests where they had settled themselves in greater strength,

strength, as in regard of the natural situation of the places, than that was of Kinsale; which were Castlehaven, Baltimore, and Beerehaven. Indeed they went away with found of trumpet, for they did nothing but publish and trumpet all the reproaches they could devise against the Irish land and nation; inasmuch as D'Aquila said in open treaty, that when the devil upon the mount did shew Christ all the kingdoms of the earth, and the glory of them, he did not doubt but the devil left out Ireland, and kept it for himself.

I cease here; omitting not a few other proofs of the English valour and fortunes, in these latter times: as at the suburbs of Paris, at the Raveline, at Druse in Normandy, some encounters in Brittany, and at Ostend, and divers others; partly because some of them have not been proper encounters between the Spaniards and the English; and partly because others of them have not been of that greatness, as to have sorted in company with the particulars formerly recited. It is true, that amongst all the late adventures, the voyage of Sir Francis Drake, and Sir John Hawkins into the West-Indies, was unfortunate; yet in such sort as it doth not break or interrupt our prescription, to have had the better of the Spaniards upon all fights of late. For the disaster of that journey was caused chiefly by sickness; as might well appear by the deaths of both the generals, Sir Francis Drake and Sir John Hawkins, of the same sickness amongst the rest. The land enterprise of Panama was an ill-measured and immature counsel: for it was grounded upon a false account, that the passages towards Panama were no better fortified than Drake had left them. But yet it sorted not to any fight of importance, but to a retreat, after the English had proved the strength of their first fort, and had notice of the two other forts beyond, by which they were to have marched. It is true, that in the return of the English fleet they were set upon by Avellaneda, admiral of twenty great ships Spanish, our fleet being but fourteen, full of sick men, deprived of their two generals by sea, and having no pretence but to journey homewards: and yet the Spaniards did but salute them, about the Cape de los Corientes, with some small offer of fight, and came off with loss; although it was such a new thing for the Spaniards to receive so little hurt upon dealing with the English, as Avellaneda made great brags of it, for no greater matter than the waiting upon the English afar off, from Cape de los Corientes to Cape Antonio; which, nevertheless, in the language of a soldier, and of a Spaniard, he called a chase.

But before I proceed farther, it is good to meet with an objection, which if it be not removed, the conclusion of experience from the time past to the time present will not be sound and perfect. For it will be said, that in the former times, whereof we have spoken, Spain was not so mighty as now it is; and England, on the other side, was more beforehand in all matters of power. Therefore let us compare with indifferency these disparities of times, and we shall plainly perceive, that they make for the advantage of England at this present time. And because we will less wander in generalities, we will fix the comparison to precise times; comparing the state of Spain and England in the year 1588, with this present year that now runneth. In handling of this point, I will not meddle with any personal comparisons of the princes, counsellors, and commanders by sea or land, that were then, and that are now, in both kingdoms, Spain and England; but only rest upon real points, for the true balancing of the state of the forces and affairs of both times. And yet these personal comparisons I omit not, but

that I could evidently shew, that even in these personal respects the balance sways on our part; but because I would say nothing that may favour of a spirit of flattery or censure of the present government.

First therefore it is certain, that Spain hath not now one foot of ground in quiet possession, more than it had in 1588. As for the Valtoline, and the Palatinate, it is a maxim in state, that all countries of new conquest, till they be settled, are rather matters of burden than of strength. On the other side, England hath Scotland united, and Ireland reduced to obedience, and planted; which are mighty augmentations.

Secondly, in 1588, the kingdom of France, able alone to counterpoise Spain itself, much more in conjunction, was torn with the party of the league, which gave law to their king, and depended wholly upon Spain. Now France is united under a valiant young king, generally obeyed if he will, himself king of Navarre as well as of France; and that is no ways taken prisoner, though he be tied in a double chain of alliance with Spain.

Thirdly, in 1588, there sat in the see of Rome a fierce thundring frier, that would set all at six and seven; or at six and five, if you allude to his name: and though he would after have turned his teeth upon Spain, yet he was taken order with before it came to that. Now there is ascended to the papacy, a personage, that came in by a chaste election, no ways obliged to the party of the Spaniards: a man bred in embassages and affairs of state, that hath much of the prince, and nothing of the frier; and one, that though he loves the chair of the papacy well, yet he loveth the carpet above the chair; that is, Italy, and the liberties thereof well likewise.

Fourthly, in 1588, the king of Denmark was a stranger to England, and rather inclined to Spain; now the king is incorporated to the blood of England, and engaged in the quarrel of the Palatinate. Then also Venice, Savoy, and the princes and cities of Germany, had but a dull fear of the greatness of Spain, upon a general apprehension only of the spreading and ambitious designs of that nation: now that fear is sharpened and pointed by the Spaniards late enterprises upon the Valtoline and the Palatinate, which come nearer them.

Fifthly and lastly, the Dutch, which is the Spaniards perpetual duellist, hath now, at this present, five ships to one, and the like proportion in treasure and wealth, to that they had in 1588. Neither is it possible, whatsoever is given out, that the coffers of Spain should now be fuller than they were in 1588: for at that time Spain had no other wars save those of the Low Countries, which were grown into an ordinary; now they have had coupled therewith the extraordinary of the Valtoline and the Palatinate. And so I conclude my answer to the objection raised touching the difference of times; not entering into more secret passages of state, but keeping that character of style whereof Seneca speaketh, *plus significat quam loquitur*.

Here I would pass over from matter of experience, were it not that I held it necessary to discover a wonderful erroneous observation that walketh about, and is commonly received, contrary to all the true account of time and experience. It is, that the Spaniard, where he once getteth in, will seldom or never be got out again. But nothing is less true than this. Not long since they got footing at Brest, and some other parts in French Britain, and after quitted them. They had Calais, Ardes, and Amiens, and rendered them, or were beaten out. They had

had since Marfeilles, and fairly left it. They had the other day the Valoine, and now have put it in deposit. What they will do with Ormus, which the Persians hath taken from them, we shall see. So that, to speak truly of latter times, they have rather poached and offered at a number of enterprizes, than maintained any constantly; quite contrary to that idle tradition. In more ancient times, leaving their purchases in Afric, which they after abandoned, when their great emperor Charles had clasped Germany almost in his fist, he was forced, in the end, to go from Isburg, and, as if it had been in a mask, by torchlight, and to quit every foot in Germany round that he had gotten; which, I doubt not, will be the hereditary issue of this late purchase of the Palatinate. And so I conclude the ground that I have to think that Spain will be no overmatch to Great Britain, if his majesty should enter into a war, out of experience and records of time.

For grounds of reason they are many; I will extract the principal, and open them briefly, and as it were in the bud. For situation, I pass it over; though it be no small point: England, Scotland, Ireland, and our good confederates the United Provinces, lie all in a clump together, not accessible but by sea, or at least by passing over great rivers, which are natural fortifications. As for the dominions of Spain, they are so scattered, as it yieldeth great choice of the scenes of the war, and promiseth slow succours unto such part as shall be attempted. There be three main parts of military puissance, men, money, and confederates. For men, there are to be considered valour and number. Of valour I speak not; take it from the witnesses that have been produced before: yet the old observation is not untrue, that the Spaniards' valour lieth in the eye of the looker on; but the English valour lieth about the soldier's heart. A valour of glory, and a valour of natural courage, are two things. But let that pass, and let us speak of number: Spain is a nation thin sown of people; partly by reason of the sterility of the soil, and partly because their natives are exhausted by so many employments in such vast territories as they possess. So that it hath been accounted a kind of miracle, to see ten or twelve thousand native Spaniards in an army. And it is certain, as we have touched it, a little before, in passage, that the secret of the power of Spain consisteth in a veteran army, compounded of miscellany forces of all nations, which for many years they have had on foot upon one occasion or other: and if there should happen the misfortune of a battle, it would be a long work to draw on supplies. They tell a tale of a Spanish ambassador that was brought to see the treasury of S. Mark at Venice, and still he looked down to the ground; and being asked, why he so looked down, said, "he was looking to see whether their treasure had any root, so that if it were spent it would grow again; as his master's had." But, howsoever it be of their treasure, certainly their forces have scarce any root; or at least such a root as buddeth forth poorly and slowly. It is true they have the Walloons, who are tall soldiers; yet that is but a spot of ground. But, on the other side, there is not in the world again such a spring and seminary of brave military people, as is England, Scotland, Ireland, and the United Provinces: so as if wars should mow them down never so fast, yet they may be suddenly supplied, and come up again.

For money, no doubt it is the principal part of the greatness of Spain; for by that they maintain their veteran army; and Spain is the only state of Europe that is a money grower. But in this part, of all others, is most to be considered, the ticklish and brittle state of the greatness of Spain. Their greatness consisteth in
their

their treasure, their treasure in their Indies, and their Indies, if it be well weighed, are indeed but an accession to such as are masters by sea. So as this axle-tree, whereupon their greatness turneth, is soon cut in two by any that shall be stronger than they by sea. Herein therefore I refer myself to the opinions of all men, enemies or whomsoever, whether that the maritime forces of Great Britain, and the United Provinces, be not able to beat the Spaniard at sea? For if that be so, the links of that chain whereby they hold their greatness, are dissolved. Now if it be said, that admit the case of Spain to be such as we have made it, yet we ought to descend into our own case, which we shall find, perhaps, not to be in state, for treasure, to enter into a war with Spain. To which I answer; I know no such thing; the mint beateth well; and the pulses of the peoples hearts beat well. But there is another point that taketh away quite this objection: for whereas wars are generally causes of poverty or consumption; on the contrary part, the special nature of this war with Spain, if it be made by sea, is like to be a lucrative and restorative war. So that, if we go roundly on at the first, the war in continuance will find itself. And therefore you must make a great difference between Hercules's labours by land, and Jason's voyage by sea for the golden fleece.

For confederates; I will not take upon me the knowledge, how the princes, states, and councils of Europe, at this day, stand affected towards Spain; for that trencheth into the secret occurrents of the present time, wherewith, in all this treatise, I have forborn to meddle. But to speak of that which lieth open and in view; I see much matter of quarrel and jealousy, but little of amity and trust towards Spain, almost in all other estates. I see France is in competition with them for three noble portions of their monarchy, Navarre, Naples, and Milan; and now freshly in difference with them about the Valtoline. I see once in thirty or forty years cometh a pope, that casteth his eye upon the kingdom of Naples, to recover it to the church: as it was in the minds of Julius the second, Paul the fourth, and Sixtus the fifth. As for that great body of Germany, I see they have greater reason to confederate themselves with the kings of France, and Great Britain, or Denmark, for the liberty of the German nation, and for the expulsion of Spanish and foreign forces, than they had in the years 1552 and 1553. At which time they contracted a league with Henry the second the French king, upon the same articles, against Charles the fifth, who had impatronized himself of a great part of Germany, through the discord of the German princes, which himself had sown and fomented: which league at that time did the deed, and drove out all the Spaniards out of that part of Germany; and reintegrated that nation in their ancient liberty and honour. For the West Indies, though Spain hath yet not much actual disturbance there, except it hath been from England; yet nevertheless I see all princes lay a kind of claim unto them; accounting the title of Spain but as a monopoly of those large countries, wherein they have in great part but an imaginary possession. For Afric upon the west, the Moors of Valentia expelled, and their allies do yet hang as a cloud or storm over Spain. Gabor on the east is like an anniversary wind, that riseth every year upon the party of Austria. And Persia hath entered into hostility with Spain, and given them the first blow by taking of Ormus. It is within every man's observation also, that Venice doth think their state almost on fire, if the Spaniards hold the Valtoline. That Savoy hath learned by fresh experience, that alliance with Spain is no security
against

against the ambition of Spain; and that of Bavaria hath likewise been taught, that merit and service doth oblige the Spaniard but from day to day. Neither do I say for all this, but that Spain may rectify much of this ill blood by their particular and cunning negotiations: but yet there it is in the body, and may break out, no man knoweth when, into ill accidents: and at least it sheweth plainly, that which serveth for our purpose, that Spain is much destitute of assured and confident confederates. And therefore I will conclude this part with the speech of a counsellor of state in Spain, at this day, which was not without salt: he said to his master the king of Spain that now is, upon occasion; "Sir, I will tell your majesty thus much for your comfort; your majesty hath but two enemies, whereof the one is all the world, and the other is your own ministers." And thus I end the second main part I propounded to speak of; which was, the balancing of the forces between the king's majesty and the king of Spain, if a war must follow.



L A W T R A C T S.

VOL. II.

F t

THE
E L E M E N T S
OF THE
C O M M O N L A W S
OF
E N G L A N D.

CONTAINING

FIRST,

A Collection of some of the principal RULES and MAXIMS of the COMMON
LAW, with their Latitude and Extent.

SECONDLY,

The USE of the COMMON LAW for Preservation of our Persons, Goods, and
Good Names, according to the Laws and Customs of this Land.

T O H E R

S A C R E D M A J E S T Y.

I Do here most humbly present and dedicate unto your Majesty a sheaf and cluster of fruit of that good and favourable season, which by the influence of your happy government we enjoy; for if it be true that *silent leges inter arma*, it is also as true, that your Majesty is in a double respect the life of our laws; once, because without your authority they are but *litera mortua*; again, because you are the life of our peace, without which laws are put to silence. And as the vital spirits do not only maintain and move the body, but also do contend to perfect and renew it; so your sacred Majesty, who is *anima legis*, doth not only give unto your laws force and vigour; but also hath been careful of their amendment and reforming; wherein your Majesty's proceeding may be compared, as in that part of your government, for if your government be considered in all the parts, it is incomparable, with the former doings of the most excellent Princes that have reigned, who have ever studied to adorn and honour times of peace with the amendment of the policy of their laws. Of this proceeding in Augustus Cæsar the testimony remaineth.

*Pace datâ terris, animum ad civilia vertit
Jura suum; legesque tulit justissimus auctor.*

Hence was collected the difference between *gesta in armis* and *acta in toga*, whereof Cicero disputeth.

Ecquid est, quod tam proprie dici potest actum ejus, qui togatus in republica cum potestate imperioque versatus sit, quam lex? quaere acta Gracchi: leges Semproniae proferantur. Quaere Syllae: Corneliae. Quid? Cn. Pompeii tertius consulatus in quibus actis consistit? nempe in legibus. A Caesare ipso si quaereres quidnam egisset in urbe, et toga: leges multas se responderet, et praecclaras tulisse.

The same desire long after did spring in the emperor Justinian, being rightly called *ultimus imperator Romanorum*, who having peace in the heart of his empire, and making his wars prosperously in the remote places of his dominions by his lieutenants, chose it for a monument and honour of his government, to revise the Roman laws, and to reduce them from infinite volumes and much repugnancy and uncertainty into one competent and uniform corps of law; of which matter himself doth speak gloriously, and yet aptly, calling it, *proprium et sanctissimum templum justitiae consecratum*: a work of great excellency indeed, as may well appear, in that France, Italy, and Spain, which have long since shaken off the yoke of the Roman empire, do yet nevertheless continue to use the policy of that law: but more excellent had the work been, save that the more ignorant and obscure time undertook to correct the more learned and flourishing time. To conclude with the domestic example of one of your Majesty's royal ancestors: King Edward I, your Majesty's famous progenitor, and principal lawgiver of our nation, after he had in younger years given himself satisfaction in glory of arms, by the enterprize of the Holy Land, having inward peace, otherwise than for the invasion which himself made upon Wales and Scotland, parts far distant from the
centre

THE EPISTLE DEDICATORY.

centre of the realm, he bent himself to endow his state with fundry notable and fundamental laws, upon which the government ever since hath principally rested. Of this example, and other the like, two reasons may be given; the one, because that Kings, which, either by the moderation of their natures, or the maturity of their years and judgment, do temper their magnanimity with justice, do wisely consider and conceive of the exploits of ambitious wars, as actions rather great than good; and so, distasted with that course of winning honour, they convert their minds rather to do somewhat for the better uniting of human society, than for the dissolving or disturbing of the same. Another reason is, because times of peace, drawing for the most part with them abundance of wealth, and finesse of cunning, do draw also, in further consequence, multitudes of suits and controversies, and abuses of laws by evasions and devices; which inconveniences in such times growing more general, do more instantly solicit for the amendment of laws to restrain and repress them.

Your Majesty's reign having been blessed from the Highest with inward peace, and falling into an age, wherein, if science be increased, conscience is rather decayed; and if mens wits be great, their wills are more great; and wherein also laws are multiplied in number, and slackened in vigour and execution; it was not possible but that not only suits in law should multiply and increase, whereof always a great part are unjust, but also that all the indirect and sinister courses and practices to abuse law and justice should have been much attempted, and put in use, which no doubt had bred great enormities, had they not, by the royal policy of your Majesty, by the censure and foresight of your Council-table and Star-chamber, and by the gravity and integrity of your benches been repressed and restrained: for it may be truly observed, that, as concerning frauds in contracts, bargains, and assurances, and abuses of laws by delays, covins, vexations, and corruptions in informers, jurors, ministers of justice, and the like, there have been sundry excellent statutes made in your Majesty's time, more in number, and more politic in provision, than in any of your predecessors times.

But I am an unworthy witness to your Majesty of an higher intention and project, both by that which was published by your Chancellor in full parliament from your royal mouth, in the five and thirtieth of your happy reign; and much more by that which I have been vouchsafed to understand from your Majesty, importing a purpose for these many years infused in your Majesty's breast, to enter into a general amendment of the state of your laws, and to reduce them to more brevity and certainty, that the great hollownes and unsafety in assurances of lands and goods may be strengthened, the snaring penalties, that lie upon many subjects, removed, the execution of many profitable laws revived, the judge better directed in his sentence, the counsellor better warranted in his counsel, the student eased in his reading, the contentious suitor, that seeketh but vexation, disarmed, and the honest suitor, that seeketh but to obtain his right, relieved; which purpose and intention, as it did strike me with great admiration when I heard it, so it might be acknowledged to be one of the most chosen works, of highest merit and beneficence towards the subject, that ever entered into the mind of any King; greater than we can imagine, because the imperfections and dangers of the laws are covered under the clemency and excellent temper of your Majesty's government. And though there be rare precedents of it in government, as it cometh to pass in things so excellent, there being no precedent full

full in view but of Justinian ; yet I must say, as Cicero said to Cæsar, *Nihil vulgare te dignum videri potest* ; and as it is no doubt a precious seed sown in your Majesty's heart by the hand of God's divine Majesty, so, I hope, in the maturity of your Majesty's own times it will come up and bear fruit. But to return from thence whither I have been carried ; observing in your Majesty, upon so notable proofs and grounds, this disposition in general of a prudent and royal regard to the amendment of your laws, and having by my private travel collected many of the grounds of the common laws, the better to establish and settle a certain sense of law, which doth now too much waver in uncertainty, I conceived the nature of the subject, besides my particular obligation, was such, as I ought not to dedicate the same to any other than to your sacred Majesty ; both because though the collection be mine, yet the laws are yours ; and because it is your Majesty's reign that hath been as a goodly seasonable spring weather to the advancing of all excellent arts of peace. And so concluding with a prayer answerable to the present argument, which is, that God will continue your Majesty's reign in a happy and renowned peace, and that he will guide both your policy and arms to purchase the continuance of it with surety and honour, I most humbly crave pardon, and commend your Majesty to the divine preservation.

Your Sacred MAJESTY'S most humble and obedient subject and servant,

FRANCIS BACON.

1596.



THE

T H E
P R E F A C E.

I Hold every man a debtor to his profession; from the which as men of course do seek to receive countenance and profit, so ought they of duty to endeavour themselves, by way of amends, to be a help and ornament thereunto. This is performed in some degree by the honest and liberal practice of a profession, when men shall carry a respect not to descend into any course that is corrupt and unworthy thereof, and preserve themselves free from the abuses wherewith the same profession is noted to be infected: but much more is this performed if a man be able to visit and strengthen the roots and foundation of the science itself; thereby not only gracing it in reputation and dignity, but also amplifying it in profession and substance. Having therefore from the beginning come to the study of the laws of this realm, with a mind and desire no less, if I could attain unto it, that the same laws should be the better by my industry, than that myself should be the better by the knowledge of them; I do not find that by mine own travel, without the help of authority, I can in any kind confer so profitable an addition unto that science, as by collecting the rules and grounds dispersed throughout the body of the same laws; for hereby no small light will be given in new cases, and such wherein there is no direct authority to sound into the true conceit of law by the depth of reason, in cases wherein the authorities do square and vary, to confirm the law, and to make it received one way; and in cases wherein the law is cleared by authority, yet nevertheless to see more profoundly into the reason of such judgments and ruled cases, and thereby to make more use of them for the decision of other cases more doubtful: so that the uncertainty of law, which is the most principal and just challenge that is made to the laws of our nation at this time, will, by this new strength laid to the foundation, somewhat the more settle and be corrected. Neither will the use hereof be only in deciding of doubts, and helping soundness of judgment, but further in gracing of argument, in correcting of unprofitable subtlety, and reducing the same to a more sound and substantial sense of law; in reclaiming vulgar errors, and generally in the amendment in some measure of the very nature and complexion of the whole law: and therefore the conclusions of reason of this kind are worthily and aptly called by a great civilian *legum leges*, for that many *placita legum*, that is, particular and positive learnings of laws, do easily decline from a good temper of justice, if they be not rectified and governed by such rules.

Now for the manner of setting down of them, I have in all points, to the best of my understanding and foresight, applied myself not to that which might seem most for the ostentation of mine own wit or knowledge, but to that which may yield most use and profit to the students and professors of our laws.

And therefore, whereas these rules are some of them ordinary and vulgar, that now seem but for grounds and plain songs to the more shallow and impertinent sort of arguments; either of them are gathered and extracted out of the harmony
and

and congruity of cases, and are such as the wisest and deepest sort of lawyers have in judgment and in use, though they be not able many times to express and set them down.

For the former sort, which a man that should rather write to raise an high opinion of himself, than to instruct others, would have omitted, as trite and within every man's compass; yet nevertheless I have not affected to neglect them, but having chosen out of them such as I thought good, I have reduced them to a true application, limiting and defining their bounds, that they may be run upon at large, but restrained to point of difference: for as, both in the law and other sciences, the handling of questions by common-place, without aim or application, is the weakest; so yet nevertheless many common principles and generalities are not to be contemned, if they be well derived and reduced into particulars, and their limits and conclusions duly assigned: for there be two contrary faults and extremities in the debating and sifting out the law, which may be best noted in two several manner of arguments: Some argue upon general grounds, and come not near to the point in question; others, without laying any foundation of a ground or difference or reason, do loosely put cases, which, though they go near the point, yet being so scattered, prove not, but rather serve to make the law appear more doubtful than to make it more plain.

Secondly, whereas some of these rules have a concurrence with the civil Roman law, and some others a diversity, and many times an opposition, such grounds which are common to our law and theirs I have not affected to disguise into other words than the civilians use, to the end they might seem invented by me, and not borrowed or translated from them: no, but I took hold of it as a matter of great authority and majesty, to use and consider the concordance between the laws penned, and as it were dictated *verbatim*, by the same reason. On the other side, the diversities between the civil Roman rules of law and ours, happening either when there is either such an indifferency of reason so equally balanced, as the one law embraceth one course, and the other the contrary, and both just, after either is once positive and certain; or where the laws vary in regard of accommodating the law to the different considerations of estate, I have not omitted to set down with the reasons.

Thirdly, whereas I could have digested these rules into a certain method or order, which, I know, would have been more admired, as that which would have made every particular rule, through his coherence and relation unto other rules, seem more cunning and more deep; yet I have avoided so to do, because this delivering of knowledge in distinct and disjointed aphorisms doth leave the wit of man more free to turn and to toss, and to make use of that which is so delivered to more several purposes and applications; for we see that all the ancient wisdom and science was wont to be delivered in that form, as may be seen by the parables of Solomon, and by the aphorisms of Hippocrates, and the moral verses of Theognis and Phocylides; but chiefly the precedent of the civil law, which hath taken the same course with their rules, did confirm me in my opinion.

Fourthly, whereas, I know very well it would have been more plausible and more current, if the rules, with the expositions of them, had been set down either in Latin or English; that the harshness of the language might not have disgraced the matter; and that civilians, statesmen, scholars, and other sensible

men might not have been barred from them; yet I have forsaken that grace and ornament of them, and only taken this course: the rules themselves I have put in Latin, not purified further than the propriety of terms of law would permit; but Latin, which language I chose, as the briefest to contrive the rules compendiously, the aptest for memory, and of the greatest authority and majesty to be avouched and alledged in argument: and for the expositions and distinctions, I have retained the particular language of our law, because it should not be singular among the books of the same science, and because it is most familiar to the students and professors thereof, and besides that it is most significant to express conceits of law; and to conclude, it is a language wherein a man shall not be enticed to hunt after words but matter; and for excluding any other than professed lawyers, it was better manners to exclude them by the strangeness of the language, than by the obscurity of the conceit; which is such as though it had been written in no private and retired language, yet by those that are not lawyers would for the most part have been either not understood, or, which is worse, mistaken.

Fifthly, whereas I might have made more flourish and ostentation of reading, to have vouched the authorities, and sometimes to have enforced or noted upon them, yet I have abstained from that also; and the reason is, because I judged it a matter undue and preposterous to prove rules and maxims; wherein I had the example of Mr. Littleton and Mr. Fitzherbert, whose writings are the institutions of the laws of England; whereof the one forbearth to vouch any authority altogether; the other never reciteth a book, but when he thinketh the case so weak in credit of itself as it needeth surety; and these two I did far more esteem than Mr. Perkins or Mr. Standford, that have done the contrary. Well will it appear to those that are learned in the laws, that many of the cases are judged cases, either within the books, or of fresh report, and most of them fortified by judged cases and similitude of reason; though in some cases I did intend expressly to weigh down authorities by evidence of reason, and therein rather to correct the law, than either to sooth a received error, or by unprofitable subtlety, which corrupteth the sense of the law, to reconcile contrarieties. For these reasons I resolved not to derogate from the authority of the rules, by vouching of the authorities of the cases, though in mine own copy I had them quoted: for although the meanness of mine own person may now at first extenuate the authority of this collection, and that every man is adventurous to control; yet surely, according to Gamaliel's reason, if it be of weight, time will settle and authorise it; if it be light and weak, time will reprove it. So that, to conclude, you have here a work without any glory of affected novelty, or of method, or of language, or of quotations and authorities, dedicated only to use, and submitted only to the censure of the learned, and chiefly of time.

Lastly, there is one point above all the rest I account the most material for making these reasons indeed profitable and instructing; which is, that they be not set down alone, like short dark oracles, which every man will be content to allow still to be true, but in the mean time they give little light and direction; but I have attended them, a matter not practised, no not in the civil law to any purpose, and for want whereof, the rules indeed are but as proverbs, and many times plain fallacies, with a clear and perspicuous exposition, breaking them into cases, and opening their sense and use, and limiting them with distinctions, and
sometimes

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sometimes shewing the reasons whereupon they depend, and the affinity they have with other rules. And though I have thus, with as much discretion and foresight as I could, ordered this work, and, as I might say, without all colours or shews, husbanded it best to profit; yet, nevertheless, not wholly trusting to mine own judgment: having collected three hundred of them, I thought good, before I brought them all into form, to publish some few, that, by the taste of other mens opinions in this first, I might receive either approbation in mine own course, or better advice for the altering of the other which remain: for it is great reason that that which is intended to the profit of others, should be guided by the conceits of others.



T H E
M A X I M S of the L A W.

R E G U L A I.

In jure non remota causa sed proxima spectatur.

IT were infinite for the law to consider the causes of causes, and their impulsions one of another; therefore it contenteth itself with the immediate cause, and judgeth of acts by that, without looking to any further degree.

As if an annuity be granted *pro consilio impenso et impendendo*, and the grantee commit treason, whereby he is imprisoned, so that the grantor cannot have access unto him for his counsel; yet nevertheless the annuity is not determined by this *non-feasance*; yet it was the grantee's act and default to commit the treason, whereby the imprisonment grew: but the law looketh not so far, and excuseth him, because the not giving counsel was compulsory, and not voluntary, in regard of the imprisonment.

So if a parson make a lease, and be deprived, or resign, the successors shall avoid the lease; and yet the cause of deprivation, and more strongly of a resignation, moved from the party himself: but the law regardeth not that, because the admission of the new incumbent is the act of the ordinary.

So if I be seized of an advowson in gross, and an usurpation be had against me, and at the next avoidance I usurp are, I shall be remitted: and yet the presentation, which is the act remote, is mine own act; but the admission of my clerk, whereby the inheritance is reduced to me, is the act of the ordinary.

So if I covenant with I. S. a stranger, in consideration of natural love to my son, to stand seized to the use of the said I. S. to the intent he shall infeoff my son; by this no use will rise to I. S. because the law doth respect that there is no immediate consideration between me and I. S.

So if I be bound to enter into a statute before the mayor of the staple at such a day, for the security of a hundred pounds, and the obligee, before the day, accept of me a lease of an house in satisfaction; this is no plea in debt upon my obligation: and yet the end of this statute was but security for money; but because the entering into this statute itself, which is the mediate act whereto I am bound; a corporal act which lieth not in satisfaction, therefore the law taketh no consideration that the remote intent was for money.

So if I make a *feoffment in fee, upon condition that the feoffee shall infeoff over, and the feoffee be disseised, and a descent cast, and then the feoffee bind himself in a statute, which statute is discharged before the recovery of the land: this is no breach of the condition, because the land was never liable to the statute, and the possibility that it should be liable upon recovery the law doth not respect.

* M. 40 et 41. El. Julius Winnington's case, ore report per le tresreverend Judge, le Sur Coke, lib. 2.
So.

So if I enfeoff two, upon condition to enfeoff, and one of them take a wife, the condition is not broken; and yet there is a remote possibility that the joint-tenant may die, and then the feme is intitled to dower.

So if a man purchase land in fee-simple, and die without issue; in the first degree the law respecteth dignity of sex, and not proximity; and therefore the remote heir on the part of the father shall have it, before the near heir on the part of the mother: but, in any degree paramount, the first the law respecteth it not, and therefore the near heir by the grandmother on the part of the father shall have it, before the remote heir of the grandfather on the part of the father.

This rule faileth in covinous acts, which though they be conveyed through many degrees and reaches, yet the law taketh heed to the corrupt beginning, and counteth all as one intire act.

30 R. Dacres
case, obiter.

As if a feoffment be made of lands held in knights service to I. S. upon condition that he within a certain time shall infeoff I. D. which feoffment to I. D. shall be to the wife of the first feoffor for her jointure, etc. this feoffment is within the statute of 32 H. VIII. *nam dolus circuitu non purgatur*.

Op. Cattelyn
et autres in
case de Stoel.

In like manner this rule holdeth not in criminal acts, except they have a full interruption; because when the intention is matter of substance, and that which the law doth principally behold, there the first motive must be principally regarded, and not the last impulsion. As if I. S. of malice prepenſe discharge a pistol at I. D. and miss him, whereupon he throws down his pistol and flies, and I. D. pursueth him to kill him, whereupon he turneth and killeth I. D. with a dagger; if the law should consider the last impulsive cause, it should say that this was in his own defence; but the law is otherwise, for it is but a pursuance and execution of the first murderous intent.

44 Ed. 3.

But if I. S. had fallen down, his dagger drawn, and I. D. had fallen by haste upon his dagger, there I. D. had been *felo de se*, and I. S. shall go quit.

Also you may not confound the act with the execution of the act; nor the intire act with the last part, or the consummation of the act.

11. cap. de
descent.

For if a disseisor enter into religion, the immediate cause is from the party, though the descent be cast in law; but the law doth but execute the act which the party procureth, and therefore the descent shall not bind, *et e converso*.

21 Eliz.

If a lease for years be made rendering rent, and the lessee make a feoffment of part, and the lessor enter, the immediate cause is from the law in respect of the forfeiture, though the entry be the act of the party; but that is but the pursuance and putting in execution of the title which the law giveth: and therefore the rent or condition shall be apportioned.

22 H. 8. fo. 4.
Dy. 21 R.

So in the binding of a right by a descent, you are to consider the whole time from the disseisin to the descent cast; and if at all times the person be not privileged, the descent binds.

9 H. 7. 24.
3 et 4 P. et M.
Dr. 143.

And therefore if a feme covert be disseised, and the baron dieth, and she taketh a new husband, and then the descent is cast: or if a man that is not *infra quatuor maria*, be disseised, and return into England, and go over sea again, and then a descent is cast, this descent bindeth, because of the *interim* when the persons might have entered; and the law respecteth not the state of the person at the last time of the descent cast, but a continuance from the very disseisin to the descent.

So

So if baron and feme be, and they join in feoffment of the wife's land rendring rent, and the baron die, and the feme take a new husband before any rent-day, and he accept the rent, the feoffment is affirmed for ever. ^{4 et 5 P. et M. Dy. 159.}

REGULA II.

Non potest adduci exceptio ejusdem rei, cujus petitur dissolutio.

IT were impertinent and contrary in itself, for the law to allow of a plea in bar of such matter as is to be defeated by the same suit; for it is included: and otherwise a man should never come to the end and effect of his suit, but be cut off in the way.

And therefore if tenant in tail of a manor, whereunto a villain is regardant, discontinued and die, and the right of entail descend unto the villain himself, who brings *formedon*, and the discontinuee pleadeth villenage; this is no plea, because the devesher of the manor, which is the intent of the suit, doth include this plea, because it determineth the villenage.

So if tenant in ancient demesne be disseised by the lord, whereby the feignory is suspended, and the disseisee bring his assize in the court of the lord, frank fee is no plea, because the suit is to undo the disseisin, and to receive the feignory in ancient demesne. ^{50 E. 3.}

So if a man be attainted and executed, and the heir bring error upon the attainder, and corruption of blood by the same attainder be pleaded, to interrupt his conveying in the said writ of error; this is no plea, for then he were without remedy ever to reverse the attainder. ^{7 H. 4. 39. 7 H. 6. 44.}

So if tenant in tail discontinued for life rendring rent, and the issue brings *formedon*, and the warrant of his ancestor with assets is pleaded against him, and the assets is laid to be no other but his reversion with the rent; this is no plea, because the *formedon* which is brought to undo this discontinuance, doth inclusively undo this new reversion in fee, and the rent thereunto annexed. ^{38 Ed. 3. 32.}

But whether this rule may take place when the matter of the plea is not to be avoided in the same suit but in another suit, is doubtful; and I rather take the law to be, that this rule doth extend to such cases; where otherwise the party were at a mischief, in respect the exceptions or bars might be pleaded cross, either of them, in the contrary suit; and so the party altogether prevented and intercepted to come by his right.

So if a man be attainted by two several attainders, and there is error in them both, there is no reason but there should be a remedy open for the heir to reverse those attainders being erroneous, as well if they be twenty as one.

And therefore, if in the writ of error brought by the heir of one of them, the other attainder should be a plea peremptorily; and so again, if in error brought of that other, the former should be a plea; these were to exclude him utterly of his right: and therefore it shall be a good replication to say, that he hath a writ of error depending of that also, and so the court shall proceed: but no judgment shall be given till both pleas be discussed; and if either plea be found without error, there shall be no reversal either of the one or of the other; and if he discontinue either writ, then shall it be no longer a plea: and so of several outlawries in a personal action.

And

And this seemeth to me more reasonable, than that generally an outlawry or an attainder should be no plea in a writ of error brought upon a diverse outlawry or attainder, as 7 H. IV. and 7 H. VI. seem to hold; for that is a remedy too large for the mischief; for there is no reason but if any of the outlawries be indeed without error, but it should be a peremptory plea to the person in a writ of error, as well as in any other action.

R.

But if a man levy a fine *jur consensu de droit come ceo que il ad de son done*, and suffer a recovery of the same lands, and there be error in them both, he cannot bring error first of the fine, because by the recovery his title of error is discharged and released in law *inclusive*, but he must begin with the error upon the recovery, which he may do, because a fine executed barreth no titles that accrue *de puisne tems* after the fine levied, and so restore himself to his title of error upon the fine: but so it is not in the former case of the attainder; for the writ of error to a former attainder is not given away by a second, except it be by express words of an act of parliament, but only it remaineth a plea to his person while he liveth, and to the conveyance of the heir after his death.

But if a man levy a fine where he hath nothing in the land, which inureth by way of conclusion only, and is executory against all purchases and new titles which shall grow to the consor afterwards, and he purchase the land, and suffer a recovery to the consor, and in both fine and recovery there is error; this fine is *Fanus bifrons*, and will look forwards, to bar him in the writ of error brought of the recovery; and therefore it will come to the reason of the first cause of the attainder, that he must reply, that he hath a writ of error also depending of the same fine, and so demand judgment.

1^o E. 3. Fitz.
28, 45.

To return to our first purpose, like law is it if tenant in tail of two acres make two several discontinuances to two several persons for life rendering, and bring the *formedon* of both, and in *formedon* brought of white acre the reversion and rent reserved upon black acre is pleaded, and so contrary. I take it to be a good replication, that he hath *formedon* also upon that depending, whereunto the tenant hath pleaded the descent of the reversion of white acre; and so neither shall be a bar: and yet there is no doubt but if in a *formedon* the warrant of tenant in tail with assets be pleaded, it is a replication for the issue to say, that a *praecipe* dependeth brought by I. S. to evict the assets.

But the former case standeth upon the particular reason before mentioned.

R E G U L A III.

Verba fortius accipiuntur contra proferentem.

THIS rule, that a man's deeds and his words shall be taken strongest against himself, though it be one of the most common grounds of the law, it is notwithstanding a rule drawn out of the depth of reason; for, first, it is a schoolmaster of wisdom and diligence in making men watchful in their own business; next it is author of much quiet and certainty, and that in two sorts: first, because it favoureth acts and conveyances executed, taking them still beneficially for the grantees and possessors: and secondly, because it makes an end of many questions and doubts about construction of words; for if the labour were only to pick out the
intention

attention of the parties, every judge would have a several sense; whereas this rule doth give them a sway to take the law more certainly one way.

But this rule, as all other rules which are very general, is but a found in the air, and cometh in sometimes to help and make up other reasons without any great instruction or direction; except it be duly conceived in point of difference, where it taketh place, and where not. And first we will examine it in grants, and then in pleadings.

The force of this rule is in three things, in ambiguity of words, in implication of matter, and reducing and qualifying the exposition of such grants as were against the law, if they were taken according to their words.

And therefore if I. S. submit himself to arbitrement of all actions and suits between him and I. D. and I. N. it rests ambiguous whether this submission shall be intended collective of joint actions only, or distributive of several actions all; but because the words shall be strongest taken against I. S. that speaks them, it shall be understood of both: for if I. S. had submitted himself of all actions and suits which he hath now depending, except it be such as are between him and I. D. and I. N. now it shall be understood collective only of joint actions, because in the other case large construction was hardest against him that speaks, and in this case strict construction is hardest.

So if I grant ten pounds rent to baron and feme, and if the baron die that the feme shall have three pounds rent, because these words rest ambiguous whether I intend three pounds by way of increase, or three pounds by way of restraint and abatement of the former rent of ten pounds, it shall be taken strongest against me that am the grantor, that is three pounds addition to the ten pounds: but if I had let lands to baron and feme for three lives, reserving ten pounds *per annum*, and, if the baron die, reddendum three pounds; this shall be taken contrary to the former case, to abridge my rent only to three pounds.

So if I demise *omnes bogios meos in villa de Dale* for years, this passeth the soil; but if I demise all my lands in Dale *exceptis bogiis*, this extendeth to the trees only, and not to the soil.

So if I sow my land with corn, and lett it for years, the corn passeth to the lessee, if I except it not; but if I make a lease for life to I. S. upon condition that upon request he shall make me a lease for years, and I. S. sow the ground, and then I make request, I. S. may well make me a lease excepting his corn, and not break the condition.

So if I have free warren in my own land, and let my land for life, - not mentioning my warren, yet the lessee by implication shall have the warren discharged and extinct during his lease: but if I had let the land *cum omni libertate garronis*, excepting white acre, there the warren is not by implication reserved unto me either to be enjoyed or to be extinguished; but the lessee shall have the warren against me in white acre.

So if I. S. hold of me by fealty and rent only, and I grant the rent, not speaking of the fealty; yet the fealty by implication shall pass, because my grant shall be taken strongly as of a rent service, and not of a rent secke.

Otherwise had it been if the feignory had been by homage, fealty, and rent, because of the dignity of the service, which could not have passed by intendment by the grant of the rent: but if I be seised of the manor of Dale in fee, whereof I. S. holds by fealty and rent, and I grant the manor, excepting the rent

of I. S. there the fealty shall pass to the grantee, and I shall have but a rent lecke.

So in grants against the law, if I give land to I. S. and his heirs males, this is a good fee-simple, which is a larger estate than the words seem to intend, and the word "males" is void. But if I make a gift in tail, reserving rent to me and the heirs of my body, the words "of my body" are not void, and so leave it rent in fee-simple; but the words "heirs and all" are void, and leaves that but a rent for life; except that you will say, it is but a limitation to any my heir in fee-simple which shall be heir of my body; for it cannot be a rent in tail by reservation.

47 Ed. 3. 29.
24 R. But if I give lands with my daughter in frank marriage, the remainder to I. S. and his heirs, this grant cannot be good in all parts, according to the words: for it is incident to the nature of a gift in frank marriage, that the donee hold of the donor; and therefore my deed shall be taken so strongly against myself, that rather than the remainder shall be void, the frank marriage, though it be first placed in the deed, shall be void as a frank marriage.

4 H. 6. 22.
25 Ass. pl. 26. But if I give land in frank marriage, reserving to me and my heirs ten pounds rent, now the frank marriage stands good, and the reservation is void, because it is a limitation of a benefit to myself, and not to a stranger.

So if I lett white acre, black acre, and green acre to I. S. excepting white acre, this exception is void, because it is repugnant; but if I lett the three acres aforesaid, reddendo twenty shillings rent, viz. for white acre ten shillings, and for black acre ten shillings, I shall not distrain at all in green acre, but that shall be discharged of my rent.

46 E. 3. 18. So if I grant a rent to I. S. and his heirs out of my manor of Dale, *et obligo manerium praedictum et omnia bona et catalla mea super manerium praedictum existentia ad distringendum per ballivos domini regis*: this limitation of the distress to the king's bailiffs is void, and it is good to give a power of distress to I. S. the grantee, and his bailiffs.

2 Ed. 4. 3. But if I give land in tail *tenendo de capitalibus dominis per redditum viginti solidorum per feoditatem*: this limitation of tenure to the chief lord is void; but it shall not be good, as in the other case, to make a reservation of twenty shillings good unto myself; but it shall be utterly void, as if no reservation at all had been made: and if the truth be that I, that am the donor, hold of the lord paramount by ten shillings only, then there shall be ten shillings only intended to be reserved upon the gift in tail as for overty.

27 E. 3. 30.
31. et 32. H. 6.
Dyer 46.
Plow. fo. 17.
35 H. 6. 54. So if I give land to I. S. and the heirs of his body, and for default of such issue *quod tenementum praedictum revertatur ad I. N.* yet these words of reversion will carry a remainder to a stranger. But if I lett white acre to I. S. excepting ten shillings rent, these words of exception to mine own benefit shall never inure to words of reservation.

But now it is to be noted, that this rule is the rule which is last to be resorted to, and is never to be relied upon but where all other rules of exposition of words fail; and if any other rule come in place, this giveth place. And that is a point worthy to be observed generally in the rules of the law, that when they encounter and cross one another in any case, that be understood which the law holdeth worthier, and to be preferred; and it is in this particular very notable to consider, that this being a rule of some strictness and rigor, doth not, as it were, his office, but in absence of other rules which are of some equity and humanity;

manity; which rules you shall find afterwards set down with their expositions and limitations.

But now to give a taste of them to this present purpose: it is a rule, that general words shall never be stretched to foreign intendment, which the civilians utter thus; *Verba generalia restringuntur ad habilitatem personae, vel ad aptitudinem rei.*

Therefore if a man grant to another, common *intra metas et bundas villae de Dale*, and part of the ville is his several, and part is his waste and common; the grantee shall not have common in the several: and yet that is the strongest exposition against the grantor. 14 Aff. pl. 21.

So it is a rule, *Verba ita sunt intelligenda, ut res magis valeat, quam pereat*: and therefore if I give land to I. S. and his heirs, *reddendo quinque libras annuatim* to I. D. and his heirs, this implies a condition to me that am the grantor; yet it were a stronger exposition against me, to say the limitation should be void, and the feoffment absolute. Lit. cap. cond.

So it is a rule, that the law will not intend a wrong, which the civilians utter thus; *Ea est accipienda interpretatio, quae vitio caret.* And therefore if the executors of I. S. grant *omnia bona et catalla sua*, the goods which they have as executors, will not pass, because *non constat* whether it may not be a devastation, and so a wrong; and yet against the trespasser that taketh them out of their possession, they shall declare *quod bona sua cepit*. 10 Ed. 4. 1.

So it is a rule, words are to be understood that they work somewhat, and be not idle and frivolous: *Verba aliquid operari debent, verba cum effectu sunt accipienda.* And therefore if I bargain and sell you four parts of my manor of Dale, and say not in how many parts to be divided, this shall be construed four parts of five, and not of six nor seven, etc. because that it is the strongest against me; but on the other side, it shall not be intended four parts of four parts, that is whole of four quarters; and yet that were strongest of all, but then the words were idle and of none effect.

So it is a rule, *Divinatio non interpretatio est, quae cumino recedit a litera*: and therefore if I have a free rent or fee farm-rent issuing out of white acre of ten shillings, and I reciting the same reservation do grant to I. S. the rent of five shillings *percipiend' de reddit' praedi' et de omnibus terris et tenementis meis in Dale*, with a clause of distress, although there be attornment, yet nothing passeth out of my former rent; and yet that were strongest against me to have it a double rent, or grant of part of that rent with an enlargement of a distress in the other land, but for that it is against the words, because *copulatio verborum inclinat exceptionem in eodem sensu*, and the word *de*, *anglice* out of, may be taken in two senses, that is, either as a greater sum out of a less, or as a charge out of land, or other principal interest; and that the coupling of it with lands and tenements, doth define the sense to be one rent issuing out of another, and not as a lesser rent to be taken by way of computation out of a greater: therefore nothing passeth of that rent. But if it stood of itself without these words of land and tenements, namely, I reciting that I am seised of such a rent of ten shillings, do grant five shillings *percipiend' de eodem reddit'*, it is good enough without attornment; because *percipiend' de etc.* may well be taken for *parcella de etc.* without violence to the words; but if it had been *percipiend' de*, I. S. without saying *de redditibus praedi'*, although I. S. be the person that payeth me the foresaid rent of ten shillings, yet it is void: and 3 H. 6. 20.

so it is of all other rules of exposition of grants, when they meet in opposition with this rule, they are preferred.

Now to examine this rule in pleadings as we have done in grants, you shall find that in all imperfections of pleadings, whether it be in ambiguity of words and double intendments, or want of certainty and averments, or impropriety of words or repugnancy and absurdity of words, even the plea shall be strictly and strongly taken against him that pleads.

22 H. 6. 47. For ambiguity of words, if in a writ of entry upon disseisin, the tenant pleads jointenancy with I. S. of the gift and feoffment of I. D. judgment de briefe, the demandant saith that long time before I. D. any thing had, the demandant himself was seised in fee *quodam praediis I. D. super possessionem ejus intravit*, and made a joint feoffment, whereupon he the demandant re-entred, and so was seised until by the defendant alone he was disseised; this is no plea, because the word *intravit* may be understood either of a lawful entry, or of a tortious; and the hardest against him shall be taken, which is, that it was a lawful entry; therefore he should have alleged precisely that I. D. *disseisivit*.

3 E. 1. C. 16. D. 66. So upon ambiguity that grows by reference, if an action of debt be brought against I. N. and I. P. sheriffs of London, upon an escape, and the plaintiff doth declare upon an execution by force of a recovery in the prison of Ludgate *sub custodia I. S. et I. D.* then sheriffs in 1 K. H. VIII. and that he so continued *sub custodia I. B. et I. G.* in 2 K. H. VIII. and so continued *sub custodia I. N. et I. L.* in 3 K. H. VIII. and then was suffered to escape: I. N. and I. L. plead, that before the escape, supposed at such a day *anno superius in narratione specificato*, the said I. D. and I. S. *ad tunc vicecomites* suffered him to escape; this is no good plea, because there be three years specified in the declaration, and it shall be hardliest taken that it was 1 or 3 H. VIII. when they were out of office; and yet it is nearly induced by the *ad tunc vicecomites*, which should leave the intendment to be of that year in which the declaration supposeth that they were sheriffs; but that sufficeth not, but the year must be alleged in fact, for it may be it was mislaid by the plaintiff, and therefore the defendants meaning to discharge themselves by a former escape, which was not in their time, must allege it precisely.

27 H. 3. For uncertainty of intendment, if a warranty collateral be pleaded in bar, and the plaintiff by replication, to avoid warranty, saith, that he entred upon the possession of the defendant, *non constat* whether this entry was in the life of the ancestor, or after the warranty attached; and therefore it shall be taken in hardest sense, that it was after the warranty descended, if it be not otherwise averred.

11 H. 6. 20. 3 H. 5. 5. For impropriety of words, if a man plead that his ancestors died by procreation seised, and that I. S. abated, *etc.* this is no plea, for there can be no abatement except there be a dying seised alleged in fact; and an abatement shall not improperly be taken for disseisin in pleading, *car parols sont pleas*.

9. Dy. 237. For repugnancy, if a man in avowry declares that he was seised in his demesne as of fee of white acre, and being so seised did demise the same white acre to I. S. *habendum* the moiety for twenty-one years from the date of the deed, the other moiety from the surrender, expiration, or determination of the estate of I. D. *qui tenet praediis medietatem ad terminum vitae suae reddend'* 40s. rent: this declaration is insufficient, because the tenin that he hath alleged in himself in his demesne

mesne as of fee in the whole, and the state for life of a moiety, are repugnant ; and it shall not be cured by taking the last which is expressed to control the former, which is but general and formal ; but the plea is naught, yet the matter in law had been good to have intitled him to have distrained for the whole rent.

But the same restraint follows this rule in pleading that was before noted in grants : for if the case be such as falleth within any other rule of pleadings, then this rule may not be urged.

And therefore it is a rule that a bar is good to a common intent. As if a debt ^{9 Ed. 4.} be brought against five executors, and three of them make default, and two appear and plead in bar a recovery had against them two of 300*l.* and nothing in their hands over and above that sum : if this bar should be taken strongest against them, then it should be intended that they might have abated the first suit, because the other three were not named, and so the recovery not duly had against them ; but because of this other rule the bar is good : for that the more common intent will say, that they two did only administer, and so the action well conceived ; rather than to imagine, that they would have lost the benefit and advantage of abating of the writ. ^{4 Ed. 6. Plow.}

So there is another rule, that in pleading a man shall not disclose that which is against himself : and therefore if it be a matter that is to be set forth on the other side, then the plea shall not be taken in the hardest sense, but in the most beneficial, and to be left unto the contrary party to allege.

And therefore if a man be bound in an obligation, that if the feme of the ^{28 H. 8.} obligee do decease before the feast of St. John the Baptist which shall be in the ^{Dy. fo. 17.} year of our Lord God 1598, without issue of her body by her husband lawfully begotten then living, that then the bond shall be void ; and in debt brought upon this obligation the defendant pleads the feme died before the said feast without issue of her body then living : if this plea should be taken strongest against the defendant, then should it be taken that the feme had issue at the time of her death, but issue died before the feast ; but that shall not be so understood, because it makes against the defendant, and it is to be brought in on the plaintiff's side, and that without traverse.

So if in a detinue brought by a feme against the executors of her husband for ^{30 E. 3.} the reasonable part of the goods of her husband, and her demand is of a moiety, and she declares upon the custom of the realm, by which the feme is to have a moiety, if there be no issue between her and her husband, and the third part if there be issue had, and declareth that her husband died without issue had between them ; if this count should be hardest construed against the party, it should be intended that her husband had issue by another wife, though not by her, in which case the feme is but to have the third part likewise ; but that shall not be so intended, because it is matter of reply to be shewed of the other side.

And so it is of all other rules of pleadings, these being sufficient not for the exact expounding of these other rules, but *obiter* to shew how this rule which we handle is put by when it meets with any other rule.

As for acts of parliament, verdicts, judgments, *etc.* which are not words of parties, in them this rule hath no place at all, neither in devises and wills, upon several reasons ; but more especially it is to be noted, that in evidence it hath no place, which yet seems to have some affinity with pleadings, especially when demurrer is joined upon the evidence.

And

11. 11. 2. P.
7. 11.

And therefore if land be given by will by H. C. to his son I. C. and the heirs males of his body begotten; the remainder to F. C. and the heirs males of his body begotten: the remainder to the heirs males of the body of the deviser; the remainder to his daughter S. C. and the heirs of her body, with a clause of perpetuity; and the question comes upon the point of forfeiture in an assize taken by default, and evidence is given, and demurrer upon evidence, and in the evidence given to maintain the entry of the daughter upon a forfeiture, it is not set forth nor averred that the deviser had no other issue male, yet the evidence is good enough, and it shall be so intended; and the reason thereof cannot be, because a jury may take knowledge of matters not within the evidence; and the court contrariwise cannot take knowledge of any matter not within the pleas: for it is clear that if the evidence had been altogether remote, and not proving the issue there, although the jury might find it, yet a demurrer may well be taken upon the evidence.

But I take the reason of difference between pleadings, which are but openings of the case, and evidence which are the proofs of an issue, to be, that pleadings being but to open the verity of the matter in fact indifferently on both parts, have no scope and conclusion to direct the construction and intendment of them, and therefore must be certain; but in evidence and proofs the issue, which is the state of the question and conclusion, shall incline and apply all the proofs as tending to that conclusion.

Another reason is, that pleadings must be certain, because the adverse party may know whereto to answer, or else he were at a mischief, which mischief is remedied by a demurrer; but in evidence if it be short, impertinent, or uncertain, the adverse party is at no mischief, because it is to be thought that the jury will pass against him; yet nevertheless because the jury is not compellable to supply defect of evidence out of their own knowledge, though it be in their liberty so to do; therefore the law alloweth a demurrer upon evidence also.

REGULA IV.

Quod sub certa forma concessum vel reservatum, est, non trahitur ad valorem vel compensationem.

THE law permitteth every man to part with his own interest, and to qualify his own grant, as it pleaseth himself; and therefore doth not admit any allowance or recompence if the thing be not taken as it is granted.

2. H. 6. 10.

So in all profits *a prender*, if I grant common for ten beasts, or ten loads of wood out of my coppice, or ten loads of hay out of my meads, to be taken for three years; he shall not have common for thirty beasts, or thirty loads of wood or hay, the third year, if he forbear for the space of two years: here the time is certain and precise.

So if the place be limited, as if I grant estovers to be spent in such a house, or stone towards the reparation of such a castle; although the grantee do burn of his fuel and repair of his own charge, yet he can demand no allowance for that he took it not.

So if the kind be specified, as if I let my park reserving to myself all the deer and sufficient pasture for them, if I do decay the game whereby there is no deer, I shall not have quantity of pasture answerable to the feed of so many deer as were upon

upon the ground when I let it; but am without any remedy except I will replenish the ground again with deer.

But it may be thought that the reason of these cases is the default and laches of the grantor, which is no so.

For put the case that the house where the estovers should be spent be overthrown by the act of God, as by tempest, or burnt by the enemies of the King, yet there is no recompence to be made.

And in the strongest case where it is in default of the grantor, yet he shall make void his own grant rather than the certain form of it should be wrested to an equity or valuation.

As if I grant common *ubicunque averia mea ierint*, the commoner cannot otherwise intitle himself, except that he aver that in such grounds my beasts have gone and fed; and if I never put in any, but occupy my grounds otherwise, he is without remedy; but if I once put in, and after by poverty or otherwise desist, yet the commoner may continue; contrariwise, if the words of the grant had been *quandocunque averia mea ierint*, for there it depends continually upon the putting in of my beasts, or at least the general seasons when I put them in, not upon every hour or moment. 9 H. 6. 36.

But if I grant *tertiam advocacionem* to I. S. if he neglect to take his turn *ea vice*, he is without remedy: but if my wife be before intitled to dower, and I die, then my heir shall have two presentments, and my wife the third, and my grantee shall have the fourth; and it doth not impugn this rule at all, because the grant shall receive that construction at the first that it was intended such an avoidance as may be taken and enjoyed; as if I grant *proximam advocacionem* to I. D. and then grant *proximam advocacionem* to I. S. this shall be intended the next to the next, that is the next which I may lawfully grant or dispose. 29 H. 8. Dy. 35.

But if I grant *proximam advocacionem* to I. S. and I. N. is incumbent, and I grant by precise words, *illam advocacionem, quae post mortem, resignationem, translationem, vel deprivationem I. N. immediate fore contigerit*; now this grant is merely void, because I had granted that before, and it cannot be taken against the words.

REGULA V.

Necessitas inducit privilegium quoad jura privata.

THE law chargeth no man with default where the act is compulsory and not voluntary, and where there is not a consent and election; and therefore if either an impossibility be for a man to do otherwise, or so great a perturbation of the judgment and reason as in presumption of law man's nature cannot overcome, such necessity carrieth a privilege in itself. 4 Ed. 6. cond. 9: 6.

Necessity is of three sorts, necessity of conservation of life, necessity of obedience, and necessity of the act of God, or a stranger.

First, for conservation of life: if a man steal viands to satisfy his present hunger, this is no felony nor larceny. Samf.

So if divers be in danger of drowning by the casting away of some boat or bark, and one of them get to some plank, or on the boats side to keep himself above water, and another to save his life thrust him from it, whereby he is drowned; this is neither *se defendendo* nor by misadventure, but justifiable. 30.

So if divers felons be in a gaol, and the gaol by casualty is set on fire, whereby the prisoners get forth; this is no escape, nor breaking of prison.

So upon the statute, that every merchant that letteth his merchandise on land without satisfying the customer or agreeing for it, which agreement is construed to be in certainty, shall forfeit his merchandise, and it is so that by tempest a great quantity of the merchandise is cast over-board, whereby the merchant agrees with the customer by estimation, which faileth out short of the truth, yet the over quantity is not forfeited by reason of the necessity; where note that necessity dispenseth with the direct letter of a statute law.

So if a man have right to land, and do not make his entry for terror of force, the law allows him a continual claim, which shall be as beneficial to him as an entry; so shall a man save his default of appearance by *exline de eau*, and avoid his debt by *dureffe*, whereof you shall find proper cases elsewhere.

The second necessity is of obedience; and therefore where baron and feme commit a felony, the feme can neither be principal nor accessory; because the law intends her to have no will, in regard of the subjection and obedience she oweth to her husband.

So one reason among others why ambassadors are used to be excused of practices against the state where they reside, except it be in point of conspiracy, which is against the law of nations and society, is, because *non constat* whether they have it *in mandatis*, and then they are excused by necessity of obedience.

So if a warrant or precept come from the king to fell wood upon the ground whereof I am tenant for life or for years, I am excused in waste.

The third necessity is of the act of God, or of a stranger, as if I be particular tenant for years of a house, and it be overthrown by grand tempest, or thunder and lightning, or by sudden floods, or by invasion of enemies, or if I have belonging unto it some cottages which have been infected, whereby I can procure none to inhabit them, no workmen to repair them, and so they fall down; in all these cases I am excused in waste: but of this last learning when and how the act of God and strangers do excuse men, there be other particular rules.

But then it is to be noted, that necessity privilegeth only *quoad jura privata*, for in all cases if the act that should deliver a man out of the necessity be against the commonwealth, necessity excuseth not; for *privilegium non valet contra rempublicam*: and as another saith, *necessitas publica est major quam privata*: for death is the last and farthest point of particular necessity, and the law imposeth it upon every subject, that he prefer the urgent service of his prince and country before the safety of his life: as if in danger of tempest those that are in a ship throw over board other mens goods, they are not answerable; but if a man be commanded to bring ordnance or munition to relieve any of the king's towns that are distressed, then he cannot for any danger of tempest justify the throwing them overboard; for there it holdeth which was spoken by the Roman, when he alleged the same necessity of weather to hold him from embarking, *Necessitas est ut eam, non ut vivam*. So in the case put before of husband and wife, if they join in committing treason, the necessity of obedience doth not excuse the offence, as it doth in felony, because it is against the commonwealth.

So if a fire be taken in a street, I may justify the pulling down of the wall or house of another man, to save the row from the spreading of the fire; but if I be assailed in my house, a city or town, and be distressed, and to save mine own

own life I set fire on mine own house, which spreadeth and taketh hold on the other houses adjoining, this is not justifiable, but I am subject to their action upon the case, because I cannot rescue mine own life by doing any thing against the commonwealth: but if it had been but a private trespass, as the going over another's ground, or the breaking of his inclosure when I am pursued, for the safeguard of my life, it is justifiable.

This rule admitteth an exception when the law intendeth some fault or wrong in the party that hath brought himself into the necessity; so that it is *necessitas culpabilis*. This I take to be the chief reason why *seipsum defendendo* is not matter of justification, because the law intends it hath a commencement upon an unlawful cause, because quarrels are not presumed to grow but upon some wrongs in words or deeds on either part, and the law thinking it a thing hardly triable in whole default the affray or quarrel began, supposeth the party that kills another in his own defence not to be without malice; and therefore as it doth not touch him in the highest degree, so it putteth him to sue out his pardon of course, and punisheth him by forfeiture of goods: for where there can be no malice nor wrong presumed, as where a man assails me to rob me, and I kill him; or if a woman kill him that assaileth to ravish her, it is justifiable without pardon.

So the common case proveth this exception, that is, if a madman commit a felony, he shall not lose his life for it, because his infirmity came by the act of God: but if a drunken man commit a felony, he shall not be excused, because his imperfection came by his own default; for the reason of loss and deprivation of will and election by necessity and by infirmity is all one, for the lack of *arbitrium solutum* is the matter: and therefore as *necessitas culpabilis* excuseth not, no more doth *infirmitas culpabilis*.

REGULA VI.

Corporalis injuria non recipit aestimationem de futuro.

THE law, in many cases that concern lands or goods, doth deprive a man of his present remedy, and turneth him over to some further circuit of remedy, rather than to suffer an inconvenience: but if it be a question of personal pain, the law will not compel him to sustain it and expect a remedy, because it holdeth no damages a sufficient recompence for a wrong which is corporal.

As if the sheriff make a false return that I am summoned, whereby I lose my land; yet because of the inconvenience of drawing all things to uncertainty and delay, if the sheriff's return should not be credited, I am excluded of any averment against it, and am put to mine action of deceit against the sheriff and somers: but if the sheriff upon a *capias* return a *cepi corpus, et quod est languidus in prisona*, there I may come in and falsify the return of the sheriff to save my imprisonment.

So if a man menace me in my goods, and that he will burn certain evidences of my land which he hath in his hand, if I will not make unto him a bond, yet if I enter into bond by this terror, I cannot avoid it by plea, because the law holdeth it an inconvenience to avoid specialty by such matter of averment; and therefore I am put to mine action against such menacer: but if he restrain my person, or threaten me with battery, or with burning of my house, which is a safety and

protection to my person, or with burning an instrument of manumission, which is evidence of my enfranchisement; if upon such menace or duress I enter into a bond, I shall avoid it by plea.

So if a trespasser drive away my beasts over another's ground, I pursue them to retrieve them, yet am I trespasser to the stranger upon whose ground I come: but if a man assail my person, and I fly over another's ground, now am I no trespasser.

This ground some of the canonists do aptly infer out of the saying of Christ, *Amen, est corpus supra vestimentum*, where they say *vestimentum* comprehendeth all outward things appertaining to a man's condition, as lands and goods, which, they say, are not in the same degree with that which is corporal; and this was the reason of the ancient *lex talionis, oculus pro oculo, dens pro dente*, so that by that law *corporalis injuria de praeterito non recipit aestimationem*: but our law, when the injury is already executed and inflicted, thinketh it best satisfaction to the party grieved to relieve him in damages, and to give him rather profit than revenge; but it will never force a man to tolerate a corporal hurt, and to depend upon that same inferior kind of satisfaction, *ut in dammagiis*.

R E G U L A VII.

Excusat aut extenuat delictum in capitalibus, quod non operatur idem in civilibus.

IN capital causes *in favorem vitae*, the law will not punish in so high a degree, except the malice of the will and intention appear; but in civil trespasses and injuries that are of an inferior nature, the law doth rather consider the damage of the party wronged, than the malice of him that was the wrong-doer: and therefore,

The law makes a difference between killing a man upon malice fore-thought, and upon present heat: but if I give a man slanderous words, whereby I damnify him in his name and credit, it is not material whether I use them upon sudden choler and provocation, or of set malice, but in an action upon the case I shall render damages alike.

So if a man be killed by misadventure, as by an arrow at butts, this hath a pardon of course: but if a man be hurt or maimed only, an action of trespass lieth, though it be done against the party's mind and will, and he shall be punished for the same as deeply as if he had done it of malice.

So if a surgeon authorised to practise, do through negligence in his cure cause the party to die, the surgeon shall not be brought in question for his life; and yet if he do only hurt the wound, whereby the cure is cast back, and death ensues not, he is subject to an action upon the case for his misfeasance.

So if baron and feme be, and they commit felony together, the feme is neither principal nor accessory, in regard of her obedience to the will of her husband: but if baron and feme join in a trespass upon land or otherwise, the action may be brought against them both.

So if an infant within years of discretion, or a madman, kill another, he shall not be impeached thereof: but if they put out a man's eye, or do him like corporal hurt, he shall be punished in trespass.

So.

So in felonies the law admitteth the difference of principal and accessary, and if the principal die, or be pardoned, the proceeding against the accessary faileth; but in treipals, if one command his man to beat another, and the servant after the battery die, yet an action of trespass stands good against the master.

25 H. 6. 11.
17 H. 4. 19.
Com. 68.

REGULA VIII.

Affinatio praeteriti delicti ex post facto nunquam crescit.

THE law construeth neither penal laws nor penal facts by intendments, but considereth the offence in degree, as it standeth at the time when it is committed; so as if a matter or circumstance be subsequent, which laid together with the beginning should seem to draw to it a higher nature, yet the law doth not extend nor amplify the offence.

Therefore if a man be wounded, and the percussor is voluntarily let go at large by the gaoler, and after, death ensueth of the hurt, yet this is no felonious escape in the gaoler.

11 H. 4. 12.

So if the villain striketh mortally the heir apparent of the lord, and the lord dieth before, and the person hurt who succeedeth to be lord to the villain dieth after, yet this is no petty treason.

So if a man compasseth and imagineth the death of one that after cometh to be King of the land, not being any person mentioned within the statute of 21 Ed. III. this imagination precedent is not high treason.

So if a man use slanderous speeches upon a person to whom some dignity after descends that maketh him peer of the realm, yet he shall have but a simple action of the case, and not in the nature of a *scandalum magnatum* upon the statute.

So if John Stile steal six pence from me in money, and the Queen by her proclamation doth raise monies, that the weight of silver in the piece now of six pence should go for twelve pence, yet this shall remain petty larceny and not felony: and yet in all civil reckonings the alteration shall take place; as if I contract with a labourer to do some work for twelve pence, and the inhancing of money cometh before I pay him, I shall satisfy my contract with a six penny piece being so raised.

So if a man deliver goods to one to keep, and after retain the same person into his service, who afterwards goeth away with his goods, this is no felony by the statute of 21 H. VIII. because he was not servant at that time.

28 H. 8. pl. 2.

In like manner, if I deliver goods to the servant of I. S. to keep, and after die, and make I. S. my executor; and before any new commandment or notice of I. S. to his servant for the custody of the same goods, his servant goeth away with them, this is also out of the same statute.

But note that it is said *praeteriti delicti*; for an accessary before the act is subject to all the contingencies pregnant of the fact, if they be pursuances of the same fact: as if a man command or counsel one to rob a man, or beat him grievously, and murder ensue, in either case he is accessary to the murder, *quia in criminibus praestantur accidentia*.

18 Eliz. com.
175.

REGULA IX.

Quod remedio destituitur ipsa re valet si culpa absit.

THE benignity of the law is such, as, when to preserve the principles and grounds of law it depriveth a man of his remedy without his own fault, it will rather put him in a better degree and condition than in a worse; for if it disable him to pursue his action, or to make his claim, sometimes it will give him the thing itself by operation of law without any act of his own, sometimes it will give him a more beneficial remedy.

Lit. pl. 683. And therefore if the heir of the disseisor which is in by descent make a lease for life, the remainder for life unto the disseisee, and the lessee for life die, now the frank tenement is cast upon the disseisee by act in law, and thereby he is disabled to bring his *praecipe* to recover his right; whereupon the law judgeth him in of his ancient right as strongly as if it had been recovered and executed by action, which operation of law is by an ancient term and word of law called a *remitter*; but if there may be assigned any default or laches in him, either in accepting freehold, or accepting the interest that draws the freehold, then the law denieth him any such benefit.

Lit. pl. 682. And therefore if the heir of the disseisor make a lease for years, the remainder in fee to the disseisee, the disseisee is not remitted, and yet the remainder is in him without his own knowledge or assent; but because the freehold is not cast upon him by act in law, it is no remitter. *Quod nota.*

Lit. pl. 685. So if the heir of the disseisor intest the disseisee and a stranger, and make livery to the stranger, although the stranger die before any agreement or taking of profits by the disseisee, yet he is not remitted; because though a moiety be cast upon him by survivor, yet that is but *jus accrescendi*, and it is no casting of the freehold upon him by act in law, but he is still an immediate purchaser, and therefore no remitter.

Lit. pl. 666. So if the husband be seized in the right of his wife, and discontinue and die, and the feme takes another husband, who takes a feoffment from the discontinuee to him and his wife, the feme is not remitted; and the reason is, because she was once sole, and so a laches in her for not pursuing her right: but if the feoffment taken back had been to the first husband and herself, she had been remitted.

3; II. 3. Yet if the husband discontinue the lands of the wife, and the discontinuee make a feoffment to the use of the husband and wife, she is not remitted; but that is upon a special reason, upon the letter of the statute of 27 H. VIII. of uses, that willeth that the *celes que use* shall have the possession in quality, form and degree as he had the use; but that holdeth place only upon the first vestre of the use: for when the use is absolutely once executed and vested, then it doth insue merely the nature of possessions; and if the discontinuee had made a feoffment in fee to the use of I. S. for life, the remainder to the use of the baron and feme, and lessee for life die, now the feme is remitted, *causa qua supra.*

Also if the heir of the disseisor make a lease for life, the remainder to the disseisee, who chargeth the remainder, and lessee for life dies, the disseisee is not remitted; and the reason is, his intermeddling with this wrongful remainder, where-
by

by he hath affirmed the same to be in him, and so accepted it: but if the heir of the disseisor had granted a rent charge to the disseisee, and afterwards made a lease for life, the remainder to the disseisee, and the lessee for life had died, the disseisee had been remitted; because there appeareth no assent or acceptance of any estate in the freehold, but only of a collateral charge.

So if the feme be disseised, and intermarry with the disseisor, who makes a lease for life, rendring rent, and dieth leaving a son by the same feme, and the son accepts the rent of lessee for life, and then the feme dies, and the lessee for life dies, the son is not remitted; and yet the frank tenement was cast upon him by act in law, but because he had agreed to be in the tortious reversion by acceptance of the rent, therefore no remitter. 6 Ed. 3. 17. Cond. 3. 67. 28 H. 8. pl. 207.

So if tenant in tail discontinue, and the discontinuee make a lease for life, the remainder to the issue in tail being within age, and at full age the lessee for life surrendereth to the issue in tail, and tenant in tail die, and lessee for life die, yet the issue is not remitted; and yet if the issue had accepted a feoffment within age, and had continued the taking of the profits when he came of full age, and then the tenant in tail had died, notwithstanding his taking of the profits he had been remitted: for that which guides the remitter, is, if he be once in of the freehold without any laches: as if the heir of the disseisor enfeoffs the heir of the disseisee, who dies, and it descends to a second heir upon whom the frank tenement is cast by descent, who enters and takes the profits, and then the disseisee dies, this is no remitter, *causa qua supra*.

And if tenant in tail discontinue for life, and take a surrender of the lessee, now is he remitted and seised again by force of the tail, and yet he cometh in by his own act: but this case differeth from all the other cases; because the discontinuance was but particular at first, and the new gained reversion is but by intention and necessity of law; and therefore is knit as it were *ab initio*, with a limitation to determine whensoever the particular discontinuance endeth, and the estate cometh back to the ancient right. Lit. pl. 69

But now we do proceed from cases of remitter, which is a great branch of this rule, to other cases: if executors do redeem goods pledged by their testator with their own money, the law doth convert so much goods as amount to the value of that they laid forth, to themselves in property, and upon a plea of fully administered it shall be allowed: and the reason is, because it may be matter of necessity for the well administering the goods of the testator, and executing of their trust, that they disburse money of their own: for else perhaps the goods would have been forfeited, and he that had them in pledge would not accept other goods but money, and so it is a liberty which the law gives them, and then they cannot have any suit against themselves; and therefore the law gives them leave to retain so much goods by way of allowance: and if there be two executors, and one of them pay the money, he may also retain against his companion, if he have notice thereof. 7 H. 8. pl. 25 Dy.

But if there be an overplus of goods, above the value of that he hath disbursed, then ought he by his claim to determine what goods he doth elect to have in value; or else before such election, if his companion do sell all the goods, he hath no remedy but in the spiritual court: for to say he should be tenant in common with himself and his companion *pro rata* of that he doth lay out, the law doth reject that course for intricateness. 3 Eliz. 187. pl. 6.

20 H. 7. p. 7
11 H. 7. p. 1
21 H. 7. p. 1
R. C. in valu.
2.

So if I. S. have a lease for years worth 20 l. by the year, and grant unto I. D. a rent charge of 10 l. a year, and after make him my executor; now I. D. shall be charged with assets 10 l. only, and the other 10 l. shall be allowed and considered to him; and the reason is, because the not refusing shall be accounted no laches to him, because an executorship is *pium officium*, and matter of conscience and trust, and not like a purchase to a man's own use.

12 H. 7. p. 22.
Cond. 185.
2 H. 7. p. 5.
37 H. 7. p. 20.

Like law is, where the debtor makes the debtee his executor, the debt shall be considered in the assets, notwithstanding it be a thing in action.

1 F. C. cond.
133. C.
13 H. 7. p. 22.

So if I have a rent charge, and grant that upon condition, now though the condition be broken, the grantee's estate is not defeated till I have made my claim; but if after any such grant my father purchase the land, and it descend to me, now if the condition be broken, the rent ceaseth without claim: but if I had purchased the land myself, then I had extincted mine own condition, because I had disabled myself to make my claim: and yet a condition collateral is not suspended by taking back an estate; as if I make a feoffment in fee, upon condition that I. S. shall marry my daughter, and take a lease for life from my feoffee, if the feoffee break the condition I may claim to hold in by my fee-simple: but the case of the charge is otherwise, for if I have a rent charge issuing out of twenty acres, and grant the rent over upon condition, and purchase but one acre, the whole condition is extinct, and the possibility of the rent by reason of the condition, is as fully destroyed as if the rent had been in me in *esse*.

20 H. 7. per
101.
13 H. 7. Fitz.
133. 132.

So if the Queen grant to me the wardship of I. S. the heir of I. S. when it falleth; because an action of covenant lieth not against the Queen, I shall have the thing myself in interest.

60 H. 7. Fitz.
Grants 91.

But if I lett land to I. S. rendring rent with condition of re-entry, and I. S. be attainted, whereby the lease cometh to the King, now my demand upon the land is gone, which should give me benefit of re-entry, and yet I shall not have it reduced without demand; and the reason of the difference is, because my condition in this case is not taken away in right, but suspended only by the privilege of the possession; for if the King grant the lease over, the condition is revived as it was.

7 H. 6. 40.

Allso if my tenant for life grant his estate to the Queen, now if I will grant my reversion, the Queen is not compellable to atturn, therefore it shall pass by grant by deed without atturnment.

9 H. 6. Fitz.
Attournments
11.

So if my tenant for life be, and I grant my reversion *pur autre vie*, and the grantee die, living *cestuy que vie*, now the privity between tenant for life and me is not restored, and I have no tenant in *esse* to atturn; therefore I may pass my reversion without atturnment.

6 H. 7. Dy.
92.

So if I have a nomination to a church, and another hath the presentation, and the presentation comes to the King, now because the King cannot be attendant, my nomination is turned to an absolute patronage.

So if a man be seised of an advowson, and take a wife, and after title of dower given he join in impropriating the church, and dieth; now because the feme cannot have the third turn because of the perpetual incumbency, she shall have all the turns during her life; for it shall not be disimpropriated to the benefit of the heir contrary to the grant of tenant in fee-simple.

But if a man grant the third presentment to I. S. and his heirs, and impropriate the advowson, now the grantee is without remedy, for he took his grant subject

to that mischief at the first: and therefore it was his laches, and therefore not like the case of the dower; and this grant of the third avoidance is not like *tertia pars advocacionis*, or *medietas advocacionis* upon a tenancy in common of the advowson: for if two tenants in common be, and an usurpation be had against them, and the usurper do impropriate, and one of the tenants in common do release, and the other bring his writ of right *de medietate advocacionis*, and recover; now I take the law to be, that because tenants in common ought to join in presentments, which cannot now be, he shall have the whole patronage: for neither can there be an apportionment that he should present all the turns, and his incumbent to have but a moiety of the profits, nor yet the act of impropriation shall not be defeated. But as if two tenants in common be of a ward, and they join in a writ of right of ward, and one release, the other shall recover the entire ward, because it cannot be dissevered: so shall it be in the other case, though it be of inheritance, and though he bring his action alone.

Also if a disseisor be disseised, and the mesne disseisee release to the second disseisor upon condition, and a descent be cast, and the condition broken; now the mean disseisor, whose right is revived, shall enter notwithstanding this descent, because his right was taken away by the act of a stranger.

But if I devise land by the statute of 32 H. VIII. and the heir of the devisor enters and makes a feoffment in fee, and feoffee dieth seised, this descent binds, and there shall not be a perpetual liberty of entry, upon the reason that he never had seisin whereupon he might ground his action, but he is at mischief by his own laches: and the like law of the Queen's patentee; for I see no reasonable difference between them and him in the remainder, which is Littleton's case.

But note, that the law by operation and matter in fact will never countervail and supply a title grounded upon a matter of record; and therefore if I be intitled unto a writ of error, and the land descend unto me, I shall never be remitted, no more shall I be unto an attaint, except I may also have a writ of right.

So if upon my avowry for services, my tenant disclaim where I may have a writ of right as upon disclaimer, if the land after descend to me, I shall never be remitted.

REGULA X.

Verba generalia restringuntur ad habilitatem rei vel personam.

IT is a rule that the King's grants shall not be taken or construed to a special intent; it is not so with the grants of a common person, for they shall be extended as well to a foreign intent as to a common intent; but yet with this exception, that they shall never be taken to an impertinent or a repugnant intent: for all words, whether they be in deeds or statutes, or otherwise, if they be general and not expres and precise, shall be restrained unto the fitness of the matter and the person.

As if I grant common *in omnibus terris meis* in D. if I have in D. both open grounds and several, it shall not be stretched to common in my several, much less in my garden or orchard.

So if I grant to a man *omnes arbores meas crescentes supra terras meas* in D. he shall not have apple-trees, nor other fruit-trees growing in my gardens or orchards, if there be any other trees upon my grounds.

So

So if I grant to I. S. an annuity of 10l. a year *pro consilio impenso et impendendis*, if I. S. be a physician, it shall be understood of his counsel in physic; and if he be a lawyer, of his counsel in law.

So if I do let a tenement to I. S. near my dwelling house in a borough, provided that he shall not erect nor use any shop in the same without my licence, and afterwards I license him to erect a shop, and I. S. is then a millener, he shall not by virtue of these general words erect a joiner's shop.

So the statute of chanteries, that willeth all lands to be forfeited, that were given or employed to a superstitious use, shall not be construed of the glebe lands of parsonages: nay farther, if lands be given to the parson and his successors of D. to say a mass in his church of D. this is out of the statute, because it shall be intended but as augmentation of his glebe; but otherwise it had been, if it had been to say a mass in another church than his own.

So the statute of wrecks, that willeth that the goods wreck'd where any live domestical creature remains in a vessel, shall be preserved and kept to the use of the owner that shall make his claim by the space of one year, doth not extend to fresh victuals or the like, which is impossible to keep without perishing or destroying it; for in these and the like cases general words may be taken, as was said, to a rare or foreign intent, but never to an unreasonable intent.

REGULA XI.

Jura sanguinis nullo jure civili dirimi possunt.

THEY be the very words of the civil law, which cannot be amended, to explain this rule. *Filius est nomen naturae, haeres est nomen juris*: therefore corruption of blood taketh away the privy of the one, that is, of the heir, but not of other, that is, of the son; therefore if a man be attainted and be murdered by a stranger, the eldest son shall not have appeal, because the appeal is given to the heir, for the youngest sons who are equal in blood shall not have it; but if an attainted person be killed by his son, this is petty treason, because the privy of a son remaineth: for I admit the law to be, that if the son kill father or mother it is petty treason, and that there remaineth in our laws so much of the ancient footsteps of *potestas patris* and natural obedience, which by the law of God is the very instance itself; and all other government and obedience is taken but by equity, which I add, because some have sought to weaken the law in that point.

So if land descend to the eldest son of a person attainted from an ancestor of the mother held in knights service, the guardian shall enter, and oust the father, because the law giveth the father that prerogative in respect he is his son and heir; for of a daughter or of a special heir in tail he shall not have it: but if the son be attainted, and the father covenant in consideration of natural love to stand seised of the land to his use, this is good enough to raise an use, because the privy of natural affection remaineth.

So if a man be attainted and have charter of pardon, and be returned of a jury between his son and I. S. the challenge remaineth; so may he maintain any suit of his son, notwithstanding the blood be corrupt.

So by the statute of 21 H. VIII. the ordinary ought to commit administration of his goods that was attainted and purchase his charter of pardon, to his children, though born before the pardon, for it is no question of inheritance: for if one brother of the half blood die, the administration ought to be committed to his other brother of the half blood, if there be no nearer by the father. Ed. 6. Adm. 47.

So if the uncle by the mother be attainted, pardoned, and land descend from the father to the son within age held in socage, the uncle shall be guardian in socage; for that favoureth so little of the privy of heir, as the possibility to inherit shutteth out. 33 H. 6. 55.

But if a feme tenant in tail assent to the ravisher, and have no issue, and her cousin is attainted, and pardoned, and purchaseth the reversion, he shall not enter for a forfeiture. For although the law giveth it not in point of inheritance, but only as a perquisite to any of the blood, so he be next in estate; yet the recompence is understood for the stain of his blood, which cannot be considered when it is once wholly corrupted before. Ed. 4. 50.

So if a villain be attainted, yet the lord shall have the issues of his villain born before or after his attainder; for the lord hath them *jure naturae* but as the increase of a flock.

Query, whether if the eldest son be attainted and pardoned, the lord shall have aid of his tenants to make him knight, and it seemeth he shall; for the words of the writ are *filium primogenitum*, and not *filium et haeredem*, and the like writ hath *pur file marrier* who is no heir. F N. Br. Sz. G. Register, fol. 87.

REGULA XII.

Receditur à placitis juris potius, quam injuriae et delicta manean impunita.

THE law hath many grounds and positive learnings, which are not of the maxims and conclusions of reason; but yet are learnings received which the law hath set down and will not have called in question: these may be rather called *placita juris* than *regulae juris*; with such maxims the law will dispense, rather than crimes and wrongs should be unpunished, *quia salus populi suprema lex*; and *salus populi* is contained in the repressing offences by punishment.

Therefore if an advowson be granted to two, and the heirs of one of them, and an usurpation be had, they both shall join in a writ of right of advowson; and yet it is a ground in law, that a writ of right lieth of no less estate than of a fee-simple; but because the tenant for life hath no other several action in the law given him, and also that the jointure is not broken, and so the tenant in fee-simple cannot bring his writ of right alone; therefore rather than he should be deprived wholly of remedy, and this wrong unpunished, he shall join his companion with him, notwithstanding the feebleness of his estate. Fitz. N. B. 30.

But if lands be given to two, and to the heirs of one of them, and they lease in a *praecipe* by default, now they shall not join in a writ of right, because the tenant for life hath a several action, namely, a *Quod ei deforciat*, in which respect the jointure is broken. 46 Ed. 3. 21.

So if tenant for life and his lessor join in a lease for years, and the lessee commit waste, they shall join in punishing the waste, and *locus vastatus* shall go to the tenant for life, and the damages to him in the reversion; and yet an action of waste

waste lieth not for the tenant for life ; but because he in the reversion cannot have it alone, because of the mean estate for life, therefore rather than the waste shall be unpunished, they shall join.

4; Ed. 3. 3.
22 H. 6. 24. So if two coparceners be, and they lease the land, and one of them die, and hath issue, and the lessee commit waste, the aunt and the issue shall join in punishing this waste, and the issue shall recover the moiety of the place wasted, and the aunt the other moiety and the entire damages; and yet *actio injuriarum moritur cum personis*, but in *favorabilibus magis attenditur quod prodest, quam quod nocet*.

20 Ed. 2. Fitz.
F. descent. 16. So if a man recovers by erroneous judgment, and hath issue two daughters, and one of them is attainted, the writ of error shall be brought against both parceners, notwithstanding the privity fail in the one.

33 Eliz. Also it is a positive ground, that the accessory in felony cannot be proceeded with, until the principal be tried; yet if a man upon subtlety or malice set a madman by some device upon another to kill him, and he doth so; now forasmuch as the madman is excused because he can have no will nor malice, the law accounteth the inciter as principal, though he be absent, rather than the crime shall go unpunished.

Fitz. Corone
459.
Ed. 4 M. 28.
6.
Stamf. lib. 2.
fol. 60. So it is a ground in the law, that the appeal of murder goeth not to the heir where the party murdered hath a wife, nor to the younger brother where there is an elder; yet if the wife murder her husband, because she is the party offender, the appeal leaps over to the heir; and so if the son and heir murder his father, it goeth to the second brother.

But if the rule be one of the higher sort of maxims that are *regulae rationales*, and not *positivae*, then the law will rather endure a particular offence to escape without punishment, than violate such a rule.

Cap. 12.
Stamf. 2.
fol. 125.
Plow. 467.
Litt. cap. 46
Ed. 3. 31. As it is a rule that penal statutes shall not be taken by equity, and the statute of 1 Ed. VI. enacts that those that are attainted for stealing of horses shall not have their clergy, the judges conceived, that this did not extend to him that stole but one horse, and therefore procured a new act for it 2 Ed. VI. cap. 33. And they had reason for it, as I take the law; for it is not like the case upon the statute of Glocest. that gives an action of waste against him that holds *pro termino vitae vel annorum*. It is true, if a man hold but for a year he is within the statute; for it is to be noted, that penal statutes are taken strictly and literally only in the point of defining and setting down the fact and the punishment, and in those clauses that concern them; and not generally in words that are but circumstances and conveyances in putting of the case: and so the diversity; for if the law be, that for such an offence a man shall lose his right hand, and the offender had his right hand cut off in the wars before, he shall not lose his left hand, but the crime shall rather pass unpunished which the law assigned, than the law shall be extended; but if the statute of 1 Ed. VI. had been, that he that should steal a horse should be ousted of his clergy, then there had been no question at all, but if a man had stolen more horses than one, he had been within the statute, *quia canne mejus continet in se minus*.

REGULA XIII.

Non accipi debent verba in demonstrationem falsam, quae competunt in limitationem veram.

THOUGH falsity of addition or demonstration doth no hurt where you give a thing a proper name, yet nevertheless if it stand doubtful upon the words, whether they import a false reference and demonstration, or whether they be words of restraint that limit the generality of the former name, the law will never intend error or falsehood.

And therefore if the parish of Hurst do extend into the counties of Wiltshire and Berkshire, and I grant my close called Callis, situate and lying in the parish of Hurst in the county of Wiltshire, and the truth is, that the whole close lieth in the county of Berkshire; yet the law is, that it passeth well enough, because there is a certainty sufficient in that I have given it a proper name which the false reference doth not destroy, and not upon the reason that these words, "in the county of Wiltshire," shall be taken to go to the parish only, and so to be true in some sort, and not to the close, and so to be false: For if I had granted *omnes terras meas in parochia de Hurst in com. Wiltshire*, and I had no lands in Wiltshire but in Berkshire, nothing had past.

12 Eliz. 2.
Dyer, 29.
23 Eliz. Dy.
376.
7 Ed. 6. Dy.
56.

But in the principal case, if the close called Callis had extended part into Wiltshire and part into Berkshire, then only that part had passed which lay in Wiltshire.

9 Ed. 4. 7.
21 Ed. 3. 18.
18 Eliz.
29 Reg.

So if I grant *omnes et singulas terras meas in tenura I. D. quas perquisivi de I. N. in indentura dimissionis facta I. B. specificat*. If I have land wherein some of these references are true, and the rest false, and no land wherein they are all true, nothing passeth: as if I have land in the tenure of I. D. and purchased of I. N. but not specified in the indenture to I. B. or if I have land which I purchased of I. N. and specified in the indenture of demise to I. B. and not in the tenure of I. D.

But if I have some land wherein all these demonstrations are true, and some wherein part of them are true and part false, then shall they be intended words of true limitation to pass only those lands wherein all these circumstances are true.

REGULA XIV.

Licet dispositio de interesse futuro sit inutilis, tamen fieri potest declaratio praecedens quae sortiatur effectum interveniente novo actu.

THE law doth not allow of grants except there be a foundation of an interest in the grantor; for the law that will not accept of grants of titles, or of things in action which are imperfect interests, much less will it allow a man to grant or incumber that which is no interest at all, but merely future.

But of declarations precedent before any interest vested the law doth allow, but with this difference, so that there be some new act or conveyance to give life and vigour to the declaration precedent.

Now the best rule of distinction between grants and declarations is, that grants are never countermandable, not in respect of the nature of the conveyance on the instrument, though sometime in respect of the interest granted they are, whereas declarations are evermore countermandable in their natures.

26 Eliz.
19 Eliz. 62. And therefore if I grant unto you, that if you enter into obligation to me of 100 l. and after do procure me such a lease, that then the same obligation to be void, and you enter into such obligation unto me, and afterwards do procure such a lease, yet the obligation is simple, because the defeilance was made of that which was not.

27 Ed. 3. So if I grant unto you a rent charge out of white acre, and that it shall be lawful for you to distrain in all my other lands whereof I am now seised, and which I shall hereafter purchase; although this be but a liberty of distress, and no rent save only out of white acre, yet as to the lands afterwards to be purchased the clause is void.

29 Ed. 3. 6.
24 Ed. So if a reversion be granted to I. S. and I. D. a stranger by deed do grant to I. S. that if he purchase the particular estate, he doth attorne to his grantee, this is a void attornment, notwithstanding he doth afterwards purchase the particular estate.

13, 14 Eliz.
20, 21 Eliz.
25 Eliz. But of declarations the law is contrary; as if the disseisee make a charter of feoffment to I. S. and a letter of attorney to enter and make livery and seisin, and deliver the deed of feoffment, and afterwards livery and seisin is made accordingly, this is a good feoffment; and yet he had nothing other than in right at the time of the delivery of the charter; but because a deed of feoffment is but matter of declaration and evidence, and there is a new act which is the livery subsequent, therefore it is good in law.

M 38 et.
39 Eliz.
37 Eliz.

So if a man make a feoffment in fee to I. S. upon condition to enfeoff I. N. within certain days, and there are deeds made both of the first feoffment and the second, and letters of attorney accordingly, and both those deeds of feoffment and letters of attorney are delivered at a time, so that the second deed of feoffment and letter of attorney are delivered when the first feoffee hath nothing in the land; and yet if both liveries be made accordingly, all is good.

So if I covenant with I. S. by indenture, that before such a day I will purchase the manor of D. and before the same day I will levy a fine of the same land, and that the same fine shall be to certain uses which I express in the same indenture; this indenture to lead uses being but matter of declaration, and countermandable at my pleasure, will suffice, though the land be purchased after; because there is a new act to be done, namely, the fine.

25 Eliz.
27 Eliz. But if there were no new act, then otherwise it is; as if I covenant with my son in consideration of natural affection, to stand seised to his use of the lands which I shall afterwards purchase, and I do afterwards purchase, yet the use is void; and the reason is, because there is no act, nor transmutation of possession following to perfect this inception; for the use must be limited by the feoffor, and not by the feoffee, and he had nothing at the time of the covenant.

So if I devise the manor of D. by special name, of which at that time I am not seised, and after I purchase it, except I make some new publication of my will, this devise is void; and the reason is, because that my death, which is the consummation of my will, is the act of God, and not my act, and therefore no such new act as the law requireth.

But if I grant unto I. S. authority by my deed to demise for years the land whereof I am now seised, or hereafter shall be seised; and after I purchase lands, and I. S. my attorney doth demise them; this is a good demise, because the demise of my attorney is a new act, and all one with a demise by myself.

But

But if I mortgage land, and after covenant with I. S. in consideration of money ^{21 Eliz.} which I receive of him, that after I have entred for the condition broken, I will stand seised to the use of the same I. S. and I enter, and this deed is enrolled, and all within the six months, yet nothing passeth, because the enrolment is no new act, but a perfective ceremony of the first deed of bargain and sale; and the law is more strong in that case, because of the vehement relation which the enrolment hath to the time of the bargain and sale, at what time he had nothing but a naked condition.

So if two joint-tenants be, and one of them bargain and sell the whole land, ^{6 Ed. 6. Br.} and before the enrolment his companion dieth, nothing passeth of the moiety accrued unto him by survivor.

REGULA XV.

In criminalibus sufficit generalis malitia intentionis cum facto paris gradus.

ALL crimes have their conception in a corrupt intent, and have their consummation and issuing in some particular fact; which though it be not the fact at the which the intention of the malefactor levelled, yet the law giveth him no advantage of the error, if another particular ensue of as high a nature.

Therefore if an impositions apple be laid in a place to impositon I. S. and I. D. ^{18 Eliz. Stat. deus case, com. 474.} cometh by chance and eateth it, this is murder in the principal that is actor, and yet the malice *in individuo* was not against I. D.

So if a thief find a door open, and come in by night and rob an house, and be taken with the mainour, and breaketh a door to escape, this is burglary; yet ^{Cr. J. peace, fo. 30.} the breaking of the door was without any felonious intent, but it is one entire act.

So if a caliver be discharged with a murderous intent at I. S. and the piece break and striketh into the eye of him that dischargeth it, and killeth him, he is *felo de se*, and yet his intention was not to hurt himself; for *felonia de se* and murder are *crimina paris gradus*. For if a man persuade another to kill himself, and be present when he doth so, he is a murderer.

But *quere*, if I. S. lay impositions fruit for some other stranger his enemy, and his father or master come and eat it, whether this be petty treason, because it is ^{Cr. J. peace, fol. 13, 13.} not altogether *crimen paris gradus*.

REGULA XVI.

Mandata licita accipiunt strictam interpretationem, sed illicita lata et extensivam.

IN the committing of lawful authority to another, a man may limit it as strictly as it pleaseth him, and if the party authorized do transgress his authority, though it be but in circumstance expressed, it shall be void in the whole act.

But when a man is author and mover to another to commit an unlawful act, then he shall not excuse himself by circumstances not pursued.

Therefore if I make a letter of attorney to I. S. to deliver livery and seisin in the capital messuage, and he doth it in another place of the land; or between the hours of two or three, and he doth it after or before; or if I make the charter of feoffment to I. D. and I. B. and expresse the seisin to be delivered to I. D. and my ^{10 H. 7. 19. 15. 1. 1611. Dy. 217} attorney

1 El. Dy. 337. attorney deliver it to I. B. in all these cases the act of the attorney, as to execute the estate, is void; but if I say generally to I. D. whom I mean only to enfeoff, and my attorney make it to his attorney, it shall be intended, for it is a livery to him in law.

But on the other side, if a man command I. S. to rob I. D. on Shooters-hill, and he doth it on Gads-hill; or to rob him such a day, and he doth it the next day; or to kill I. D. and he doth it not himself but procureth I. B. to do it; or to kill him by poison, and he killeth him by violence; in all these cases, although the fact be not performed in circumstance, yet he is accessary nevertheless.

But if it be to kill I. S. and he kill I. D. mistaking him for I. S. then the acts are distant in substance, and he is not accessary.

And be it that the acts be of a differing degree, and yet of a kind:

As if one bids I. S. to pilfer away such a thing out of a house, and precisely restrain him to do it some time when he is gotten in without breaking of the house, and yet he breaketh the house; yet he is accessary to the burglary: for a man cannot condition with an unlawful act, but he must at his peril take heed how he put himself into another man's hands.

56 Plin. in
Sanders case,
475.

But if a man bid one to rob I. S. as he goeth to Sturbridge-fair, and he rob him in his house, the variance seemeth to be of substance, and he is not accessary.

REGULA XVII.

De fide et officio judicis non recipitur quaestio; sed de scientia, sive sit error juris sive facti.

THE law doth so much respect the certainty of judgments, and the credit and authority of judges, as it will not permit any error to be assigned that impeacheth them in their trust and office, and in wilful abuse of the same; but only in ignorance, and mistaking either of the law or of the case and matter in fact.

1 N. br. fo 21.
7 H. 7. 4.

And therefore if I will assign for error, that whereas the verdict passed for me, the court received it contrary, and so gave judgment against me, this shall not be accepted.

3 H. 6. Fitz.
Aff. 3.

So if I will alledge for error, that whereas I. S. offered to plead a sufficient bar, the court refused it, and drove me from it, this error shall not be allowed.

2 M. Dy. 119.

But the greatest doubt is where the court doth determine of the verity of the matter in fact; so that it is rather in point of trial than in point of judgment, whether it shall be examined in error.

1 M. 2. B.
1 M. 2. D. 11.
1 H. 7. 10. 22.

As if an appeal of main be brought, and the court, by the assisance of the chirurgeons, do judge it to be a main, whether the party grieved may bring a writ of error; and I hold the law to be he cannot.

4 H. 4. 1.

So if one of the Prothonotaries of the common pleas bring an assize of his office, and alledge fees belonging to the same office in certainty, and issue to be taken upon those fees, this issue shall be tried by the judges by way of examination, and if they determine it for the plaintiff, and he have judgment to recover arrears accordingly, the defendant can bring no writ of error of this judgment, though the fees in truth be other.

1 Mu. Dy. 87.
1 Mu. Dy.
1 J.

So if a woman bring a writ of dower, and the tenant plead her husband was alive, this shall be tried by proofs and not by jury, and upon judgment given on either side no error lies. 8 H. 6. 23.
2 Ed. 285. Dy.
43 Aff. 26.

So if *nul tiel record* be pleaded, which is to be tried by the inspection of the record, and judgment be thereupon given, no error lies. 41 Aff. 5.
37 Aff. 9.
5 Ed. 4. 3.

So if in an affize the tenant saith, he is *counte de Dale, et nient nofme counte*, in the writ, this shall be tried by the records of the chancery, and upon judgment given no error lieth. 9 H. 7. 2.
19 H. 6. 52.

So if a felon demand his clergy, and read well and distinctly, and the court who is judge thereof do put him from his clergy wrongfully, error shall never be brought upon the attainder. 22 Aff. pl. 24.
19 Ed. 4. 6.

So if upon judgment given upon confession or default, and the court do assess damages, the defendant shall never bring a writ of error, though the damages be outrageous. 9 Aff. 8.
F. N. Br. 21.

And it seems in the case of maim, and some of the other cases, that the court may dismiss themselves of discussing the matter by examination, and put it to a jury, and then the party grieved shall have his attain; and therefore that the court that doth deprive a man of his action, should be subject to an action; but that notwithstanding the law will not have, as it was said in the beginning, the judges called in question in the point of their office when they undertake to discuss the issue, and that is the true reason: for to say that the reason of these cases should be, because trial by the court should be peremptory as trial by certificate, as by the Bishop in case of bastardy, or by the Marshal of the King, &c. the cases are nothing like; for the reason of those cases of certificate is, because if the court should not give credit to the certificate, but should re-examine it, they have no other mean but to write again to the same Lord Bishop, or the same Lord Marshal, which were frivolous, because it is not to be presumed they would differ from their own former certificate; whereas in these other cases of error the matter is drawn before a superior court, to re-examine the errors of an inferior court; and therefore the true reason is, as was said, that to examine again that which the court had tried were in substance to attain the court. 21 H. 7. 33. 40.
22 Aff. 59.
41 Aff. 29.
11 H. 4. 41.
7 H. 6. 57.

And therefore this is a certain rule in errors, that error in law is ever of such matters as do appear upon record; and error in fact is ever of such matters as are not crossed by the record; as to alledge the death of the tenant at the time of the judgment given, nothing appeareth upon the record to the contrary.

So when any infant levies a fine, it appeareth not upon the record of the fine that he is an infant, therefore it is an error in fact, and shall be tried by inspection during nonage. F. N. Br. 21.

But if a writ of error be brought in the King's bench of a fine levied by an infant, and the court by inspection and examination do affirm the fine, the infant, though it be during his infancy, shall never bring a writ of error in parliament upon this judgment; not but that error lies after error, but because it doth not appear upon the record that he is now of full age, therefore it can be no error in fact. And therefore if a man will assign for error that fact, that whereas the judges gave judgment for him, the clerks entred it in the roll against him, this error shall not be allowed; and yet it doth not touch the judges but the clerks: but the reason is, if it be an error, it is an error in fact; and you shall never alledge an error in fact contrary to the record. 2 R. 2. 21.
F. N. Br. 21.
9 Ed. 4. 1.

REGULA XVIII.

Persona conjuncta aequiparatur interesse proprio.

THE law hath this respect of nature and conjunction of blood, as in divers cases it compareth and matcheth nearness of blood with consideration of profit and interest; yea, and in some cases alloweth of it more strongly.

et 8 Eliz.

Therefore if a man covenant, in consideration of blood, to stand seised to the use of his brother, or son, or near kinsman, an use is well raised by his covenant without transmutation of possession; nevertheless it is true, that consideration of blood is naught to ground a personal contract upon; as if I contract with my son, that in consideration of blood I will give unto him such a sum of money, this is *nudum pactum*, and no *assumpsit* lieth upon it; for to subject me to an action, there needeth a consideration of benefit; but the use the law raiseth without suit or action; and besides, the law doth match real considerations with real agreements and covenants.

19 Ed. 4. 5.

4 H. 6. 6.

19 Ed. 4. 33.

14 H. 7. 2.

22 H. 6. 35.

21 H. 6. 15, 16.

22 H. 6. 5.

2 H. 6.

14 et 15 Eliz.

Com. 428.

21 Ed. 4. 75.

35 H. 6. 17, 18.

18 H. 6. 21.

25 H. 6. 50.

15 Ed. 4. 1.

21 Ed. 4. 13.

39 H. 6. 51.

7 Ed. 4. 21.

3 Mil. 14.

D. cap. 25.

So if a suit be commenced against me, my son, or brother, my son or brother may maintain as well as he in remainder for his interest, or his lawyer for his fee; so if my brother have a suit against my nephew or cousin, yet it is at my election to maintain the cause of my nephew or cousin, though the adverse party be nearer unto me in blood.

So in challenges of juries, challenge of blood is as good as challenge within distrefs, and it is not material how far off the kindred be, so the pedigree may be conveyed in certainty, whether it be of the half or whole blood.

So if a man menace me, that he will imprison or hurt in body my father, or my child, except I make unto him an obligation, I shall avoid this dureffe, as well as if the dureffe had been to mine own person: and yet if a man menace me, by the taking away or destruction of my goods, this is no good dureffe to plead: and the reason is, because the law can make me no reparation of that loss, and so can it not of the other.

So if a man under the years of twenty one, contract for the nursing of his lawful child, this contract is good, and shall not be avoided by infancy, no more than if he had contracted for his own aliments or erudition.

REGULA XIX.

Non impedit clausula derogatoria, quae minus ab eadem potestate res diffiniantur, à quibus constituuntur.

ACTS which are in their nature revocable, cannot by strength of words be fixed and perpetuated; yet men have put in use two means to bind themselves from changing or dissolving that which they have set down, whereof the one is *clausula derogatoria*, the other *interpositio paramenti*, whereof the former is only pertinent to the present purpose.

This *clausula derogatoria* is by the common practical term called *clausula non obstante*, and is of two sorts, *de praeterito, et de futuro*, the one weakening and diminishing any matter past to the contrary, the other any matter to come; and this latter is that only whereof we speak.

This

This *clausula de non obstante de futuro*, the law judgeth to be idle and of no force, because it doth deprive men of that which of all other things is most incident to human condition, and that is alteration or repentance.

And therefore if I make my will, and in the end thereof do add such like clause, [Also my will is, that if I shall revoke this present will, or declare any new will, except the same shall be in writing, subscribed with the hands of two witnessess, that such revocation or new declaration shall be utterly void, and by these presents I do declare the same not to be my will, but this my former will to stand, any such pretended will to the contrary notwithstanding] yet nevertheless this clause or any the like never so exactly penned, and although it do restrain the revocation but in circumstance and not altogether, is of no force or efficacy to fortify the former will against the second; but I may by parole without writing repeal the same will and make a new one.

So if there be a statute made that no sheriff shall continue in his office above a year, and if any patent be made to the contrary it shall be void; and if there be any *clausula de non obstante* contained in such patent to dispense with this present act, that such clause also shall be void; yet nevertheless a patent of the sheriff's office made by the King for term of life, with a *non obstante*, will be good in law contrary to such statute, which pretendeth to exclude *non obstantes*; and the reason is, because it is an inseparable prerogative of the crown to dispense with politic statutes, and of that kind; and then the derogatory clause hurteth not. 28 Ed. 3. cap. 7. 12 Ed. 3. cap. 9. 2 H. 7. 6.

So if an act of parliament be made, wherein there is a clause contained that it shall not be lawful for the King, by authority of parliament, during the space of seven years, to repeal and determine the same act, this is a void clause, and the same act may be repealed within the seven years; and yet if the parliament should enact in the nature of the ancient *lex regia*, that there should be no more parliaments held, but that the King should have the authority of the parliament; this act were good in law, *quia potestas suprema seipsum dissolvere potest, ligare non potest*: for it is in the power of a man to kill a man, but it is not in his power to save him alive, and to restrain him from breathing or feeling; so it is in the power of a parliament to extinguish or transfer their own authority, but not, whilst the authority remains entire, to restrain the functions and exercises of the same authority.

So in 28 of K. H. VIII. chap. 17. there was a statute made, that all acts that passed in the minority of Kings, reckoning the same under the years of twenty-four, might be annulled and revoked by their letters patent when they came to the same years; but this act in the first of K. Ed. VI. who was then between the years of ten and eleven, cap. 11. was repealed, and a new law surrogated in place thereof, wherein a more reasonable liberty is given; and wherein, though other laws are made revocable according to the provision of the former law with some new form prescribed, yet that very law of revocation, together with pardons, is made irrevocable and perpetual, so that there is a direct contrariety and repugnancy between these two laws; for if the former stands, which maketh all later laws during the minority of Kings revocable without exception of any law whatsoever, then that very law of repeal is concluded in the generality, and so itself made revocable: on the other side, that law making no doubt of the absolute repeal of the first law, though itself were made during minority, which was the very case of the former law in the new provision which it maketh, hath a precise exception, that the law of repeal shall not be repealed. 14 Ed. Dy. 313. Pl. Com. 563.

But the law is, that the first law by the impertinency of it was void *ab initio et ipso facto* without repeal, as if a law were made, that no new statute should be made during seven years, and the same statute be repealed within the seven years, if the first statute should be good, then no repeal could be made thereof within that time; for the law of repeal were a new law, and that were disabled by the former law; therefore it is void in itself, and the rule holds, *perpetua lex est, nullam legem humanam ac positivam perpetuam esse; et clausula quae abrogationem excludit initio non valet.*

Neither is the difference of the civil law so reasonable as colourable, for they distinguish and say that a derogatory clause is good to disable any later act, except you revoke the same clause before you proceed to establish any later disposition or declaration; for they say, that *clausula derogatoria ad alias sequentes voluntates posita in testamento, viz. si testator dicat quod si contigerit eum facere aliud testamentum non vult aliud valere, operatur quod sequens dispositio ab illa clausula reguletur, et per consequens quod sequens dispositio ducatur sine voluntate, et sic quod non sit attendendum.* The sense is, that where a former will is made, and after a later will, the reason why, without an express revocation of the former will, it is by implication revoked, is because of the repugnancy between the disposition of the former and the later.

But where there is such a derogatory clause, there can be gathered no such repugnancy; because it seemeth the testator had a purpose at the making of the first will to make some shew of a new will, which nevertheless his intention was should not take place: but this was answered before; for if that clause were allowed to be good until a revocation, then could no revocation at all be made, and therefore it must needs be void by operation of law at first. Thus much of *clausula derogatoria.*

REGULA XX.

Actus inceptus, cujus perfectio pendet ex voluntate partium, revocari potest; si autem pendet ex voluntate tertiae personae, vel ex contingenti, revocari non potest.

IN acts which are fully executed and consummate, the law makes this difference, that if the first parties have put it in the power of a third person, or of a contingency, to give a perfection to their acts, then they have put it out of their own reach and liberty; and therefore there is no reason they should revoke them: but if the consummation depend upon the same consent, which was the inception, then the law accounteth it in vain to restrain them from revoking of it; for as they may frustrate it by omission and *non seifance*, at a certain time, or in a certain sort or circumstance, so the law permitteth them to dissolve it by an express consent before that time, or without that circumstance.

F N. Br. 36. 1311.7 1314. Therefore if two exchange land by deed, or without deed, and neither enter, this may make a revocation or dissolution of the same exchange by mutual consent, so it be by deed, but not by parole; for as much as the making of an exchange needeth no deed, because it is to be perfected by entry, which is a ceremony notorious in the nature of livery; but it cannot be dissolved but by deed, because it dischargeth that which is but title.

So

So if I contract with I. D. that if he lay me into my cellar three tuns of wine before Mich. that I will bring to his garner twenty quarters of wheat before Christmas, before either of these days the parties may by assent dissolve the contract; but after the first day there is a perfection given to the contract by action on the one side, and they may make cross releases by deed or parole, but never dissolve the contract; for there is a difference between dissolving the contract, and release or surrender of the thing contracted for: as if lessee for twenty years make a lease for ten years, and after he take a new lease for five years, he is in only of his lease for five years, and yet this cannot inure by way of surrender: for a petty lease derived out of a greater cannot be surrendered back again, but it inureth only by dissolution of contract; for a lease of land is but a contract executory from time to time of the profits of the land, to arise as a man may sell his corn or his tithe to spring or to be perceived for divers future years.

But to return from our digression: on the other side, if I contract with you for cloth at such a price as I. S. shall name; there if I. S. refuse to name, the contract is void; but the parties cannot discharge it, because they have put it in the power of the third person to perfect.

So if I grant my reversion, though this be an imperfect act before attornment; yet because the attornment is the act of a stranger, this is not simply revocable, but by a policy or circumstance in law, as by levying a fine, or making a bargain and sale, or the like.

So if I present a clerk to the Bishop, now can I not revoke this presentation, because I have put it out of myself, that is, in the Bishop, by admiffus, to perfect my act begun.

The same difference appeareth in nominations and elections; as if I enfeoff I. S. upon condition to enfeoff such a one as I. D. shall name within a year, and I. D. name I. B. yet before the feoffment, and within the year, I. D. may countermand his nomination, and name again, because no interest passeth out of him. But if I enfeoff I. S. to the use of such a one as I. D. shall name within a year, then if I. D. name I. B. it is not revocable, because the use passeth presently by operation of law.

So in judicial acts the rule of the civil law holdeth, *sententia interlocutoria revocari potest, definitiva non potest*; that is, that an order may be revoked, but a judgment cannot; and the reason is, because there is a title of execution or of bar given presently unto the party upon judgment, and so it is out of the judge to revoke, in courts ordered by the common law.

REGULA XXI.

Clausula vel dispositio inutilis per praesumptionem vel causam remotam, ex post facto non fulcitur.

CLAUSULA vel dispositio inutilis are said, when the act or the words do work or express no more than law by intendment would have supplied; and therefore the doubling or iterating of that and no more, which the conceit of the law doth in a sort prevent and preoccupate, is reputed nugation, and is not supported and made of substance either by a foreign intendment of some purpose, in
A a a 2
regard

regard whereof it might be material, nor upon any cause or matter emerging afterwards, which may induce an operation of those idle words or acts.

32 H. 8.
Geord. 193.
R. 2.
Br. devises
41.

And therefore if a man devise land at this day to his son and heir, this is a void devise, because the disposition of law did cast the same upon the heir by descent; and yet if it be knight's service land, and the heir within age, if he take by the devise, he shall have two parts of the profits to his own use, and the guardian shall have benefit but of the third; but if a man devise land to his two daughters, having no sons, then the devise is good, because he doth alter the disposition of the law; for by the law they should take in coparcenary, but by the devise they shall take jointly; and this is not any foreign collateral purpose, but in point of taking of estate.

29 H. 8.
Dy. 12.

So if a man make a feoffment in fee to the use of his last will and testament, these words of special limitation are void, and the law reserveth the ancient use to the feoffor and his heirs; and yet if the words might stand, then should it be authority by his will to declare and appoint uses, and then though it were knight's service land, he might dispose the whole. As if a man make a feoffment in fee, to the use of the will and testament of a stranger, there the stranger may declare an use of the whole by his will, notwithstanding it be knight's service land; but the reason of the principal case is, because uses before the statute of 21 were to have been disposed by will, and therefore before that statute an use limited in the form aforesaid, was but a frivolous limitation, in regard that the old use which the law reserved was deviseable; and the statute of 27 altereth not the law, as to the creating and limiting of any use, and therefore after that statute, and before the statute of wills, when no lands could have been devised, yet it was a void limitation as before, and so continueth to this day.

19 H. 8. 11.
5 Ed. 4. 8.

But if I make a feoffment in fee to the use of my last will and testament, thereby to declare any estate tail and no greater estate, and after my death, and after such estate declared shall expire, or in default of such declaration then to the use of I. S. and his heirs, this is a good limitation; and I may by my will declare an use of the whole land to a stranger, though it be held in knight's service, and yet I have an estate in fee simple by virtue of the old use during life.

19 H. 8. 11.
5 Ed. 4. 8.

So if I make a feoffment in fee to the use of my right heirs, this is a void limitation, and the use reserved by the law doth take place; and yet if the limitation should be good the heir should come in by way of purchase, who otherwise cometh in by descent; but this is but a circumstance which the law respecteth not, as was proved before.

32 H. 8. 93 B.
20 H. 8. 8 Dy.
7 Ed. 2. 37. Dy.

But if I make a feoffment in fee to the use of my right heirs, and the right heirs of I. S. this is a good use, because I have altered the disposition of law; neither is it void for a moiety, but both our right heirs when they come in being shall take by joint purchase; and he to whom the first falleth shall take the whole, subject nevertheless to his companions title, so it have not descended from the first heir to the heir of the heir: for a man cannot be joint-tenant claiming by purchase, and the other by descent, because they be several titles.

15 Ed. 2. 74. Dy.

2 Ed. 3. 29.
30 E. 3. Fitz.
Devises. 9.

So if a man having land on the part of his mother make a feoffment in fee to the use of himself and his heirs, this use, though expressed, shall not go to him and the heirs on the part of his father as a new purchase, no more than it should have done if it had been a feoffment in fee nakedly without consideration, for the intendment is remote. But if baron and feme be, and they join in a fine

4 M. 134. p.

of the feme's lands, and exprefs an use to the husband and wife and their heirs : 14 H. 8. 5. this limitation shall give a joint estate by entierties to them both ; because the intendment of law would have conveyed the use to the feme alone. And thus much touching foreign intendments. per Browne. 5 Ed. 4. 8. 19 H. 8. 11.

For matter *ex post facto*, if a lease for life be made to two, and the survivor of them, and they after make partition : now these words [and to the survivor of them] should seem to carry purpose as a limitation, that either of them should be stated in his part for both their lives severally ; but yet the law at the first contrueth the words but words of dilating to describe a joint estate ; but if one of them die after partition, there shall be no occupant, but his part shall revert. 30 Aff. 8. Fitz. part 16. 1 H. 8. 46. Pl. 7. Dy.

So if a man grant a rent charge out of ten acres, and grant farther that the whole rent shall issue out of every acre, and distress accordingly, and afterwards the grantee purchase an acre : now this clause shall seem to be material to uphold the whole rent ; but yet nevertheless the law at first accepteth of these words but as words of explanation, and then notwithstanding the whole rent is extinct.

So if a gift in tail be made upon condition, that if tenant in tail die without issue, it shall be lawful for the donor to enter ; and the donee discontinue and die without issue : now this condition should seem material to give him benefit of entry, but because it did at the first limit the estate according to the limitation in law, it worketh nothing upon this matter emergent afterward. 4 Ed. 6. Com. 33. 27 H. 8. 6.

So if a gift in tail be made of lands held in knight's service with an express reservation of the same service, whereby the land is held over, and the gift is with warranty, and the land is evicted, and other land recovered in value against the donor, held in socage, now the tenure which the law makes between the donor and donee shall be in socage, not in knight's service ; because the first reservation was according to the ovelty of service, which was no more than the law would have reserved. 22 Aff. Pl. 52.

But if a gift in tail had been made of lands held in socage with a reservation of knight's service tenure, and with warranty, then, because the intendment of law is altered, the new land shall be held by the same service the lost land was, without any regard at all to the tenure paramount : and thus much of matter *ex post facto*.

This rule faileth where as the law saith as much as the party, but upon foreign matter not pregnant and appearing upon the same act or conveyance, as if lessee for life be, and he lets for twenty years, if he live so long ; this limitation [if he live so long] is no more than the law saith, but it doth not appear upon the same conveyance or act, that this limitation is nugatory, but it is foreign matter in respect of the truth of the state whence the lease is derived : and therefore if lessee for life make a feoffment in fee, yet the state of the lessee for years is not enlarged against the feoffee ; otherwise had it been if such limitation had not been, but that it had been left only to the law.

So if tenant after possibility make a lease for years, and the donor confirms to the lessee to hold without impeachment of waste during the life of tenant in tail, this is no more than the law saith ; but the privilege of tenant after possibility is foreign matter, as to the lease and confirmation : and therefore if tenant after possibility do surrender, yet the lessee shall hold dispensible of waste ; otherwise had it been if no such confirmation had been made. 16 H. 7. 4. per Keble. 24 Ed. 3. 28. Fitz. pl. 93.

Also

Also heed must be given that it be indeed the same thing which the law intendeth, and which the party expresseth, and not only like or resembling, and such as may stand both together: for if I lett land for life rendring rent, and by my deed warrant the same land, this warranty in law and warranty in deed are not the same thing, but may both stand together.

27 Ed. 3.
Fitz. 7.
31 E. 1.
Vouch. 230.

There remaineth yet a great question upon this rule.

A principal reason whereupon this rule is built, should seem to be, because such acts or clauses are thought to be but declaratory, and added upon ignorance of the law, and *ex consuetudine clericorum*, upon observing of a common form, and not upon purpose or meaning, and therefore whether by particular and precise words a man may not control the intendment of the law.

To this I answer, that no precise nor express words will control this intendment of law; but as the general words are void, because they say that which the law saith; and so are thought to be against the law: and therefore if I devise my land being knight's service tenure to my heir, and express my intention to be, that the one part should descend to him as the third part appointed by the statute, and the other he shall take by devise to his own use; yet this is void: for the law saith, he is in by descent of the whole, and I say he shall be in by devise, which is against the law.

But if I make a gift in tail, and say upon condition, that if tenant in tail discontinue and after die without issue, it shall be lawful for me to enter; this is a good clause to make a condition, because it is but in one case, and doth not cross the law generally: for if the tenant in tail in that case be disseised, and a descent cast, and die without issue, I that am the donor shall not enter.

But if the clause had been provided, that if tenant in tail discontinue, or suffer a descent, or do any other act whatsoever, that after his death without issue it shall be lawful for me to enter: now this is a void condition, for it importeth a repugnancy to law; as if I would over-rule that where the law saith I am put to my action, I nevertheless will reserve to myself an entry.

REGULA XXII.

Non videtur consensum retinuisse si quis ex praescripto minantis aliquid immutavit.

ALTHOUGH choice and election be a badge of consent, yet if the first ground of the act be duress, the law will not construe that the duress doth determine, if the party duresed do make any motion or offer.

Therefore if a party menace me, except I make unto him a bond of 40 l. and I tell him that I will not do it, but I will make unto him a bond of 20 l. the law shall not expound this bond to be voluntary, but shall rather make construction that my mind and courage is not to enter into the greater bond for any menace, and yet that I enter by compulsion notwithstanding into the lesser.

But if I will draw any consideration to myself, as if I had said, I will enter into your bond of 40 l. if you will deliver me that piece of plate, now the duress is discharged; and yet if it had been moved from the duresor, who had said at the first, You shall take this piece of plate, and make me a bond of 40 l. now the gift of the plate had been good, and yet the bond shall be avoided by duress.

REGULA

REGULA XXIII.

Licita bene miscentur, formula nisi juris obstat.

THE law giveth that favour to lawful acts, that although they be executed by several authorities, yet the whole act is good.

As when tenant for life is the remainder in fee, and they join in a livery by deed or without, this is one good entire livery drawn from them both, and doth not inure to a surrender of the particular estate, if it be without deed*; or confirmation of those in the remainder, if it be by deed; but they are all parties to the livery.

So if tenant for life the remainder in fee be, and they join in granting a rent, this is one solid rent out of both their estates, and no double rent, or rent by confirmation.

So if tenant in tail be at this day, and he make a lease for three lives, and his own, this is a good lease, and warranted by the statute of 32 H. VIII. and yet it is good in part by the authority which tenant in tail hath by the common law, that is, for his own life, and in part by the authority which he hath by the statute, that is, for the other three lives. Query.

So if a man, seised of lands devisable by custom and of other land held in knight's service, devise all his lands, this is a good devise of all the land customary by the common law, and of two parts of the other land by the statutes.

So in the Star-chamber a sentence may be good, grounded in part upon the authority given the court by the statute of 3 H. VII. and in part upon that ancient authority which the court hath by the common law, and so upon several commissions.

But if there be any form which the law appointeth to be observed, which cannot agree with the diversities of authorities, then this rule faileth.

And if three coparceners be, and one of them alien her purparty, the feoffee and one of the sisters cannot join in a writ *de part' facienda*, because it behoveth the feoffee to mention the statute in his writ. Vide 1. Instit. 166. b.

REGULA XXIV.

Praesentia corporis tollit errorem nominis, et veritas nominis tollit errorem demonstrationis.

THERE be three degrees of certainty.

1. Presence.
2. Name.
3. Demonstration or reference.

* Semble clerement le ley d'estre contrary in ambideux cafes, car lou est sans fait, est livery solement de celui in le rem' et surr' de partic' ten', autrement sera forfeiture de son estate, et lou est per fait, le livery passa solement de tenant, car il ad le frank-tenement, vide accordant Sur Co. l. 1. 79. b. 77. a. Com. Plow. 59. a. 140. 2 H. 5. 7. 13 H. 7. 14. 13 Ed. 4. 4. a. 27 H. 8. 13. M. 16. et 17. El. Dy. 339.

Whereof

Whereof the presence the law holdeth of greatest dignity, the name in the second degree, and the demonstration or reference in the lowest, and always the error or fallity in the less worthy.

And therefore if I give a horse to I. D. being present, and say unto him, I. S. take this; this is a good gift, notwithstanding I call him by a wrong name: but so had it not been if I had delivered him to a stranger to the use of I. S. where I meant I. D.

So if I say unto I. S. Here I give you my ring with the ruby, and deliver it with my hand, and the ring bear a diamond and no ruby, this is a good gift notwithstanding I name it amiss.

So had it been if by word or writing, without the delivery of the thing itself, I had given the ring with the ruby, although I had no such, but only one with a diamond which I meant, yet it would have passed.

So if I by deed grant unto you, by general words, all the lands that the King hath passed unto me by letters patents dated 10 May, unto this present indenture annexed, and the patent annexed have date 10 July; yet if it be proved that that was the true patent annexed, the presence of the patent maketh the error of the date recited not material; yet if no patent had been annexed, and there had been also no other certainty given, but the reference of the patent, the date whereof was mis-recited, although I had no other patent ever of the King, yet nothing would have passed.

Like law is it, but more doubtful, where there is not a presence, but a kind of representation, which is less worthy than a presence, and yet more worthy than a name or reference.

As if I covenant with my ward, that I will tender unto him no other marriage, than the gentlewoman whose picture I delivered him, and that picture hath about it *actatis suae anno 16*, and the gentlewoman is seventeen years old; yet nevertheless if it can be proved that the picture was made for that gentlewoman, I may, notwithstanding this mistaking, tender her well enough.

So if I grant you for life a way over my land, according to a plot intended between us, and after I grant unto you and your heirs a way according to the first plot intended, whereof a table is annexed to these presents, and there be some special variance between the table and the original plot, yet this representation shall be certainty sufficient to lead unto the first plot; and you shall have the way in fee nevertheless, according to the first plot, and not according to the table.

So if I grant unto you by general words the land which the King hath granted me by his letters patents, *quarum tenor sequitur in haec verba, etc.* and there be some mistaking in the recital and variance from the original patent, although it be in a point material, yet the representation of this whole patent shall be as the annexing of the true patent, and the grant shall not be void by this variance.

Now for the second part of this rule, touching the name and the reference, for the explaining thereof, it must be noted what things found in demonstration or addition: as first in lands, the greatest certainty is, where the land hath a name proper, as "the manor of Dale, Grandfield," *etc.* the next is equal to that, when the land is set forth by bounds and abuttals, as "a close of pasture bounding on the east part upon Emsden-wood, on the south upon," *etc.* It is also a sufficient name to lay the general boundary, that is, some place of larger precinct, if there

be no other land to pass in the same precinct, as “all my lands in Dale, my tenement in St. Dunstan’s parish,” etc.

A farther sort of denomination is to name lands by the attendancy they have to other lands more notorious, as “parcel of my manor of D. belonging to such a college lying upon Thames bank.”

All these things are notes found in denomination of lands, because they be signs local, and therefore of property to signify and name a place; but those notes that found only in demonstration and addition, are such as are but transitory and accidental to the nature of the place.

As *modo in tenura et occupatione* of the proprietary, tenure or possession is but a thing transitory in respect of land; *Generatio venit, generatio migrat, terra autem manet in aeternum.*

So likewise matter of conveyance, title, or instrument.

As, *quae perquisivi de I. D. quae descendebant a I. N. patre meo, or in praedicta indentura dimissionis, or in praedictis literis patentibus specificat’.*

So likewise *continent’ per aestimationem 20 acras*, or if *per aestimationem* be left out, all is one, for it is understood, and this matter of measure, although it seem local, yet it is indeed but opinion and observation of men.

The distinction being made, the rule is to be examined by it.

Therefore if I grant my close called Dale in the parish of Hurst, in the county of Southampton, and the parish likewise extendeth into the county of Berkshire, and the whole close of Dale lieth in the county of Berkshire; yet because the parcel is especially named, the falsity of the addition hurteth not, and yet this addition is found in name, but, as it was said, it was less worthy than a proper name.

So if I grant *tenementum meum, or omnia tenementa mea*, for the universal and indefinite to this purpose are all one, *in parochia Sancti Butolphi extra Aldgate*, where the verity is *extra Bishopsgate, in tenura Guilielmi*, which is true, yet this grant is void, because that which sounds in denomination is false, which is the more worthy; and that which sounds in addition is true, which is the less*; and though *in tenura Guilielmi*, which is true, had been first placed, yet it had been all one.

But if I grant *tenementum meum quod perquisivi de R. C. in Dale*, where the truth was *T. C.* and I have no other tenements in *D.* but one, this grant is good, because that which foundeth in name, namely, *in Dale*, is true, and that which founded in addition, namely, *quod perquisivi, etc.* is only false.

Vide ib. quae contraria est lex, car icy auxi le primer certainty est faux.

So if I grant *prato mea in Dale continentia 10 acras*, and they contain indeed twenty acres, the whole twenty pass.

So if I grant all my lands, being parcels *manerii de D. in praedictis literis patentibus specificat’*, and there be no letters patents, yet the grant is good enough.

The like reason holds in demonstrations of persons, that have been declared in demonstration of lands and places, the proper name of every one is in certainty worthiest: next are such appellations as are fixed to his person, or at least of continuance, as, son of such a man, wife of such a husband; or addition of office, as, clerk of such a court, etc. and the third are actions or accidents, which sound no way in appellation or name, but only in circumstance, which are less worthy, although they may have a proper particular reference to the intention of the grant.

* Semble icy le grant est este affets bon. come fait resolu per cur’, Co. lib. 3. fo. 10. a. vid. 33 H. 8. De. 50. b. 12 El. ib. 292. b. et Co. lib. 2. fo. 33. a.

MAXIMS OF THE LAW.

And therefore if an obligation be made to *I. S. filio et haeredi G. S.* where indeed he is a bastard, yet this obligation is good.

So if I grant land *Episcopo nunc Londinensi, qui me erudivit in pueritia*, this is a good grant, although he never instructed me.

But *e converso*, if I grant land to *I. S. filio et haeredi G. S.* and it be true that he is son and heir unto *G. S.* but his name is Thomas, this is a void grant.

Or if in the former grant it was the Bishop of Canterbury who taught me in my childhood, yet shall it be good, as was said, to the Bishop of London, and not to the Bishop of Canterbury.

The same rule holdeth of denomination of times, which are such a day of the month, such a day of the week, such a Saint's day or eve, to day, to morrow; these are names of times.

But the day that I was born, the day that I was married; these are but circumstances and addition of times.

And therefore if I bind myself to do some personal attendance upon you upon Innocents day, being the day of your birth, and you were not born that day, yet shall I attend.

There rest two questions of difficulty yet upon this rule, first, Of such things whereof men take not so much note as that they shall fail of this distinction of name and addition.

As, "my box of ivory lying in my study sealed up with my seal of arms; my suit of arras with the story of the nativity and passion;" of such things there can be no name, but all is of description, and of circumstance, and of these I hold the law to be, that precise truth of all recited circumstances is not required.

But in such things *ex multitudine signorum colligitur identitas vera*, therefore though my box were not sealed, and although the arras had the story of the nativity, and not of the passion, if I had no other box, nor no other suit, the gifts are good; and there is certainty sufficient, for the law doth not expect a precise description of such things as have no certain denomination.

Secondly, Of such things as do admit the distinction of name and addition, but the notes fall out to be of equal dignity all of name or addition.

As, *prata mea juxta communem fossam in D.* whereof the one is true, the other false; or *tenementum meum in tenura Guilielmi, quod perquisivi de R. C. in praedictis indentis specificat*, whereof one is true, and two are false; or two are true, and one false.

So *ad curiam quam tenebat die Mercurii tertio die Martii*, whereof the one is true, the other false.

Will. livers
and the cur
col. lxxi.

In these cases the former rule, *ex multitudine signorum, etc.* holdeth not; neither is the placing of the falsity or verity first or last material, but all must be true, or else the grant is void; always understood, that if you can reconcile all the words, and make no falsity, that is quite out of this rule, which hath place only where there is a direct contrariety or falsity not to be reconciled to this rule.

As if I grant all my land in *D. in tenura I. S.* which I purchased of *I. N.* specified in a demise to *I. D.* and I have land in *D.* whereof in part of them all these circumstances are true, but I have other lands in *D.* wherein some of them fail, this grant will not pass all my land in *D.* for there these are references, and no words of falsity or error, but of limitation and restraint.

R E G U L A

REGULA XXV.

Ambiguitas verborum latens verificatione suppletur; nam quod ex facto oritur ambiguum verificatione facti tollitur.

THERE be two sorts of ambiguities of words, the one is *ambiguitas patens*, and the other *latens*. *Patens* is that which appears to be ambiguous upon the deed or instrument: *latens* is that which seemeth certain and without ambiguity, for any thing that appeareth upon the deed or instrument; but there is some collateral matter out of the deed that breedeth the ambiguity.

Ambiguitas patens is never holpen by averment, and the reason is, because the law will not couple and mingle matter of specialty, which is of the higher account, with matter of averment, which is of inferior account in law; for that were to make all deeds hollow, and subject to averments, and so in effect, that to pass without deed, which the law appointeth shall not pass but by deed.

Therefore if a man give land to *I. D. et I. S. et haeredibus*, and do not limit to whether of their heirs, it shall not be supplied by averment to whether of them the intention was, the inheritance should be limited.

So if a man give land in tail, though it be by will, the remainder in tail, and add a *proviso* in this manner: Provided that if he, or they, or any of them do any, *etc.* according to the usual clauses of perpetuities, it cannot be averred upon the ambiguities of the reference of this clause, that the intent of the devisor was, that the restraint should go only to him in the remainder, and the heirs of his body; and that the tenant in tail in possession was meant to be at large.

Of these infinite cases might be put, for it holdeth generally that all ambiguity of words by matter within the deed, and not out of the deed, shall be holpen by construction, or in some case by election, but never by averment, but rather shall make the deed void for uncertainty.

But if it be *ambiguitas latens*, then otherwise it is: as if I grant my manor of S. to I. F. and his heirs, here appeareth no ambiguity at all; but if the truth be, that I have the manors both of South S. and North S. this ambiguity is matter in fact; and therefore it shall be holpen by averment, whether of them was that the party intended should pass.

So if I set forth my land by quantity, then it shall be supplied by election, and not averment.

As if I grant ten acres of wood in sale, where I have an hundred acres, whether I say it in my deed or no, that I grant out of my hundred acres, yet here shall be an election in the grantee, which ten he will take.

And the reason is plain, for the presumption of the law is, where the thing is only nominated by quantity, that the parties had indifferent intentions which should be taken, and there being no cause to help the uncertainty by intention, it shall be holpen by election.

But in the former case the difference holdeth, where it is expressed, and where not; for if I recite, Whereas I am seised of the manor of North S. and South S. I lease unto you *unum manerium de S.* there it is clearly an election. So if I recite, Whereas I have two tenements in St. Dunstan's, I lease unto you *unum tenementum*,

there it is an election, not averment of intention, except the intent were of an election, which may be specially averred.

Another sort of *ambiguitas latens* is correlative unto these: for this ambiguity spoken of before, is when one name and appellation doth denominate divers things, and the second, when the same thing is called by divers names.

As if I give lands to Christ-Church in Oxford, and the name of the corporation is *Ecclesia Christi in universitate Oxford*, this shall be holpen by averment, because there appears no ambiguity in the words: for this variance is matter in fact, but the averment shall not be of intention, because it doth stand with the words.

For in the case of equivocation the general intent includes both the special, and therefore stands with the words: but so it is not in variance, and therefore the averment must be of matter, that do endure quantity, and not intention.

As to say, of the precinct of Oxford, and of the University of Oxford, is one and the same, and not to say that the intention of the parties was, that the grant should be to Christ-Church in that university of Oxford.



T H E
U S E of the L A W;

F O R

Preservation of our Persons, Goods, and Good Names.

According to the practice of the Laws and Customs of this Land.

THE use of the law consisteth principally in these three things :

- I. To secure mens persons from death and violence.
- II. To dispose the property of their goods and lands.
- III. For preservation of their good names from shame and infamy.

The use of the law, and wherein it principally consisteth.

For safety of persons, the law provideth that any man standing in fear of another, may take his oath before a justice of peace, that he standeth in fear of his life, and the justice shall compel the other to be bound with sureties to keep the peace.

Surety to keep the peace.

If any man beat, wound, or maim another, or give false scandalous words that may touch his credit, the law giveth thereupon an action of the case for the slander of his good name; and an action of battery, or an appeal of maim, by which recompence shall be recovered, to the value of the hurt, damage or danger.

Action for slander, battery, &c.

If any man kill another with malice, the law giveth an appeal to the wife of the dead, if he had any, or to the next of kin that is heir, in default of a wife; by which appeal the defendant convicted is to suffer death, and to lose all his lands and goods: but if the wife or heir will not sue, or be compounded withal, yet the King is to punish the offence by indictment or presentment of a lawful inquest and trial of the offender before competent judges; whereupon being found guilty, he is to suffer death, and to lose his lands and goods.

Appeal of murder given to the next of kin.

If one kill another upon a sudden quarrel, this is man-slaughter, for which the offender must die, except he can read; and if he can read, yet must he lose his goods, but no lands.

Man-slaughter, when a forfeiture of goods, and when not.

And if a man kill another in his own defence, he shall not lose his life, nor his lands, but he must lose his goods, except the party slain did first assault him, to kill, rob, or trouble him by the high-way side, or in his own house, and then he shall lose nothing.

And if a man kill himself, all his goods and chattels are forfeited, but no lands.

Felo de se.

If a man kill another by misfortune, as shooting an arrow at a butt or mark, or casting a stone over a house, or the like, this is loss of his goods and chattels, but not of his lands, nor life.

Felony by mischance.

If a horse, or cart, or a beast, or any other thing do kill a man, the horse, beast, or other thing is forfeited to the crown, and is called a *Deodand*, and usually granted and allowed by the King to the bishop almoner, as goods are of those that kill themselves.

The

USE OF THE LAW.

Cutting out tongues,
and putting out eyes,
felony.

The cutting out of a man's tongue, or putting out his eyes maliciously, is felony; for which the offender is to suffer death, and lose his lands and goods.

But for that all punishment is for example's sake, it is good to see the means whereby offenders are drawn to their punishment; and first for matter of the peace.

The ancient laws of England, planted here by the Conqueror, were, that there should be officers of two sorts in all the parts of this realm to preserve the peace:

1. *Constabularii pacis.*

2. *Conseruatores pacis.*

The office of the
constable.

The office of the constable was, to arrest the parties that he had seen breaking the peace, or in fury ready to break the peace, or was truly informed by others, or by their own confession, that they had freshly broken the peace; which persons he might imprison in the stocks, or in his own house, as his or their quality required, until they had become bounden with sureties to keep the peace; which obligation from thenceforth was to be sealed and delivered to the constable to the use of the King; and that the constable was to send to the King's exchequer or chancery, from whence process should be awarded to levy the debt, if the peace were broken.

But the constables could not arrest any, nor make any put in bond upon complaint of threatening only, except they had seen them breaking the peace, or had come freshly after the peace was broken. Also, these constables should keep watch about the town for the apprehension of rogues and vagabonds, and night-walkers, and eves-droppers, scouts, and such like, and such as go armed. And they ought likewise to raise hue and cry against murderers, man-slayers, thieves and rogues.

High-constables for
every hundred.
Petty constable for
every village.

Of this office of constable there were high constables, two of every hundred; petty constables, one in every village: they were in ancient time all appointed by the Sheriff of the shire yearly in his court called the Sheriff's Turn, and there they received their oath. But at this day they are appointed either in the law-day of that precinct wherein they serve, or else by the high constable in the sessions of the peace.

The King's bench
first instituted, and
its jurisdiction.

The Sheriff's Turn is a court very ancient, incident to his office. At the first it was erected by the Conqueror, and called the King's bench, appointing men studied in the knowledge of the laws to execute justice, as substitutes to him, in his name, which men are to be named *Justiciarii ad placita coram rege assignati*: one of them being *capitalis justiciarius*, called to his fellows; the rest in number as pleaseth the King: of late but three *justiciarii*, holden by patent. In this court every man above twelve years of age was to take his oath of allegiance to the King; if he were bound, then his lord to answer for him. In this court the constables were appointed and sworn; breakers of the peace punished by fine and imprisonment; the parties beaten or hurt recompensed upon complaints or damages; all appeals of murder, maim, robbery, decided; contempts against the crown, public annoyances against the people, treasons and felonies, and all other matters of wrong between party and party for taces and profits.

Com or shire courts,
and its jurisdic-
tion within twelve
miles of the chief
town.

But the King being the realm grow daily more and more populous, and that this one court could not dispatch all, did his cousin that his marshal should keep a court, for controversies arising within the verge, which is within twelve miles of the chief town of the court; which did but ease the King's bench in mat-

ters

ters only concerning debts, covenants, and such like, of those of the King's household only; never dealing in breaches of the peace, or concerning the crown by any other persons, or any pleas of lands.

Inasmuch, as the King, for farther ease, having divided this kingdom into counties, and committing the charge of every county to a lord or earl, did direct that those earls, within their limits, should look to the matter of the peace, and take charge of the constables, and reform public annoyances, and swear the people to the crown, and take pledges of the freemen for their allegiance; for which purpose the county did once every year keep a court, called the Sheriff's Turn; at which all the county, except women, clergy, children under twelve, and aged above sixty, did appear to give or renew their pledges for allegiance. And the court was called, *Curia visus franci plegii*, a view of the pledges of freemen; or, *Turna comitatus*.

Sheriff's Turn instituted upon the division of England into counties, etc. Likewise called *Curia visus franci plegii*.

At which meeting or court there fell, by occasion of great assemblies, much blood-shed, scarcity of victuals, mutinies, and the like mischiefs, which are incident to the congregations of people, by which the King was moved to allow a subdivision of every county into hundreds, and every hundred to have a court, whereunto the people of every hundred should be assembled twice a year for survey of pledges, and use of that justice which was formerly executed in that grand court for the county; and the count or earl appointed a bailiff under him to keep the hundred court.

Subdivision of the county court into hundreds.

But in the end, the Kings of this realm found it necessary to have all execution of justice immediately from themselves, by such as were more bound than earls to that service, and readily subject to correction for their negligence or abuse; and therefore took to themselves the appointing a sheriff yearly in every county, calling them *Vicecomites*, and to them directed such writs and precepts for executing justice in the county, as fell out needful to have been dispatched, committing to the sheriff *custodiam comitatus*; by which the earls were spared of their toils and labours, and that was laid upon the sheriffs. So as now the sheriff doth all the King's business in the county, and that is now called the Sheriff's Turn; that is to say, he is judge of this grand court for the county, and also of all hundred courts not given away from the crown.

The charge of the county taken from the earls, and committed to the sheriff.

The sheriff is judge of all hundred courts, etc.

He hath another court called the county court, belonging to his office, wherein men may sue monthly for any debt or damages under 40s. and may have writs for to replevy their cattle distrained and impounded by others, and there try the cause of their distress; and by a writ called *justicies*, a man may sue for any sum; and in this court the sheriff by a writ called an *exigent* doth proclaim men sued in courts above to render their bodies, or else they be out-lawed.

County court kept monthly by the sheriff.

This sheriff doth serve the King's writs of process, be they summons, or attachments, to compel men to answer to the law, and all writs of execution of the law, according to judgments of superior courts, for taking of mens goods, lands, or bodies, as the cause requireth.

The office of the sheriff.

The hundred courts were most of them granted to religious men, noblemen, and others of great place. And also many men of good quality have attained by charter, and some by usage within manors of their own, liberty of keeping law-days, and to use their justice appertaining to a law-day.

Hundred courts to whom at first granted.

Whosoever is lord of the hundred court, is to appoint two high constables of the hundred, and also is to appoint in every village a petty constable, with a tithing-man

Lord of the hundred to appoint two high constables.

ing-man to attend in his absence, and to be at his commandment when he is present, in all services of his office for his assistance.

What matters they inquire of in leets and law-days.

There have been, by use and statute law, besides surveying of the pledges of freemen, and giving the oath of allegiance, and making of constables, many additions of powers and authority given to the stewards of leets and law-days, to be put in use in their courts; as for example, they may punish inn-keepers, victuallers, bakers, butchers, poulterers, fishmongers, and tradesmen of all sorts, selling with under-weights or measures, or at excessive prices, or things unwholesome, or ill made, in deceit of the people. They may punish those that do stop, straiten, or annoy the high-ways, or do not, according to the provision enacted, repair or amend them, or divert water-courses, or destroy fry of fish, or use engines or nets to take deer, conies, pheasants, or partridges, or build pigeon-houses; except he be lord of the manor, or parson of the church. They may also take presentment upon oath of the twelve sworn jury before them of all felonies; but they cannot try the malefactors, only they must by indenture deliver over those presentments of felony to the judges, when they come their circuits into that county. All those courts before mentioned are in use, and exercised as law at this day, concerning the sheriff's law-days and leets, and the offices of high constables, petty constables, and tithing-men; howbeit, with some further additions by statute laws, laying charge upon them for taxation for poor, for soldiers, and the like, and dealing without corruption, and the like.

Conservators of the peace by writ for term of life, or at the King's pleasure. What their office was.

CONSERVATORS of the peace were in ancient times certain which were assigned by the King to see the peace maintained, and they were called to the office by the King's writ, to continue for term of their lives, or at the King's pleasure.

For this service, choice was made of the best men of calling in the country, and but few in the shire. They might bind any man to keep the peace, and to good behaviour, by recognizance to the king with sureties, and they might by warrant send for the party, directing their warrant to the sheriff or constable, as they please, to arrest the party and bring him before them. This they used to do, when complaint was made by any that he stood in fear of another, and so took his oath; or else where the conservator himself did, without oath or complaint, see the disposition of any man inclined to quarrel and breach of the peace, or to misbehave himself in some outrageous manner of force or fraud: there by his own discretion he might send for such a fellow, and make him find sureties of the peace, or of his good behaviour, as he should see cause; or else commit him to the gaol if he refused.

Conservators of the peace by virtue of their office.

The judges of either bench in Westminster, barons of the exchequer, master of the rolls, and justices in eyre and assizes in their circuits, were all, without writ, conservators of the peace in all shires of England, and continue to this day.

Justice of peace ordained in lieu of conservators. Term of peace now granted to the Chancellor.

But now at this day conservators of the peace are out of use, and in lieu of them there are ordained justices of peace, assigned by the King's commissions in every county, which are moveable at the King's pleasure; but the power of placing and displacing justices of the peace is by use delegated from the King to the Chancellor.

That there should be justices of peace by commissions, it was first enacted by a statute made 1 Edw. III. and their authority augmented by many statutes made since in every King's reign.

They

They are appointed to keep four sessions every year; that is, every quarter one. These sessions are a sitting of the justices to dispatch the affairs of their commissions. They have power to hear and determine, in their sessions, all felonies, breaches of the peace, contempts and trespasses, so far as to fine the offender to the crown, but not to award recompence to the party grieved.

To fine offenders to the crown, but not to recompense the party grieved. Parl. stat. 17 R. 2. cap. 10. et v. Dyer 69.

* They are to suppress riots and tumults, to restore possessions forcibly taken away, to examine all felons apprehended and brought before them; to see impotent poor people, or maimed soldiers provided for, according to the laws; and rogues, vagabonds, and beggars punished. They are both to license and suppress ale-houses, badgers of corn and victuals, and to punish forestallers, regrators, and ingrossers.

b. Ils ont poier d'inquier de murder car ceo est felon.

* Authority of the justices of peace, &c.

Through these, in effect, run all the county services to the crown, as taxations of subsidies, mustering men, arming them, and levying forces, that is done by a special commission or precept from the King. Any of these justices, by oath taken by a man that he standeth in fear that another man will beat him, or kill him, or burn his house, are to send for the party by warrant of attachment directed to the sheriff or constable, and then to bind the party with sureties by recognizance to the King, to keep the peace, and also to appear at the next sessions of the peace; at which next sessions, when every justice of the peace hath therein delivered all their recognizances so taken, then the parties are called and the cause of binding to the peace examined, and both parties being heard, the whole bench is to determine as they see cause, either to continue the party so bound, or else to discharge him.

Beating, killing, burning of houses.

Attachments for surety of the peace.

Recognizance of the peace delivered by the justices at their sessions.

The justices of peace in their sessions are attended by the constables and bailiffs of all hundreds and liberties within the county, and by the sheriff or his deputy, to be employed as occasion shall serve in executing the precepts and directions of the court. They proceed in this sort: The sheriff doth summon twenty-four freeholders, discreet men of the said county, whereof some sixteen are selected and sworn, and have their charge to serve as the grand jury; the party indicted is to traverse the indictment, or else to confess it, and so submit himself to be fined as the court shall think meet, regard had to the offence, except the punishment be certainly appointed, as often it is, by special statutes.

Quarter sessions held by the justices of the peace.

The justices of peace are many in every county, and to them are brought all traitors, felons, and other malefactors of any sort upon their first apprehension; and that justice to whom they are brought examineth them, and heareth their accusations, but judgeth not upon it; only if he find the suspicion but light, then he taketh bond with sureties of the accused to appear either at the next assizes, if it be a matter of treason or felony; or else at the quarter sessions, if it be concerning riot or misbehaviour, or some other small offence. And he also then bindeth to appear those that give testimony and prosecute the accusation, all the accusers and witnesses, and so setteth the party at large. And at the assizes or sessions, as the case falleth out, he certifieth the recognizances taken of the accused, accusers, and witnesses, who being there are called, and appearing, the cause of the accused is debated according to law for his clearing or condemning.

The authority of justices of the peace out of their sessions.

But if the party accused seem, upon pregnant matter in the accusation, and to the justice, to be guilty, and the offence hainous, or the offender taken with the *maincur*, then the justice is to commit the party by his warrant, called a *mittimus*, to the gaoler of the common gaol of the county, there to remain until the assizes.

USE OF THE LAW.

And then the justice is to certify his accusation, examination, and recognifance taken for the appearances and prosecution of the witnesses, so as the judges may, when they come, readily proceed with him as the law requireth.

The judges of the assizes as they be now came into the place of the ancient justices in eyre, called *justiciarii itinerantes*, which in the prime kings after the conquest, until H. III's time especially, and after in lesser measure even to R. II's time, did execute the justice of the realm; they began in this sort.

The King, not able to dispatch business in his own person, erected the court of King's bench. That not able to receive all, nor meet to draw the people all to one place, there were ordained counties, and the sheriff's turns, hundred courts, and particular leets, and law-days, as before mentioned, which dealt only with crown matters for the public; but not the private titles of lands, or goods, nor the trial of grand offences of treasons and felonies. All the counties of the realm were divided into six circuits: and two learned men, well read in the laws of the realm, were assigned by the King's commission to every circuit, and to ride twice a year through those shires allotted to that circuit, making proclamation beforehand, a convenient time, in every county, of the time of their coming, and place of their sitting, to the end the people might attend them in every county of that court.

They were to stay three or four days in every county, and in that time all the causes of that county were brought before them by the parties grieved, and all the prisoners of every gaol in the said shire, and whatsoever controversies arising concerning life, lands, or goods.

The authority of these judges in eyre is in part translated by act of parliament to justices of assize, which be now the judges of circuits, and they to use the same course that justices in eyre did, to proclaim their coming every half year, and the place of their sitting.

The business of the justices in eyre, and of the justices of assize at this day is much lessened, for that in H. III's time there was erected the court of common-pleas at Westminster, in which court have been ever since, and yet are, begun and handled the great suits of lands, debts, benefices, and contracts, fines for assurance of lands and recoveries, which were wont to be either in the King's bench, or else before the justices in eyre. But the statute of *Mag. Chart. cap. 11.* is negative against it, namely, *Communia placita non sequentur curiam nostram, sed teneantur in aliquo loco certo*; which *locus certus* must be the common-pleas; yet the judges of circuits have now five commissions by which they sit.

The first is a commission of oyer and terminer, directed unto them, and many others of the best account, in their circuits: but in this commission the judges of assize are of the *Quorum*, so as without them there can be no proceeding.

This commission giveth them power to deal with treasons, murders, and all manner of felonies and misdemeanors whatsoever; and this is the largest commission that they have.

The second is a commission of gaol-delivery, that is only to the judges themselves, and the clerk of the assize associate: and by this commission they are to deal with every prisoner in the gaol, for what offence soever he be there, and to proceed with him according to the laws of the realm, and the quality of his offence; and they cannot by this commission do any thing concerning any man, but those that are prisoners in the gaol. The course now in use of execution of this commission

Judges of assize in
place of the ancient
justices in eyre,
temp. R. II.

King's bench, man-
aged by a chief justice,
justices in eyre, and
law-days, dealt only
in crown matters;
justices in eyre dealt
in private titles of
lands or goods, and
in all treasons and
felonies, which the
county courts medi-
ated not in.

The authority of
judges in eyre, trans-
lated to justices of
assize.

Justices of assize
much lessened by
the court of com-
mon pleas, erected
in H. III's time.

Justices of assize sit
by five commissions.

Oyer and terminer,
in which the judges
are of the *Quorum*,
&c.

Gaol-delivery di-
rected only to the
judges and clerk of
assize.

commission of gaol-delivery, is this. There is no prisoner but is committed by some justice of peace, who before he committed him took his examination, and bound his accusers and witnesses to appear and prosecute at the gaol-delivery. This justice doth certify these examinations and bonds, and thereupon the accuser is called solemnly into the court, and when he appeareth, he is willed to prepare a bill of indictment against the prisoner, and go with it to the grand jury, and give evidence upon their oaths, he and the witnesses; which he doth: and then the grand jury write thereupon either *billa vera*, and then the prisoner standeth indicted; or else *ignoramus*, and then he is not touched. The grand jury deliver these bills to the judges in their court, and so many as they find indorsed *billa vera*, they send for those prisoners; then is every man's indictment put and read to him, and they ask him, whether he be guilty or not: if he saith, Guilty, his confession is recorded; if he say, Not guilty, then he is asked how he will be tried; he answereth, By the country. Then the sheriff is commanded to return the names of twelve freeholders to the court, which freeholders be sworn to make true delivery between the King and the prisoner; and then the indictment is again read, and the witnesses sworn to speak their knowledge concerning the fact, and the prisoner is heard at large what defence he can make, and then the jury go together and consult. And after a while they come in with a verdict of Guilty or Not guilty, which verdict the judges do record accordingly. If any prisoner plead Not guilty upon the indictment, and yet will not put himself to trial upon the jury, or stand mute, he shall be pressed.

The manner of the proceedings of the justices of circuits.
Of the judges for the gaol-delivery.

The judges, when many prisoners are in the gaol, do in the end before they go, peruse every one. Those that were indicted by the grand jury, and found Not guilty by the select jury, they judge to be quitted, and so deliver them out of the gaol. Those that are found Guilty by both juries, they judge to death, and command the sheriff to see execution done. Those that refuse trial by the country, or stand mute upon the indictment, they judge to be pressed to death. Some whose offences are pilfering under twelve pence value, they judge to be whipped. Those that confess their indictments, they judge to death, whipping, or otherwise, as their offence requireth. And those that are not indicted at all, but their bill of indictment returned with *ignoramus* by the grand jury, and all others in the gaol, against whom no bills at all are preferred, they do acquit by proclamation out of the gaol; that one way or other they rid the gaol of all the prisoners in it. But because some prisoners have their books, and are burned in the hand, and so delivered, it is necessary to shew the reason thereof. This having their books is called their clergy, which in ancient time began thus.

For the scarcity of the clergy in the realm of England, to be disposed in religious houses, or for priests, deacons, and clerks of parishes, there was a prerogative allowed to the clergy, that if any man that could read as a clerk were to be condemned to death, the bishop of the diocese might, if he would, claim him as a clerk, and he was to see him tried in the face of the court whether he could read or not. The book was prepared and brought by the bishop, and the judge was to turn to some place as he should think meet; and if the prisoner could read, then the bishop was to have him delivered over unto him, to dispose of in some places of the clergy as he should think meet: but if either the bishop would not demand him, or that the prisoner could not read, then was he to be put to death.

Book of Clergy.
Clergy.

Clergy allowed an-
 cients in all offences,
 except treason
 and robbing of
 churches; now
 taken away, 1. In
 murder. 2. In bur-
 glary. 3. Robbery.
 4. Purse-cutting.
 5. Horse-stealing,
 and in divers other
 offences. By the
 stat. of 19 E. judges
 are to allow clergy,
 and to see them
 burned in the hand,
 and to discharge the
 prisoners without
 delivering them to
 the bishop.

4. Commission to
 take *Assizes*, di-
 rected to two judges,
 and the clerk of the
assize.
Nisi Prius.

* *Debitum*
 The manner of pro-
 ceeding in the trial
 of a *debt*. The
 count the jury is
 held in the trial of
 a *debt*.

And this clergy was allowable, in the ancient times and law, for all offences, whatsoever they were, except treason, and the robbing of churches of their goods and ornaments. But by many statutes made since, the clergy is taken away for murder, burglary, robbery, purse-cutting, horse-stealing, and divers other felonies, particularized by the statutes to the judges; and lastly, by a statute made 18 Elizabeth, the judges themselves are appointed to allow clergy to such as can read, being not such offenders from whom clergy is taken away by any statute, and to see them burned in the hand, and so discharge them, without delivering them to the bishop; howbeit, the bishop appointeth the deputy to attend the judges with a book, to try whether they can read or not.

The third commission that the judges of circuits have, is a commission directed to themselves only, and the clerk of assize, to take assizes, by which they are called justices of assize; and the office of those justices is to do right upon writs called assizes, brought before them by such as are wrongfully thrust out of their lands. Of which number of writs there was far greater store brought before them in ancient times than now; for that mens seisin and possessions are sooner recovered by sealing leases upon the ground, and by bringing an *ejectione firmæ*, and trying their title so, than by the long suits of assizes.

The fourth commission is a commission to take *Nisi prius*, directed to none but to the judges themselves, and their clerks of assizes, by which they are called justices of *Nisi prius*. These *Nisi prius* happen in this sort; when a suit is begun for any matter in one of the three courts, the King's bench, common-pleas, or the exchequer here above, and the parties in their pleadings do vary in a point of fact; as for example, if in an action of debt upon obligation the defendant denies the obligation to be his debt; or in any action of trespass grown for taking away goods, the defendant denieth that he took them; or in action of the case for slanderous words, the defendant denieth that he spake them, *etc.* Then the plaintiff is to maintain and prove that the obligation is the defendant's deed, that he either took the goods, or spake the words; upon which denial and affirmation the law saith, that issue is joined betwixt them, which issue of the fact is to be tried by a jury of twelve men of the county, where it is supposed by the plaintiff to be done, and for that purpose the judges of the court do award a writ of *Venire facias* in the King's name to the sheriff of that county, commanding him to cause four and twenty discreet freeholders of his county, at a certain day, to try this issue so joined; out of which four and twenty only twelve are chosen to serve. And that double number is returned, because some may make default, and some be challenged upon kindred, alliance, or partial dealing.

These four and twenty the sheriff doth name and certify to the court, and withal, that he hath warned them to come at the day according to their writ. But because at the first summons there falleth no punishment upon the four and twenty if they come not, they very seldom or never appear upon the first writ; and upon their default there is another writ* returned to the sheriff, commanding him to distrain them by their lands to appear at a certain day appointed by the writ, which is the next term after, *Nisi prius postea tunc ad assisas capiendarum veniant, etc.* of which words the writ is called a *Nisi prius*, and the judges of the circuit of that county in that vacation, and mean time, before the day of appearance appointed for the jury above, here by their commission of *Nisi prius*, have authority to take the appearance of the jury in the county before them, and there

there to hear the witnesses and proofs on both sides, concerning the issue or the fact, and to take the verdict of the jury, and against the day they should have appeared above, to return the verdict read in the court above, which return is called a *Postea*.

Postea.

And upon this verdict, clearing the matter in fact, one way or other, the judges above give judgment for the party for whom the verdict is found, and for such damages and costs as the jury do assess.

By those trials called *Nisi prius*, the juries and the parties are eased much of the charge they should be put to, by coming to London with their evidences and witnesses; and the courts of Westminster are eased of much trouble they should have, if all the juries for trials should appear and try their causes in those courts; for those courts above have little leisure now. Though the juries come not up, yet in matters of great weight, or where the title is intricate or difficult, the judges above, upon information to them, do retain those causes to be tried there, and the juries do at this day, in such causes, come to the bar at Westminster.

The fifth commission that the judges in their circuits do sit by, is the commission of the peace in every county of their circuit. And all the justices of the peace, having no lawful impediment, are bound to be present at the assizes to attend the judges, as occasion shall fall out: if any make default, the judges may set a fine upon him at their pleasure and discretions. Also the sheriff in every shire through the circuit, is to attend in person, or by a sufficient deputy allowed by the judges, all that time they be within the county, and the judges may fine him if he fail, or for negligence or misbehaviour in his office before them; and the judges above may also fine the sheriff, for not returning, or not sufficient returning of writs before them.

5. Commission is a commission of the peace. The justices of the peace and the sheriff are to attend the judges in their county.

Property in lands, how gotten or transferred.

- I. By entry.
- II. By descent.
- III. By escheat.
- IV. Most usually by conveyance.

I. PROPERTY by entry is, where a man findeth a piece of land that no other possesseth, or hath title unto, and he that so findeth it doth enter, this entry gaineth a property. This law seemeth to be derived from this text, *Terram dedit filiis hominum*, which is to be understood, to those that will till and manure it, and so make it yield fruit: and that is he that entereth into it, where no man had it before. But this manner of gaining lands was in the first days, and is not now of use in England, for that by the conquest all the land of this nation was in the Conqueror's hands, and appropriated unto him; except religious and church lands, and the lands in Kent, which by composition were left to the former owners, as the Conqueror found them; so that none but the bishopricks, churches, and the men of Kent, can at this day make any greater title than from the conquest, to any lands in England. And lands possessed without any such title, are in the crown, and not in him that first entereth; as it is in land left by the sea; this land belongeth to the King, and not to him that hath the lands next adjoining, which was the ancient sea banks. This is to be understood of the inheritance

Of the property of land: to be gained by entry.

All lands in England were the Conqueror's, and held of him, except, 1. Religious and church-land. 2. The land of the men of Kent. Lands left by the sea, belongeth to the King.

tance

rance of lands, namely, that the inheritance cannot be gained by the first entry. But an estate for another man's life by occupancy, may at this day be gotten by entry. As a man called A. having land conveyed unto him for the life of B. dieth without making any estate of it, there, whosoever first entereth into the land after the decease of A. getteth the property in the land for time of the continuance of the estate which was granted to A. for the life of B. which B. yet liveth, and therefore the said land cannot revert till B. die. And to the heir of A. it cannot go, for that it is not any estate of inheritance, but only an estate for another man's life; which is not descendable to the heir, except he be specially named in the grant, namely, to him and his heirs. As for the executors of A. they cannot have it, for it is not an estate testamentary, that it should go to the executors as goods and chattels should, so as in truth no man can intitle himself unto those lands; and therefore the law preferreth him that first entreth, and he is called *occupans*, and shall hold it during the life of B. but must pay the rent, perform the conditions, and do no waste: and he may by deed assign it to whom he please in his life-time. But if he die before he assign it over, then it shall go again to whomsoever first entreth and holdeth; and so all the life of B. so often as it shall happen.

Occupancy.

Likewise, if any man doth wrongfully enter into another man's possession, and put the right owner of the freehold and inheritance from it, he thereby getteth the freehold and inheritance by disseisin, and may hold it against all men, but him that hath right, and his heirs, and is called a disseisor. Or if any one die seised of lands, and before his heir doth enter, one that hath no right doth enter into the lands, and holdeth them from the right heir, he is called an abator, and is lawful owner against all men but the right heir.

And if such person, abator or disseisor, so as the disseisor hath quiet possession five years next after the disseisin, do continue their possession, and die seised, and the land descend to his heir, they have gained the right to the possession of the land against him that hath right, till he recover it by fit action real at the common law. And if it be not sued for at the common law, within threescore years after the disseisin, or abatement committed, the right owner hath lost his right by that negligence. And if a man hath divers children, and the elder, being a bastard, doth enter into the land, and enjoyeth it quietly during his life, and dieth thereof so seised, his heirs shall hold the land against all the lawful children, and their issues.

Property of lands
by descent.

II. PROPERTY of lands by descent is, where a man hath lands of inheritance and dieth, not disposing of them, but leaving it to go, as the law casteth it, upon the heir. This is called a descent in law, and upon whom the descent is to light, is the question. For which purpose, the law of inheritance preferreth the first child before all others, and amongst children the male before the female; and amongst males the first born. If there be no children, then the brother; if no brother, then sisters; if neither brothers nor sisters, then uncles, and for lack of uncles, aunts; if none of them, then cousins in the nearest degree of consanguinity, with these three rules of diversities. 1. That the eldest male shall solely inherit; but if it come to females, then they being all in an equal degree of nearness shall inherit all together, and are called parceners, and all they make but one heir to the ancestor. 2. That no brother or sister of the half blood shall inherit to his brother or sister, but as a child to his parents: as for example, if a man

Of descent. three
rules.

Brother or sister of
the half blood shall

have

have two wives, and by either wife a son, the eldest son over-living his father, is to be preferred to the inheritance of the father, being fee-simple; but if he entreteth and dieth without a child, the brother shall not be his heir, because he is of the half blood to him, but the uncle of the eldest brother or sister of the whole blood: yet if the eldest brother had died, or had not entered in the life of the father, either by such entry or conveyance, then the youngest brother should inherit the land that the father had, although it were a child by the second wife, before any daughter by the first. The third rule about descents: The land purchased so by the party himself that dieth, is to be inherited; first, by the heirs of the father's side; then if he have none of that part, by the heirs of the mother's side. But lands descended to him from his father or mother, are to go to that side only from which they came, and not to the other side.

not inherit to his brother or sister, but only as a child to his parents.

Descent.

Those rules of descent mentioned before are to be understood of fee simples, and not of entailed lands; and those rules are restrained by some particular customs of some particular places: as namely, the customs of Kent, that every male of equal degree of childhood, brotherhood, or kindred, shall inherit equally, as daughters shall, being parceners; and in many borough towns of England, the custom alloweth the youngest son to inherit, and so the youngest daughter. The custom of Kent, is called Gavelkind. The custom of boroughs, Burgh-English.

Customs of certain places.

And there is another note to be observed in fee-simple inheritance, and that is, that every heir having fee-simple land or inheritance, be it by common law or by custom, of either Gavelkind or Burgh-English, is chargeable, so far forth as the value thereof extendeth, with the binding acts of the ancestors from whom the inheritance descendeth; and these acts are collateral incumbrances, and the reason of this charge is, *Qui sentit commodum, sentire debet et incommodum sive onus*. As for example, if a man bind himself and his heirs in an obligation, or do covenant by writing for him and his heirs, or do grant an annuity for him and his heirs, or do make a warranty of land, binding him and his heirs to warranty: in all these cases the law chargeth the heir after the death of the ancestor with this obligation, covenant, annuity, and warranty; yet with these three cautions: first, that the party must by special name bind himself and his heirs, or covenant, grant, and warrant for himself and his heirs; otherwise the heir is not to be touched. Secondly, that some action must be brought against the heir, whilst the land or other inheritance resteth in him unaliened away: for if the ancestor die, and the heir, before an action be brought against him upon those bonds, covenants, or warranties, do alien away the land, then the heir is clean discharged of the burden; except the land was by fraud conveyed away of purpose to prevent the suit intended against him. Thirdly, that no heir is farther to be charged than the value of the land descended unto him from the same ancestor that made the instrument of charge, and that land also, not to be sold out-right for the debt, but to be kept in extent, and at a yearly value, until the debt or damage be run out. Nevertheless, if an heir that is sued upon such a debt of his ancestor do not deal clearly with the court when he is sued, that is, if he come not in immediately, and by way of confession set down the true quantity of his inheritance descended, and so submit himself therefore, as the law requireth, then that heir that otherwise demeaneth himself, shall be charged of his own lands or goods, and of his money, for this deed of his ancestor. As for example; if a man bind himself and his heirs in an obligation of one hundred pounds, and dieth leaving but ten acres

Every heir having land is bound by the binding acts of his ancestors, if he be named.

Dyer, 114. Plowd.

Dyer, 149. Plowd.

Day and Pepp's case.

Heir charged for his false p...

of

of land to his heir, if his heir be sued upon the bond, and cometh in, and denieth that he hath any lands by descent, and it is found against him by the verdict that he hath ten acres; this heir shall be now charged by his false plea of his own lands, goods, and body, to pay the hundred pound, although the ten acres be not worth ten pound.

Property of lands by
escheat.
Two causes of
escheat.
1. Bastardy. 2. At-
tainer of treason.
felony.

III. PROPERTY of lands by escheat, is where the owner died seised of the lands in possession without child or other heir, thereby the land, for lack of other heir, is said to escheat to the lord of whom it is holden. This lack of heir happeneth principally in two cases: First, where the land's owner is a bastard. Secondly, where he is attainted of felony or treason. For neither can a bastard have any heir, except it be his own child, nor a man attainted of treason, although it be his own child.

Attainder of treason
incurreth the King.
though lands be not
holden of him:
otherwise in attainder
of felony, &c.
for there the King
shall have but an
annuity, &c. &c.

Upon attainder of treason the King is to have the land, although he be not the lord of whom it is held, because it is a royal escheat. But for felony it is not so, for there the King is not to have the escheat, except the land be holden of him: and yet where the land is not holden of him, the King is to have the land for a year and a day next ensuing the judgment of the attainder, with a liberty to commit all manner of waste all that year in houses, gardens, ponds, lands, and woods.

In escheat. 1. The
tenure. 2. The
manner of the at-
tainer.

In these escheats two things are especially to be observed; the one is, the tenure of the lands, because it directeth the person to whom the escheat belongeth, namely, the lord of the manor of whom the land is holden. 2. The manner of such attainder which draweth with it the escheat. Concerning the tenure of lands, it is to be understood, that all lands are holden of the crown either mediately or immediately, and that the escheat appertaineth to the immediate lord, and not to the mediate. The reason why all land is holden of the crown immediately, or by mesne lords, is this:

The Conqueror
got all the lands of
the realm into his
hands, and reserved
rents and services.
Knight's service in
capite first instituted.

The *Conqueror got by right of conquest all the land of the realm into his own hands in demesne, taking from every man all estate, tenure, property, and liberty of the same, except religious and church lands, and the land in Kent: and still as he gave any of it out of his own hand, he reserved some retribution of rents, or services, or both, to him and to his heirs; which reservation is that which is called the tenure of land.

The reservation in
knight's service.
1. Marriage of the
wards. 2. Home for
service. 3. Homage
and fealty. 4. Pri-
mier feisin.
The policy of the
Conqueror in the
reservation of ser-
vices.

In which reservation he had four institutions, exceeding politic and suitable to the state of a conqueror.

First, Seeing his people to be part Normans, and part Saxons, the Normans he brought with him, the Saxons he found here; he bent himself to conjoin them by marriages in amity, and for that purpose ordained, that if those of his nobles, knights, and gentlemen, to whom he gave great rewards of lands, should die, leaving their heir within age, a male within twenty-one, and a female within fourteen years, and unmarried, then the King should have the bestowing of such heirs in marriage in such a family, and to such persons as he should think meet; which interest of marriage went still implied, and doth at this day in every tenure called knight's service.

Reservation that his
tenant should keep
a horse of service.

The second was, to the end that his people should still be conserved in warlike exercises, and able for his defence. When therefore he gave any good portion of lands, that might make the party of abilities or strength, he withal reserved this

this service, that that party and his heirs having such lands, should keep a horse of service continually, and serve upon him himself when the king went to wars; or else, having impediment to excuse his own person, should find another to serve in his place: which service of horse and man is a part of that tenure called knight's service at this day.

But if the tenant himself be an infant, the King is to hold this land himself until he come to full age, finding him meat, drink, apparel, and other necessaries, and finding a horse and a man with the overplus, to serve in the wars, as the tenant himself should do if he were at full age.

But if this inheritance descend upon a woman that cannot serve by her sex, then the King is not to have the lands, she being of fourteen years of age, because she is then able to have a husband that may do the service in person.

* The third institution was, that upon every gift of land the King reserved a vow and an oath to bind the party to his faith and loyalty: that vow was called homage, the oath fealty. Homage is to be done kneeling, holding his hands between the knees of the lord, saying in the French tongue, I become your man of life and limb, and of earthly honour. Fealty is to take an oath upon a book, that he will be a faithful tenant to the King, and do his service, and pay his rents according to his tenure.

3. Institution of the Conqueror was, that his tenants by knight's service vow,
1. Homage.
2. Fealty.

† The fourth institution was, that for recognition of the King's bounty by every heir succeeding his ancestor in those knight's service lands, the King should have *primer seisin* of the lands, which is one year's profit of the lands; and until this be paid, the King is to have possession of the land, and then to restore it to the heir; which continueth at this day in use, and is the very cause of suing livery, and that as well where the heir hath been in ward, as otherwise.

4. Institution was for recognition of the King's bounty, every heir to pay one year's profit of the lands called *primer seisin*.

These before-mentioned be the rights of the tenure, called knight's service *in capite*, which is as much to say, as tenure *de persona regis*; and *caput* being the chiefest part of the person, it is called a tenure *in capite*, or in chief. And it is also to be noted, that as this tenure *in capite* by knight's service generally was a great safety to the crown, so also the Conqueror instituted other tenures *in capite* necessary to his estate; as namely, he gave divers lands to be holden of him by some special service about his person, or by bearing some special office in his house, or in the field, which have knight's service and more in them, and these be called tenures by grand serjeanty. Also he provided upon the first gift of lands, to have revenues by continual service of ploughing his land, repairing his houses, parks, pales, castles, and the like. And sometimes to a yearly provision of gloves, spurs, hawks, horses, hounds, and the like; which kind of reservations are called also tenures in chief, or *in capite* of the King, but they are not by knight's service, because they required no personal service, but such things as the tenant may hire another to do, or provide for his money. And this tenure is called a tenure by *socage in capite*, the word *soa* signifying the plough; howbeit in this latter time, the service of ploughing the land, and of harvest works, is turned into

Knight's service *in capite* is a tenure *de persona regis*. Tenants by grand serjeanty were to pay relief at the full age of every heir, which was one year's value of the lands so held *ultra repriff*. Grand serjeanty. Petty serjeanty.

The institution of *socage in capite*, and that it is now turned into money-reat.

* Aid money to make the King's eldest son a knight, or to marry his eldest daughter, is likewise due to his Majesty from every one of his tenants in knight's service, that hold by a whole fee 20s. and from every tenant in socage, if his land be worth twenty pound *per annum*. 20s.

his tenant by knight's service: when his Majesty made a voyage royal to war against another nation, those of his tenants that did not attend him there for forty days with horse and furniture fit for service, were to be assessed in a certain sum by act of parliament, to be paid unto his Majesty; which assessment is called *escape*.

† *Socage* was likewise due unto the King from

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money-

money-rent, for that the Kings do not keep their demefne in their own hands, as they were wont to do; yet what lands were *de antiquo dominio coronae*, it well appeareth in the records of the exchequer called the book of *Doom-day*. And the tenants in ancient demefne have many immunities and privileges at this day, that in ancient times were granted unto thofe tenants by the crown; the particulars whereof are too long to fet down.

Thefe tenures *in capite*, as well that by *foage*, as the others by knight's fervice, have this property; that the tenants cannot alien their lands without licence of the King: if they do, the King is to have a fine for the contempt, and may feize the land, and retain it until the fine be paid. And the reason is, becaufe the King would have a liberty in the choice of his tenant, fo that no man fhould pre- fume to enter into thofe lands, and hold them, for which the King was to have thofe fpecial fervices done him, without the King's leave; this licence and fine, as it is now digefted, is eafy and of courfe.

There is an office called the office of alienation, where any man may have a licence at a reasonable rate, that is, at the third part of one year's value of the land moderately rated. A tenant *in capite* by knight's fervice or grand ferjeanty, was refrained by ancient ftatute, that he fhould not give nor alien away more of his lands, than that with the reft he might be able to do the fervice due to the King; and this is now out of ufe.

And to this tenure by knight's fervice in chief was incident, that the King fhould have a certain fum of money called *aid*, due, to be ratably levied amongst all thofe tenants proportionably to their lands, to make his eldeft fon a knight, or to marry his eldeft daughter.

And it is to be noted, that all thofe that hold lands by the tenure of *foage in capite*, although not by knight's fervice, cannot alien without licence, and they are to lie livery, and pay *primer feifin*, but not to be in ward for body or land.

By example and relemblance of the King's policy in thefe institutions of tenures, the great men and gentlemen of this realm did the like fo near as they could; as for example, when the King had given to any of them two thoufand acres of land, this party purpofing in this place to make a dwelling, or, as the old word is, his manion-houfe, or his manor-houfe, did devife how he might make his land a complete habitation to fupply him with all manner of neceffaries; and for that purpofe, he would give of the uttermoft parts of thofe two thoufand acres, 100 or 200 acres, or more or lefs, as he fhould think meet, to one of his moft trully fervants, with fome refervation of rent, to find a horfe for the wars, and go with him when he went with the King to the wars, adding vow of homage, and the oath * of realty, wardship, marriage, and relief. This relief is to pay five pound for every knight's fee, or after that rate for more or lefs at the entrance of every heir; which tenant fo created, and placed, was and is to this day called a tenant by knight's fervice, and not by his own perfon, but of his manors; of thefe he might make as many as he would. Then this lord would provide that the land which he was to keep for his own ufe, fhould be ploughed, and his harveft brought home, his houfe repaired, his park paled, and the like: and for that end he would give fome leffer parcels to fundry others, of twenty, thirty, forty, or fifty acres: referving the fervice of ploughing a certain quantity, or fo many days, of

* Knight's fervice tenure created by the lord, is not a tenure by knight's fervice of the perfon of the lord, but of his manor.

Office of alienation. A licence of alienation is the third part of one year's value of the land moderately rated.

Aid, what. Tenants by knight's fervice *in capite* paid it to make the King's eldeft fon a knight, or to marry his eldeft daughter. Tenants by *foage in capite*.

How manors were at firft created. Manors created by great men in imitation of the King in the institutions of tenures. A manor, the word manor. Knight's fervice tenure reserved to common perfons.

Relief is 5 l. to be paid by every tenant by knight's fervice to his lord, etc.

Some tenures reserved to the lord.

his land, and certain harvest works or days in the harvest to labour, or to repair the house, park-pale, or otherwise, or to give him for his provision, capons, hens, pepper, cummin, roses, gilliflowers, spurs, gloves, or the like: or to pay to him a certain rent, and to be sworn to be his faithful tenant, which tenure was called a socage tenure, and is so to this day; howbeit most of the ploughing and harvest service are turned into money rents.

* The tenants in socage at the death of every tenant were to pay relief, which was not as knight's service is, five pound a knight's fee: but it was, and so is still, one year's rent of the land; and no wardship or other profit to the lord. The remainder of the two thousand acres he kept to himself, which he used to manure by his bondmen, and appointed them at the courts of his manor how they should hold it, making an entry of it into the roll of the remembrances of the acts of his court, yet still in the lord's power to take it away; and therefore they were called tenants at will, by copy of court-roll; being in truth bondmen at the beginning: but having obtained freedom of their persons, and gained a custom by use of occupying their lands, they now are called copy-holders, and are so privileged that the lord cannot put them out, and all through custom. Some copyholders are for lives, one, two, or three successively; and some inheritances from heir to heir by custom; and custom ruleth these estates wholly, both for widows estates, fines, herriots, forfeitures, and all other things.

Relief of tenant in socage, one year's rent and no wardship, or other profit upon the dying of the tenant.

Villenage or tenure by copy of court-roll.

Manors being in this sort made at the first, reason was that the lord of the manor should hold a court, which is no more than to assemble his tenants together at a time by him to be appointed; in which court he was to be informed by oath of his tenants, of all such duties, rents, reliefs, wardships, copy-holds, or the like, that had happened unto him; which information is called a presentment, and then his bailiff was to seize and distrain for those duties if they were denied or withholden, which is called a court baron: and herein a man may sue for any debt or trespass under forty shillings value, and the freeholders are to judge of the cause upon proof produced upon both sides. And therefore the freeholders of these manors, as incident to their tenures, do hold by suit of court, which is to come to the court, and there to judge between party and party in those petty actions; and also to inform the lord of duties, rents, and services unpaid to him from his tenants. By this course it is discerned who be the lords of lands, such as if the tenants die without heir, or be attainted of felony or treason, shall have the land by escheat.

Court baron, with the use of it.

Suit to the court of the lord incident to the tenure of the freeholders.

Now concerning what attainders shall give the escheat to the lord; it is to be noted, that it must either be by judgment of death given in some court of record against the felon found guilty by verdict, or confession of the felony, or it must be by outlawry of him.

What attainders shall give the escheat to the lord. Attainders, 1. By judgment. 2. By verdict or confession. 3. By outlawry, give the lands to the lord. (4) an attainer by outlawry.

The outlawry groweth in this sort; a man is indicted for felony, being not in hold, so as he cannot be brought in person to appear and to be tried, inso much that process of *capias* is therefore awarded to the sheriff, who not finding him, returneth, *non est inventus in balliva mea*; and thereupon another *capias* is awarded to the sheriff; who likewise not finding him maketh the same return: then a writ called an *exigent* is directed to the sheriff, commanding him to proclaim him in his county-court five several court days, to yield his body; which if the sheriff

* All money and escuage money is likewise due unto the lord of their tenants.

do, and the party yield not his body, he is said, by the default, to be outlawed, the coroners there adjudging him outlawed, and the sheriff making the return of the proclamations, and of the judgment of the coroners upon the backside of the writ. This is an attainder of felony, whereupon the offender doth forfeit his lands by an escheat to the lord of whom they are holden.

Prayer of the clergy. But note, that a man found guilty of felony by verdict or confession, and praying his clergy, and thereupon reading as a clerk, and so burnt in the hand and discharged, is not attainted; because he by his clergy preventeth the judgment of death, and is called a clerk convict, who loseth not his lands, but all his goods, chattels, leases, and debts.

He that standeth mute forfeiteth no lands, except for treason. So a man indicted, that will not answer nor put himself upon trial, although he be by this to have judgment of pressing to death, yet he doth forfeit no lands, but goods, chattels, leases, and debts, except his offence be treason, and then he forfeiteth his lands to the crown.

He that killeth himself forfeiteth but his chattels. So a man that killeth himself shall not lose his lands, but his goods, chattels, leases, and debts. So of those that kill others in their own defence, or by misfortune.

Flying for felony, a forfeiture of goods. A man that being pursued for felony, and flieth for it, loses his goods for his flying, although he return and is tried, and found not guilty of the fact.

He that yieldeth his body upon the exigent for felony, forfeiteth his goods. So a man indicted of felony, if he yield not his body to the sheriff until after the exigent of proclamation is awarded against him, this man doth forfeit all his goods for his long stay, although he be not found guilty of the felony; but none is attainted to lose his lands, but only such as have judgments of death by trial upon verdict, or their own confession, or that they be by judgment of the coroners outlawed, as before.

Lands entailed escheat to the King for treason. Besides the escheats of lands to the lords of whom they be holden, for lack of heirs, and by attainder for felony, which only do hold place in fee-simple lands, there are also forfeiture of lands to the crown by attainder of treason; as namely, if one that hath entailed lands commit treason, he forfeiteth the profits of the lands for his life to the crown, but not to the lord.

Stat. 26 H. 8.

Tenant for life committing treason or felony, there shall be no escheat to the lord. And if a man having an estate for life of himself, or of another, commit treason or felony, the whole estate is forfeited to the crown, but no escheat to the lord.

But a copy-hold, for fee-simple, or for life, is forfeited to the lord, and not to the crown; and if it be entailed, the lord is to have it during the life of the offender only, and then his heir is to have it.

The custom of Kent is, that Gavelkind land is not forfeitable nor escheatable for felony: for they have an old saying; The father to the bough, and the son to the plough.

The wife loseth no dower, notwithstanding the husband be attainted of felony. If the husband was attainted, the wife was to lose her thirds in cases of felony and treason, but yet she is no offender; but at this day it is holden by statute law, that she loseth them not for the husband's felony. The relation of these forfeits are these:

Attainder in felony or treason by verdict, confession, or outlawry, forfeiteth all they had from the time of the offence committed. 1. That men attainted of felony or treason, by verdict or confession, do forfeit all the lands they had at the time of their offence committed; and the King or the lord, whosoever of them hath the escheat or forfeiture, shall come in and avoid all leases, statutes, or conveyances done by the offender, at any time since the offence done. And so is the law clear also, if a man be attainted for treason by outlawry: but upon attainder of felony by outlawry, it hath been much

doubted

doubted by the law-books, whether the lord's title by escheat shall relate back to the time of the offence done, or only to the date of teste of the writ of exigent for proclamation, whereupon he is outlawed: howbeit at this day it is ruled, that it shall reach back to the time of the fact; but for goods, chattels, and debts, the King's title shall look no further back than to those goods, the party attainted by verdict or confession had at the time of the verdict and confession given or made, and in outlawries at the time of the exigent, as well in treasons as felonies: wherein it is to be observed, that upon the party's first apprehension, the King's officers are to seize all the goods and chattels, and preserve them together, depending only so much out of them, as is fit for the sustentation of the person in prison, without any wasting, or disposing of them until conviction; and then the property of them is in the crown, and not before.

And so it is upon an attainder of outlawry; otherwise it is in the attainder by verdict, confession, and outlawry, as to their relation for the forfeiture of goods and chattels.

The King's officers to seize a felon's goods and chattels.

It is also to be noted, that persons attainted for felony or treason have no capacity in them to take, obtain, or purchase, save only to the use of the King, until the party be pardoned. Yet the party getteth not back his lands or goods, without a special patent of restitution, which cannot restore the blood without an act of parliament. So if a man have a son, and then is attainted of felony or treason, and pardoned, and purchaseth lands, and then hath issue another son, and dieth; the son he had before he had his pardon, although he be his eldest son, and the patent have the words of restitution to his lands, shall not inherit, but his second son shall inherit them, and not the first; because the blood is corrupted by the attainder, and cannot be restored by patent alone, but by act of parliament. And if a man have two sons, and the eldest is attainted in the life of his father, and dieth without issue, the father living, the second son shall inherit the father's lands; but if the eldest son have any issue, though he die in the life of his father, then neither the second son, nor the issue of the eldest, shall inherit the father's lands, but the father shall there be accounted to die without heir; and the land shall escheat, whether the eldest son have issue or not, afterward or before, though he be pardoned after the death of his father.

A person attainted may purchase, but it shall be to the King's use. There can be no restitution in blood without act of parliament; but a pardon enableth a man to purchase, and the heir begotten after shall inherit those lands.

IV. PROPERTY of lands by conveyance is first distributed into estates for years, for life, in tail, and fee-simple.

Property of land by conveyance divided into,

These estates are created by word, by writing, or by record.

1. For estates of years, which are commonly called leases for years, they are thus made: where the owner of the land agreeth with the other by word of mouth, that the other shall have, hold, and enjoy the land, to take the profits thereof for a time certain of years, months, weeks, or days, agreed between them; and this is called a lease parole: such a lease may be made by writing poll, or indented of demise, grant, and to farm let, and so also by fine of record; but whether any rent be reserved or no, it is not material. Unto these leases there may be annexed such exceptions, conditions, and covenants, as the parties can agree on. They are called chattels real, and are not inheritable by the heirs, but go to the executors, and administrators, and be saleable for debts in the life of the owner, or in the executors or administrators hands by writs of execution upon statutes, recognisances, judgments of debts or damages. They be also forfeitable to the crown by outlawry, by attainder for treason, felony, or premunire, killing himself, flying for felony, although not guilty of the fact, standing out, or refusing

1. Estates in fee.
 2. In tail.
 3. For life.
 4. For years.
- Leases for years: they go to the executor, and not to the heirs. Leases are to be forfeited by attainder.
1. Intestacy.
 2. Felony.
 3. Premunire.
 4. By killing himself.
 5. For flying.
 6. Standing out.

7. By conviction.
8. Petty larceny.
9. Going beyond the
sea without licence.
Extent upon flat-
lands, merchant, or
dropt. Wardship of
body and lands are
chattel, and for-
feitable.
Leafe for life how
forfeitable.

Forfeiture of
livery, &c.

Leafe for life not to
be sold by the sheriff
for debt, but ex-
tended at a yearly
value.

A man that hath
been taken by char-
ter, shall not have
the estate, if left e
for he be attainted.

Occupant.

Of entails, and
how they are created
may be created.

By the Statute of W. 1.
In the time of Ed. 1's
time, estates in tail
were so strengthened,
that they could not
be taken away by
any attainder.
The present course
is that they cannot
be taken.

to be tried by the county, by conviction of felony, by verdict without judgment, petty-larceny, or going beyond the sea without licence.

These are forfeitable to the crown, in like manner as leases for years; namely, interest gotten in other mens lands by extending for debt upon judgment in any court or record, statute merchant, statute staple, recognizances; which being upon statutes, are called tenants by statute merchant, or staple, the other tenants by *assize*, and by wardship of body and lands: for all these are called chattels real, and go to the executors and administrators, and not to the heirs; and are saleable and forfeitable as leases for years are.

2. Leases for lives are also called freeholds: they may also be made by word or writing. There must be livery and seisin given at the making of the lease by him, whom we call the lessor; who cometh to the door, backside, or garden, if it be a house, if not, then to some part of the land, and there he expresth, that he doth grant unto the taker, called the lessee, for term of his life; and in seisin thereof, he delivereth to him a turf, twig, or ring of the door: and if the lease be by writing, then commonly there is a note written on the backside of the lease, with the names of those witnesses who were present at the time of the livery of seisin made. This estate is not saleable by the sheriff for debt, but the land is to be extended for a yearly value, to satisfy the debt. It is not forfeitable by outlawry, except in cases of felony, nor by any of the means before mentioned, of leases for years; saving in an attainder for felony, treason, premunire, and then only to the crown, and not to the lords by escheat.

And though a nobleman or other have liberty by charter, to have all felons goods; yet a tenant holding for term of life, being attainted of felony, doth forfeit unto the King, and not to this nobleman.

If a man have an estate in lands for another man's life, and dieth; this land cannot go to his heir, nor to his executors, but to the party that first entred; and he is called an occupant: as before hath been declared.

A lease for years or for life may be made also by fine of record, or bargain and sale, or covenant, to stand seised upon good considerations of marriage, or blood; the reasons whereof are hereafter expressed.

3. Entails of lands are created by a gift, with livery and seisin to a man, and to the heirs of his body; this word, body, making the entail, may be demonstrated and restrained to the male, or females, heirs or their two bodies, or of the body of either of them, or of the body of the grandfather or father.

Entails of lands began by a statute made in Ed. 1's time, by which also they are so much strengthened, as that the tenant in tail could not put away the land from the heir by any act of conveyance or attainder; nor lett it, nor incumber it, longer than his own life.

But the inconvenience thereof was great, for by that means the land being so sure tied upon the heir as that his father could not put it from him, it made the son to be idollent, negligent, and wasteful, often marrying without the father's consent, and to grow intolent in vice, knowing that there could be no check or disinheriting him. It also made the owners of the land less fearful to commit murders, felonies, treasons, and manslaughters; for that they knew none of these acts could hurt the heir of his inheritance. It hindred men that had entailed lands, that they could not make the best of their lands by fine and improvement, for that none, upon so uncertain an estate as for term of his own life, would give

him

him a fine of any value, nor lay any great stock upon the land, that might yield rent improved.

Lately, those entails did defraud the crown, and many subjects of their debts; for that the land was not liable longer than his own life-time; which caused, that the King could not safely commit any office of account to such whose lands were entailed, nor other men trust them with loan of money.

The prejudice the crown received thereby.

These inconveniencies were all remedied by acts of parliament; as namely, by acts of parliament later than the act of entails, made 4 H. VII. 32 H. VIII. a tenant in tail may disinheret his son by a fine with proclamation, and may by that means also make it subject to his debts and sales.

The stat. 4 H. VII. and 32 H. VIII. to bar entails tail by fine.

By a statute made 26 H. VIII. a tenant in tail doth forfeit his lands for treason; and by another act of parliament, 32 H. VIII. he may make leases good against his heir for one and twenty years, or three lives; so that it be not of his chief houses, lands, or demesne, or any lease in reversion, nor less rent reserved than the tenants have paid most part of one and twenty years before, nor have any manner of discharge for doing waives and spoils: by a statute made 33 H. VIII.

26 H. VIII. 32 H. VIII.

tenants of entailed lands are liable to the King's debts by extent; and by statutes made 13 and 39 Eliz. they are saleable for the arrearages upon his account for his office; so that now it resteth, that entailed lands have two privileges only, which be these. First, not to be forfeited for felonies. Secondly, not to be extended for debts after the party's death, except the entails be cut off by fine and recovery.

33 H. VIII.

13 et 39 Eliz.

Entails two privileges; 1. Not forfeitable for felony.

2. Not extendable for the debts of the party after his death.

proviso not to exclude his next heir.

If he do, to forfeit his estate, and the next heir must enter.

Of a perpetuity, which is an entail with an addition.

These perpetuities would bring in all the former inconveniencies of estates tail.

The inconveniencies of those perpetuities.

But it is to be noted, that since these notable statutes, and remedies provided by statutes, to dock entails, there is started up a devise called perpetuity, which is an entail with an addition of a proviso conditional, tied to his estate, not to put away the land from his next heir; and if he do, to forfeit his own estate. Which perpetuities, if they should stand, would bring in all the former inconveniencies subject to entails, that were cut off by the former-mentioned statutes, and far greater; for by the perpetuity, if he that is in possession start away never so little, as in making a lease, or selling a little quicker, forgetting after two or three descents, as often they do, how they are tied; the next heir must enter, who peradventure is his son, his brother, uncle, or kinsman: and this raiseth unkind suits, setting all the kindred at jars, some taking one part, some another, and the principal parties waiting their time and money in suits of law; so that in the end they are both constrained by necessity to join in a sale of the land, or a great part of it, to pay their debts, occasioned through their suits. And if the chief of the family, for any good purpose of well seating himself, by selling that which lieth far off, to buy that which is near, or for the advancement of his daughters or younger sons, should have reasonable cause to sell, this perpetuity, if it should hold good, restraineth him. And more than that, where many are owners of inheritance of land not entailed, may, during the minority of his eldest son, appoint the profits to go to the advancement of the younger sons and daughters, and pay debts; but by entails and perpetuities, the owners of these lands cannot do it, but they must suffer the whole to descend to the eldest son, and so to come to the crown by wardship all the time of his infancy.

The inconveniencies of those perpetuities.

Wherefore, seeing the dangerous times and untowardly heirs, they might prevent those mischiefs of undoing their houses, by conveying the land from such heirs, if they were not tied to the stake by those perpetuities, and restrained

Query. Whether it be better to restrain men by their perpetuities from alienating

from

tion, or to hazard the undoing of his house by unthrifty posterity.

The last and greatest estate in land is fee-simple.
A remainder cannot be limited upon an estate in fee-simple.

The difference between a remainder and a reversion.

A reversion cannot be granted by word.

Attornment must be had to the grant of the reversion.

The tenant not compellable to attorn, but where the reversion is granted by fine.

Lands may be conveyed, 1. By feoffment. 2. By fine. 3. By recovery. 4. By use. 5. By covenant. 6. By will.

What a fine is, and how land may be conveyed hereby.

The years non claim cannot not. 1. An infant. 2. A feme covert. 3. A mad man. 4. Beyond the seas.

How a feoffment of record.

from forfeiting to the crown, and disposing it to their own, or to their childrens good; therefore it is worthy of consideration, whether it be better for the subject and sovereign to have the lands secured to mens names and bloods by perpetuities, with all the inconveniencies above-mentioned, or to be in hazard of undoing his house by unthrifty posterity.

4. The last and greatest estate of lands is fee-simple, and beyond this there is none of the former for lives, years, or entails; but beyond them is fee-simple. For it is the greatest, last, and uttermost degree of estates in land; therefore he that maketh a lease for life, or a gift in tail, may appoint a remainder when he maketh another for life or in tail, or to a third in fee-simple; but after a fee-simple he can limit no other estate. And if a man do not dispose of the fee-simple by way of remainder, when he maketh the gift in tail, or for lives, then the fee-simple resteth in himself as a reversion. The difference between a reversion and a remainder is this. The remainder is always a succeeding estate, appointed upon the gifts of a precedent estate at the time when the precedent is appointed. But the reversion is an estate left in the giver, after a particular estate made by him for years, life, or entail. Where the remainder is made with the particular estates, then it must be done by deeds in writing, with livery and seisin, and cannot be by words; and if the giver will dispose of the reversion after it remaineth in himself, he is to do it by writing, and not by word, and the tenant is to have notice of it, and to attorn to it, which is to give his assent by word, or paying rent, or the like; and except the tenant will thus attorn, the party to whom the reversion is granted cannot have the reversion, neither can he compel him by any law to attorn, except the grant of the reversion be by fine; and then he may by writ provided for that purpose: and if he do not purchase that writ, yet by the fine the reversion shall pass; and the tenant shall pay no rent, except he will himself, nor be punished for any waste in houses, woods, &c. unless it be granted by bargain and sale by indenture enrolled. These fee-simple estates lie open to all perils of forfeitures, extents, incumbrances, and sales.

Lands are conveyed by these six means:

1. By feoffment, which is, where by deed lands are given to one and his heirs, and livery and seisin made according to the form and effect of the deed; if a lesser estate than fee-simple be given, and livery of seisin made, it is not called a feoffment, except the fee-simple be conveyed, but is otherwise called a lease for life or gift in tail, as above-mentioned.

2. A fine is a real agreement, beginning thus, *Hæc est finalis concordia, etc.* This is done before the King's judges in the court of common-pleas, concerning lands that a man should have from another to him and his heirs, or to him for his life, or to him and the heirs males of his body, or for years certain, whereupon rent may be reserved, but no condition or covenants. This fine is a record of great credit; and upon this fine are four proclamations made openly in the common-pleas; that is, in every term one, for four terms together; and if any man having right to the fine, make not his claim within five years after the proclamation ended, he loseth his right for ever, except he be an infant, a woman covert, a mad-man, or beyond the seas, and then his right is saved; so that the claim be within five years after full age, the death of her husband, recovery of his wits, or return from beyond the seas. This fine is called a feoffment of record, because that it includeth all the feoffment doth, and worketh farther of its own nature,

nature, and barreth entails preemptorily, whether the heir doth claim within five years or not, if he claim by him that levied the fine.

3. Recoveries are where for assurances of lands the parties do agree, that one shall begin an action real against the other, as though he had good right to the land, and the other shall not enter into defence against it, but alledge that he bought the land of I. H. who had warranted unto him, and pray that I. H. may be called in to defend the title, which I. H. is one of the criers of the common-pleas, and is called the common-vouchee. This I. H. shall appear and make as if he would defend it, but shall pray a day to be assigned him in his matter of defence; which being granted him, at the day he maketh default, and thereupon the court is to give judgment against him; which cannot be for him to lose his lands, because he hath it not, but the party that he hath sold it to hath that, who vouched him to warrant it.

What recoveries are.

Common vouchee one of the criers of the court.

Therefore the demandant who hath no defence made against it, must have judgment to have the land against him that he sued, who is called the tenant, and the tenant is to have judgment against I. H. to recover in value so much land of his, where in truth he hath none, nor never will. And by this device, grounded upon the strict principles of law, the first tenant loseth the land, and hath nothing for it; but it is by his own agreement for assurance to him that brought it.

Judgment for the demandant against the tenant in tail.

Judgment for tenant to recover so much land in value of the common vouchee.

This recovery barreth entails, and all remainders and reversions that should take place after the entails, saving where the King is giver of the entail, and keepeth the reversion to himself; then neither the heir, nor the remainder, nor the reversion, is barred by the recovery.

A recovery barreth an estate tail and all reversions and remainders thereupon.

The reason why the heirs, remainders, and reversions are thus barred, is because in strict law the recompence adjudged against the crier that was vouchee, is to go in succession of estate as the land should have done, and then it was not reason to allow the heir the liberty to keep the land itself, and also to have recompence; and therefore he loseth the land, and is to trust to the recompence.

The reason why a common recovery barreth those in remainder and reversions.

This slight was first invented, when entails fell out to be so inconvenient as is before declared, so that men made no conscience to cut them off, if they could find law for it. And now by use, those recoveries are become common assurances against entails, remainders, and reversions, and are the greatest security purchasers have for their money; for a fine will bar the heir in tail, and not the remainder, nor reversion, but a common recovery will bar them all.

The many inconveniences of estates in tail brought in these recoveries, which are made now common conveyances and assurances for land.

Upon feoffments and recoveries, the estate doth settle as the use and intent of the parties is declared by word or writing, before the act was done: as for example, if they make a writing that one of them shall levy a fine, make a feoffment, or suffer a common recovery to the other; but the use and intent is, that one should have it for his life, and after his decease a stranger to have it in tail, and then a third in fee-simple: in this case the land settlenth in an estate according to the use and intent declared; and that by reason of the statute made 27 H. VIII. conveying the land in possession to him that hath interest in the use, or intent of the fine, feoffment, or recovery, according to the use and intent of the parties.

Upon fines, feoffments, and recoveries, the estate doth settle according to the intent of the parties.

Upon this statute is likewise grounded the fourth and fifth of the six conveyances, namely, bargains and sales, and covenants to stand seized to uses; for this

Bargains, sales, and covenants to stand seized to a use, are

all grounded upon
one statute.

What a use is.

Before 27 H. 8. there
was no remedy for a
use, but in chan-
cery.

The stat. of 27 H. 8.
doth not pass land
upon the payment
of money without
a deed indented
and inrolled.

The stat. of 27 H. 8.
extendeth not to
places where they
did inroll deeds.

A covenant to stand
seised to a use.

Upon an agreement
in writing to stand
seised to the use of
any of his kindred,
a use may be cre-
ated, &c.

A covenant to stand
seised to a use need-
eth not inrollment
as a bargain and sale
to a use doth, &c.

Upon a fine, feoff-
ment, or recovery, a
man may limit the
use to whom he list-
eth, without consid-
eration of blood or
money. *Quia in*
in a bargain and sale,
or covenant,
of the conveyance
of land by will.

statute, wheresoever it findeth an use, conjoineth the possession to it, and turneth it into like quality of estate, condition, rent, and the like, as the use hath.

4. The use is but the equity and honesty to hold the land *in conscientia boni viri*. As for example; I and you agree that I shall give you money for your land, and you shall make me assurance of it. I pay you the money, but you made me not assurance of it. Here although the estate of the land be still in you, yet the equity and honesty to have it is with me; and this equity is called the use, upon which I had no remedy but in chancery, until this statute was made of 27 H. VIII. and now this statute conjoineth and conveyeth the land to him that hath the use. I for my money paid to you, have the land itself, without any other conveyance from you; and it is called a bargain and sale.

But the parliament that made that statute did foresee, that it would be mischievous that mens lands should so suddenly, upon the payment of a little money, be conveyed from them, peradventure in an alehouse or a tavern upon strainable advantages, did therefore gravely provide another act in the same parliament, that the land upon payment of this money should not pass away, except there were a writing indented, made between the said two parties, and the said writing also within six months inrolled in some of the courts at Westminster, or in the sessions-rolls in the shire where the land lieth; unless it be in cities or corporate towns where they did use to inroll deeds, and there the statute extendeth not.

5. The fifth conveyance is a covenant to stand seised to uses. It is in this sort: A man that hath a wife and children, brethren and kinsfolks, may by writing under his hand and seal agree, that for their or any of their preferment he will stand seised of his lands to their uses, either for life, in tail, or fee, so as he shall see cause; upon which agreement in writing, there ariseth an equity or honesty, that the land should go according to those agreements; nature and reason allowing these provisions; which equity and honesty is the use. And the use being created in this sort, the statute of 27 H. VIII. before mentioned, conveyeth the estate of the land, as the use is appointed.

And so this covenant to stand seised to uses, is at this day, since the said statute, a conveyance of land; and with this difference from a bargain and sale, in that this needeth no enrollment, as a bargain and sale doth; nor needeth it to be in writing indented, as bargain and sale must: and if the party to whose use he agreeth to stand seised of the land, be not wife, or child, cousin, or one that he meaneth to marry, then will no use rise, and so no conveyance; for although the law alloweth such weighty considerations of marriage and blood raise uses, yet doth it not admit so trifling considerations, as of acquaintance, schooling, services, or the like.

But where a man maketh an estate of his land to others, by fine, feoffment, or recovery, he may then appoint the use to whom he listeth, without respect of marriage, kindred, or other things; for in that case his own will and declaration guideth the equity of the estate. It is not so when he maketh no estate, but agreeth to stand seised, nor when he hath taken any thing, as in the cases of bargain and sale, and covenant, to stand seised to uses.

6. The last of the six conveyances is a will in writing; which course of conveyance was first ordained by a statute made 32 H. VIII. before which statute no man might give land by will, except it were in a borough town, where there was an

an especial custom that men might give their lands by will; as in London, and many other places.

The not giving of land by will was thought to be a defect at common law, that men in wars, or suddenly falling sick, had no power to dispose of their lands, except they could make a feoffment, or levy a fine, or suffer a recovery; which lack of time would not permit: and for men to do it by these means, when they could not undo it again, was hard; besides, even to the last hour of death, mens minds might alter upon further proofs of their children or kindred, or increase of children or debt, or defect of servants or friends.

The not disposing of lands by will, was thought to be a defect at the common law.

For which cause, it was reason that the law should permit him to reserve to the last instant the disposing of his lands, and to give him means to dispose of it; which seeing it did not fitly serve, men used this devise:

The course that was invented before the stat. of 32 H. 8. first gave power to devise lands by will, was a conveyance of lands to feoffees in trust, to such persons as they should declare in their will.

They conveyed their full estates of their lands, in their good health, to friends in trust, properly called feoffees in trust; and then they would by their wills declare how their friends should dispose of their lands; and if those friends would not perform it, the court of chancery was to compel them by reason of trust; and this trust was called the use of the land, so as the feoffees had the land, and the party himself had the use; which use was in equity, to take the profits for himself, and that the feoffees should make such an estate as he should appoint them; and if he appointed none, then the use should go to the heir, as the estate itself of the land should have done; for the use was to the estate like a shadow following the body.

By this course of putting lands into use there were many inconveniencies, as this use, which grew first for a reasonable cause, namely, to give men power and liberty to dispose of their own, was turned to deceive many of their just and reasonable rights; as namely, a man that had cause to sue for his land, knew not against whom to bring his action, nor who was owner of it. The wife was defrauded of her thirds; the husband of being tenant by courtesy; the lord of his wardship, relief, heriot, and escheat; the creditor of his extent for debt; the poor tenant of his lease; for these rights and duties were given by law from him that was owner of the land, and none other; which was now the feoffee of trust; and so the old owner, which we call the feoffor, should take the profits, and leave the power to dispose of the land at his discretion to the feoffee; and yet he was not such a tenant as to be seised of the land, so as his wife could have dower, or the lands be extended for his debts, or that he could forfeit it for felony or treason, or that his heir could be in ward for it, or any duty of tenure fall to the lord by his death, or that he could make any leases of it.

The inconveniencies of putting land into use.

Which frauds by degrees of time as they increased, were remedied by divers statutes: as namely, by a statute of 1 H. VI. and 4 H. VIII. it was appointed that the action may be tried against him which taketh the profits, which was then *cestuy que use*; by a statute made 1 R. III. leases and estates made by *cestuy que use* are made good; and estates by him acknowledged. 4. H. VII. the heir of *cestuy que use* is to be in ward; 16 H. VIII. the lord is to have relief upon the death of any *cestuy que use*.

The frauds of conveyances to use, by degrees of time, as they increased, were remedied by the statutes.

Which frauds nevertheless multiplying daily, in the end, 27 H. VIII. the parliament, purposing to take away all those uses, and reducing the law to the ancient form of conveying of lands by public livery of seisin, fine, and recovery, did ordain, that where lands were put in trust or use, there the possession and

27 H. 8 taking away all uses, reduceth the law to the ancient form of conveyances of land, by

feoffment, fine and recovery.

In what manner the Stat. of 32 H. 8. giveth power to dispose of lands by will.

If a man be seised of *capite* lands and socage, he cannot devise but two parts of the whole.

The third part must descend to the heir to answer wardship, livery and seisin to the crown.

A conveyance by devise of *capite* lands to the wife for her jointure, &c. void for a third part, by 32 H. VIII.

But a conveyance by act executed in the life-time of the party of such lands to such uses is not void: but if the heir be within age, he shall have one third to be in ward.

Entailed lands part of the thirds.

The King nor lord cannot meddle if a full third part be left to descend to the heir.

The manner of making supply, when the part of the heir is not a full third.

The statutes give power to the testator to set out the third himself, &c.

estate should be presently carried out of the friends in trust, and settled and invested on him that had the uses, for such term and time as he had the use.

By this statute of 27 H. VIII. the power of disposing land by will is clearly taken away amongst those frauds; whereupon 32 H. VIII. another statute was made, to give men power to give lands by will in this sort. First, it must be by will in writing. Secondly, he must be seised of an estate in fee-simple; for tenant for another man's life, or tenant in tail, cannot give land by will; by that statute 32 H. VIII. he must be solely seised, and not jointly with another; and then being thus seised, for all the land he holdeth in socage tenure, he may give it by will, except he hold any piece of land *in capite* by knight's service of the King; and then laying all together, he can give but two parts by will: for the third part of the whole, as well in socage as *in capite*, must descend to the heir, to answer wardship, livery, and primer seisin to the crown.

And so if he hold lands by knight's service of a subject, he can devise of the land but two parts, and the third the lord by wardship, and the heir by descent is to hold.

And if a man that hath three acres of land holden *in capite* by knight's service, do make a jointure to his wife of one, and convey another to any of his children, or to friends, to take the profits, and to pay his debts, or legacies, or daughters portions, then the third acre or any part thereof he cannot give by will, but must suffer it to descend to the heir, and that must satisfy wardship.

Yet a man having three acres as before, may convey all to his wife, or children, by conveyance in his life-time, as by feoffment, fine, recovery, bargain and sale, or covenant to stand seised to uses, and disinherit the heir. But if the heir be within age when his father dieth, the King or other lord shall have that heir in ward, and shall have one of the three acres during the wardship, and to sue livery and seisin. But at full age the heir shall have no part of it, but it shall go according to the conveyance made by the father.

It hath been debated how the thirds shall be set forth. For it is the use, that all lands which the father leaveth to descend to the heir, being fee-simple, or in tail, must be part of the thirds; and if it be a full third, then the King, nor heir, nor lord, can intermeddle with the rest; if it be not a full third, yet they must take it to much as it is, and have a supply out of the rest.

This supply is to be taken thus; if it be the King's ward, then by a commission out of the court of wards, whereupon a jury by oath must set forth so much as shall make up the thirds, except the officers of the court of wards can otherwise agree with the parties. If there be no wardship due to the King, then the other lord is to have this supply by a commission out of the chancery, and jury thereupon.

But in all those cases, the statutes do give power to him that maketh the will, to set forth and appoint of himself which lands shall go for thirds, and neither King nor lord can refuse it. And if it be not enough, yet they must take that in part, and only have a supply in manner as before is mentioned out of the rest.

Property in goods.

- Of the several ways whereby a man may get property in goods or chattels.
- I. By gift.
 - II. By sale.
 - III. By stealing.
 - IV. By waving.
 - V. By straying.
 - VI. By shipwreck.
 - VII. By forfeiture.
 - VIII. By executorship.
 - IX. By administration.
 - X. By legacy.

I. Property by gift.

By gift, the property of goods may be passed by word or writing; but if there be a general deed of gift made of all his goods, this is suspicious to be done upon fraud, to deceive the creditors.

And if a man who is in debt make a deed of gift of all his goods to protect the taking of them in execution for his debt, this deed of gift is void, as against those to whom he stood indebted; but as against himself, his own executors or administrators, or any man to whom afterwards he shall sell or convey them, it is good.

II. By sale.

Property in goods by sale. By sale, any man may convey his own goods to another; and although he may fear execution for debts, yet he may sell them out-right for money at any time before the execution served; so that there be no reservation of trust between them, that, repaying the money, he shall have the goods again; for that trust, in such case, doth prove plainly a fraud, to prevent the creditors from taking the goods in execution.

III. By theft, or taking in jeft.

Property of goods by theft, or taking in jeft. If any man steal my goods or chattels, or take them from me in jeft, or borrow them of me, or as a trespasser or felon carry them to the market or fair, and sell them, this sale doth bar me of the property of my goods, saving that if he be a horse he must be ridden two hours in the market or fair, between ten and five a clock, and tolled for in the toll-book, and the feller must bring one to avouch his sale, known to the toll-book-keeper: or else the sale bindeth me not. And for any other goods, where the sale in a market or fair shall bar the owner, being not the feller of his property, it must be sale in a market or fair where usually things of that nature are sold. As for example; if a man steal a horse, and sell him in Smithfield, the true owner is barred by this sale; but if he sell the horse in Cheapside, Newgate, or Westminster market, the true owner is not barred by this sale; because these markets are usual for flesh, fish; etc. and not for horses.

So whereas by the custom of London in every shop there is a market all the days of the week, saving Sundays and Holidays; yet if a piece of plate or jewel that is lost, or chain of gold or pearl that is stolen or borrowed, be sold in a draper's or scrivener's shop, or any other but a goldsmith's, this sale barreth not the true owner, *et sic in similibus.*

Yet.

The owner may seize his goods after they are stolen.

If the thief be condemned for felony, or outlawed, or forfeit the stolen goods to the crown, the owner is without remedy.

When the owner may take his goods from the thief. If he convict the thief of the same felony, he shall have his goods again by a writ of restitution.

Yet by stealing alone of goods, the thief getteth not such property, but that the owner may seize them again wheresoever he findeth them, except they were sold in fair or market, after they were stolen, and that *bona fide* without fraud.

But if the thief be condemned of the felony, or outlawed for the same, or outlawed in any personal action, or have committed a forfeiture of goods to the crown, then the true owner is without remedy.

Nevertheless, if fresh after the goods were stolen, the true owner maketh pursuit after the thief and goods, and taketh the goods with the thief, he may take them again: and if he make no fresh pursuit, yet if he prosecute the felon, so far as justice requireth, that is, to have him arraigned, indicted, and found guilty, though he be not hanged, nor have judgment of death, or have him outlawed upon the indictment; in all these cases he shall have his goods again, by a writ of restitution to the party in whose hands they are.

IV. By waving of goods.

By waving of goods, a property is gotten thus. A thief having stolen goods, being pursued, flieth away and leaveth the goods. This leaving is called waving, and the property is in the King; except the lord of the manor have right to it, by custom or charter.

But if the felon be indicted, adjudged, or found guilty, or outlawed, at the suit of the owner of these goods, he shall have restitution of these goods, as before.

V. By straying.

By straying, property in live cattle is thus gotten. When they come into other mens grounds straying from the owners, then the party or lord into whose grounds or manors they come, causeth them to be seised, and a wythe put about their necks, and to be cried in three markets adjoining, shewing the marks of the cattle; which done, if the true owner claimeth them not within a year and a day, then the property of them is in the lord of the manor whereunto they did stray, if he have all strays by custom or charter, else to the King.

VI. Wreck, and when it shall be said to be.

By shipwreck, property of goods is thus gotten. When a ship laden is cast away upon the coasts, so that no living creature that was in it when it began to sink escaped to land with life, then all those goods are said to be wrecked, and they belong to the crown if they be found; except the lord of the soil adjoining can intitle himself unto them by custom, or by the King's charter.

VII. Forfeitures.

By forfeitures, goods and chattels are thus gotten. If the owner be outlawed, if he be indicted of felony, or treason, or either confess it, or be found guilty of it, or refuse to be tried by peers or jury, or be attainted by judgment, or fly for felony, although he be not guilty, or suffer the exigent to go forth against him, although he be not outlawed, or that he go over the seas without licence, all the goods he had at the judgment, he forfeiteth to the crown; except some lord by charter can claim them. For in those cases prescription will not serve, except it be so ancient, that it hath had allowance before the justices in eyre in their circuits, or in the King's bench in ancient time.

VIII. By executorship.

By executorship goods are thus gotten. When a man possessed of goods maketh his last will and testament in writing or by word, and maketh one or more executors thereof; these executors have, by the will and death of the parties, all the property of their goods, chattels, leases for years, wardships and extents, and all right concerning those things.

Those executors may meddle with the goods, and dispose of them before they prove the will, but they cannot bring an action for any debt or duty before they have proved the will. Executors may before probat dispose of the goods, but not bring an action for any debt.

The proving of the will is thus. They are to exhibit the will into the bishop's court, and there they are to bring the witnesses, and there they are to be sworn, and the bishop's officers are to keep the will original, and certify the copy thereof in parchment under the bishop's seal of office; which parchment so sealed, is called the will proved. What probat of the will is, and in what manner it is made

IX. By letters of administration.

By letters of administration property in goods is thus gotten. When a man possessed of goods dieth without any will, there such goods as the executors should have had, if he had made a will, were by ancient law to come to the bishop of the diocese, to dispose for the good of his soul that died, he first paying his funeral and debts, and giving the rest *ad pios usus*.

This is now altered by statute laws, so as the bishops are to grant letters of administration of the goods at this day to the wife if she requireth it, or children, or next of kin; if they refuse it, as often they do, because the debts are greater than the estate will bear, then some creditor or some other will take it as the bishop's officers shall think meet. It groweth often in question what bishop shall have the right of proving wills, and granting administration of goods. Prius.

In † which controverly the rule is thus, that if the party dead had at the time of his death *bona notabilia* in diverse dioceses of some reasonable value, then the archbishop of the province where he died is to have the probat of his will, or to grant the administration of his goods, as the case falleth out; otherwise the bishop of the diocese where he died is to do it.

If there be but one executor made, yet he may refuse the executorship, coming before the bishop, so that he hath not intermeddled with any of the goods before, or with receiving debts, or paying legacies. † Where the intestate had bona notabilia in diverse dioceses, then the archbishop of that province where he died is to commit the administration.

And if there be more executors than one, so many as list may refuse; and if any one take it upon him, the rest that did once refuse may, when they will, take it upon them; and no executor shall be farther charged with debts or legacies, than the value of the goods come to his hands; so that he foresee that he pay debts upon record, first debts to the King, then upon judgments, statutes, recognizances, then debts by bond and bill sealed, rent unpaid, servants wages, payment to head workmen, and lastly, shop-books and contracts by word. For if an executor or administrator pay debts to others before debts to the King, or debts due by bond before those due by record, or debts by shop-books and contracts before those by bond, arrearages of rent, and servants or workmens wages, he shall pay the same over again to those others in the said degrees. Executor may refuse before the bishop, if he have not intermeddled with the goods.

But yet the law giveth them choice, that where divers have debts due in equal degree of record or specialty, he may pay which of them he will, before any other. Debts due in equal degree of record, the executor may pay

- 1. Judgments.
- 2. Stat. recogn.
- 3. Debts by bonds and bills sealed.
- 4. Rent unpaid.
- 5. Servants wages.
- 6. Head workmen.
- 7. Shop books and contracts by word.

which of them he
may do before suit
is commenced.

Any one executor
may do as much as
all together; but if
a debt be released
and a debt wanting,
he only shall be
charged.

Otherwise of admin-
istrators.

Executor dieth mak-
ing his executor,
the second executor
shall be executor to
the first testator.

But otherwise, if the
administrator die
making his executor,
or if administration
be committed of his
goods.

In both cases the or-
dinary shall commit
administration of the
goods of the first in-
testate. Executors or
administrators may
retain.

Executors or admin-
istrators may re-
tain; because the
executors are charg-
ed to pay some debts
before legacies.

Legacies are to be
paid before debts by
shop-books, bill un-
sealed, or contracts
by word.

Executor may pay
which legacy he will
first.

If the executors do
want, they may sell
any legacy to pay
debt.

When a will is made
and no executor
named, administra-
tion is to be com-
mitted *cum testa-
mento annexo*.

suit brought against him; but if suit be brought he must first pay them that get judgment against him.

Any one executor may convey the goods, or release debts without his compa-
nion, and any one by himself may do as much as altogether; but one man's re-
leasing of debts or selling of goods, shall not charge the other to pay so much of
the goods, if there be not enough to pay debts; but it shall charge the party him-
self that did so release or convey.

But it is not so with administrators, for they have but one authority given them
by the bishop over the goods, which authority being given to many is to be exe-
cuted by all of them joined together.

And if an executor die making an executor, the second executor is executor to
the first testator.

But if an administrator die intestate, then his administrator shall not be exe-
cutor or administrator to the first; but in that case the bishop, whom we call the
ordinary, is to commit the administration of the first testator's goods to his wife,
or next of kin, as if he had died intestate; always provided, that that which the
executor did in his life-time, is to be allowed for good. And so if an adminis-
trator die and make his executor, the executor of the administrator shall not be exe-
cutor to the first intestate; but the ordinary must now commit the administration
of the goods of the first intestate again.

If the executor or administrator pay debts, or funerals, or legacies of his own
money, he may retain so much of the goods in kind, of the testator or intestate,
and shall have property of it in kind.

X. Property by legacy.

Property by legacy, is where a man maketh a will and executors, and giveth le-
gacies, he or they to whom the legacies are given must have the assent of the exe-
cutors, or one of them, to have his legacy; and the property of that legacy or
other goods bequeathed unto him, is said to be in him; but he may not enter nor
take his legacy without the assent of the executors, or one of them; because the
executors are charged to pay debts before legacies. And if one of them assent to
pay legacies, he shall pay the value thereof of his own purse, if there be not other-
wise sufficient to pay debts.

But this is to be understood by debts of record to the King, or by bill and
bond sealed, or arrearages of rent, or servants or workmens wages; and not debts
of shop-books, or bills unsealed, or contract by word; for before them legacies
are to be paid.

And if the executors doubt that they shall not have enough to pay every
legacy, they may pay which they list first; but they may not sell any special
legacy which they will to pay debts, or a lease of goods to pay a money legacy.
But they may sell any legacy which they will to pay debts, if they have not
enough besides.

If a man make a will and make no executors, or if the executors refuse, the
ordinary is to commit administration, *cum testamento annexo*, and take bonds of the
administrators to perform the will, and he is to do it in such sort, as the executor
should have done, if he had been named.

A N

Account of the lately erected Service,

C A L L E D,

The Office of COMPOSITIONS for ALIENATIONS.

Written [about the close of 1598] by Mr. FRANCIS BACON.

And published from a MS. in the Inner-Temple Library.

ALL the finances or revenues of the imperial crown of this realm of Eng-
land, be either extraordinary or ordinary. The fundry
forts of the
royal reve-
nue.

Those extraordinary, be fifteenths and tenths, subsidies, loans, benevolences,
aids, and such others of that kind, that have been or shall be invented for support-
ation of the charges of war; the which as it is entertained by diet, so can it not
be long maintained by the ordinary fiscal and receipt.

Of these that be ordinary, some are certain and standing, as the yearly rents of
the demefne or lands; being either of the ancient possessions of the crown, or of
the later augmentations of the same.

Likewise the fee farms reserved upon charters granted to cities and towns corpo-
rate, and the blanch rents and lath silver answered by the sheriffs. The residue of
these ordinary finances be casual, or uncertain, as be the escheats and forfeitures, the
customs, butlerage and impost, the advantages coming by the jurisdiction of the
courts of record and clerks of the market, the temporalities of vacant bishoprics,
the profits that grow by the tenures of lands, and such like, if there any be.

And albeit that both the one sort and other of these be at the last brought unto
that office of her majesty's exchequer, which we, by a metaphor, do call the pipe, The pipe.
as the civilians do by a like translation name it *Fiscus*, a basket or bag, because
the whole receipt is finally conveyed into it by the means of divers small pipes
or quills, as it were water into a great head or cistern; yet nevertheless some of
the same be first and immediately left in other several places and courts, from
whence they are afterwards carried by silver streams, to make up that great lake,
or sea, of money.

As for example, the profits of wards and their lands be answered into that court
which is proper for them; and the fines for all original writs, and for causes that
pass the great seal, were wont to be immediately paid into the hanaper of the The hanaper.
chancery: howbeit now of late years, all the sums which are due, either for any
writ of covenant, or of other sort, whereupon a final concord is to be levied in
the common bench, or for any writ of entry, whereupon a common recovery is
to be suffered there; as also all sums demandable, either for licence of alienation
to be made of lands holden in chief, or for the pardon of any such alienation,
already made without licence, together with the mean profits that be forfeited for

that offence and trespass, have been stayed in the way to the hanaper, and been lett to farm, upon assurance of three hundred pound of yearly standing profit, to be increased over and above that casual commodity, that was found to be answered in the hanaper for them, in the ten years, one with another, next before the making of the same lease.

This office is
derived out of
the hanaper.

And yet so as that yearly rent of increase is now still paid into the hanaper by four gross portions, not altogether equal, in the four usual open terms of St. Michael, and St. Hilary, of Easter, and the Holy Trinity, even as the former casualty itself was wont to be, in parcel meal, brought in and answered there.

The name of
the office.

And now forasmuch as the only matter and subject about which this farmer or his deputies are employed, is to rate or compound the sums of money payable to her majesty, for the alienation of lands that are either made without licence, or to be made by licence, if they be holden in chief, or to pass for common recovery, or by final concord to be levied, though they be not so holden, their service may therefore very aptly and agreeably be termed the office of compositions for alienations. Whether the advancement of her majesty's commodity in this part of her prerogative, or the respect of private lucre or both, were the first motives thus to dissever this member, and thereby as it were to mayhem the chancery, it is neither my part nor purpose to dispute.

The scope of
the discourse
and the parts
thereof.

But for a full institution of the service as it now standeth, howsoever some men have not spared to speak hardly thereof, I hold worthy my labour to set down as followeth.

First, That these fines, exacted for such alienations, be not only of the greatest antiquity, but are also good and reasonable in themselves: secondly, that the modern and present exercise of this office, is more commendable than was the former usage: and lastly, that as her majesty hath received great profit thereby, so may she, by a moderate hand, from time to time reap the like, and that without just grief to any of her subjects.

The first part
of the treatise.

As the lands that are to be aliened, be either immediately holden in chief, or not so holden of the queen: so be these fines or sums respectively of two sundry sorts. For upon each alienation of lands, immediately held of her majesty in chief, the fine is rated here, either upon the licence before the alienation is made, or else upon the pardon when it is made without licence. But generally for every final concord of lands to be levied upon a writ of covenant, *warrantia chartae*, or other writ, upon which it may be orderly levied, the sum is rated here upon the original writ, whether the lands be held of the queen, or of any other person; if at the least the lands be of such value, as they may yield the due fine. And likewise for every writ of entry, whereupon a common recovery is to be suffered, the queen's fine is to be rated there upon the writ original, if the lands comprised therein be held of her by the tenure of her prerogative, that is to say, in chief, or of her royal person.

The king's
tenancy of
lands held
of the crown
aliened without
licence.

1 E. III. c. 12.

So that I am hereby induced, for avoiding of confusion, to speak severally, first of the means for alienation of lands held in chief, and then of the fines upon the same writ original. That the king's tenant in chief could not in ancient time alien his tenancy without the king's licence, it appeareth by the statute, 1 E. III. cap. 12. where it is thus written: "Whereas divers do complain, that
" the lands, holden of the king in chief, and aliened without licence, have been
" seized into the king's hands for such alienation, and holden as forfeit: the king
" shall

“ shall not hold them as forfeit in such a case, but granteth that, upon such alienations, there shall be reasonable fines taken in the chancery by due process.”

So that it is hereby proved, that before this statute, the offence of such alienation, without licence, was taken to be so great, that the tenant did forfeit the land thereby; and consequently that he found great favour there by this statute, to be reasonably fined for his trespass.

And although we read an opinion 20 *lib. Aff. parl.* 17, et 26. *Aff. parl.* 37. which also is repeated by Hankf. 14 *il.* 4. *fol.* 3. in which year Magna Charta was confirmed by him, the king's tenant in chief might as freely alien his lands without licence, as might the tenant of any other lord: yet forasmuch as it appeareth not by what statute the law was then changed, I had rather believe, with old judge Thorpe and late justice Stanford, that even at the common law, which is as much as to say, as from the beginning of our tenures, or from the beginning of the English monarchy, it was accounted an offence in the king's tenant in chief, to alien without the royal and express licence.

And I am sure, that not only upon the entering, or recording, of such a fine for alienation, it is wont to be said *pro transgressione in hac parte facta*; but that you may also read amongst the records in the Tower, *Fines* 6 *Hen. Reg.* 3. *Memb.* 4. a precedent of a *capias in manum regis terras alienatas sine licentia regis*, and that namely of the manor of Coselescombe in Kent, whereof Robert Cesterton was then the king's tenant in chief. But were it that, as they say, this began first 20 *Hen. III.* yet it is above three hundred and sixty years old, and of equal if not more antiquity than Magna Charta itself, and the rest of our most ancient laws; the which never found assurance by parliament, until the time of King Edw. I. who may be therefore worthily called our English Solon or Lycurgus.

Now therefore to proceed to the reason and equity of exacting these fines for such alienations, it standeth thus: when the king, whom our law understandeth to have been at the first both the supreme lord of all the persons, and sole owner of all the lands within his dominions, did give lands to any subject to hold them of himself, as of his crown and royal diadem, he vouchsafed that favour upon a chosen and selected man, not minding that any other should, without his privity and good liking, be made owner of the same. And therefore his gift has this secret intention inclosed within it, that if his tenant and patentee shall dispose of the same without his kingly assent first obtained, the lands shall revert to the king, or to his successors, that first gave them: and that also was the very cause, as I take it, why they were anciently seized into the king's hands as forfeited by such alienation, until the making of the said statute, 1 *Edw. III.* which did qualify that rigour of the former law.

The fine for alienation is moderate.

Neither ought this to seem strange in the case of the king, when every common subject, being lord of lands which another holdeth of him, ought not only to have notice given unto him upon every alienation of his tenant, but shall, by the like implied intention, re-have the lands of his tenants dying without heirs, though they were given out never so many years ago, and have passed through the hands of howsoever many and strange possessors.

Not without good warrant, therefore, said Mr. Fitzherbert in his *Nat. Brev. fol.* 147. that the justices ought not wittingly to suffer any fine to be levied of lands holden in chief, without the king's licence. And as this reason is good and forcible, so is the equity and moderation of the fine itself most open and apparent;

for how easy a thing is it to redeem a forfeiture of the whole lands for ever with the profits of one year, by the purchase of a pardon? Or otherwise, how tolerable is it to prevent the charge of that pardon, with the only cost of a third part thereof, timely and beforehand bestowed upon a licence?

The antiquity and deterioration of fines upon writs original.

Touching the king's fines accustomably paid for the purchasing of writs original, I find no certain beginning of them, and do therefore think that they also grew up with the chancery, which is the shop wherein they be forged; or, if you will, with the first ordinary jurisdiction and delivery of justice itself.

For when as the king had erected his courts of ordinary resort, for the help of his subjects in suit one against another, and was at the charge not only to wage justices and their ministers, but also to appoint places and officers for safe custody of the records that concerned not himself; by which means each man might boldly both crave and have law for the present, and find memorials also to maintain his right and recovery, for ever after, to the singular benefit of himself and all his posterity; it was consonant to good reason, that the benefited subject should render some small portion of his gain, as well towards the maintainance of this his own so great commodity, as for the supportation of the king's expence, and the reward of the labour of them that were wholly employed for his profit.

1131. H. 5. fol. 17.

And therefore it was well said by Littleton, 34 H. 6. fol. 38. that the chancellor of England is not bound to make writs, without his due fee for the writing and seal of them. And that, in this part also, you may have assurance of good antiquity, it is extant among the records in the Tower, 2 H. III. Membr. 6. that Simon Hales and others gave unto him their king, *unum palfredum pro summonendo Richardo filio et haerede Willielmi de Henred, quod teneat finem factum coram justiciariis apud Northampton, inter dictum Willielmum et patrem dicti Arnoldi de feodo in Barten.* And besides that, *in oblatis de ann. 1, 2, & 7. regis Johannis*, fines were diversely paid to the king upon the purchasing writs of mort d'auncestor, dower, pone, to remove pleas for inquisitions, trial by juries, writs of sundry summons, and other more.

20 Rich. II.

Hereof then it is, that upon every writ procured for debt or damage, amounting to forty pounds or more, a noble, that is, six shillings and eight pence, is, and usually hath been paid to fine; and so for every hundred marks more a noble: and likewise upon every writ called a *praeceptum* of lands, exceeding the yearly value of forty shillings, a noble is given to a fine; and for every other five marks by year, moreover another noble, as it is set forth 20 Rich. II. abridged both by justice Fitzherbert, and justice Brooke; and may also appear in the old *Natura Brevium*, and the register, which have a proper writ of deceit, formed upon the case where a man did, in the name of another, purchase such a writ in the chancery without his knowledge and consent.

And herein the writ of right is excepted and passeth freely; not for fear of the words in *Magna Charta*, *Nalli vendemus justitiam vel rectum*, as some do phantasy, but rather because it is rarely brought; and then also bought dearly enough without such a fine, for that the trial may be by battle to the great hazard of the champion.

The like exemption hath the writ to inquire of a man's death, which also, by the twenty-sixth chapter of that *Magna Charta*, must be granted freely, and without giving any thing for it: which last I do rather note, because it may be well gathered thereby, that even then all those other writs did lawfully answer their

due fines: for otherwise the like prohibition would have been published against them, as was in this case of the inquisition itself.

I see no need to maintain the mediocrity and easiness of this last sort of fine, which in lands exceedeth not the tenth part of one year's value, and in goods the two hundredth part of the thing that is demanded by the writ.

Neither has this office of ours originally to meddle with the fines of any other original writs, than of such only as whereupon a fine or concord may be had and levied; which is commonly the writ of covenant, and rarely any other. For we deal not with the fine of the writ of entry of lands holden in chief, as due upon the original writ itself; but only as payable in the nature of a licence for the alienation, for which the third part of the yearly rent is answered; as the statute 32 H. VIII. *cap.* 1. hath specified, giving the direction for it; albeit now lately the writs of entry be made parcel of the parcel ferm also; and therefore I will here close up the first part, and unfold the second.

Before the institution of this ferm and office, no writ of covenant for the levying any final concord, no writ of entry for the suffering of any common recovery of lands holden in chief, no doquet for licence to alien, nor warrant for pardon of alienation made, could be purchased and gotten without an oath called an affidavit, therein first taken either before some justice of assize, or matter of the chancery, for the true discovery of the yearly value of the lands comprised in every of the same: in which doing, if a man shall consider on the one side the care and severity of the law, that would not be satisfied without an oath; and on the other side the assurance of the truth to be had by so religious an affirmation as an oath is, he will easily believe that nothing could be added unto that order, either for the ready dispatch of the subject, or for the uttermost advancement of the king's profit. But *quid verba audiam, cum facta videam?* Much peril to the swearer, and little good to our sovereign hath ensued thereof. For on the one side the justices of assize were many times abused by their clerks, that preferred the recognitions of final concords taken in their circuit: and the masters of the chancery were often overtaken by the fraud of solicitors and attorneys, that followed their clients causes here at Westminster; and on the other side light and lewd persons, especially, that the exactor of the oath did neither use exhortation, nor examining of them for taking thereof, were as easily suborned to make an affidavit for money, as post-horses and hackneys are taken to hire in Canterbury and Dover way: infomuch that it was usual for him that dwelt in Southwark, Shoreditch, or Tothil-Street, to depose the yearly rent or valuation of lands lying in the north, the west, or other remote part of the realm, where either he never was at all, or whence he came so young, that little could he tell what the matter meant: And thus *consuetudinem peccandi fecit multitudo peccantium*. For the removing of which corruption, and of some others whereof I have long since particularly heard, it was thought good that the justice of assize should be intreated to have a more vigilant eye upon their clerks writing; and that one special master of the chancery should be appointed to reside in this office, and to take the oaths concerning the matters that come hither: who might not only reject such as for just causes were unmeet to be sworn, but might also instruct and admonish in the weight of an oath, those others that are fit to pass and perform it: and forasmuch as thereby it must needs fall out very often, that either there was no man ready and at hand that could with knowledge and good conscience undertake the oath, or else, that such ho-

AN HISTORICAL ACCOUNT OF

next persons as were present, and did right well know the yearly value of the land, would rather chuse and agree to pay a reasonable fine without any oath, than to adventure the uttermost, which, by the taking of their oath, must come to light and discovery: It was also provided, that the fermour, and the deputies, should have power to treat, compound and agree with such, and so not exact any oath at all of them.

How much this sort of finance hath been increased by this new device, I will reserve, as I have already plotted it, for the last part of this discourse: but in the mean while I am to note first, that the fear of common perjury, growing by a daily and over-usual acquaintance with an oath, by little and little razeth out that most reverend and religious opinion thereof, which ought to be planted in our hearts, is hereby for a great part cut off and clean removed: then that the subject yieldeth little or nothing more now than he did before, considering that the money, which was wont to be saved by the former corrupt swearing, was not saved unto him, but lost to her majesty and him, and found only in the purse of the clerk, attorney, solicitor, or other follower of the suit: and lastly, that the client, besides the benefit of retaining a good conscience in the passage of this his business, hath also this good assurance, that he is always a gainer, and by no means can be at any loss, as seeing well enough, that if the composition be over-hard and heavy for him, he may then, at his pleasure, relieve himself by recourse to his oath; which also is no more than the ancient law and custom of the realm hath required at his hands. And the self-same thing is moreover, that I may shortly deliver it by the way, not only a singular comfort to the executioners of this office, a pleasant seasoning of all the four of their labour and pains, when they shall consider that they cannot be guilty of the doing of any oppression or wrong; but it is also a most necessary instruction and document for them, that even as her majesty hath made them sustentators of this her royal favour towards her people, so it becometh them to shew themselves *peregrinatores*, even and equal distributers of the same; and, as that most honourable lord and reverend sage counsellor, the * late lord Burleigh, late lord treasurer, said to myself, to deal it out with wisdom and good dexterity towards all the sorts of her loving subjects.

But now that it may yet more particularly appear what is the sum of this new building, and by what joints and sinews the same is raised and knit together, I must let you know, that besides the fermours deputies, which at this day be three in number, and besides the doctor of whom I spake, there is also a receiver, who alone handleth the moneys, and three clerks, that be employed severally, as anon you shall perceive; and by these persons the whole proceeding in this charge is thus performed.

If the recognition or acknowledgment of a final concord upon any writ of covenant finable, for so we call that which containeth lands above the yearly value of forty shillings, and all others we term unfinable, be taken by justice of assize, or by the chief justice of the common pleas, and the yearly value of those lands be also declared by affidavit made before the same justice; then is the recognition and value, signed with the hand-writing of that justice, carried by the curfitor in chancery for that shire where those lands do lie, and by him is a writ of covenant thereupon drawn and ingrossed in parchment; which, having the same value entered on the backside thereof, is brought together with the said paper

* This part
of the date of
this writing.
is the same
with the same.

Proceeding
upon fines.

that

that doth warrant it, into this office: and there first the doctor, conferring together the paper and writ, indorseth his name upon that writ, close underneath the value thereof: then forasmuch as the valuation thereof is already made, that writ is delivered to the receiver, who taketh the sum of money that is due, after the rate of that yearly value, and indorseth the payment thereof upon the same writ accordingly: this done, the same writ is brought to the second clerk, who entereth it into a several book; kept only for final writs of covenant, together with the yearly value, and the rate of the money paid, with the name of the party that made the affidavit, and of the justice that took it; and at the foot of that writ maketh a secret mark of his said entry: lastly, that writ is delivered to the deputies, who seeing that all the premises be orderly performed, do also indorse their own names upon the same writ for testimony of the money received. Thus passeth it from this office to the *custos brevium*, from him to the queen's silver, then to the chirographer to be ingrossed, and so to be proclaimed in the court. But if no affidavit be already made touching the value, then is the writ of covenant brought first to the deputies ready drawn and ingrossed: and then is the value made either by composition had with them without any oath, or else by oath taken before the doctor; if by composition, then one of the deputies setteth down the yearly value, so agreed upon, at the foot of the backside of the writ: which value the doctor causeth one of the clerks to write on the top of the backside of the writ, as the curfitor did in the former, and after that the doctor indorseth his own name underneath it, and so passeth it through the hands of the receiver, of the clerk that maketh the entry, and of the deputies, as the former writ did. But if the valuation be made by oath taken before the doctor, then causeth he the clerk to indorse that value accordingly, and then also subscribeth he his name as before; and so the writ taketh the same course through the office that the others had.

And this is the order for writs of covenant that be finable: the like whereof was at the first observed, in the passing of writs of entry of lands holden in chief; saving that they be entered into another book, especially appointed for them and for licences and pardons of alienations; and the like is now severally done with the writs of entry of lands not so holden: which writs of covenant or entry not finable, thus it is done: an affidavit is made either before some such justice, or before the said doctor, that the lands, comprised in the writ, be not worth above forty shillings by the year, to be taken. And albeit now here can be no composition, since the queen is to have no fine at all for unfinable writs, yet doth the doctor indorse his name, and cause the youngest, or third clerk, both to make entry of the writ into a third book, purposely kept for those only writs, and also to indorse it thus, *fnis nullus*: That done, it receiveth the names of the deputies, indorsed as before, and so passeth hence to the *custos brevium* as the rest. Upon every doquet for licence of alienation, or warrant for pardon of alienation, the party is likewise at liberty either to compound with the deputies, or to make affidavit touching the yearly value; which being known once and set down, the doctor subscribeth his name, the receiver taketh the money after the due rate and proportion; the second clerk entereth the doquet or warrant into the book that is proper for them, and for the writs of entry, with a notice also, whether it passeth by oath or by composition: then do the deputies sign it with their hands, and so it is conveyed to the deputy or Mr. Bacon, clerk of the honour, whose charge it

Proceeding
upon writs
of entry.

is to procure the hand of the lord chancellor, and consequently the great seal for every such licence or pardon.

Proc. Reg.
upon forfeit-
ure of mean
profits.

34 H. VIII.
c. 5.

There yet remaineth untouched, the order that is for the mean profits; for which also there is an agreement made here when it is discovered that any alienation hath been made of lands holden in chief, without the queen's licence; and albeit that in the other cases, one whole year's profit be commonly payable upon such a pardon, yet where the alienation is made by devise in a last will only, the third part of these profits is there demandable, by special provision thereof made in the statute 34 H. VIII. c. 5. but yet every way the yearly profits of the lands so aliened without licence, and lost even from the time of the writ of *scire facias*, or inquisition thereupon returned into the exchequer, until the time that the party shall come hither to sue forth his charter of pardon for that offence.

In which part the subject hath in time gained double ease of two weighty burdens, that in former ages did grievously press him: the one before the institution of this office, and the other since; for in ancient time, and of right, as it is adjudged 46 E. III. *Fitzb. forfait* 18. the mean profits were precisely answered after the rate and proportion *per diem*, even from the time of the alienation made. Again, whereas before the receipt of them in this office, they were assessed by the affidavit from the time of the inquisition found, or *scire facias* returned, now not so much at any time as the one half, and many times not the sixth part of them, is exacted. Here therefore, above the rest, is great necessity to shew favour and merciful dealing: because it many times happeneth, that either through the remote dwelling of the party from the lands, or by the negligence or evil practice of under-sheriffs and their bailiffs, the owner hath incurred the forfeiture of eight or ten years whole profits of his lands, before he cometh to the knowledge of the process that runneth against him: other times an alienation made without licence is discovered when the present owner of the lands is altogether ignorant that his lands be holden in chief at all: other times also some man concludeth himself to have such a tenure by his own suing forth of a special writ of livery, or by causeless procuring a licence, or pardon, for his alienation, when in truth the lands be not either holden at all of her majesty, or not holden in chief, but by a mean tenure in socage, or by knight's service at the most. In which cases, and the like, if the extremity should be rigorously urged and taken, especially where the years be many, the party should be driven to his utter overthrow, to make half a purchase, or more, of his own proper land and living.

The chief
clerk.

The discharge
of him that
is charged
with the
error.

About the discovery of the tenure in chief, following of process for such alienation made, as also about the calling upon sheriffs for their accounts, and the bringing in of the parties by seizure of their lands, therefore the first and principal clerk in this office, of whom I had not before any cause to speak, is chiefly and in a manner wholly occupied and set on work. Now if it do at any time happen, as, notwithstanding the best endeavour, it may and doth happen, that the process, however colourably awarded, hath not hit the very mark where it was directed, and apply itself upon some man who is not of right to be charged with the tenure in chief, that is objected against; then is he, upon oath and other good evidence, to receive his discharge under the hands of the deputies, but with a *certiorari* and *writ of habeas corpus*. Usage and deceivable manner of awarding process cannot be avoided, especially where a man, having in some one place both lands holden in chief, and other lands not so holden, alieneth the lands not holden:

seeing

seeing that it cannot appear by record nor otherwise, without the express declaration and evidences of the party himself, whether they be the same lands that be holden, or others. And therefore albeit the party grieved thereby may have some reason to complain of an untrue charge, yet may he not well call it an unjust vexation; but ought rather to look upon that ease, which in this kind of proceeding he hath found, where, besides his labour, he is not to expend above two and twenty shillings in the whole charge, in comparison of that toil, cost and care, which he in the case was wont to sustain by the writ of *certiorari* in the exchequer; wherein, besides all his labour, it did cost him fifty shillings at the least, and sometimes twice so much, before he could find the means to be delivered.

Thus have I run through the whole order of this practice, in the open time of the term; and that the more particularly and at full, to the end that thereby these things ensuing, might the more fully appear, and plainly bewray themselves: first, that this present manner of exercising of this office hath so many testimonies, interchangeable warrants, and counter-rolments, whereof each, running through the hands and resting in the power of so many several persons, is sufficient to argue and convince all manner of falsehood; so as with a general conspiracy of all those offices together, it is almost impossible to contrive any deceit therein: a right, ancient and sound policy, whereupon both the order of the accounts in the exchequer, and of the affairs of her majesty's own household, are so grounded and built, that the infection of an evil mind in some one or twain cannot do any great harm, unless the rest of the company be also poisoned by their contagion. And surely, as Cicero said, *Nullum est tam desperatum collegium, in quo non unus è multis sit sana mente praeditus*. Secondly, that here is great use both of discretion, learning, and integrity: of discretion, I say, for examining the degrees of favour, which ought to be imparted diversly, and for discerning the valuations of lands, not in one place or shire, but in each county and corner of the realm; and that not of one sort or quality, but of every kind, nature, and degree: for a taste whereof, and to the end that all due quality of rates be not suddenly charged with infidelity, and condemned for corruption; it is note-worthy, that favour is here sometimes right worthily bestowed, not only in a general regard of the person, by which every man ought to have a good pennyworth of his own, but more especially also and with much distinction: for a peer of the realm, a counsellor of state, a judge of the land, an officer that laboureth in furtherance of the tenure, or a poor person, are not, as I think, to be measured by the common yard, but by the pole of special grace and dispensation. Such as served in the wars have been permitted, by many statutes, to alien their lands of this tenure, without suing out of any licence. All those of the chancery have claimed and taken the privilege to pass their writs without fine; and yet therefore do still look to be easily fined: yea the favourites in court, and as many as serve the queen in ordinary, take it unkindly if they have not more than market measure.

Again, the consideration of the place or county where the lands do lie, may justly cause the rate or valuation to be the more or less: for as the writs do commonly report the land by numbers of acres, and as it is allowable, for the eschewing of some dangers, that those numbers do exceed the very content and true quantity of the lands themselves; so in some counties they are not much acquainted with admeasurement by acre: and thereby, for the most part, the writs of those shires and counties do contain twice or thrice so many acres more than the land.

hath. In some places the lands do lie open in common fields, and be not so valuable as if they were inclosed: and not only in one and the same shire, but also within the self-same lordship, parish, or hamlet, lands have their divers degrees of value, through the diversity of their fertility or barrenness: wherein how great odds and variety there is, he shall soonest find, that will examine it by his own skill in whatsoever place that he knoweth best.

Moreover, some lands be more chargeable than others are, respecting either the tenure, as knight's service, and the tenure in chief, or in regard of defence against the sea and great rivers; as for their lying near to the borders of the realm, or because of great and continual purveyances that are made upon them, or such like.

And in some counties, as namely westward, their yearly rents, by which most commonly their value to her majesty is accounted, are not to this day improved at all, the landlords making no less gain by fines and incomes, than there is raised in other places by inhancement of rents.

The manner
of the assu-
rance.

The manner and sorts of the conveyance of the land itself is likewise variable, and therefore deserveth a divers consideration and value: for in a pardon one whole year's value, together with the mean rates thereof, is due to be paid; which ought therefore to be more favourably assessed, than where but a third part of one year's rent, as in a licence or writ of entry, or where only a tenth part, as in a writ of covenant, is to be demanded.

A licence also and a pardon are to pass the charges of the great seal, to the which the bargain and sale, the fine and recovery are not subject. Sometimes upon one only alienation and change, the purchaser is to pass both licence, fine and recovery, and is for this multiplicity of payments more to be favoured, than he which bringeth but one single pay for all his assurance.

Moreover, it is very often seen that the same land suffereth sundry transmigrations of owners within one term, or other small compass of time; by which return much profit cometh to her majesty, though the party feel of some favour in that doing.

The end of
conveyances.

Neither is it of small moment in this part, to behold to what end the conveyances of land be delivered: seeing that sometimes it is only to establish the lands in the hands of the owner and his posterity, without any alienation and change of possession to be made: sometimes a fine is levied only to make good a lease for years, or to pass an estate for life, upon which no yearly rent is reserved; or to grant a reversion, or remainder, expectant upon a lease, or estate, that yieldeth no rent. Sometimes the land is given in mortgage only, with full intention to be redeemed within one year, six months, or a lesser time. Many assurances do also pass to godly and charitable uses alone; and it happeneth not seldom, that, to avoid the yearly oath, for averment of the continuance of some estate for life, which is eigne, and not subject to forfeiture for the alienation that cometh after it, the party will offer to sue a pardon un-compelled before the time; in all which some mitigation of the uttermost value may well and worthily be offered, the rather for that the statute, 1 E. III. cap. 12. willeth, that in this service generally a reasonable fine shall be taken.

1 E. III. c. 12.

Error and
mistaking.

Lastly, error, misclaim, and forgetfulness, do now and then become suitors for some remission of extreme rigour: for I have sundry times observed, that an assurance, being passed through for a competent fine, hath come back again by reason of some oversight, and the party hath voluntarily repassed it within a while after.

after. Sometimes the attorney, or follower of the cause, unskilfully thrusteth into the writ, both the uttermost quantity, or more, of the land, and the full rent also that is given for it: or elle setteth down an entierly, where but a moiety, a third, or fourth part only was to be passed; or causeth a bargain and sale to be inrolled, when nothing passed thereby, because a fine had transferred the land before; or elle inrolleth it within the six months; whereas, before the end of those months, the land was brought home to the first owner, by repayment of the money for which it was engaged. In which and many other like cases, the client will rather choose to give a moderate fine for the alienation so recharged, than to undertake a costly plea in the exchequer, for reformation of that which was done amiss. I take it for a venial fault also to vouchsafe a pardon, after the rate and proportion of a licence, to him that without fraud or evil mind hath slipped a term or two months, by forgetting to purchase his licence.

Much more could I say concerning this unblameable inequality of fines and rates: but as I meant only to give an essay thereof, so not doubting but that this may stand, both for the satisfaction of such as be indifferent, and for the discharge of us that be put in trust with the service, wherein no doubt a good discretion and dexterity ought to be used, I resort to the place where I left, affirming that there is in this employment of ours great use of good learning also, as well to distinguish the manifold sorts of tenures and estates; to make construction of grants, conveyances and wills, and to found the validity of inquisitions, liveries, licences, and pardons: as also to decipher the manifold slights and subtilties that are daily offered to defraud her majesty in this her most ancient and due prerogative, and finally to handle many other matters, which this purpose will not permit me to recount at large.

Lastly, here is need, as I said, of integrity throughout the whole labour and practice, as without the which both the former learning and discretion are no better than *armata nequitia*, and nothing else but detestable craft and double villany.

And now as you have seen that these clerks want not their full task of labour during the time of the open term, so is there for them whereupon to be occupied in the vacation also.

For whereas alienations of lands, holden by the tenure of prerogative, be continually made, and that by many and divers ways, whereof all are not, at the first, to be found of record; and yet for the most part do come to be recorded in the end: the clerks of this office do, in the time of the vacation, repair to the rolls and records, as well of the chancery and king's bench, as of the common pleas and exchequer, whence they extract notes not only of inquisitions, common recoveries, and indentures of bargains and sales, that cannot but be of record, but also of such feoffments, exchanges, gifts by will, and indentures of covenants to raise uses of lands holden in chief, as are first made in the country without matter of record, and come at the length to be found by office or inquisition, that is of record; all which are digested into apt books, and are then sent to the remembrancer of the lord treasurer in the exchequer, to the end that he may make and send out processe upon them, as he doth upon the extracts of the final concords of such lands, which the clerk of the fines doth convey unto him.

Thus it is plain, that this new order by many degrees excelleth the former usage; as also for the present advancement of her majesty's commodity, and for the future profit which must ensue by such discovery of tenures as were concealed

before, by awaking of such as had taken a long sleep, and by reviving a great many that were more than half dead.

The fees, or allowances, that are termly given to these deputies, receiver, and clerks, for recompence of these their pains, I do purposely pretermitt; because they be not certain, but arbitrary, at the good pleasure of those honourable persons that have the dispensation of the same: howbeit hitherto each deputy and the receiver hath received twenty pounds for his travel in each term, only the doctor hath not allowance of any sum in gross, but is altogether paid in petty fees, by the party or suitor; and the clerks are partly rewarded by that mean also, for their entries, discharges, and some other writings, besides that termly fee which they are allowed.

Note.

But if the deputies take one peny, besides their known allowance, they buy it at the dearest price that may be; I mean the shipwreck of conscience, and with the irrecoverable loss of their honesty and credit; and therefore since it appeareth which way each of these hath his reward, let us also examine that increase of benefit and gain, which is brought to her majesty by the invention of this office.

At the end of Hilary term 1589, being the last open term of the lease of these profits granted to the late earl of Leicester, which also was to expire at the feast of the Annunciation of the blessed virgin Mary 1590, then shortly to ensue; the officers above-remembered thought it, for good causes, their duties to exhibit to the said right honourable the lord treasurer a special declaration of the yearly profits of these finances, paid into the hanaper during every of the six years before the beginning of the demise thereof made to that earl, conferred with the profits thereof that had been yearly taken during the six last years before the determination of the lease. By which it plainly appeared, that in all those first six years, next before the demise, there had been raised only 12798l. 15s. 7d. ob. and in these last six years of the demise the full sum of 32160l. 4s. 10d. qu. and so in all 19362l. 2s. 2d. ob. qu. more in these last, than in those former six years. But because it may be said, that all this increase redounded to the gain of the fermor only, I must add, that during all the time of the demise, he answered 300l. rent, of yearly increase, above all that profit of 2133l. 2s. 7d. qu. which had been yearly and casually made in the sixteen years one with another next before: the which, in the time of fourteen years, for so long these profits have been demised by three several leases, did bring 4200l. to her majesty's coffers. I say yearly; which may seem strange, that a casual and thereby uncertain profit should yearly be all one: but indeed such was the wonderous handling thereof, that the profit was yearly neither more nor less to her majesty, howsoever it might casually be more or less to him that did receive it. For the writs of covenant answered year by year 1152l. 16s. 8d. the licences and pardons 934l. 3s. 11d. qu. and the mean rates 46l. 2s. in all 2133l. 2s. 7d. qu. without increase or diminution.

Moreover, whereas her majesty did, after the death of the earl, buy of the countess, being his executrix, the remanent of the last term of three years in those profits, whereof there were only then six terms, that is, about one year and an half, to come, paying for it the sum of 3000l. her majesty did clearly gain by that bargain the full sum of 1173l. 15s. 8d. ob. above the said 3000l. above the rent of 3649l. 13s. 10d. ob. qu. proportionably due for that time, and above all fees and other reprises. Neither hath the benefit of this increase to her majesty

majesty been contained within the bounds of this small office, but hath swelled over the banks thereof, and displayed itself apparently, as well in the hanaper, by the fees of the great seal, which yielding 20 s. 4 d. towards her majesty for every licence and pardon, was estimated to advantage her highness, during those fourteen years, the sum of 3721 l. 6 s. ob. qu. more than without that demise she was like to have found. As also in the court of wards and liveries, and in the exchequer itself: where, by reason of the tenures in chief revived through the only labours of these officers, both the sums for respect of homage be increased, and the profits of wardships, primer seifins, oulter le maine, and liveries, cannot but be much advanced. And so her majesty's self hath, in this particular, gained the full sum of 8736 l. 5 s. 5 d. ob. qu. not comprising those profits in the exchequer and court of wards, the very certainty whereof lieth not in the knowledge of these officers, nor accounting any part of that great benefit which the earl and his executrix have made by the demises: which, one year with another, during all the thirteen years and a half, I suppose to have been 2263 l. or thereabouts; and so in all about 27158 l. above all his costs and expences. The which albeit I do here report only for the justification of the service in this place; yet who cannot but see withal, how much the royal revenues might be advanced, if but the like good endeavours were shewed for her majesty in the rest of her finances, as have been found in this office for the commodity of this one subject?

The views of all which matter being presented to the most wise and princely consideration of her majesty, she was pleased to demise these profits and fines for other five years, to begin at the feast of the Annunciation 1590, in the thirty-second year of her reign, for the yearly rent formerly reserved upon the leases of the earl; within the compass of which five years, expired at the Annunciation 1595, there was advanced to her majesty's benefit, by this service, the whole sum of 13013 l. 14 s. 1 d. qu. beyond the ancient yearly revenues, which, before any lease, were usually made of these finances. To which if there be added 5700 l. for the gain given to her majesty by the yearly receipt of 300 l. in rent, from the first demise to the earl, until the time of his death, together with the sum of 1173 l. 15 s. 8 d. ob. clearly won in those six terms bought of the countess; then the whole commodity, from the first institution of this office, till the end of these last five years expired at the Annunciation 1595, shall appear to be 19887 l. 9 s. 9 d. ob. qu. To the which sum also if 28550 l. 15 s. 6 d. ob. qu. which the earl and the countess levied hereby, be likewise adjoined, then the whole profit taken in these nineteen years, that is, from the first lease, to the end of the last, for her majesty, the earl, and the countess, will amount unto 48438 l. 5 s. 4 d. This labour hitherto thus luckily succeeding, the deputies in this office finding by daily proof, that it was wearisome to the subject to travel to divers places, and through sundry hands, for the pursuing of common recoveries, either not holden of her majesty at all, or but partly holden in chief; and not doubting to improve her majesty's revenue therein, and that without loss to any, either private person or public officer, if the same might be managed by them jointly with the rest whereof they had the charge; they found, by search in the hanaper, that the fruits of those writs of entry had not, one year with another, in the ten years next before, exceeded 400 l. by the year. Whereupon they took hold of the occasion then present, for the renewing of the lease of the former profits; and moved the lord treasurer,

AN HISTORICAL ACCOUNT OF

treasurer, and Sir John Fortescue, under-treasurer and chancellor of the exchequer, to join the same in one and the same demise, and to yield unto her majesty 500 l. by year therefor; which is 100 l. yearly of increase. The which desire being by them recommended to her majesty, it liked her forthwith to include the same, and all the former demised profits, within one intire lease, for seven years, to begin at the said feast of the Annunciation 1597, under the yearly rent of 2733 l. 2 s. 7 d. qu. Since which time hitherto, I mean to the end of Michaelmas term 1598, not only the proportion of the said increased 100 l. but almost of one other 100 l. also, hath been answered to her majesty's coffers, for those recoveries so drawn into the demise now continuing.

Thus I have opened both the first plotting, the especial practice, and the consequent profit arising by these officers: and now if I should be demanded, whether this increase of profit were likely to stand without fall, or to be yet amended or made more? I would answer, that if some few things were provided, and some others prevented, it is probable enough in mine opinion, that the profit should rather receive accession than decay.

The things that I wish to be provided are these; first, that by the diligence of these officers, assisted with such other as can bring good help thereunto, a general and careful collection be made of all the tenures in chief; and that the same be digested by way of alphabet into apt volumes, for every part, or shire, of the realm. Then that every office, or inquisition, that findeth any tenure in chief, shall express the true quantities of the lands so holden, even as in ancient time it was wont to be done by way of admeasurement, after the manner of a perfect extent or survey: whereby all the parts of the tenancy in chief may be wholly brought to light, howsoever in proces of time it hath been, or shall be torn and dismembered. For prevention, I wish likewise, first, that some good means were devised for the restraint of making these inordinate and covenous leases of lands, holden in chief, for hundreds or thousands of years, now grown so bold, that they dare shew themselves in fines, levied upon the open stage of the common pleas; by which one man taketh the full profit, and another beareth the empty name of tenancy, to the infinite deceit of her majesty in this part of her prerogative. Then, that no alienation of lands holden in chief should be available, touching the freehold or inheritance thereof, but only where it were made by matter of record, to be found in some of her majesty's treasuries: and lastly, that a continual and watchful eye be had, as well upon these new founden traverses of tenure, which are not now tried *per patriam*, as the old manner was; as also upon all such pleas whereunto the confession of her majesty's said attorney general is expected: so as the tenure of the prerogative be not prejudiced, either by the fraud of counsellors at the law, many of which do bend their wits to the overthrow thereof; or by the greediness of clerks and attorneys, that, to serve their own gain, do both impair the tenure, and therewithal grow more heavy to the client, in so costly pleading for discharge, than the very confession of the matter itself would prove unto him. I may yet hereunto add another thing, very meet not only to be prevented with all speed, but also to be punished with great severity: I mean that collusion set on foot lately, between some of her majesty's tenants in chief, and certain others that have had to do in her highness's grants of concealed lands: where, under a feigned concealment of the land itself, nothing else is sought but only to make a change of the tenure, which is reserved upon the grant

grant of those concealments, into that tenure in chief: in which practice there is no less abuse of her majesty's great bounty, than loss and hindrance of her royal right. These things thus settled, the tenure in chief should be kept alive and nourished; the which, as it is the very root that doth maintain this silver stem, that by many rich and fruitful branches spreadeth itself into the chancery, exchequer, and court of wards; so, if it be suffered to starve, by want of ablaqueation, and other good husbandry, not only this yearly fruit will much decrease from time to time, but also the whole body and boughs of that precious tree itself will fall into danger of decay and dying.

And now, to conclude therewith, I cannot see how it may justly be disliked, that her majesty should, in a reasonable and moderate manner, demand and take this sort of finance: which is not newly out and imposed, but is given and grown up with the first law itself, and which is evermore accompanied with some special benefit to the giver of the same: seeing that lightly no alienation is made, but either upon recompence in money, or land, or for marriage, or other good and profitable consideration that doth move it: yea rather all good subjects and citizens ought not only to yield that gladly of themselves, but also to further it with other men; as knowing that the better this and such like ancient and settled revenues shall be answered and paid, the less need her majesty shall have to ask subsidies, fifteens, loans, and whatsoever extraordinary helps, that otherwise must of necessity be levied upon them. And for proof that it shall be more profitable to her majesty, to have every of the same to be managed by men of fidelity, that shall be waged by her own pay, than either to be letten out to the fermours benefits, or to be left at large to the booty and spoil of ravenous ministers, that have not their reward; let the experiment and success be in this one office, and persuade for all the rest.

Laus Deo.



THE
LEARNED READING
OF
Mr. FRANCIS BACON,
One of Her MAJESTY'S Council at Law,
UPON THE
STATUTE OF USES.

BEING

His double Reading to the Hon. SOCIETY OF GRAY'S INN. 42 Eliz.

I HAVE chosē to read upon the statute of uses made 27 Hen. VIII. a law, whereupon the inheritances of this realm are tossed at this day, like a ship upon the sea, in such sort, that it is hard to say which bark will sink, and which will get to the haven; that is to say, what assurances will stand good, and what will not. Neither is this any lack or default in the pilots, the grave and learned judges: but the tides and currents of received errors, and unwarranted and abusive experience have been so strong, as they were not able to keep a right course according to the law, so as this statute is in great part as a law made in the parliament, held 35 Reginae; for in 37 Reginae, by the notable judgment upon solemn arguments of all the judges assembled in the exchequer chamber, in the famous cause between Dillon and Freine, concerning an assurance made by Chudleigh, this law began to be reduced to a true and sound exposition, and the false and perverted exposition, which had continued for so many years, though never countenanced by any rule or authority of weight, but only entertained in a popular conceit, and put in practice at adventure, grew to be controled; since which time, as it cometh to pass always upon the first reforming of inveterate errors, many doubts and perplexed questions have risen, which are not yet resolved, nor the law thereupon settled: the consideration whereof moved me to take the occasion of performing this particular duty to the house, to see if I could, by my travel, bring the exposition thereof to a more general good of the commonwealth.

Herein, though I could not be ignorant of the difficulty of the matter, which he that taketh in hand shall soon find; or much less of my own inability, which I had continual sense and feeling of; yet because I had more means of absolution than the younger sort, and more leisure than the greater sort, I did think it not impossible to work some profitable effect; the rather because where an inferior wit is bent and conversant upon one subject, he shall many times with patience and meditation

dition dissolve and undo many of the knots, which a greater wit, distracted with many matters, would rather cut in two than unknit: and at least, if my invention or judgment be too barren or too weak; yet, by the benefit of other arts, I did hope to dispose or digest the authorities or opinions which are in cases of uses in such order and method, as they should take light one from another, though they took no light from me. And like to the matter of my reading shall my manner be, for my meaning is to revive and recontinue the ancient form of reading, which you may see in Mr. Frowicke's upon the prerogative, and all other readings of ancient time, being of less ostentation, and more fruit than the manner lately accustomed: for the use then was, substantially to expound the statutes by grounds and diversities; as you shall find the readings still to run upon cases of like law and contrary law; whereof the one includes the learning of a ground, the other the learning of a difference: and not to stir concise and subtle doubts, or to contrive a multitude of tedious and intricate cases, whereof all, saving one, are buried, and the greater part of that one case, which is taken, is commonly nothing to the matter in hand; but my labour shall be in the ancient course, to open the law upon doubts, and not to open doubts upon this law.

EXPOSITIO STATUTI.

THE exposition of this statute consists, upon the matter without the statute: upon the matter within the statute.

Three things are to be considered concerning these statutes, and all other statutes, which are helps and inducements to the right understanding of any statute, and yet are no part of the statute itself.

1. The consideration of the statute at the common law.
2. The consideration of the mischief which the statute intendeth to redress, as also any other mischief, which an exposition of the statute this way or that way may breed.
3. Certain maxims of the common law, touching exposition of statutes.

Having therefore framed six divisions, according to the number of readings upon the statute itself, I have likewise divided the matter without the statute into six introductions or discourses, so that for every day's reading I have made a triple provision.

1. A preface or introduction.
2. A division upon the law itself.
3. A few brief cases, for exercise and argument.

The last of which I would have forborn; and, according to the ancient manner, you should have taken some of my points upon my divisions, one, two, or more, as you should have thought good; save that I had this regard, that the younger sort of the bar were not so conversant with matters upon the statutes; and for their ease I have interlaced some matters at the common law, that are more familiar within the books.

1. The first matter I will discourse unto you, is the nature and definition of an use, and its inception and progression before the statute.
2. The second discourse shall be of the second spring of this tree of uses since the statute.

READING ON THE STATUTE OF USES.

3. The third discourse shall be of the estate of the assurances of this realm at this day upon uses, and what kind of them is convenient and reasonable, and not fit to be touched, as far as the sense of law and natural construction of the statute will give leave; and what kind of them is convenient and meet to be suppressed.

4. The fourth discourse shall be of certain rules and explications of laws applied to this present purpose.

5. The fifth discourse shall be of the best course to remedy the same inconveniencies now a-foot, by construction of the statute, without offering violence to the letter or sense.

6. The sixth and last discourse shall be of the best course to remedy the same inconveniencies, and to declare the law by act of parliament: which last I think good to reserve, and not to publish.

THE nature of a use is best discerned by considering what it is not, and then what it is; for it is the nature of all human science and knowledge to proceed most safely, by negatives and exclusives, to what is affirmative and inclusive.

First, an use is no right, title, or interest in law; and therefore master attorney, who read upon this statute, said well, that there are but two rights:

Jus in Re: Jus ad rem.

The one is an estate, which is *Jus in re*; the other a demand, which is *Jus ad rem*: but a use is neither; so that in 24 H. VIII. it is said that the saving of the statute of 1 R. III. which saveth any right or interest of intails, must be understood of intails of the possession, and not of the part of the use, because a use is no right nor interest. So again, you see, Littleton's conceit, that an use should amount to a tenancy at will, whereupon a release might well inure, because of privity, is controled by 4 and 5 H. VII. and divers other books, which say that *cestuy que use* is punishable in an action of trespass towards the feoffees; only 5 H. V. seemeth to be at some discord with other books, where it is admitted for law, that if there be *cestuy que use* of an advowson, and he be outlawed in a personal action, the King should have the presentment; which case Master Ewens, in the argument of Chudleigh's case, did seem to reconcile thus: where *cestuy que use*, being outlawed, had presented in his own name, there the King should remove his incumbent; but no such thing can be collected upon that book; and therefore I conceive the error grew upon this, that because it was generally thought, that a use was but a pernaney of profits; and then again because the law is, that, upon outlawries upon personal actions, the King shall have the pernaney of profits, they took that to be one and the self-same thing which *cestuy que use* had, and which the King was intitled unto: which was not so; for the King had remedy in law for his pernaney of profits, but *cestuy que use* had none. The books go further, and say, that a use is nothing, as in 2 H. VII. *det* was brought and counted *sur leas* for years rendering rent, *etc.* The defendant pleaded in bar, that the plaintiff *nihil habuit tempore dimissionis*: the plaintiff made a special replication, and shewed that he had an use, and issue joined upon that; wherefore it appeared, that if he had taken issue upon the defendant's plea, it should have been found against him. So again in 4 Reginae, in the case of the Lord Sandys, the truth of the case was a fine levied by *cestuy que use* before the statute, and this coming in question since the

The statute upon an averment by the plaintiff *quod partes finis nihil habuerunt*, it is said that the defendant may shew the special matter of the use, and it shall be no departure from the first pleading of the fine; and it is said farther that the averment given in 4 H. VII. *quod partes finis nihil habuerunt, nec in possessione, nec in usu*, was ousted upon this statute of 27 H. VIII. and was no more now to be accepted: but yet it appears, that if issue had been taken upon the general averment, without the special matter shewed, it should have been found for him that took the averment, because a use is nothing. But these books are not to be taken generally or grossly; for we see in the same books, when an use is specially alleged, the law taketh knowledge of it; but the sense of it is, that use is nothing for which remedy is given by the course of the common law, so as the law knoweth it, but protects it not; and therefore when the question cometh, whether it hath any being in nature or conscience, the law accepteth of it; and therefore Littleton's case is good law, that he who hath but forty shillings free-hold in use, shall be sworn in an inquest, for it is ruled *secundum dominium naturale*, and not *secundum dominium legitimum, nam natura dominus est, quia fructum ex re percipit*. And some doubt if upon subsidies and taxes *cestuy que use* should be valued as an owner: so likewise if *cestuy que use* had released his use unto the feoffee for six pounds, or contracted with a stranger for the like sum, there is no doubt but it is a good condition or contract whereon to ground an action upon the case: for money for release of a suit in the chancery is a good *quid pro quo*; therefore to conclude, though a use be nothing in law to yield remedy by course of law, yet it is somewhat in reputation of law and conscience: for that may be somewhat in conscience which is nothing in law, like as that may be something in law which is nothing in conscience; as, if the feoffees had made a feoffment over in fee, *bona fide*, upon good consideration, and, upon a *subpoena* brought against them, they pleaded this matter in chancery; this had been nothing in conscience, not as to discharge them of damages.

A second negative fit to be understood is, that a use is no covin, nor is it a collusion, as the word is now used; for it is to be noted, that where a man doth remove the state and possession of land, or goods, out of himself unto another upon trust, it is either a special trust, or a general trust.

The special trust is either lawful or unlawful.

The special trust unlawful is, according to the case, provided for by ancient statutes of fermours of the profits; as where it is to defraud creditors, or to get men to maintain suits, or to defeat the tenancy to the *praecipe*, or the statute of mortmain, or the lords of their wardships, or the like; and those are termed frauds, covins or collusions.

The special trust lawful is, as when I infeoff some of my friends, because I am to go beyond the seas, or because I would free the land from some statute, or bond, which I am to enter into, or upon intent to be reinfeoffed, or intent to be vouched, and so to suffer a common recovery, or upon intent that the feoffees shall infeoff over a stranger, and infinite the like intents and purposes, which fall out in mens dealings and occasions: and this we call confidence, and the books do call them intents; but where the trust is not special, nor transitory, but general and permanent, there it is a use; and therefore these three are to be distinguished, and not confounded; the covin, confidence, and use.

READING ON THE STATUTE OF USES.

So as now we are come by negatives to the affirmative, what a use is, agreeable to the definition in Plowden, 352. Delamer's case, where it is said:

An use is a trust reposed by any person in the terre-tenant, that he may suffice him to take the profits, and that he will perform his intent.

But it is a shorter speech to say, that

Usus est dominium fiduciarium: Use is an owner's liship in trust.

So that *usus et status, sive possessio, potius differunt secundum rationem fori, quam secundum naturam rei*, for that one of them is in court of law, the other in court of conscience; and for a trust, which is the way to an use, it is exceeding well defined by a civilian of great understanding:

Fides est obligatio conscientiae unius ad intentionem alterius.

And they have a good division likewise of rights:

Jus precarium: Jus fiduciarium: Jus legitimum.

1. A right in courtesy, for the which there is no remedy at all.
2. A right in trust, for which there is a remedy, but only in conscience.
3. A right in law.

So much of the nature and definition of an use.

It followeth to consider the parts and properties of an use: wherein by the consent of all books, as it was distinctly delivered by Justice Walmley in 36 of Elizabeth: That a trust consisteth upon three parts.

The first, that the feoffee will suffer the feoffor to take the profits.

The second, that the feoffee upon request of the feoffor, or notice of his will, will execute the estates to the feoffor, or his heirs, or any other by his direction.

The third, that if the feoffee be disseised, and so the feoffor disturbed, the feoffee will re-enter, or bring an action to re-continue the possession; so that those three, pernaney of profits, execution of estates, and defence of the land, are the three points of trust.

The properties of an use are exceeding well set forth by Fenner, justice, in the same case; and they be three:

1. Uses, saith he, are created by confidence:
2. Preserved by privity, which is nothing else but a continuance of the confidence, without interruption: and
3. Ordered and guided by conscience: either by the private conscience of the feoffee; or the general conscience of the realm, which is chancery.

The two former of which, because they be matters more thoroughly beaten, and we shall have occasion hereafter to handle them, we will not now dilate upon:

But the third, we will speak somewhat of; both because it is a key to open many of the true reasons, and learnings of uses, and because it tendeth to decide our great and principal doubts at this day.

Coke solicitor, entring into his argument of Chudleigh's case, said sharply and fitly: "I will put never a case but it shall be of an use, for a use in law hath no fellow;" meaning, that the learning of uses is not to be matched with other learnings.

earnings. Anderfon, chief juſtice, in the argument of the ſame caſe, did truly and profoundly control the vulgar opinion collected upon 5 E. IV. that there might be *poſſeſſio fratris* of a uſe; for he ſaid, that it was no more but that the chancellor would conſult with the rules of law, where the intention of the parties did not ſpecially appear; and therefore the private conceit, which Glanvile, juſtice, cited in the 42 Reginae, in the caſe of Corbet, in the common pleas, of one of Lincolns-Inn, whom he named not, but ſeemed to allow, is not found; which was, that a uſe was but a limitation, and did enſue the nature of a poſſeſſion.

This very conceit was ſet on foot in 27 H. VIII. in the Lord Darcie's caſe, in which time they began to heave at uſes: for thereafter the realm had many ages together put in uſe the paſſage of uſes by will, they began to argue that an uſe was not deviſeable, but that it did enſue the nature of the land; and the ſame year after, this ſtatute was made; ſo that this opinion ſeemeth ever to be a prelude and forerunner to an act of parliament touching uſes; and if it be ſo meant now, I like it well: but in the mean time the opinion itſelf is to be rejected; and becauſe, in the ſame caſe of Corbet, three reverend judges of the court of common pleas did deliver and publiſh their opinion, though not directly upon the point adjudged, yet *obiter* as one of the reaſons of their judgment, that an uſe of inheritance could not be limited to ceaſe; and again, that the limitation of a new uſe could not be to a ſtranger; ruling uſes merely according to the ground of poſſeſſion; it is worth the labour to examine that learning. By 3 Hen. VII. you may collect, that if the feoffees had been diſſeiſed by the common law, and an ancestor collateral of *ceſtuy que uſe* had releaſed unto the diſſeiſor, and his warranty had attached upon *ceſtuy que uſe*; yet the chancellor, upon this matter ſhewed, would have no reſpect unto it, to compel the feoffees to execute the eſtate unto the diſſeiſor: for there the caſe being, that *ceſtuy que uſe* in tail having made an aſſurance by fine and recovery, and by warranty which deſcended upon his iſſue, two of the judges held, that the uſe is not extinct; and Bryan and Huſſey, that held the contrary, ſaid, that the common law is altered by the new ſtatute; whereby they admit, that by the common law that warranty will not bind and extinct a right of a uſe, as it will do a right of poſſeſſion; and the reaſon is, becauſe the law of collateral warranty is a hard law, and not to be conſidered in a court of conſcience. In 5. Edw. IV. it is ſaid, that if *ceſtuy que uſe* be attainted, *query*, who ſhall have the land, for the lord ſhall not have the land; ſo as there the uſe doth not limitate the poſſeſſion; and the reaſon is, becauſe the lord hath a rent by title; for that is nothing to the *ſubpoena*, becauſe the feoffee's intent was never to advance the lord, but only his own blood; and therefore the *query* of the book ariſeth, what the truſt and confidence of the feoffee did tye him to do, as whether he ſhould not ſell the land to the uſe of the feoffee's will, or *in pios uſus*? So favourably they took the intent in thoſe days, as you find in 27 Hen. VI. that if a man had appointed his uſe to one for life, the remainder in fee to another, and *ceſtuy que uſe* for life had reſuſed, becauſe the intent appeared not to advance the heir at all, nor him in reverſion, preſently the feoffee ſhould have the eſtate for life of him that reſuſed, ſome ways to the behoof of the feoffor. But to proceed in ſome better order towards the diſproof of this opinion of limitation, there be four points wherein we will examine the nature of uſes.

1. The

1. The raising of them.
2. The preserving of them.
3. The transferring of them.
4. The extinguishing of them.

1. In all these four, you shall see apparerly that uses stand upon their own reasons, utterly differing from cases of possession. I would have one case shewed by men learned in the law, where there is a deed; and yet there needs a consideration; as for parole, the law adjudgeth it too light to give action without consideration; but a deed ever in law imports a consideration, because of the deliberation and ceremony in the confection of it: and therefore in 8 Reginae it is solemnly argued, that a deed should raise an use without any other consideration. In the Queen's case a false consideration, if it be of record, will hurt the patent, but want of consideration doth never hurt it; and yet they say that a use is but a nimble and light thing; and now, contrariwise, it seemeth to be weightier than any thing else: for you cannot weigh it up to raise it, neither by deed, nor deed inrolled, without the weight of a consideration; but you shall never find a reason of this to the world's end, in the law: But it is a reason of chancery, and it is this:

That no court of conscience will enforce *donum gratuitum*, though the intent appear never so clearly, where it is not executed, or sufficiently passed by law; but if money had been paid, and so a person damnified, or that it was for the establishment of his house, then it is a good matter in the chancery. So again I would see in the law, a case where a man shall take by a conveyance, be it by deed, livery, or word, that is not party to the grant: I do not say that the delivery must be to him that takes by the deed, for a deed may be delivery to one man to the use of another. Neither do I say that he must be party to the delivery of the deed, for he in the remainder may take though he be not party; but he must be party to the words of the grant: here again the case of the use goeth single, and the reason is, because a conveyance in use is nothing but a publication of the trust; and therefore so as the party trusted be declared, it is not material to whom the publication be. So much for the raising of uses. Now as to the preserving of them.

2. There is no case in the common law, wherein notice simply and nakedly is material to make a covin, or *particeps criminis*; and therefore if the heir which is in by descent, infeoff one which had notice of the disseisin, if he were not a *disseiser de facto*, it is nothing: so in 33 H. VI. if a feoffment be made upon collusion, and feoffee makes a feoffment over upon good consideration, the collusion is discharged, and it is not material if they had notice or no. So as it is put in 14 H. VIII. if a sale be made in a market overt upon good consideration, although it be to one that hath notice that they are stolen goods, yet the property of a stranger is bound; though in the book before remembered 33 H. VI. some opine to the contrary, which is clearly no law; so in 31 E. III. if assets descend to the heir, and he alien it upon good consideration, although it be to one that had notice of the debt, or of the warranty, it is good enough. So 25 Ass. p. 1. if a man enter of purpose into my lands, to the end that a stranger which hath right, should bring his *praecipe* and evict the land, I may enter notwithstanding any such recovery; but if he enter, having notice that the stranger hath right, and the stranger likewise having notice of his entry, yet if it were not upon conspiracy or collusion between them, it is nothing; and the reason of these cases

3, because the common law looketh no farther than to see whether the act were merely *actum contra intentionem legis*; and therefore wherefoever it findeth consideration given, it dischargeth the covin.

But come now to the case of use, and there it is otherwise, as it is in 14 H. VIII. and 28 H. VIII. and divers other books; which prove that if the feoffee sell the land for good consideration to one that hath notice, the purchaser shall stand seized to the ancient use; and the reason is, because the chancery looketh farther than the common law, namely, to the corrupt conscience of him that will deal in the land, knowing it in equity to be another's; and therefore if there were *radix amaritudinis*, the consideration purgeth it not, but it is at the peril of him that giveth it: so that consideration, or no consideration, is an issue at the common law; but notice, or no notice, is an issue in the chancery. And so much for the preserving of uses.

3. For the transferring of uses there is no case in law whereby an action is transferred, but the *subpoena* in case of use was always assignable; nay farther, you find twice 27 H. VIII. fol. 10. pla. 9. and fol. 30. and pla. 21. that a right of use may be transferred: for in the former case Montague maketh the objection, and saith, that a right of use cannot be given by fine, but to him that hath the possession; Fitz-Herbert answereth, Yes, well enough; *query* the reason, saith the book.

And in the latter case, where *cestuy que use* was infeoffed by the disseisor of the feoffee, and made a feoffment over, Englefield doubted whether the second feoffee should have the use. Fitz-Herbert said, "I marvel you will make a doubt of it, for there is no doubt but the use passeth by the feoffment to the stranger, and therefore this question needeth not to have been made." So the great difficulty in 10 Reginae, Delamer's case, where the case was in effect tenant in tail of an use, the remainder in fee; tenant in tail made a feoffment in fee; tenant, by the statute of 1 R. III. and the feoffee infeoffed him in the remainder of the use, who made it over; and there question being made, whether the second feoffee should have the use in remainder, it is said that the second feoffee must needs have the best right in conscience; because the first feoffee claimed nothing but in trust, and the *cestuy que use* cannot claim it against his sale; but the reason is apparent, as was touched before, that a use in *esse* was but a thing in action, or in suit to be brought in court of conscience, and where the *subpoena* was to be brought against the feoffee, in possession to execute the estate, or against the feoffee out of possession to recontinue the estate, always the *subpoena* might be transferred; for still the action at the common law was not stirred but remained in the feoffee; and so no mischief of maintainance or transferring rights.

And if a use being but a right may be assigned, and passed over to a stranger, *à multo fortiori*, it may be limited to a stranger upon the privity of the first conveyance, as shall be handled in another place: and as to what Glanvile, justice, said, he could never find by any book, or evidence of antiquity, a contingent use limited over to a stranger; I answer, first, it is no marvel that you find no case before E. IV. his time, of contingent uses, where there be not six of uses in all; and the reason I doubt was, men did choose well whom they trusted, and trust was well observed: and at this day, in Ireland, where uses be in practice, cases of uses come seldom in question, except it be sometimes upon the alienations of tenants in tail by fine, that the feoffees will not be brought to execute estates to

the dis-inheritance of ancient blood. But for experience in the conveyance, there was nothing more usual in *obits*, than to will the use of the land to certain persons and their heirs, so long as they shall pay the chantry priests their wages, and in default of payment to limit the use over to other persons and their heirs; and so, in case of forfeiture, through many degrees; and such conveyances are as ancient as R. II. his time.

4. Now for determining and extinguishing of uses, I put the case of collateral warranty before, and to that the notable case of 14 H. VIII. Halfpenny's case, where this very point was as in the principal case; for a right out of land, and the land itself in case of possession, cannot stand together, but the rent shall be extinct; but there the case is, that the use of the land and the use of the rent shall stand well enough together; for a rent charge was granted by the feoffee to one, that had notice of the use, and ruled, that the rent was to the ancient use, and both uses were *in esse simul et semel*: and though Brudenell, chief justice, urged the ground of possession to be otherwise, yet he was over-ruled by the other three justices, and Brooke said unto him, he thought he argued much for his pleasure. And to conclude, we see that things may be avoided and determined by the ceremonies and acts, like unto those by which they are created and raised; that which passeth by livery ought to be avoided by entry; that which passeth by grant, by claim; that which passeth by way of charge, determineth by way of discharge: and so a use which is raised but by a declaration or limitation, may cease by words of declaration or limitation, as the civil law saith, *in his magis contentancum est, quam ut iisdem modis res dissolvantur quibus constituentur*.

For the inception and progression of uses, I have for a precedent in them searched other laws, because states and commonwealths have common accidents; and I find in the civil law, that that which cometh nearest in name to the use, is nothing like in matter, which is *usus fructus*: for *usus fructus et dominium* is with them, as with us particular tenancy and inheritance. But that which resembleth the use most is *fidei commissio*, and therefore you shall find in *Justinian, lib. 2.* that they had a form in testaments, to give inheritance to one to the use of another, *Haereditatem constituo Caium; rogo autem te, Caie, ut haereditatem restituas Scio*. And the text of the civilians saith, that for a great time if the heir did not as he was required, *cestuy que use* had no remedy at all, until about the time of Augustus Cæsar there grew in custom a flattering form of trust, for they penned it thus: *Rego te per salutem Augusti, or per fortunam Augusti, etc.* Whereupon Augustus took the breach of trust to found in derogation of himself, and made a rescript to the *praetor* to give remedy in such cases; whereupon within the space of a hundred years, these trusts did spring and speed so fast, as they were forced to have a particular chancellor only for uses, who was called *praetor fidei-commissarius*; and not long after, the inconvenience of them being found, they resorted unto a remedy much like unto this statute; for by two decrees of senate, called *senatus-consultum Trebellianum et Pegasianum*, they made *cestuy que use* to be heir in substance. I have sought likewise, whether there be any thing which maketh with them in our law, and I find that Periam, chief baron, in the argument of Chudleigh's case, compareth them to copyholders, and aptly for many respects.

First, because as an use seemeth to be an hereditament in the court of chancery, so the copy-hold seemeth to be an hereditament in the lord's court.

Secondly,

Secondly, this conceit of limitation hath been troublesome in copy-holders as well as in uses; for it hath been of late days questioned, whether there should be dowers, tenancies by the courtesy, intails, discontinuances, and recoveries of copy-holds, in the nature of inheritances, at the common law; and still the judgments have weighed, that you must have particular customs in copy-holds, as well as particular reasons of conscience in use, and the limitation rejected.

And thirdly, because they both grew to strength and credit by degrees: for the copy-holder first had no remedy at all against the lord, and were as tenancy at will. Afterwards it grew to have remedy in chancery, and afterwards against their lords by trespass at the common law; and now, lately, the law is taken by some, that they have remedy by *ejectione firmæ*, without a special custom of leasing. So no doubt in uses: at the first the chancery made question to give remedy, until uses grew more general, and the chancery more eminent; and then they grew to have remedy in conscience: but they could never obtain any manner of remedy at the common law, neither against the feoffee, nor against strangers; but the remedy against the feoffee was left to the *subpoena*; and the remedy against strangers to the feoffee.

Now for the cases whereupon uses were put in practice, Coke in his reading doth say well, that they were produced sometimes for fear, and many times for fraud. But I hold that neither of these cases were so much the reasons of uses, as another reason in the beginning, which was, that the lands by the common law of England were not testamentary or deviseable; and of late years, since the statute, the case of the conveyance for sparing of purchases and execution of estates; and now last of all an excess of evil in mens minds, affecting to have the assurance of their estate and possession to be revocable in their own times, and irrevocable after their own times.

Now for the commencement and proceeding of them, I have considered what it hath been in course of common law, and what it hath been in course of statute. For the common law the conceit of Shelley in 24 H. VIII. and of Pollard in 27 H. VIII. seemeth to me to be without ground, which was, that the use succeeded the tenure: for after that the statute of *Quia emptores terrarum*, which was made 18 E. I. had taken away the tenure between the feoffor and the feoffee, and left it to the lord paramount; they said that the feoffment being then merely without consideration, should therefore intend an use to the feoffor; which cannot be; for by that reason, if the feoffment before the statute had been made *tenendum de capitalibus dominis*, as it must be, there should have been an use unto the feoffor before that statute. And again, if a grant had been made of such things as consist not in tenure, as advowsons, rents, villains, and the like, there should have been a use of them, wherein the law was quite contrary; for after the time that uses grew common, it was nevertheless a great doubt whether things that did lie in grant, did not carry a consideration in themselves because of the deed.

And therefore I do judge that the intendment of a use to the feoffor, where the feoffment was made without consideration, grew long after, when uses waxed general; and for this reason, because when feoffments were made, and that it rested doubtful whether it were in use or in purchase, because purchases were things notorious, and uses were things secret, the Chancellor thought it more convenient to put the purchaser to prove his consideration, than the feoffor and his heirs to prove

the trust; and so made the intendment towards the use, and put the proof upon the purchaser.

And therefore as uses were at the common law in reason, for whatsoever is not by statute, nor against law, may be said to be at the common law; and both the general trust and the special, were things not prohibited by the law, though they were not remedied by the law; so the experience and practice of uses were not ancient; and my reasons why I think so, are these:

First, I cannot find in any evidence before king R. II. his time, the clause *ad opus et usum*, and the very Latin of it savoureth of that time; for in ancient time, about Edw. I. his time, and before, when lawyers were part civilians, the Latin phrase was much purer, as you may see by Bracton's writing, and by ancient patents and deeds, and chiefly by the register of writs, which is good Latin; wherein this phrase, *ad opus et usum*, and the words, *ad opus*, is a barbarous phrase, and like enough to be the penning of some chaplain that was not much past his grammar, where he had found *opus et usus* coupled together, and that they did govern an ablative case; as they do indeed since this statute, for they take away the land and put them into a conveyance.

Secondly, I find in no private act of attainder, the clause of forfeiture of lands, the words, "which he hath in possession or in use," until Ed. IV's reign.

Thirdly, I find the word "use" in no statute until 7 Rich. II. cap. 11. *Of provisors*, and in 15 Rich. *Of mortmain*.

Fourthly, I collect out of Choke's speech in 8 Edw. IV. where he saith, that by the advice of all the judges it was thought that the *subpoena* did not lie against the heir of the feoffee which was in by law, but *cestuy que use* was driven to his bill in parliament, that uses even in that time were but in their infancy; for no doubt but at the first the chancery made difficulty to give remedy at all, and did leave it to the particular conscience of the feoffee: but after the chancery grew absolute, as may appear by the statute of 13 H. VI. that complainants in chancery should enter into bond to prove their suggestions, which sheweth that the chancery at that time began to embrace too far, and was used for vexation; yet nevertheless it made scruple to give remedy against the heir being in by act in law, though he were privy; so that it cannot be that uses had been of any great continuance when they made that question: as for the case of *matrimonii praelocuti*, it hath no affinity with uses; for wheresoever there was remedy at the common law by action, it cannot be intended to be of the nature of a use.

And for the book commonly vouched of 8 *Aff.* where Earl calleth the possession of a conuzee upon a fine levied by consent and entry in *autre droit*, and 44 of E. III. where there is mention of the feoffors that sued by petition to the King, they be but implications of no moment. So as it appeareth the first practice of uses was about Richard II. his time; and the great multiplying and overpreading of them was partly during the wars in France, which drew most of the nobility to be absent from their possessions; and partly during the time of the trouble and civil war between the two houses about the title of the crown.

Now to conclude the progression of uses in course of statutes, I do denote three special points.

1. That a use had never any force at all at the common law, but by statute law.
2. That there was never any statute made directly for the benefit of *cestuy que use*, as that the descent of an use should toll an entry, or that a release should be good

to the pernor of the profits, or the like; but always for the benefit of strangers and other persons against *cestuy que use*, and his feoffees: for though by the statute of Richard III. he might alter his feoffee, yet that was not the scope of the statute, but to make good his assurance to other persons, and the other came in *ex obliquo*.

3. That the special intent unlawful and covinous was the original of uses, though after it induced to the lawful intent general and special; for 30 Edward III. is the first statute I find wherein mention is made of the taking of profits by one, where the estate in law is in another.

For as to the opinion in 27 Hen. VIII. that in case of the statute of Marlebridge, the feoffees took the profits, it is but a conceit: for the law is this day, that if a man infeoff his eldest son, within age, and without consideration, although the profits be taken to the use of the son, yet it is a feoffment within the statute. And for the statute *De religiosis* 7 Edward I. which prohibits generally that religious persons should not purchase *arte vel ingenio*, yet it maketh no mention of a use, but it saith *colore donationis, termini, vel alicujus tituli*, reciting there three forms of conveyances, the gift, the long lease, and feigned recovery; which gift cannot be understood of a gift to a stranger to their use, for that came to be holpen by 15 Richard II. long after.

But to proceed, in 5 Edward III. a statute was made for the relief of creditors against such as made covinous gifts of their lands and goods, and conveyed their bodies into sanctuaries, there living high upon other goods; and therefore that statute made their lands liable to their creditors executions in that particular case, if they took the profits. In 1 Richard II. a statute was made for relief of those as had right of action, against those as had removed the tenancy of the *praecipue* from them sometimes by infeoffing great persons, for maintenance; and sometimes by secret feoffments to others, whereof the defendants could have no notice; and therefore the statute maketh the recovery good in all actions against the first feoffers as they took the profits, and so as the defendants bring their actions within a year of their expulsions. In 2 Richard II. *cap. 3. session 2.* an imperfection of the statute of 50 Edward III. was holpen; for whereas the statute took no place, but where the defendant appeared, and so was frustrated, the statute giveth upon proclamation made at the gate of the place privileged, that the land should be liable without appearance.

In 7 R. II. a statute was made for the restraint of aliens, to take any benefices, or dignities ecclesiastical, or farms, or administration to them, without the King's special licence, upon pain of the statute of provisors: which being remedied by a former statute, where the alien took it to his own use; it is by that statute remedied, where the alien took it to the use of another, as it is said in the book; though I guess, that if the record were searched, it should be, if any other purchased to the use of an alien, and that the words, "or to the use of another," should be, "or any other to his use." In 15 Rich. II. *cap. 5.* a statute was made for the relief of lords against mortmain, where feoffments were made to the use of corporations; and an ordinance made that for feoffments past the feoffees should, before a day, either purchase license to amovise them, or alien them to some other use, or other reventments to come, or they should be within the statute of mortmain. In 4 Hen IV. *cap. 7.* the statute of 1 Richard II. is enlarged in the limitation of time; for whereas the statute did bin it the action to be brought within

the year of the feoffment, this statute in case of a disseisin extends the time to the life of the disseisor; and in all other actions, leaves it to the year from the time of the action grown. In 11 Henry VI. *cap.* 3. that statute of 4 Henry IV. is declared, because the conceit was upon the statute, that in case of disseisin the limitation of the life of the disseisor went only to the assise of *novel disseisin*, and to no other action; and therefore that statute declareth the former law to extend to all other actions, grounded upon *novel disseisin*. In 11 Henry VI. *cap.* 5. a statute was made for relief of him in remainder against particular tenants, for lives, or years, that assigned over their estates, and took the profits, and then committed waste against them; therefore this statute giveth an action of waste, being perners of the profits. In all this course of statutes no relief is given to purchasers, that come in by the party, but to such as come in by law, as defendants in *praecipies*, whether they be creditors, disseisors, or lessors, and that only in case of mortmain: and note also, that they be all in cases of special covinous intents, as to defeat executions, tenancy to the *praecipie*, and the statute of mortmain, or provisors. From 11 Henry VI. to 1 R. III. being the space of fifty years, there is a silence of uses in the statute book, which was at that time, when, no question, they were favoured most. In 1 Richard III. *cap.* 1. cometh the great statute for relief of those that come in by the party, and at that time an use appeareth in his likeness; for there is not a word spoken of taking the profits, to describe a use by, but of claiming to a use; and this statute ordained, that all gifts, feoffments, grants, *etc.* shall be good against the feoffors, donors and grantors, and all other persons claiming only to their use; so as here the purchaser was fully relieved, and *cestuy que use* was *obiter* enabled to change his feoffees; because there were no words in the statute of feoffments, grants, *etc.* upon good consideration; but generally in Henry VII's time, new statutes were made for further help and remedy to those that came in by act in law; as 1 Henry VII. *cap.* 1. a *formedon* is given without limitation of time against *cestuy que use*; and *obiter*, because they make him a tenant, they give him advantage of a tenant, as of age, and voucher: *query* 4 Henry VII. *cap.* 17. the wardship is given to the lord of the heir of *cestuy que use*, dying, and no will declared, is given to the lord, as if he had died seised in demesne, and action of waste given to the heir against the guardian, and damages, if the lord were barred in his writ of ward; and relief is likewise given unto the lord, if the heir holden the knight's service be of full age. In 19 Hen. VII. *cap.* 15. there is relief given in three cases, first to the creditors upon matters of record, as upon recognisance, statute, or judgment, whereof the two former were not aided at all by any statute: and the last was aided by a statute of 56 E. III. and 2 R. II. only in cases of sanctuary men. Secondly, to the lords in socage for their relief, and herriots upon death, which was omitted in the 4 Henry VII. and lastly to the lords of villains, upon a purchase of their villains in use. In 23 Henry VIII. *cap.* 10. a further remedy was given in a case like unto the case of mortmain; for in the statute of 15 Richard II. remedy was given where the use came *ad manum mortuam*, which was when it came to some corporation: now when uses were limited to a thing, act, or work, and to a body, as to the reparation of a church, or an abbot, or to a guild, or fraternities as are only in reputation, but not incorporated, as to parishes; or such guilds or fraternities as are only in reputation, but not incorporated, that case was omitted, which by this statute is remedied, not by way of giving entry unto the lord, but by way of making the use utterly void; neither doth

doth the statute exprefs to whose benefit the use shall be made void, either the feoffer, or feoffee, but leaveth it to law, and addeth a *proviso*, that uses may be limited twenty years from the gift, and no longer.

This is the whole course of statute law, before this statute, touching uses. Thus have I set forth unto you the nature and definition of an use, the differences and trust of an use, and the parts and qualities of it; and by what rules and learnings uses shall be guided and ordered: by a precedent of them in our laws, the causes of the springing and spreading of uses, the continuance of them, and the proceedings that they have had both in common law and statute law; whereby it may appear, that a use is no more but a general trust when any one will trust the conscience of another better than his own estate and possession, which is an accident or event of human society, which hath been, and will be in all laws, and therefore was at the common law, which is common reason. Fitz-Herbert saith in the 14 H. VIII. common reason is common law, and not conscience; but common reason doth define that uses should be remedied in conscience, and not in courts of law, and ordered by rules in conscience, and not by straight rules of law; for the common law hath a kind of a rule and survey over the chancery, to determine what belongs to the chancery. And therefore we may truly conclude, that the force and strength that a use had or hath in conscience, is by common law; and the force that it had or hath by common law, is only by statutes.

Now followeth in time and matter the consideration of this statute, which is of principal labour; for those former considerations which we have handled serve but for introduction.

This statute, as it is the statute which of all others hath the greatest power and operation over the heritages of the realm, so howsoever it hath been by the humour of the time perverted in exposition, yet in itself is most perfectly and exactly conceived and penned of any law in the book. 'Tis induced with the most declaring and persuading preamble, 'tis consisting and standing upon the wisest and fittest ordinances, and qualified with the most foreseeing and circumspect savings and provisoes: and lastly 'tis the best ponder'd in all the words and clauses of it of any statute that I find; but before I come to the statute it self, I will note unto you three matters of circumstance.

1. The time of the statute. 2. The title of it. 3. The precedent or pattern of it.

For the time of it was in 27 Hen. VIII. when the King was in full peace, and a wealthy and flourishing estate, in which nature of time men are most careful of their possessions; as well because purchasers are most stirring, as again, because the purchaser when he is full, is no less careful of his assurance to his children, and of disposing that which he hath gotten, than he was of his bargain for the compassing thereof.

About that time the realm likewise began to be enfranchised from the tributes of Rome, and the possessions that had been in mortmain began to stir abroad; for this year was the suppression of the smaller houses of religion, all tending to plenty, and purchasing: and this statute came in consort with divers excellent statutes, made for the kingdom in the same parliament; as the reduction of Wales to a more civil government, the re-edifying of divers cities and towns, the suppressing of depopulation and inclosures.

For.

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For the title, it hath one title in the roll, and another in course of pleading. The title in the roll is no solemn title, but an act intituled, an act expressing an order for uses and wills; the title in course of pleading is, *Statutum de usibus in possessionem transferendis*: wherein Walmisly justice noted well 4^o *Reginae*, that if a man look to the working of the statute, he would think that it should be turned the other way, *de possessionibus ad usus transferendis*; for that is the course of the statute, to bring possession to the use. But the title is framed not according to the work of the statute, but according to the scope and intention of the statute, *nam quod primum est in intentione, ultimum est in operatione*. The intention of the statute by carrying the possession to the use, is to turn the use to a possession; for the words are not *de possessionibus ad usus transferendis*; and as the grammarian saith, *praecipitio, ad, denotat notam aditum, sed praecipitio, in, cum accusativo denotat notam alterationis*: and therefore Kingm. justice in the same case saith, that the meaning of the statute was, to make a transubstantiation of the use into a possession. But it is to be noted, that titles of acts of parliament severally came in but in the 5 Hen. VIII. for before that time there was but one title of all the acts made in one parliament; and that was no title neither, but a general preface of the good intent of the King, tho' now it is parcel of the record.

For the precedent of this statute upon which it is drawn, I do find by the first Richard III. whereupon you may see the very mould whereon this statute was made, that the said King having been infeoffed, before he usurped, to uses, it was ordained that the land whereof he was jointly infeoffed should be as if he had not been named; and where he was solely infeoffed, it should be in *cestuy que use*, in estate, as he had the use.

Now to come to the statute itself, the statute consisteth, as other laws do, upon a preamble, the body of the law, and certain savings, and provisoes. The preamble setteth forth the inconveniencies, the body of the law giveth the remedy, and the savings and provisoes take away the inconveniencies of the remedy. For new laws are like the apothecaries drugs, though they remedy the disease, yet they trouble the body; and therefore they use to correct with spices: so it is not possible to find a remedy for any mischief in the commonwealth, but it will beget some new mischief; and therefore they spice their laws with provisoes to correct and qualify them.

The preamble of the law was justly commended by Popham chief justice in 36 *Reginae*, where he saith, that there is little need to search and collect out of cases, before this statute, what the mischief was which the scope of the statute was to redress; because there is a shorter way offered us, by the sufficiency and fulness of the preamble, and therefore it is good to consider it and ponder it thoroughly.

The preamble hath three parts.

First, a recital of the principal inconveniencies, which is the root of all the rest.

Secondly, an enumeration of divers particular inconveniencies, as branches of the former.

Thirdly, a taste or brief note of the remedy that the statute meaneth to apply. The principal inconvenience, which is *radix omnium malorum*, is the diverting from the grounds and principles of the common law, by inventing a mean to transfer lands and inheritances without any solemnity or act notorious: so as the whole statute is to be expounded chiefly towards the extinguishment of all conveyances, whereby

whereby the freehold or inheritance may pass without any new confections of deeds, executions of estate or entries, except it be where the estate is of privity and dependence one towards the other; in which cases, *mutatis mutandis*, they might pass by the rules of the common law.

The particular inconveniencies by the law rehearsed may be reduced into four heads.

1. First, that these conveyances in use are weak for consideration.
2. Secondly, that they are obscure and doubtful for trial.
3. Thirdly, That they are dangerous for want of notice and publication.
4. Fourthly, that they are exempted from all such titles as the law subjecteth possessions unto.

The first inconvenience lighteth upon heirs.

The second upon jurors and witnesses.

The third upon purchasers.

The fourth upon such as come in by gift in law.

All which are persons that the law doth principally respect and favour.

For the first of these are three impediments, to the judgment of man, in disposing justly and advisedly of his estate.

First, trouble of mind.

Secondly, want of time.

Thirdly, of wise and faithful counsel about him.

1. And all these three the statute did find to be in the disposition of an use by will, whereof followed the unjust disinherition of heirs. Now the favour of law unto heirs appeareth in many parts of the law; as the law of descent privilegeth the possession of the heir against the entry of him that hath right by the law: no man shall warrant against his heir, except he warrant against himself, and divers other cases too long to stand upon: and we see the ancient law in Glanvill's time was, that the ancestor could not disinherit his heir by grant, or other act executed in time of sickness; neither could he alien land which had descended unto him, except it were for consideration of money or service; but not to advance any younger brother without the consent of the heir.

2. For trials, no law ever took a straiter course that evidence should not be perplexed, nor juries inveigled, than the common law of England; as on the other side, never law took a more precise and strait course with juries, that they should give a direct verdict. For whereas in a manner all laws do give the triers, or jurors, which in other laws are called judges *de facto*, a liberty to give *non liquet*, that is, to give no verdict at all, and so the case to stand abated; our law inforceth them to a direct verdict, general or special; and whereas other laws accept of plurality of voices to make a verdict, our law inforceth them all to agree in one; and whereas other laws leave them to their own time and ease, and to part, and to meet again; our law doth drefs and imprison them in the hardest manner, without light or comfort, until they be agreed, in consideration of straitness and coercion: it is consonant, that the law do require in all matters brought to issue, that there be full proof and evidence; and therefore if the matter in itself be of that surety as in simple contracts, which are made by parole without writing, it alloweth wager of law.

In issue upon the mere right, which is a thing hardly to discern, it alloweth wager of battail to spare jurors, if time have wore out the marks and badges of truth:

truth: from time to time there have been statutes of limitation, where you shall find this mischief of perjuries often recited; and lastly, which is the matter in hand, all inheritances could not pass but by acts overt and notorious, as by deeds, livery, and records.

3. For purchasers, *bona fide*, it may appear that they were ever favoured in our law, as first by the great favour of warranties which were ever for the help of purchasers: as where by the law in Edw. III.'s time, the disseisee could not enter upon the feoffee in regard of the warranty; so again the collateral warranty, which otherwise as a hard law, grew in doubt only upon favour of purchasers; so was the binding of fines at the common law, the invention and practice of recoveries, to defeat the statute of intails, and many more grounds and learnings are to be found, which respect to the quiet of the possession of purchasers. And therefore though the statute of 1 Rich. III. had provided for the purchaser in some sort, by enabling the acts and conveyances of *cestuy que use*; yet nevertheless, the statute did not at all disable the acts or charges of the feoffees: and so as Walmisly justice said 42 *Reginae*, they played at double hand, for *cestuy que use* might sell, and the feoffee might sell, which was a very great uncertainty to the purchaser.

4. For the fourth inconvenience towards those that come in by law; conveyances in uses were like privileged places or liberties: for as there the law doth not run, so upon such conveyances the law could take no hold, but they were exempted from all titles in law. No man is so absolute owner of his possessions, but that the wisdom of the law doth reserve certain titles unto others; and such persons come not in by the pleasure and disposition of the party, but by the justice and consideration of law, and therefore of all others they are most favour'd: and also they are principally three.

1. The King and lords who lost the benefit of attainders, fines for alienations, escheats, aids, herriots, reliefs, &c.

2. The defendants in *praecipies* either real or personal, for debt and damages, who lost the benefit of their recoveries and executions.

3. Tenants in dower, and by the courtesy, who lost their estates and tithes.

1. First for the King: no law doth endow the King or Sovereign with more prerogatives or privileges: for his person is privileged from suits and actions, his possessions from interruption and disturbance, his right from limitation of time, his patents and gifts from all deceits and false suggestions. Next the King is the lord, whose duties and rights the law doth much favour, because the law supposeth the land did originally come from him; for until the statute of *Quia emptores terrarum*, the lord was not forced to destruct or dismember his signiory or service. So until 15 H. VII. the law was taken, that the lord, upon his title of wardship, should put out a conuzee of a statute, or a termor; so again we see, that the statute of mortmain was made to preserve the lord's escheats and wards: the tenant in dower is so much favoured, as that it is the common by-word in the law, that the law favoureth three things.

1. Life. 2. Liberty. 3. Dower.

So in case of voucher, the feme shall not be delayed, but shall recover against the heir incontinent; so likewise of tenant by courtesy it is called tenancy by the law of England, and therefore specially favoured, as a proper conceit and invention of our law; so as again the law doth favour such as have ancient rights, and therefore

therefore it telleth us it is commonly said that a right cannot die : and that ground of law, that a freehold cannot be in suspense, sheweth it well, inasmuch that the law will rather give the land to the first comer, which we call an occupant, than want a tenant to a demandant's action.

And again the other ancient ground of law of *remitter*, sheweth that where the tenant faileth without folly in the defendant, the law executeth the ancient right. To conclude therefore this point, when this practice of feoffments to use did prejudice and damnify all those persons that the ancient common law favoured ; and did absolutely cross the wisdom of the law : to have conveyances considerate and not odious, and to have trial thereupon clear and not inveigled, it is no marvel that the statute concludeth, that their subtle imaginations and abuses tended to the utter subversion of the ancient common laws of this realm.

The third part of the preamble giveth a touch of the remedy which the statute intendeth to minister, consisting in two parts.

First, the expiration of feoffments.

Secondly, the taking away of the hurt, damage, and deceit of the uses ; out of which have been gathered two extremities of opinions.

The first opinion is, that the intention of the statute was to discontinue and banish all conveyances in use ; grounding themselves upon the words, that the statute doth not speak of the extinguishment or extirpation of the use, namely, by an unity of possession, but of an extinguishment or extirpation of the feoffment, &c. which is the conveyance itself.

Secondly, out of the words, abuse and errors, heretofore used and accustomed, as if uses had not been at the common law, but had been only an erroneous device or practice. To both which I answer.

To the former, that the extirpation which the statute meant was plain, to be of the feoffee's estate, and not to the form of conveyances.

To the latter I say, that for the word, abuse, that may be an abuse of the law, which is not against law, as the taking long leases at this day of land *in capite* to defraud wardships, is an abuse of the law, which is not against law, but wandering or going astray, or digressing from the ancient practice of the law ; and by the word, errors, the statute meant by it, not a mistaking of the law, into a by-courie ; as when we say, *erravimus cum patribus juris*, it is not meant of ignorance only, but of perversity. But to prove that the statute meant not to suppress the form of conveyances, there be three reasons which are not answerable.

The first is, that the statute in the very branch thereof hath words *de futuro*, that are seized, or hereafter shall be seized : and whereas it may be said that these words were put in, in regard of uses suspended by disseisins, and so no present seizure to the use, until a regress of the feoffees ; that intendment is very particular, for commonly such cases are brought in by provisos, or special branches, and not intermixed in the body of a statute ; and it had been easy for the statute to have said, " or hereafter shall be seized upon any feoffment, *etc.* heretofore " had or made."

The second reason is upon the words of the statute of inrolments, which saith, that no hereditaments shall pass, *etc.* or any use thereof, *etc.* whereby it is manifest, that the statute meant to leave the form of conveyance with the addition of a farther ceremony.

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The third reason I make is out of the words of the proviso, where it is said, that no primer seisin, livery, no fine, nor alienation, shall be taken for any estate executed by force of the statute of 27, before the first of May 1536, but they shall be paid for uses made and executed in possession for the time after; where the word, made, directly goeth to conveyances in use made after the statute, and can have no other understanding; for the words, executed in possession, would have served for the case of regrefs: and lastly, which is more than all, if they have had any such intent, the case being so general and so plain, they would have had words express, that every limitation of use made after the statute should have been void; and this was the exposition, as tradition goeth, that a reader of Grays-Inn, which read soon after the statute, was in trouble for, and worthily, who, as I suppose, was Boy, whose reading I could never see; but I do now insist upon it, because now again some, in an immoderate invective against uses, do relapse to the same opinion.

The second opinion, which I called a contrary extremity, is, that the statute meant only to remedy the mischiefs in the preamble, recited as they grew by reason of divided uses; and although the like mischief may grow upon the contingent uses, yet the statute had no foresight of them at that time, and so it was merely a new case not comprised. Whereunto I answer, that it is the work of the statute to execute the divided use; and therefore to make an use void by this statute which was good before, though it doth participate of the mischief recited in the statute, were to make a law upon a preamble without a purview, which were grossly absurd. But upon the question what uses are executed, and what not; and whether out of possessions of a disseisor, or other possessions out of privity or not, there you shall guide your exposition according to the preamble; as shall be handled in my next day's discourse, and so much touching the preamble of this law.

For the body of the law, I would wish all readers that expound statutes to do as scholars are willed to do: that is, first to seek out the principal verb; that is, to note and single out the material words whereupon the statute is framed; for there are in every statute certain words, which are as veins where the life and blood of the statute cometh, and where all doubts do arise, and the rest are *literae mortuae*, fulfilling words.

The body of the statute consisteth upon two parts.

First, a supposition or case put, as Anderson 36 *Reginae* calleth it.

Secondly, a purview or ordinance thereupon.

The cases of the statute are three, and every one hath his purview. The general case. The case of co-foffees to the use of some of them. And the general case of feoffees to the use or purnors of rents or profits.

The general case is built upon eight material words. Four on the part of the feoffees. Three on the part of *cestuy que use*. And one common to them both.

The first material word on the part of the feoffees is the word, person. This excludes all alliances; for there can be no trust reposed but in a person certain: it excludes again all corporations; for they are equalled to a use certain: for note on the part of the feoffor-over the statute insists upon the word, person, and on the part of *cestuy que use*, that added body politic.

The second word material, is the word, seized: this excludes chattels. The reason is, that the statute meant to remit the common law, and not but that the chattels might ever pass by testament or by parole; therefore the use did not per-

vert them. It excludes rights, for it is against the rules of the common law to grant or transfer rights; and therefore the statute would execute them. Thirdly, it excludes contingent uses, because the seisin cannot be but to a fee-simple of a use; and when that is limited, the seisin of the feoffee is spent; for Littleton tells us, that there are but two seisins, one *in dominio ut de feodo*, the other *ut de feodo et jure*; and the feoffee by the common law could execute but the fee-simple to uses present, and not post uses; and therefore the statute meant not to execute them.

The third material word is, hereafter: that bringeth in again conveyances made after the statute; it brings in again conveyances made before, and disturb'd by disseisin, and recontinued after; for it is not said, infeoffed to use hereafter seisd.

The fourth word is, hereditament, which is to be understood of those things whereof an inheritance is in *esse*: for if I grant a rent charge *de novo* for life to a use, this is good enough; yet there is no inheritance in being of this rent: this word likewise excludes annuities and uses themselves; so that a use cannot be to a use.

The first word on the part of *cestuy que use*, is the word, use, confidence, or trust, whereby it is plain that the statute meant to remedy the matter, and not words; and in all the clauses it still carrieth the words.

The second word is the word, person, again, which excludeth all alliances; it excludeth also all contingent uses which are not to bodies lively and natural, as the building of a church, the making of a bridge; but here, as noted before, it is ever coupled with body politic.

The third word is the word, other; for the statute meant not to cross the common law. Now at this time uses were grown to such a familiarity, as men could not think of possession, but in course of use; and so every man was seised to his own use, as well as to the use of others; therefore because statutes would not stir nor turmoil possessions settled at the common law, it putteth in precisely this word, other; meaning the divided use, and not the conjoined use; and this causeth the clause of joint feoffees to follow in a branch by itself; for else that case had been doubtful upon this word, other.

The words that are common to both, are words expressing the conveyance whereby the use ariseth, of which words, those that breed any question are, agreement, will, otherwise, whereby some have inferred that uses might be raised by agreement parole, so there were a consideration of money or other matter valuable; for it is expressed in the words before, bargain, sale, and contract, but of blood, or kindred; the error of which collection appeareth in the word immediately following, namely, will, whereby they might as well include, that a man seised of land might raise an use by will, especially to any of his sons or kindred, where there is a real consideration; and by that reason, mean, betwixt this statute and the statute of 32 of wills, lands were deviseable, especially to any man's kindred, which was clearly otherwise; and therefore those words were put in, not in regard of uses raised by those conveyances, or without, or likewise by will, might be transferred; and there was a person seised to a use, by force of that agreement or will, namely, to the use of the assignee; and for the word, otherwise, it should by the generality of the word include a disseisin, to a use. But the whole scope of the statute crosseth that which was to execute such uses, as were confidences and trust, which could not be in case of disseisin; for if there were a commandment

precedent, then the land was vested in *cestuy que use* upon the entry; and if the disseisin were of the disseisor's own head, then no trust. And thus much for the case of supposition of this statute; here follow the ordinance and purview thereupon.

The purview hath two parts, the first *operatio statuti*, the effect that the statute worketh: and there is *modus operandi*, a fiction, or explanation how the statute doth work that effect. The effect is, that *cestuy que use* shall be in possession of like estate as he hath in the use; the fiction *quomodo* is, that the statute will have the possession of *cestuy que use*, as a new body compounded of matter and form; and that the feoffees shall give matter and substance, and the use shall give form and quality. The material words in the first part of the purview are four.

The first words are, remainder and reverter, the statute having spoken before of uses in fee-simple, in tail, for life, or years, addeth, or otherwise in remainder or reverter: whereby it is manifest, that the first words are to be understood of uses in possession. For there are two substantial and essential differences of estates, the one limiting the times, for all estates are but times of their continuances; this maketh the difference of fee-simple, fee-tail, for life or years; and the other maketh difference of possession as remainder: all other differences of estate are but accidents, as shall be said hereafter: these two the statute meant to take hold of, and at the words, remainder and reverter, it stops: it adds not words, right, title or possibility, nor it hath not general words, or otherwise: it is most plain, that the statute meant to execute no inferior uses to remainder or reverter; that is to say, no possibility or contingencies, but estates, only such as the feoffees might have executed by conveyance made. Note also, that the very letter of the statute doth take notice of a difference between an use in remainder and an use in reverter; which though it cannot be properly so called, because it doth not depend upon particular estates, as remainders do, neither did then before the statute draw any tenures as reversions do; yet the statute intends that there is a difference when the particular use, and the use limited upon the particular use, are both new uses; in which case it is a use in remainder; and where the particular use is a new use, and the remnant of the use is the old use, in which case it is a use in reverter.

The next material word is, from henceforth, which doth exclude all conceit of relation that *cestuy que use* shall not come in: as from the time of the first feoffments to use, as Brudnell's conceit was in 14 Hen. VIII. That is, the feoffor had granted a rent charge, and *cestuy que use* had made a feoffment in fee, by the statute of 1 Richard III. the feoffor should have held it discharged, because the act of *cestuy que use* shall put the feoffor in, as if *cestuy que use* had been seised in from the time of the first use limited; and therefore the statute doth take away all such ambiguities, and expresseth that *cestuy que use* shall be in possession from henceforth; that is, from the time of the parliament for uses then in being, and from the time of the execution for uses limited after the parliament.

The third material words are, lawful seisin, state, and possession, not a possession in law only, but a seisin in fact; not a title to enter into the land, but an actual estate.

The fourth words are, of and in such estates as they had in the use; that is to say, like estates, fee-simple, fee tail, for life, for years at will, in possession, and reversion, which are the substantial differences of estates, as was said before; but
both

both these latter clauses are more fully perfected and expounded by the branch of the fiction of the statute which follows.

This branch of fiction hath three material words or clauses: the first material clause is, that the estate, right, title, and possession that was in such person, *etc.* shall be in *cestuy que use*; for that the matter and substance of the estate of *cestuy que use* is the estate of the feoffee, and more he cannot have; so as if the use were limited to *cestuy que use* and his heirs, and the estate out of which it was limited was but an estate for life, *cestuy que use* can have no inheritance: so if when the statute came the heir of the feoffee had not entred after the death of his ancestor, but had only a possession in law, *cestuy que use* in that case should not bring an assize before entry, because the heir of the feoffee could not; so that the matter whereupon the use must work is the feoffee's estate. But note here: whereas before when the statute speaks of the uses, it spake only of uses in possession, remainder and reverter, but not in title or right; now when the statute speaks what shall be taken from the feoffee, it speaks of title and right: so that the statute takes more from the feoffee than it executes presently, in case where there are uses in contingency which are but titles.

The second word is, clearly, which seems properly and directly to meet with the conceit of *scintilla juris*, as well as the words in the preamble of extirpating and extinguishing such feoffments, so is their estate as clearly extinct.

The third material clause is, after such quality, manners, form, and condition as they had in the use; so as now as the feoffee's estate gives matter, so the use gives form: and as in the first clause the use was endowed with the possession in points of estate, so there it is endowed with the possession in all accidents and circumstances of estate. Wherein first note, that it is gross and absurd to expound the form of the use any whit to destroy the substance of the estate; as to make a doubt, because the use gave no dower or tenancy by the courtesy, that therefore the possession when it is transferred would do so likewise: no, but the statute meant such quality, manner, form and condition, as it is not repugnant to the corporal presence and possession of the estate.

Next for the word, condition, I do not hold it to be put in for uses upon condition, though it be also comprised within the general words; but because I would have things stood upon learnedly, and according to the true sense, I hold it but for an explaining, or word of the effect; as it is in the statute of 26 of treasons, where it is said, that the offenders shall be attainted of the overt fact by men of their condition, in this place, that is to say, of their degree or sort: and so the word condition in this place is no more, but in like quality, manner, form and degree, or sort; so as all these words amount but to *modo et forma*. Hence therefore all circumstances of estate are comprehended as sole seisin, or jointly seisin, by intieries, or by moieties, a circumstance of estate to have age as coming in by descent, or not age as purchaser; or circumstance of estate descendable to the heir of the part of the father, or of the part of the mother; a circumstance of estate conditional or absolute, remitted or not remitted, with a condition of inter-marriage or without: all these are accidents and circumstances of estate, in all which the possession shall ensue the nature and quality of the use: and thus much of the first case, which is the general case.

The second case of the joint feoffees needs no exposition; for it pursueth the penning of the general case: only this I will note, that although it had been omitted,

omitted, yet the law upon the first case would have been taken as the case provided; so that it is rather an explanation than an addition: for turn that case the other way, that one were infeoffed to the use of himself, I hold the law to be, that in the former case they shall be seised jointly; and so in the latter case *cestuy que use* shall be seised solely: for the word, other, it shall be qualified by the construction of cases, as shall appear when I come to my division. But because this case of co-tenants to the use of one of them was a general case in the realm, therefore they foresaw it expressed it precisely, and passed over the case *à converso*, which was but an especial case: and they were loth to bring in this case, by inserting the word, only, into the first case, to have penned it to the use only of other persons; for they had experience what doubt the word, only, bred upon the statute of 1 R. III. after this third case: and before the third case of rents comes in the second saving; and the reason of it is worth the noting, why the savings are interlaced before the third case; the reason of it is, because the third case needeth no saving, and the first two cases did need savings; and that is the reason of that again.

It is a general ground, that where an act of parliament is donor, if it be penned with an *ac si*, it is not a saving, for it is a special gift, and not a general gift, which includes all rights; and therefore in 11 Henry VII. where upon the alienation of women, the statute intitles the heir of him in remainder to enter, you find never a stranger, because the statute gives entry not *simpliciter*, but within an *ac si*; as if no alienation had been made, or if the feme had been naturally dead. Strangers that had right might have entred; and therefore no saving needs. So in the statute of 32 of leases, the statute enacts, that the leases shall be good and effectual in law, as if the lessor had been seised of a good and perfect estate in fee-simple; and therefore you find no saving in the statute; and so likewise of diverse other statutes, where the statute doth make a gift or title good specially against certain persons, there needs no saving, except it be to exempt some of those persons, as in the statute of 1 R. III. Now to apply this to the case of rents, which is penned with an *ac si*, namely, as if a sufficient grant or lawful conveyance had been made, or executed by such as were seised; why if such a grant of a rent had been made, one that had an ancient right might have entred and have avoided the charge; and therefore no saving needeth: but the second first cases are not penned with an *ac si*, but absolute, that *cestuy que use* shall be adjudged in estate and possession, which is a judgment of parliament stronger than any fine, to bind all rights; nay, it hath farther words, namely, in lawful estate and possession, which maketh it stronger than any in the first clause. For if the words only had stood upon the second clause, namely, that the estate of the feoffee should be in *cestuy que use*, then perhaps the gift should have been special, and so the saving superfluous: and this note is material in regard of the great question, whether the feoffees may make any regrefs; which opinion, I mean, that no regrefs is left unto them, is principally to be argued out of the saving; as shall be now declared: for the savings are two in number; the first saveth all strangers rights, with an exception of the feoffees; the second is a saving out of the exception of the first saving, namely, of the feoffees in case where they claim to their own proper use: it had been easy in the first saving out of the statute, other than such persons as are seised, or hereafter should be seised to any use, to have added to these words, executed by this statute; or in the second saving to have added unto the words, claiming to their

their proper use, these words, or to the use of any other, and executed by this statute: but the regress of the feoffee is shut out between the two savings; for it is the right of a person claiming to an use, and not unto his own proper use; but it is to be added, that the first saving is not to be understood as the letter implieth, that feoffees to use shall be barred of their regress, in case that it be of another feoffment than that whereupon the statute hath wrought, but upon the same feoffment; as if the feoffee before the statute had been disseised, and the disseised had made a feoffment in fee to I. D. his use, and then the statute came: this executeth the use of the second feoffment; but the first feoffees may make a regress, and they yet claim to an use, but not by that feoffment upon which the statute hath wrought.

Now followeth the third case of the statute, touching execution of rents; wherein the material words are four:

First, whereas diverse persons are seised, which hath bred a doubt that it should only go to rents in use at the time of the statute; but it is explained in the clause following, namely, as if a grant had been made to them by such as are or shall be seised.

The second word is, profit; for in the putting of the case, the statute speaketh of a rent; but after in the purview is added these words, or profit.

The third word is *ac si, scilicet*, that they shall have the rent as if a sufficient grant or lawful conveyance had been made and executed unto them.

The fourth words are the words of liberty and remedies attending upon such rent, *scilicet*, that he shall distrain, etc. and have such suits, entries, and remedies, relying again with an *ac si*, as if the grant had been made with such collateral penalties and advantages.

Now for the provisoes; the makers of this law did so abound with policy and discerning, as they did not only foresee such mischiefs as were incident to this new law immediately, but likewise such as were consequent in a remote degree; and therefore besides the express provisoes, they did add three new provisoes which are in themselves subtractive laws: for foreseeing that by the execution of uses, wills formerly made should be overthrown; they made an ordinance for wills. Foreseeing likewise, that by execution of uses women should be doubly advanced; they made an ordinance for dowers and jointures. Foreseeing again, that the execution of uses would make *franktenement* pass by contracts parole, they made an ordinance for inrollments of bargains and sales. The two former they inserted into this law, and the third they distinguished into a law apart, but without any preamble as may appear, being but a proviso to this statute. Besides all these provisional laws, and besides four provisoes, whereof three attend upon the law of jointure, and one of persons born in Wales, which are not material to the purpose in hand; there are six provisoes which are natural and true members and limbs of the statute, whereof four concern the part of *cestuy que use*, and two concern the part of the feoffees. The four which concern the part of *cestuy que use*, tend all to save him from prejudice by the execution of the estate.

The first saveth him from the extinguishment of any statute or recognisance, as if a man had an extent of a hundred acres, and an use of the inheritance of one. Now the statute executing the possession to that one, would have extinguished his extent being intire in all the rest: or as if the conveyee of a statute having ten
acres

READING ON THE STATUTE OF USES.

uses liable to the statute, had made a feoffment in fee to a stranger of two, and after had made a feoffment in fee to the use of the conuzee and his heirs. And upon this proviso there arise three questions :

First, whether this proviso were not superfluous, in regard that *cestuy que use* was comprehended in the general saving, though the feoffees be excluded ?

Secondly, whether this proviso doth save statutes or executions, with an apportionment, or intire ?

Thirdly, because it is penned indefinitely in point of time, whether it shall go to uses limited after the statute, as well as to those that were in being all the time of the statute ; which doubt is rather enforced by this reason, because there was for * uses at the time of the statute ; for that the execution of the statute might be waved : but both possession and use, since the statute, may be waved.

The second proviso saveth *cestuy que use* from the charge of *primer seisin*, *liveries*, *ouster les maines*, and such other duties to the King, with an express limitation of time, that he shall be discharged for the time past, and charged for the time to come to the King, namely, May 1536, to be *communis terminus*.

The third proviso doth the like for fines, reliefs, and herriots, discharging them for the time past, and speaking nothing of the time to come.

The fourth proviso giveth to *cestuy que use* all collateral benefits of vouchers, aid-priers, actions of waste, trespass, conditions broken, and which the feoffees might have had ; and this is expressly limited for estates executed before 1 May 1536. And this proviso giveth occasion to intend that none of these benefits would have been carried to *cestuy que use*, by the general words in the body of the law, *scilicet*, that the feoffees estate, right, title, and possession, *etc.*

For the two provisos on the part of the tertenant, they both concern the saving of strangers from prejudice, *etc.*

The first saves actions depending against the feoffees, that they shall not abate.

The second saves wardships, liveries, and *ouster les maines*, whereof title was veiled in regard of the heir of the feoffee, and this in case of the King only.

What persons may be seised to an use, and what not.

What persons may be cestuy que use, and what not.

What persons may declare an use, and what not.

THOUGH I have opened the statute in order of words, yet I will make my division in order of matter, namely,

1. The raising of uses.
2. The interruption of uses.
3. The executing of uses.

Again, the raising of uses doth easily divide itself into three parts : The persons that are actors to the conveyance to use. The use itself. The form of the conveyance.

Then it is first to be seen what persons may be seised to an use, and what not ; and what persons may be *cestuy que use*, and what not.

The King cannot be seised to an use ; no, not where he taketh in his natural body, and to some purpose as a common person ; and therefore if land be given to the King and I. D. *pour terme de leur vies*, this use is void for a moiety.

* The text here is manifestly corrupted, nor does any probable conjecture occur for its amendment.

Like law is, if the King be seised of land in the right of his duchy of Lancaster, and covenanteth by his letters patents under the duchy seal to stand seised to the use of his son, nothing passeth.

Like law, if King R. III. who was feoffee to diverse uses before he took upon him the crown, had, after he was King, by his letters patents granted the land over, the uses had not been renewed.

The Queen, speaking not of an imperial Queen but by marriage, cannot be seised to an use, though she be a body enabled to grant and purchase without the King: yet in regard of the government and interest the King hath in her possession, she cannot be seised to an use.

A corporation cannot be seised to an use, because their capacity is to a use certain; again, because they cannot execute an estate without doing wrong to their corporation or founder; but chiefly because of the letter of this statute which, in any clause when it speaketh of the feoffee, resteth only upon the word, person, but when it speaketh of *cestuy que use*, it addeth person or body politic.

If a bishop bargain or sell lands whereof he is seised in the right of his fee, this is good during his life; otherwise it is where a bishop is infeoffed to him and his successors, to the use of I. D. and his heirs, that is not good, no not for the bishop's life, but the use is merely void.

Contrary law of tenant in tail; for if I give land in tail by deed since the statute to A, to the use of B and his heirs; B hath a fee-simple determinable upon the death of A without issue. And like law, though doubtful before the statute, was; for the chief reason which bred the doubt before the statute, was because tenant in tail could not execute an estate without wrong; but that since the statute is quite taken away, because the statute saveth no right of intail, as the statute of 1 R. III. did; and that reason likewise might have been answered before the statute, in regard of the common recovery.

A feme covert and an infant, though under years of discretion, may be seised to an use; for as well as land might descend unto them from a feoffee to use, so may they originally be infeoffed to an use; yet if it be before the statute, and they had, upon a *subpoena* brought, executed their estate during the coverture or infancy, they might have defeated the same; and when they should have been seised again to the use, and not to their own use; but since the statute no right is saved unto them.

If a feme covert or an infant be infeoffed to an use precedent since the statute, the infant or baron come too late to discharge or root up the feoffment; but if an infant be infeoffed to the use of himself and his heirs, and I. D. pay such a sum of money to the use of I. G. and his heirs, the infant may disagree and overthrow the contingent use.

Contrary law, if an infant be infeoffed to the use of himself for life, the remainder to the use of I. S. and his heirs, he may disagree to the feoffment as to his own estate, but not to divest the remainder, but it shall remain to the benefit of him in remainder.

And yet if an attainted person be infeoffed to an use, the King's title, after office found, shall prevent the use, and relate above it; but until office the *cestuy que use* is seised of the land.

Like law of an alien; for if land be given to an alien to an use, the use is not void *ab initio*: yet neither alien or attainted person can maintain an action to defend the land.

READING ON THE STATUTE OF USES.

The King's villain if he be infeoffed to an use, the King's title shall relate above the use; otherwise in case of a common person.

But if the lord be infeoffed to the use of his villain, the use neither riseth, but the lord is in by the common law, and not by the statute discharged of the use.

But if the husband be infeoffed to the use of his wife for years, if he die the wife shall have the term, and it shall not inure by way of discharge, although the husband may dispose of the wife's term.

So if the lord of whom the land is held be infeoffed to the use of a person attainted, the lord shall not hold by way of discharge of the use, because of the King's title, *annum, diem et vastum*.

A person uncertain is not within the statute, nor any estate *in nubibus* or suspensive executed: as if I give land to I. S. the remainder to the right heirs of I. D. to the use of I. N. and his heirs, I. N. is not seised of the fee-simple of an estate *pour vie* of I. S. till I. D. be dead, and then in fee-simple.

Like law, if before the statute I give land to I. S. *pour autre vie* to an use, and I. S. dieth, living *cestuy que use*, whereby the freehold is in suspensive, the statute cometh, and no occupant entreth; the use is not executed out of the freehold in suspensive for the occupant, the disseisor, the lord by eicheat. The feoffee upon consideration, not having notice, and all other persons which shall be seised to use, not in regard of their persons but of their title; I refer them to my division touching disturbance and interruption of uses.

It followeth now to see what person may be a *cestuy que use*. The King may be *cestuy que use*; but it behoveth both the declaration of the use, and the conveyance itself, to be matter of record, because the King's title is compounded of both; I say, not appearing of record, but by conveyance of record. And therefore if I covenant with I. S. to levy a fine to him to the King's use, which I do accordingly; and this deed of covenant be not inroll'd, and the deed be found by office, the use vesteth not. *E converso*, if inroll'd. If I covenant with I. S. to infeoff him to the King's use, and the deed be inroll'd, and the feoffment also be found by office, the use vesteth.

But if I levy a fine, or suffer a recovery to the King's use, and declare the use by deed of covenant inroll'd, though the King be not party, yet it is good enough.

A corporation may take an use, and yet it is not material whether the feoffment or the declaration be by deed; but I may infeoff I. S. to the use of a corporation, and this use may be averred.

An use to a person uncertain is not void in the first limitation, but executeth not till the person be *in esse*; so that this is positive, that an use shall never be in abeyance as a remainder may be, but ever in a person certain upon the words of the statute, and the estate of the feoffees shall be in him or them which have the use. The reason is, because no confidence can be reposed in a person unknown and uncertain; and therefore if I make a feoffment to the use of I. S. for life, and then to the use of the right heirs of I. D. the remainder is not in abeyance, but the reversion is in the feoffor, *quocumque*. So that upon the matter all persons uncertain in use, are like conditions or limitations precedent.

Like law, if I infeoff one to the use of I. S. for years, the remainder to the right heirs of I. D. this is not executed in abeyance, and therefore not void.

Like law, if I make a feoffment to the use of my wife that shall be, or to such persons as I shall maintain, though I limit no particular estate at all; yet the use is good, and shall in the interim return to the feoffor. Contrary

Contrary law, if I once limit the whole fee-simple of the use out of land, and part thereof to a person uncertain, it shall never return to the feoffor by way of fraction of the use: but look how it should have gone unto the feoffor; if I begin with a contingent use, so it shall go to the remainder; if I intail a contingent use, both estates are alike subject to the contingent use when it falleth; as when I make a feoffment in fee to the use of my wife for life, the remainder to my first begotten son; I having no son at that time, the remainder to my brother and his heirs: if my wife die before I have any son, the use shall not be in me, but in my brother. And yet if I marry again, and have a son, it shall divest from my brother, and be in my son, which is the skipping they talk so much of.

So if I limit an use jointly to two persons, not *in esse*, and the one cometh to be *in esse*, he shall take the entire use; and yet if the other afterward come *in esse*, he shall take jointly with the former; as if I make a feoffment to the use of my wife that shall be, and my first begotten son for their lives, and I marry; my wife taketh the whole use, and if I afterwards have a son, he taketh jointly with my wife.

But yet where words of abeyance work to an estate executed in course of possession, it shall do the like in uses; as if I infeoff A to the use of B for life, the remainder to C for life, the remainder to the right heirs of B, this is a good remainder executed.

So if I infeoff A to the use of his right heirs, A is in the fee-simple, not by the statute, but by the common law.

Now are we to examine a special point of the disability of such persons as do take by the statute: and that upon the words of the statute, where diverse persons are seised to the use of other persons; so that by the letter of the statute, no use is contained: but where the feoffor is one, and *cestuy que use* is another.

Therefore it is to be seen in what cases the same persons shall be both seised to the use and *cestuy que use*, and yet in by the statute; and in what cases they shall be diverse persons, and yet in by the common law; wherein I observe unto you three things: First, that the letter is full in the point. Secondly, that it is strongly urged by the clause of joint estates following. Thirdly, that the whole scope of the statute was to remit the common law, and never to intermeddle where the common law executed an estate; therefore the statute ought to be expounded, that where the party seised to the use, and the *cestuy que use* is one person, he never taketh by the statute, except there be a direct impossibility or impertinency for the use, to take effect by the common law.

And if I give land to I. S. to the use of himself and his heirs; and if I. D. pay a sum of money, then to the use of I. D. and his heirs, I. S. is in of an estate for life, or for years, by way of abridgement of estate in course of possession, and I. D. in of the fee-simple by the statute.

So if I bargain and sell my land after seven years, the inheritance of the use only passeth; and there remains an estate for years by a kind of subtraction of the inheritance or occupier of my estate, but merely at the common law.

But if I infeoff I. S. to the use of himself in tail, and then to the use of I. D. in fee, or covenant to stand seised to the use of myself in tail, and to the use of my wife in fee; in both these cases the estate tail is executed by this statute; because an estate tail cannot be re-occupied out of a fee-simple, being a new estate, and not like a particular estate for life or years, which are but portions of the ab-

folate fee; and therefore if I bargain and sell my land to I. S. after my death without issue, it doth not leave an estate tail in me, nor vesteth any present fee in the bargain, but is an use expectant.

So if I infeoff I. S. to the use of I. D. for life, and then to the use of himself and his heirs, he is in of the fee-simple merely in course of possession, and as of a reversion, and not of a remainder.

Contrary law, if I infeoff I. S. to the use of I. D. for life, then to the use of himself for life, the remainder to the use of I. N. in fee: Now the law will not admit fraction of estates; but I. S. is in with the rest by the statute.

So if I infeoff I. S. to the use of himself and a stranger, they shall be both in by the statute, because they could not take jointly, taking by several titles.

Like law, if I infeoff a bishop and his heirs to the use of himself, and his successors, he is in by the statute in the right of his fee.

And as I cannot raise a present use to one out of his own seisin; so if I limit a contingent or future use to one being at the time of limitation not seised, but after become seised at the time of the execution of the contingent use, there is the same reason and the same law, and upon the same difference which I have put before.

As if I covenant with my son, that after his marriage I will stand seised of land to the use of himself and his heirs; and before marriage I infeoff him to the use of himself and his heirs, and then he marieth; he is in by the common law, and not by the statute; like law of a bargain and sale.

But if I had lett to him for life only, then he should have been in for life only by the common law, and of the fee-simple by statute. Now let me advise you of this, that it is not a matter of subtilty or conceit to take the law right, when a man cometh in by the law in course of possession, and where he cometh in by the statute in course of possession; but it is material for the deciding of many causes and questions, as for warranties, actions, conditions, waivers, suspicions, and divers other provisos.

For example; a man's farmer committed waste: after he in reversion covenanteth to stand seised to the use of his wife for life, and after to the use of himself and his heirs; his wife dies; if he be in his fee untouched, he shall punish the waste; if he be in by the statute, he shall not punish it.

So if I be infeoffed with warranty, and I covenant with my son to stand seised to the use of myself for life, and after to him and his heirs; if I be in by the statute, it is clear my warranty is gone; but if I be in by the common law, it is doubtful.

So if I have an eigne right, and be infeoffed to the use of I. S. for life, then to the use of myself for life, then to the use of I. D. in fee, I. S. dieth. If I be in by the common law, I cannot waive my estate, having agreed to the feoffment: but if I am in by the statute, yet I am not remitted, because I come in by my own act: but I may waive my use, and bring an action presently; for my right is saved unto me by one of the savings in the statute. Now on the other side it is to be seen, where there is a seisin to the use of another person; and yet it is out of the statute which is in special cases upon the ground, wheresoever *casus que use* had remedy for the possession by course of common law, there the statute never worketh; and therefore if a disseisin were committed to an use, it is in him by the common law upon agreement; so if one enter as occupant to the use of another, it is in him till disagreement.

So if a feme infeof a man, *ante matrimonii prolocuti*, ſhe hath remedy for the land again by courſe of the law; and therefore in thoſe ſpecial caſes the ſtatute worketh not; and yet the words of the ſtatute are general, where any perſon ſtands ſeiſed by force of any fine, recovery, feoffment, bargain and ſale, agreement or otherwiſe; but yet the feme is to be reſtrained for the reaſon aforeſaid.

It remaineth to ſhew what perſons may limit and declare an uſe: wherein we muſt diſtinguiſh; for there are two kinds of declarations of uſes, the one of a preſent uſe upon the firſt conveyance, the other upon a power of revocation or new declaration; the latter of which I refer to the diviſion of revocation: now for the former.

The King upon his letters patent may declare an uſe, though the patent itſelf implieth an uſe, if none be declared.

If the King gives lands by his letters to I. S. and his heirs, to the uſe of I. S. for life, the King hath the inheritance of the uſe by implication of the patent, and no office needeth; for implication out of matter of record, amounteth ever to matter of record.

If the Queen give land to I. S. and his heirs to the uſe of all the church-wardens of the church of Dale, the patentee is ſeiſed to his own uſe, upon that confidence or intent; but if a common perſon had given land in that manner, the uſe had been void by the ſtatute of 23 H. VIII. and the uſe had returned to the feoffor and his heirs. A corporation may take an uſe without deed, as hath been ſaid before; but can limit no uſe without deed.

An infant may limit an uſe upon a feoffment, fine, or recovery, and he cannot countermand or avoid the uſe, except he avoid the conveyance; contrary, if an infant covenant in conſideration of blood or marriage to ſtand ſeiſed to an uſe, the uſe is merely void.

If an infant bargain and ſell his land for money, for commons or teaching, it is good with averment; if for money, otherwiſe: if it be proved it is avoidable; if for money recited and not paid, it is void; and yet in the caſe of a man of full age the recital ſufficeth.

If baron and feme be ſeiſed in the right of the feme, or by joint purchaſe during the coverture, and they join in a fine, the baron cannot declare the uſe for longer time than the coverture, and the feme cannot declare alone; but the uſe goeth, according to the limitation of law, unto the feme and her heirs: but they may both join in declaration of the uſe in fee; and if they ſever, then it is good for ſo much of the inheritance as they concurred in; for the law avoucheth all one as if they joined: as if the baron declare an uſe to I. S. and his heirs, and the feme another to I. D. for life, and then to I. S. and his heirs, the uſe is good to I. S. in fee.

And if upon examination the feme will declare the uſe to the judge, and her huſband agree not to it, it is void, and the baron's uſe is only good; the reſt of the uſe goeth according to the limitation of law.

THE
A R G U M E N T S

IN
L A W

OF
Sir FRANCIS BACON, Knight,
the KING'S Solicitor-General,

IN
Certain Great and Difficult Cases.

To my Loving Friends and Fellow,

The READERS, ANCIENTS,
UTTER-BARRISTERS, and STUDENTS,
OF
GRAY'S - INN.

I Do not hold the law of England in so mean an account, but that which other laws are held worthy of, should be due likewise to our laws, as no less worthy for our state. Therefore when I found that not only in the ancient times, but now at this day, in France, Italy, and other nations, the speeches, and, as they term them, pleadings, which have been made in judicial cases, where the cases were mighty and famous, have been set down by those that made them, and published; so that not only a Cicero, a Demosthenes, or an Æschines, hath set forth his Orations, as well in the judicial as deliberative; but a Marrian and a Pavier have done the like by their pleadings; I know no reason why the same should not be brought in use by the professors of our law for their arguments in principal cases. And this I think the more necessary, because the compendious form of reporting resolutions, with the substance of the reasons, lately used by Sir Edward Coke, lord Chief Justice of the King's bench, doth not delineate or trace out to the young practitioners of law a method and form of argument for them to imitate. It is true I could have wished some abler person had begun; but it is a kind of order sometimes to begin with the meanest. Nevertheless thus much I may say with modesty, that these arguments which I have set forth, most of them, are upon subjects not vulgar; and therewithal, in regard of the commixture, which the course of my life hath made of law with other studies, they may have the more variety, and perhaps the more depth of reason: for the reasons of municipal laws, severed from the grounds of nature, manners, and policy, are like wall flowers, which though they grow high upon the creel of states, yet they have no deep root: besides, in all public services I ever valued my reputation more than my pains; and therefore in weighty causes I always used extraordinary diligence; in all which respects I persuade myself the reading of them will be not unprofitable. This work I knew not to whom to dedicate, rather than to the Society of GRAY'S-INN, the place whence my father was called to the highest place of justice, and where myself have lived and had my procedure to me, as by his Majesty's rare if not singular grace, to be of both his councils: and therefore few men, so bound to their societies by obligation, both ancestral and personal, as I am to yours; which I would gladly acknowledge not only in having your name joined with mine own in a book, but in any other good office and effect which the active part of my life and place may enable me unto toward the Society, or any of you in particular. And so I bid you right heartily farewell.

Your affeeted loving friend and fellow,

FRANCIS BACON.

THE

T H E
C A S E
O F
I M P E A C H M E N T of W A S T E .

A R G U E D

Before all the J U D G E S in the Exchequer Chamber.

THE case needs neither repeating nor opening. The point is in substance but one, familiar to be put, but difficult to be resolved; that is, Whether, upon a lease without impeachment of waste, the property of the timber-trees, after severance, be not in him that is owner of the inheritance?

The case is of great weight, and the question of great difficulty: weighty it must needs be, for that it doth concern, or may concern, all the lands in England; and difficult it must be, because this question fails *in confluentis aquarum*, in the meeting or strife of two great tides. For there is a strong current of practice and opinion on the one side, and there is a more strong current, as I conceive, of authorities, both ancient and late, on the other side. And therefore, according to the reverend custom of the realm, it is brought now to this assembly; and it is high time the question receive an end, the law a rule, and mens conveyances a direction.

This doubt ariseth and resteth upon two things to be considered; first, to consider of the interest and property of a timber-tree, to whom it belongeth: and secondly, to consider of the construction and operation of these words or clause, *absque impetitione vasti*: for within these two branches will aptly fall whatsoever can be pertinently spoken in this question, without obscuring the question by any other curious division.

For the first of these considerations, which is the interest or property of a timber-tree, I will maintain and prove to your lordships three things.

First, That a timber-tree, while it groweth, is merely parcel of the inheritance, as well as the soil itself.

And, secondly, I will prove, that when either nature, or accident, or the hand of man hath made it transitory, and cut it off from the earth, it cannot change the owner, but the property of it goes where the inheritance was before. And thus much by the rules of the common law.

And, thirdly, I will shew that the statute of Gloucester doth rather corroborate and confirm the property in the lessor, than alter it, or transfer it to the lessee.

And for the second consideration, which is the force of that clause, *absque impetitione vasti*, I will also uphold and make good three other assertions.

VOL. II.

M m m

First,

CASE OF IMPEACHMENT OF WASTE.

First, That if that clause should be taken in the sense which the other side would force upon it, that it were a clause repugnant to the estate and void.

Secondly, That the sense which we conceive and give, is natural in respect of the words; and for the matter agreeable to reason and the rules of law.

And lastly, That if the interpretation seem ambiguous and doubtful, yet the very mischief itself, and consideration of the commonwealth, ought rather to incline your lordships judgment to our construction.

My first assertion therefore is, that a timber-tree is a solid parcel of the inheritance; which may seem a point admitted, and not worth the labouring. But there is such a chain in this case, as that which seemeth most plain, if it is sharply looked into, doth invincibly draw on that which is most doubtful. For if the tree be parcel of the inheritance severed, inherent in the reversion, severance will not alien it, nor the clause will not divest it.

To open therefore the nature of an inheritance: sense teacheth there be, of the soil and earth, parts that are raised and eminent, as timber-trees, rocks, houses. There be parts that are sunk and depressed, as mines, which are called by some *arbores subterraneae*, because that as trees have great branches and smaller boughs and twigs; so have they in their region greater and smaller veins: so if we had in England beds of porcelane, such as they have in China, which porcelane is a kind of a plaster buried in the earth, and by length of time congealed and glazed into that fine substance; this were as an artificial mine, and no doubt part of the inheritance. Then are there the ordinary parts, which make the mass of the earth, as stone, gravel, loam, clay, and the like.

Now as I make all these much in one degree, so there is none of them, not timber-trees, not quarries, not minerals or fossils, but hath a double nature; inheritable and real, while it is contained within the mass of the earth; and transitory and personal, when it is once severed. For even gold and precious stone, which is more durable out of earth than any tree is upon the earth; yet the law doth not hold of that dignity as to be matter of inheritance if it be once severed. And this is not because it becometh moveable, for there be moveable inheritances, as villains in gross, and dignities which are judged hereditaments; but because by their severance they lose their nature of perpetuity, which is of the essence of an inheritance.

Mear's case proving there are inheritances which are not local.

The consent of the law with philosophy in distinguishing between perpetual and transitory.

And herein I do not a little admire the wisdom of the laws of England, and the consent which they have with the wisdom of philosophy and nature itself: for it is a maxim in philosophy, that *in regione elementari nihil est aeternum, nisi per propagationem speciei, aut per successionem partium*.

And it is most evident, that the elements themselves, and their products have a perpetuity not *in individuo*, but by supply and succession of parts. For example, the vestal fire, that was nourished by the virgins at Rome, was not the same fire still, but was in perpetual waste, and in perpetual renovation. So it is of the sea and waters, it is not the same water individually, for that exhales by the sun, and is fed again by showers. And so of the earth itself, and mines, quarries, and whatsoever it containeth, they are corruptible individually, and maintained only by succession of parts, and that lasteth no longer than they continue fixed to the main and mother-globe of the earth, and is destroyed by their separation.

According

According to this I find the wisdom of the law, by imitation of the course of nature, to judge of inheritances and things transitory; for it alloweth no portions of the earth, no stone, no gold, no mineral, no tree, no mould to be longer inheritance than they adhere to the mass, and so are capable of supply in their parts: for by their continuance of body stands their continuance of time.

Neither is this matter of discourse, except the deep and profound reasons of law, which ought chiefly to be searched, shall be accounted discourse, as the lighter sort of wits, *Scioli*, may esteem them.

And therefore now that we have opened the nature of inheritable and transitory, let us see, upon a division of estates, and before severance, what kind of interests the law alloteth to the owner of inheritance, and what to the particular tenant; for they be competitors in this case.

First, In general the law doth assign to the lessor those parts of the soil conjoined, which have obtained the reputation to be durable, and of continuance, and such as being destroyed, are not but by long time renewed; and to the terminors it assigneth such interests as are tender and feeble against the force of time, but have an annual or seasonable return or revenue. And herein it consents again with the wisdom of the civil law; for our inheritance and particular estate is in effect their *dominium* and *usus-fructus*; for so it was conceived upon the ancient statute of depopulations, 4 Hen. VII. which was penned, "that the owner of the land should re-edify the houses of husbandry," that the word *owner*, which answereth to *dominus*, was he that had the immediate inheritance; and so ran the later statutes. Let us see therefore what judgment the law maketh of a timber-tree; and whether the law doth not place it within the lot of him that hath the inheritance as parcel thereof.

The content of the law with the civil law, in the distinguishing between inheritance and particular estates, which hath relation to their division of *dominium* and *usus-fructus*.
Owner in the stat. 4 H. 7.

First, it appeareth by the register out of the words of the writ of waste, that the waste is laid to be *ad exbaedationem*, which presupposeth *hereditatem*: for there cannot be a disinherison by the cutting down of the tree, except there was an inheritance in the tree, *quia privatio praesupponit actum*.

The writ of waste supposeth the felling timber to be *ad exbaedationem*.

Again it appeareth out of the words of the statute of Gloucester well observed, that the tree and the soil are one intire thing, for the words are *quod recuperet rem vastatam*; and yet the books speak, and the very judgment in waste is, *quod recuperet locum vastatum*, which shews, that *res* and *locus* are in exposition of law taken indifferently: for the lessor shall not recover only the stem of the tree, but he shall recover the very soil, whereunto the stem continues. And therefore it is notably ruled in 22 H. VI. f. 13. that if the terminor do first cut down the tree, and then destroy the stem, the lessor shall declare upon two several wastes, and recover treble damages for them severally. But, says the book, he must bring but one writ, for he can recover the place wasted but once.

The statute of Gloucester, *quod recuperet rem vastatam*, not *locum vastatum*.

22 H. 6. f. 13.

And farther proof may be fitly alledged out of Mullin's case in the commentaries, where it is said, that for timber-trees tithes shall not be paid. And the reason of the book is well to be observed; "for that tithes are to be paid for the revenue of the inheritance, and not for the inheritance itself."

Mullin's case.

Nay, my lords, it is notable to consider what a reputation the law gives to the trees, even after they are severed by grant, as may be plainly inferred out of Herlackenden's case, L. Coke, p. 4. f. 62. I mean the principal case; where it is resolved, that if the trees being excepted out of a lease granted to the lessee, or if the grantee of trees accept a lease of the land, the property of the trees drow-

Co. p. 4. f. 62.

not, as a term should drown in a freehold, but subsist as a chattel divided; which shews plainly, though they be made transitory, yet they still to some purpose favour of the inheritance: for if you go a little farther, and put the case of a state tail, which is a state of inheritance, then I think clearly they are re-annexed. But on the other side, if a man buy corn standing upon the ground, and take a lease of the same ground, where the corn stands, I say plainly it is re-affixed, for *paria copulantur cum paribus*.

And it is no less worthy the note, what an operation the inheritance leaveth behind it in matter of waste, even when it is gone, as appeareth in the case of tenant after possibility, who shall not be punished; for though the new reason be, because his estate was not within the statute of Gloucester; yet I will not go from my old master Littleton's reason, which speaketh out of the depth of the common law, he shall not be punished "for the inheritance sake which was once in him."

But this will receive a great deal of illustration, by considering the terminor's estate, and the nature thereof, which was well defined by Mr. Heath, who spake excellent well to the case, that it is such as he ought to yield up the inheritance in as good plight as he received it; and therefore the word *firmarius*, which is the word of the statute of Marlebridge, cometh, as I conceive, a *firmans*; because he makes the profit of the inheritance, which otherwise should be upon account, and uncertain, firm and certain; and accordingly *feodi firma*, fee-farm, is a perpetuity certain. Therefore the nature and limit of a particular tenant is to make the inheritance certain, and not to make it worse.

1. Therefore he cannot break the soil otherwise than with his ploughshare to turn up perhaps a stone, that lieth aloft; his interest is *in superficie*, not *in profundo*, he hath but *tunicam terrae*, little more than the vesture.

If we had fir-timber here, as they have in Muscovy, he could not pierce the tree to make the pitch come forth, no more than he may break the earth.

So we see the evidence, which is *propugnaculum hereditatis*, the fortress and defence of the land, belongeth not to the lessee, but to the owner of the inheritance.

So the lessee's estate is not accounted of that dignity, that it can do homage, because it is a badge of continuance in the blood of lord and tenant. Neither for my own opinion can a particular tenant of a manor have aid *pour sic marier*, *cu pair faire fitz chevalier*; because it is given by law upon an intendment of continuance of blood and privity between lord and tenant.

And for the tree, which is now in question, do but consider in what a revolution the law moves, and as it were in an orb: for when the tree is young and tender, *germen terrae*, a sprout of the earth, the law giveth it to the lessee, as having a nature not permanent, and yet easily restored: when it comes to be a timber-tree, and hath a nature solid and durable, the law carrieth it to the lessor. But after again if it become a fear and a dotard, and its solid parts grow putrified, and as the poet saith, *non jam mater alit tellus viveque ministrat*, then the law returns it back to the lessee. This is true justice, this is *suum cuique tribuere*; the law guiding all things with line of measure and proportion.

And therefore that interest of the lessee in the tree, which the books call a special property, is scarce worth that name. He shall have the shade, so shall he have the shade of a rock; but he shall not have a crystal or Bristol diamond growing upon the rock. He shall have the pannage; why? that is the fruit of the inheritance of a tree, as herb or grais is of the soil. He shall have reasonable lop-

pings;

The derivation and force of the word *firmarius*.

The evidence of *propugnaculum hereditatis*.
Homage important continuance in the blood.
Particular tenants of manors shall not have aid.

The shade that the lessee hath a special property in the tree every timber;

pings; why? so he shall have seasonable diggings of an open mine. So all these things are rather profits of the tree, than any special property in the tree. But about words we will not differ. for he hath but the profits of the tree.

So as I conclude this part, that the reason and wisdom of law doth match things, as they consort, ascribing to permanent states permanent interest, and to transitory states transitory interest; and you cannot alter this order of law by fancies of clauses and liberties, as I will tell you in the proper place. And therefore the tree standing belongs clearly to the owner of the inheritance.

Now come I to my second assertion, that by the severance the ownership or property cannot be altered; but that he that had the trees as part of the inheritance before, must have it as a chattel transitory after. This is pregnant and followeth of itself, for it is the same tree still, and, as the Scripture saith, *uti arbor cadet, ita jacet*.

The owner of the whole must needs own the parts; he that owneth the cloth owneth the thread, and he that owneth an engine when it is intire, owneth the parts when it is broken; breaking cannot alter property.

And therefore the book in Herlackenden's case doth not stick to give it somewhat plain terms; and to say that it were an absurd thing, that the lessee which hath a particular interest in the land, should have an absolute property in that which is part of the inheritance: you would have the shadow draw the body, and the twigs draw the trunk. These are truly called absurdities. And therefore in a conclusion so plain, it shall be sufficient to vouch the authorities without enforcing the reasons. Herlackenden's case.

And although the division be good, that was made by Mr. Heath, that there be four manners of severances, that is, when the lessee fells the tree, or when the lessor fells it, or when a stranger fells it, or when the act of God, a tempest, fells it; yet this division tendeth rather to explanation than to proof, and I need it not, because I do maintain that in all these cases the property is in the lessor.

And therefore I will use a distribution which rather presseth the proof. The question is of property. There be three arguments of property; damages, seizure, and grant: and according to these I will examine the property of the trees by the authority of books. Three arguments of property, damages, seizure, and power to grant.

And first for damages.

For damages, look into the books of the law, and you shall not find the lessee shall ever recover damages, not as they are a badge of property; for the damages, which he recovereth, are of two natures, either for the special property, as they call it, or as he is chargeable over. And for this, to avoid length, I will select three books, one where the lessee shall recover treble damages: another where he shall recover but for his special property; and the third where he shall recover for the body of the tree, which is a special case, and standeth merely upon a special reason.

The first is the book of 44 E. III. f. 27. where it is agreed, that if tenant for life be, and a disseisor commit waste, the lessee shall recover in trespass as he shall answer in waste: but that this is a kind of recovery of damages, though *per accidens*, may appear plainly. 44 E. 3. f. 27.

For if the lessor die, whereby his action is gone, then the disseisor is likewise discharged, otherwise than for the special property.

The

57 f. 1. The second book is 9 E. IV. f. 35. where it is admitted, that if the lessor himself cut down the tree, the lessee shall recover but for his special profit of shade, pannage, loppings, because he is not charged over.

47 f. 1. The third is 44 E. III. f. 44. where it is said, that if the lessee fell trees to repair the barn, which is not ruinous in his own default, and the lessor come and take them away, he shall have trespass, and in that case he shall recover for the very body of the tree, for he hath an absolute property in them for that intent.

38 Aff. f. 1. And that it is only for that intent appeareth notably by the book 38 Aff. f. 1. If the lessee after he hath cut down the tree employ it not to reparations, but employ other trees of better value, yet it is waste; which sheweth plainly the property is respective to the employment.

5 E. 4. f. 122. Nay, 5 E. IV. f. 100. goeth farther and sheweth, that the special property which the lessee had was of the living tree, and determines, as Herlackenden's case saith, by severance; for then *magis dignum trahit ad se minus dignum*: for it saith, that the lessee cannot pay the workmens wages with those parts of the tree which are not timber. And so I leave the first demonstration of property, which is by damages; except you will add the case of 27 H. VIII. f. 13. where it is said, that if tenant for life and he in the reversion join in a lease for years, and lessee for years fell timber-trees, they shall join in an action of waste; but he in the reversion shall recover the whole damages: and great reason, for the special property was in the lessee for years, the general in him in the reversion, so the tenant for life meane had neither the one nor the other.

Now for the seizure, you may not look for plentiful authority in that: for the lessor, which had the more beneficial remedy by action for treble damages, had little reason to resort to the weaker remedy by seizure, and leases without impeachment were then rare, as I will tell you anon. And therefore the question of the seizure came chiefly in experience upon the case of the windfalls, which could not be punished by action of waste.

40 E. 3. pl. 22. First, therefore, the case of 40 E. III. pl. 22. is express, where at the King's suit, in the behalf of the heir of Darcy who was in ward, the King's lessee was questioned in waste, and justified the taking of the trees, because they were overthrown by winds, and taken away by a stranger. But Knevet saith, although one be guardian, yet the trees, when by their fall they are severed from the treehold, he hath no property of the chattels, but they appertain to the heir, and the heir shall have trespass of them against a stranger, and not the guardian, no more than the bailiff of a manor. So that that book rules the interest of the tree to be in the heir, and goes to a point farther, that he shall have trespass for them; but of seizure there had been no question.

2 H. 7. f. 14. So again in 2 H. VII. the words of Brian are, that for the timber-trees the lessor may take them; for they are his; and seemeth to take some difference between them and the gravel.

34 E. 3. f. 5. The like reason is of the timber of an house, as appears 34 E. III. f. 5. abridged by Brook, tit. *waste*, pl. 34. when it is said, it was doubted who should have the timber of a house which fell by tempest; and saith the book, it seems it doth appertain to the lessor; and good reason, for it is no waste, and the lessee is not bound to re-edify it: and therefore it is reason the lessor have it; but Herlackenden's case goes farther, where it is said that the lessee may help himself with the

the timber, if he will re-edify it; but clearly he hath no interest but towards a special employment.

Now you have had a case of the timber-tree, and of the timber of the house, now take a case of the mine, where that of the trees is likewise put, and that is 9 E. IV. f. 35. where it is said by Needham, that if a lease be made of land 9 E. 4. f. 35. wherein there is tin, or iron, or lead, or coals, or quarry, and the lessor enter and take the tin or other materials, the lessee shall punish him for coming upon his land, but not for taking of the substances. And so of great trees: but Danby goes farther, and saith, the law that gives him the thing, doth likewise give him means to come by it; but they both agree that the interest is in the lessor. And thus much for the seizure.

For the grant: it is not so certain a badge of property as the other two; for a man may have a property, and yet not grantable, because it is turned into a right, or otherwise suspended. And therefore it is true, that by the book in 21 H. VI. that if the lessor grant the trees, the grantee shall not take them, no not after the lease expired; because this property is but *de futuro*, expectant; but 'tis as plain on the other side that the lessee cannot grant them, as was resolved in two notable cases, namely, the case of Marwood and Sanders, 41 El. in communi banco; Marwood and Sanders. C. where it was ruled, that the tenant of the inheritance may make a feoffment with exception of timber-trees; but that if lessee for life or years set over his estate with an exception of the trees, the exception is utterly void; and the like resolution was in the case between Foster and Mills plaintiff, and Spencer and Boord defendant, 28 Eliz. rot. 820. Foster and Spencer's case.

Now come we to the authorities, which have an appearance to be against us, which are not many, and they be easily answered, not by distinguishing subtilly, but by marking the books advisedly.

1. There be two books that seem to cross the authorities touching the interest of the windfalls, 7 H. VI. and 44 E. III. f. 44. where, upon waste brought and assigned in the succision of trees, the justification is, that they were overthrown by wind, and so the lessee took them for fuel, and allowed for a good plea; but these books are reconciled two ways: first, look into both the justifications, and you shall find that the plea did not rely only in that they were windfalls, but couples it with this that they were first fear, and then overthrown by wind; and that makes an end of it, for fear trees belong to the lessee, standing or felled, and you have a special replication in the book of 44 E. III. that the wind did but rend them, and buckle them, and that they bore fruit two years after. And 2dly, you have ill luck with your windfalls, for they be still apple-trees which are but wastes *per accidens*, as willows, or thorns are in the sight of a house; but when they are once felled they are clearly matter of fuel.

Another kind of authorities, that make shew against us, are those that say that the lessee shall punish the lessor in trespass for taking the trees, which are 5 H. IV. f. 29. and 1 Mar. *Dier.* f. 90. Mervin's case; and you might add if you will 9 E. IV. the case vouched before: unto which the answer is, that trespass must be understood for the special property, and not for the body of the tree; for those two books speak not a word, what he shall recover, nor that it shall be to the value. And therefore 9 E. IV. is a good expofitor, for that distinguisheth where the other two books speak indefinitely; yea, but 5 H. IV. goes farther, and saith, that the writ shall purport *arbores suas*, which is true in respect of the special property;

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property; neither are writs to be varied according to special cases, but are framed to the general case, as upon lands recovered in value in tail, the writ shall suppose *donum*, a gift.

11 H. 7. f. 1. And the third kind of authority is some books, as 13 H. VII. f. 9. that say, that trespass lies not by the lessor against the lessee for cutting down trees, but only waste; but that it is to be understood of trespass *vi et armis*, and would have come fitly in question, if there had been no seifure in this case.

Upon all which I conclude, that the whole current of authorities proveth the properties of the trees upon severance to be in the lessor by the rules of the common law; and that although the common law would not so far protect the folly of the lessor, as to give him remedy by action, where the state was created by his own act; yet the law never took from him his property; so that as to the property, before the statute and since, the law was ever one.

Now come I to the third assertion, that the statute of Gloucester hath not transferred the property of the lessee upon an intendment of recompense to the lessor; which needs no long speech: it is grounded upon a probable reason, and upon one special book.

The reason is, that damages are a recompense for property; and therefore that the statute of Gloucester giving damages should exclude property. The authority 12 E. 4. f. 8. seems to be 12 E. IV. f. 8. where Catesbey affirming that the lessee at will shall have the great trees, as well as lessee for years or life; Fairfax and Jennings correct it with a difference, that the lessor may take them in the case of tenant at will, because he hath no remedy by the statute, but not in case of the termors.

This conceit may be reasonable thus far, that the lessee shall not both seife and bring waste; but if he seife, he shall not have his action; if he recover by action, he shall not seife: for a man shall not have both the thing and recompense; it is a bar to the highest inheritance, the kingdom of heaven, *repperunt mercedem suam*. But at the first, it is at his election, whether remedy he will use, like as in the case of trespass; where if a man once recover in damages, it hath concluded and turned the property. Nay, I invert the argument upon the force of the statute of Gloucester thus: that if there had been no property at common law; yet the statute of Gloucester, by restraining the waste, and giving an action, doth imply a property: whereto a better case cannot be put than the case upon the statute *de donis conditionalibus*, where there are no words to give any reversion or remainder; and yet the statute giving a *formedon*, where it lay not before, being but an action, implies an actual reversion and remainder.

A statute giving an action. Thus have I passed over the first main part, which I have insisted upon the longer, because I shall have use of it for the clearing of the second.

NOW to come to the force of the clause, *absque impetitione vasti*. This clause might or needly work in one of three degrees, either by way of grant of property, or by way of power and liberty knit to the state, or by way of discharge of action; whereof the first two I reject, the last I receive.

No grant of property. Therefore I think the other side will not affirm, that this clause amounts to a grant of trees; for then, according to the resolution in Herlackenden's case, they should go to the executors, and the lessee might grant them over, and they might be taken after the state determined. Now it is plain that this liberty is created with the estate, it affecteth with the estate, and determines with the estate.

That

That appears by 5 Hen. V. where it is said, that if lessee for years without im-^{5 H. 5.}peachment of waste accept a confirmation for life, the privilege is gone.

And so are the books in 3 E. III. and 28 H. VIII. that if a lease be made with-^{3 E. 3.}out impeachment of waste *pour autre vie*, the remainder to the lessee for life, the^{28 H. 3.} privilege is gone, because he is in of another estate; so then plainly it amounts to no grant of property, neither can it any ways touch the property, nor enlarge the special property of the lessee: for will any man say, that if you put Marwood and Sanders's case of a lease without impeachment of waste, that he may grant the land with the exception of the trees any more than an ordinary lessee? Or shall the windfalls be more his in this case than in the other? for he was not impeachable of waste for windfalls no more than where he hath the clause. Or will any man say, that if a stranger commit waste, such a lessee may seize? These things, I suppose, no man will affirm. Again, why should not a liberty or privilege in law be as strong as a privilege in fact? as in the case of tenant after possibility: Or where there is a lessee for life the remainder for life? for in these cases they are privileged from waste, and yet that trenches not the property.

Now therefore to take the second course, that it should be as a real power annexed to the state; neither can that be, for it is the law that moldeth estates, and not mens fancies. And therefore if men by clauses, like voluntaries in music, run not upon the grounds of law, and do restrain an estate more than the law restrains it, or enable an estate more than the law enables it, or guide an estate otherwise than the law guides it, they be mere repugnancies and vanities. And therefore if I make a feoffment in fee, provided the feoffee shall not fell timber, the clause of condition is void. And so on the other side, if I make a lease with a power that he shall fell timber, it is void.

So if I make a lease with a power that he may make feoffment, or that he may make leases for forty years, or that if he make default I shall not be received, or that the lessee may do homage; these are plainly void, as against law, and repugnant to the state. No, this cannot be done by way of use, except the words be apt, as in Mildmay's case: neither is this clause, in the sense that they take it, any better.

Therefore laying aside these two constructions, whereof the one is not maintained to be, the other cannot be: let us come to the true sense of this clause, which is by way of discharge of the action, and no more; wherein I will speak first of the words, then of the reason, then of the authorities which prove our sense, then of the practice, which is pretended to prove theirs; and lastly, I will weigh the mischief how it stands for our construction or theirs.

It is an ignorant mistaking of any man to take impeachment for *impedimentum*, and not for *impetitus*; for it is true that *impedimentum* doth extend to all hindrances, or disturbances, or interruptions, as well in *pais* as judicial. But *impetitus* is merely a judicial claim, or interruption by suit in law, and upon the matter all one with *implacitatio*. Wherein first we may take light of the derivation of *impetitus*, which is a compound of the preposition *in*, and the verb *peto*, whereof the verb *peto* itself doth signify a demand, but yet properly such a demand as is not *extra-judicial*: for the words *petit judicium*, *petit auditum brevis*, etc. are words of acts judicial; as for the demand in *pais*, it is rather *requisitio* than *petitio*, as *licet saepius requisitus*; so much for the verb *peto*. But the preposition *in* enforceth it more, which signifies *against*; as *Cicero in Verrem*, *in Catilinam*; and so in composition,

to inveigh, is to speak against: so it is such a demand only where there is a party raised to demand against, that is an adversary, which must be in a suit in law; and so it is used in records of law.

As Coke lib. 1. f. 17. Porter's case, it was pleaded in bar, that *dicta domina regina nunc ipsos Johannem et Henricum Porter petere seu occasionare non debet*, that is, *implacitare*.

So likewise Coke l. 1. f. 27. case of Alton woods, *quod dicta domina regina nunc ipsum proinde aliquo modo impetere seu occasionare non debet*.

So in the book of entries f. 1. lit. D. 15 H. VII. rot. 2. *inter placita regis, et super hoc venit W. B. commonachus abbatis W. loci illius ordinarii, gerensque vices ipsius abbatis, ad quoscunque clericos de quolibet crimine coram domino rege impetitos sive irritatos calumniand'*. So much *ex vi et usu termini*.

For reason; first, it ought to be considered, that the punishment of waste is strict and severe, because the penalty is great, treble damages, and the place wasted: and again, because the lessee must undertake for the acts of strangers: whereupon I infer, that the reason which brought this clause in use, *ab initio*, was caution to save, and to free men from the extremity of the penalty, and not any intention to countermand the property.

Add to this that the law doth assign in most cases double remedy, by matter of suit, and matter in *pais*; for disseisins, actions and entries; for trespasses, action and seisure; for nuisances, action and abatement: and, as Littleton doth instruct us, one of these remedies may be released without touching the other. If the disseisee release all actions, saith Littleton, yet my entry remains; but if I release all demands or remedies, or the like words of a general nature, it doth release the right itself. And therefore I may be of opinion, that if there be a clause of grant in my lease expressed, that if my lessee or his assigns cut down and take away any timber-trees, that I and my heirs will not charge them by action, claim, seisure, or other interruption, either this shall inure by way of covenant only, or if you take it to inure by way of absolute discharge, it amounts to a grant of property in the trees, like as the case of 31. *Assis*. I grant, that if I pay not you 10 l. *per annum* at such feasts, you shall distrain for it in my manor of Dale, though this sound executory in power, yet it amounts to a present grant of a rent. So as I conclude that the discharge of action the law knows, grant of the property the law knows, but this same mathematical power being a power amounting to a property, and yet no property, and knit to a state that cannot bear it, the law knoweth not, *tertium penitus ignoramus*.

For the authorities, they are of three kinds, two by inference, and the third direct.

The first I do collect upon the books of 42 Edw. III. f. 23, and 24. by the difference taken by Mowbray, and agreed by the court, that the law doth intend the clause of disimpeachment of waste to be a discharge special, and not general or absolute; for there the principal case was, that there was a clause in the lease, that the lessor should not demand any right, claim, or challenge in the lands during the life of the lessee. It is resolved by the book, that it is no bar in waste; but that if the clause had been, that the lessee should not have been impeached for waste, clearly a good bar; which demonstrates plainly, that general words, be they never so loud and strong, bear no more than the state will bear, and to any other

31 *Assis*.
A clause that
sounds to a
power, amounts to a
property, if
the state bear
it.

42 Edw. III. f. 23,
24.

other

other purpose are idle. But special words that inure by way of discharge of action, are good and allowed by law.

The same reason is of the books 4 Ed. II. Fitzh. tit. *waste* 15. and 17 E. III. f. 7. Fitzh. tit. *waste* 101. where there was a clause, *Quod liceat facere commodum suum meliori modo quo poterit*. Yet, saith Skipwith, doth this amount, that he shall for the making of his own profit disinheret the lessor? *Nego consequentiam*; so that still the law allows not of the general discharge, but of the special that goeth to the action.

The second authority by inference is out of 9 H. VI. fol. 35. Fitzh. tit. *waste* 39. and 32 H. VIII. Dyer f. 47. where the learning is taken, that notwithstanding this clause be inserted into a lease, yet a man may reserve unto himself remedy by entry: but say I, if this clause should have that sense, which they on the other side would give it, namely, that it should amount to an absolute privilege and power of disposing, then were the proviso flat repugnant, all one as if it were *absque impetitione vasti, proviso quod non faciet vastum*; which are contradictories: and note well that in the book of 9 H. VI. the proviso is *quod non faciat vastum voluntarium in domibus*; which indeed doth but abridge in one kind, and therefore may stand without repugnancy: but in the latter book it is general, that is to say *absque impetitione vasti, et si contigerit ipsum facere vastum tunc licebit reintrare*. And there Shelley making the objection, that the condition was repugnant, it is salved thus, *sed aliqui tenuerunt* that this word *impetitione vasti* is to be understood that he shall not be impleaded by waste, or punished by action; and so indeed it ought: those *aliqui recte tenuerunt*.

For the authorities direct, they are two, the one 27 H. VI. Fitzh. tit. *waste* 8. where a lease was made without impeachment of waste, and a stranger committed waste, and the rule is, that the lessee shall recover in trespass only for the crop of the tree, and not for the body of the tree. It is true it comes by a *dicitur*, but it is now a *legitur*; and a query there is, and reason, or else this long speech were time ill spent.

And the last authority is the case of Sir Moyle Finch and his mother, referred to my lord Wrey and Sir Roger Manwood, resolved upon conference with other of the judges vouched by Wrey in Herlackenden's case, and reported to my lord Chief Justice, here present, as a resolution of law, being our very case.

And for the cases to the contrary, I know not one in all the law direct: they press the statute of Marlebridge, which hath an exception in the prohibition, *si morti non facient vastum, etc. nisi specialem inde habuerint concess. nem per scriptum conventionis, mentionem faciens, quod hoc facere possint*. This presseth not the question; for no man doubteth, but it will excuse in an action of waste: and again, *nisi habeant specialem concessionem* may be meant of an absolute grant of the trees themselves: and otherwise the clause *absque impetitione vasti* taketh away the force of the statute, and looseth what the statute bindeth; but it toucheth not the property at common law.

For Littleton's case in his title *Of conditions*, where it is said, that if a feoffment in fee be made upon condition, that the feoffee shall infeoff the husband and wife, and the heirs of their two bodies; and that the husband die that now the feoffee ought to make a lease without impeachment of waste to the wife, the remainder to the right heirs of the body of her husband and her begotten; whereby it would be inferred, that such a lessee should have equal privilege with tenant

in tail: the answer appears in Littleton's own words, which is, that the feoffee ought to go as near the condition, and as near the intent of the condition as he may. But to come near is not to reach, neither doth Littleton undertake for that.

Culpepper's
case
2 Eliz. Dyer,
f. 184.

As for Culpepper's case, it is obscurely put, and concluded in division of opinion; but yet so as it rather makes for us. The case is 2 Eliz. Dyer f. 184. and is in effect this: a man makes a lease for years, excepting timber-trees, and afterwards makes a lease without impeachment of waste to John a Style, and then granteth the land and trees to John a Down, and binds himself to warrant and save harmless John a Down against John a Style; John a Style cutteth down the trees; the question was, whether the bond were forfeited? and that question resorteth to the other question; whether John a Style, by virtue of such lease, could fell the trees? and held by Weston and Brown that he could not: which proves plainly for us that he had no property by that clause in the tree; though it is true that in that case the exception of the trees turneth the case, and so in effect it proveth neither way.

Practice.

For the practice, if it were so ancient and common, as is conceived; yet since the authorities have not approved, but condemned it, it is no better than a popular error: it is but *pedum visa est via*, not *recta visa est via*. But I conceive it to be neither ancient nor common. It is true I find it first in 19 E. II. I mean such a clause, but it is one thing to say that the clause is ancient; and it is another thing to say, that this expolition, which they would now introduce, is ancient. And therefore you must note that a practice doth then expound the law, when the act which is practised, were merely tortious or void, if the law should not approve it: but that is not the case here, for we agree the clause to be lawful; nay, we say that it is in no sort inutile but there is use of it, to avoid this severe penalty of treble damages. But to speak plainly, I will tell you how this clause came in from 13 of E. I. till about 12 of E. IV. The state tail though it had the qualities of an inheritance, yet it was without power to alien; but as soon as that was set at liberty by common recoveries, then there must be found some other device, that a man might be an absolute owner of the land for the time, and yet not enabled to alien, and for that purpose was this clause found out: for you shall not find in one amongst an hundred, that farmers had it in their leases; but those that were once owners of the inheritance, and had put it over to their sons or next heirs, reserved such a beneficial state to themselves. And therefore the truth is, that the flood of this usage came in with perpetuities, save that the perpetuity was to make an inheritance like a stem for life, and this was to make a stem for life like an inheritance: both concurring in this, that they presume to create phantastical estates, contrary to the ground of law.

And therefore it is no matter though it went out with the perpetuities, as it came in, to the end that men that have not the inheritance should not have power to abuse the inheritance.

And for the mischief, and consideration of *bonum publicum*, certainly this clause with this opposition tendeth but to make houses ruinous, and to leave no timber upon the ground to build them up again; and therefore let men in God's name, when they establish their states, and plant their sons or kinsmen in the inheritance of some portions of their lands, with reservation of the freehold to themselves, use it, and enjoy it in such sort, as may tend *ad aedificationem*, and not *ad destructionem*; for that is good for posterity, and for the state in general.

And

And for the timber of this realm, it is *vivus thesaurus regni*; and it is the matter of our walls, walls not only of our houses, but of our island: so as it is a general disinherison to the kingdom to favour that exposition, which tends to the decay of it, being so great already; and to favour waste when the times themselves are set upon waste and spoil. Therefore since the reason and authorities of law, and the policy of estate do meet, and that those that have, or shall have such conveyances, may enjoy the benefit of that clause to protect them in a moderate manner, that is, from the penalty of the action; it is both good law and good policy for the kingdom, and not injurious or inconvenient for particulars, to take this clause strictly, and therein to affirm the last report. And so I pray judgment for the plaintiff.



THE
A R G U M E N T
I N
Low's C A S E of T E N U R E S.
In the King's bench.

THE manor of Alderwasley, parcel of the Duchy, and lying out of the county Palatine, was, before the Duchy came to the crown, held of the King by knight's service *in capite*. The land in question was held of the said manor in socage. The Duchy and this manor parcel thereof descended to King Henry IV. King Henry VIII. by letters patent the 19th of his reign, granted this manor to Anthony Low, grandfather of the ward, and then tenant of the land in question, reserving 26l. 10s. rent and fealty, *tantum pro omnibus serviciis*, and this patent is under the Duchy-seal only. The question is, how this tenancy is held, whether *in capite*, or in socage.

The case resteth upon a point, unto which all the questions arising are to be reduced.

The first is, whether this tenancy, being by the grant of the King of the manor to the tenant grown to an unity of possession with the manor, be held as the manor is held, which is expressed in the patent to be in socage.

The second, whether the manor itself be held in socage according to the last reservation; or *in capite* by revivor of the ancient seigniorie, which was *in capite* before the Duchy came to the crown.

Therefore my first proposition is, that this tenancy, which without all colour is no parcel of the manor, cannot be comprehended within the tenure reserved upon the manor, but that the law createth a severall and distinct tenure thereupon, and that not guided according to the express tenure of the manor, but merely *secundum normam legis*, by the intendment and rule of law, which must be a tenure by knight's service *in capite*.

And my second proposition is, that admitting that the tenure of the tenancy should ensue the tenure of the manor; yet nevertheless the manor itself, which was first held of the crown *in capite*, the tenure suspended by the conquest of the Duchy to the crown, being now conveyed out of the crown under the duchy-seal only, which hath no power to touch or carry any interest, whereof the King was vested in right of the crown, is now so severed and disjoined from the ancient seigniorie, which was *in capite*, as the same ancient seigniorie is revived, and so the new reservation void; because the manor cannot be charged with two tenures.

The King's
tenure may
take more

This case concerneth one of the greatest and fairest flowers of the crown, which is the King's tenures, and that in their creation; which is more than their prefer-
vation:

vation: for if the rules and maxims of law in the first raising of tenures *in capite* be weakened, this nips the flower in the bud, and may do more hurt by a resolution in law, than the losses, which the King's tenures do daily receive by oblivion or suppression, or the neglect of officers, or the iniquity of jurors, or other like blasts, whereby they are continually shaken: and therefore it behoveth us of the King's council to have a special care of this case, as much as in us is, to give satisfaction to the court. Therefore before I come to argue these two points particularly, I will speak something of the favour of law towards tenures *in capite*, as that which will give a force and edge to all that I shall speak afterwards.

The constitution of this kingdom appeareth to be a free monarchy in nothing better than in this; that as there is no land of the subject that is charged to the crown by way of tribute, or tax, or talliage, except it be set by parliament: so on the other side there is no land of the subject, but is charged to the crown by tenure, mediate or immediate, and that by the grounds of the common law. This is the excellent temper and commixture of this estate, bearing marks of the sovereignty of the King, and of the freedom of the subject from tax, whose possessions are *feodalia*, not *tributaria*.

hurt by a resolution in law, than by many suppressions or concealments.

No land in the kingdom of England charged by way of tribute, and all land charged by way of tenure.

Tenures, according to the most general division, are of two natures, the one containing matter of protection, and the other matter of profit: that of protection is likewise double, divine protection and military. The divine protection is chiefly procured by the prayers of holy and devout men; and great pity it is, that it was depraved and corrupted with superstition. This begot the tenure in frankalmoigne, which though in burden it is less than in socage, yet in virtue it is more than knight's service. For we read how, during the while Moses in the mount held up his hands, the Hebrews prevailed in battle; as well as when Elias prayed, rain came after drought, which made the plough go; so that I hold the tenure in frankalmoigne in the first institution indifferent to knight's service and socage. Setting apart this tenure, there remain the other two, that of knight's service, and that of socage; the one tending chiefly to defence and protection, the other to profit and maintenance of life. They are all three comprehended in the ancient verse, *Tu semper ora, tu protege, tuque labora*. But between these two services, knight's service and socage, the law of England makes a great difference: for this kingdom, my lords, is a state neither effeminate, nor merchant-like; but the laws give the honour unto arms and military service, like the laws of a nation, before whom Julius Cæsar turned his back, as their own prophet says; *Territa quaesitis ostendit terga Britannis*. And therefore howsoever men, upon husband-like considerations of profit, esteem of socage tenures; yet the law that looketh to the greatness of the kingdom, and proceedeth upon considerations of estate, giveth the pre-eminence altogether to knight's service.

We see that the ward, who is ward for knight's service land, is accounted in law disparaged, if he be tendered a marriage of the burghers parentage: and we see that the knights fees were by the ancient laws the materials of all nobility: for that it appears by divers records how many knights fees should by computation go to a barony, and so to an earldom. Nay, we see that in the very summons of parliament, the knights of the shire are required to be chosen *milites gladio cincti*; so as the very call though it were to council bears a mark of arms and habiliments of war. To conclude, the whole composition of this warlike nation, and the favours of law, tend to the advancement of military virtue and service.

But

But now farther, amongst the tenures by knight's service, that of the King *in capite* is the most high and worthy: and the reason is double; partly because it is held of the King's crown and person; and partly because the law createth such a privity between the line of the crown and the inheritors of such tenancies, as there cannot be an alienation without the King's licence, the penalty of which alienation was by the common law the forfeiture of the state itself, and by the statute of E. III. is reduced to fine and seizure. And although this also has been unworthily termed by the vulgar, not *capite*, captivity and thraldom; yet that which they count bondage, the law counteth honour, like to the case of tenants in tail of the King's advancement, which is a great restraint by the statute of 34 H. VIII. but yet by that statute it is imputed for an honour. This favour of law to the tenure by knight's service *in capite* produceth this effect, that wheresoever there is no express service effectually limited, or wheresoever that, which was once limited, faileth, the law evermore supplieth a tenure by knight's service *in capite*; if it be a blank once—that the law must fill it up, the law ever with her own hand writes, tenure by knight's service *in capite*. And therefore the resolution was notable by 4 E. 3. f. 45. the judges of both benches, that where the King confirmed to his farmers tenants for life, *tenend' per servitia debita*, this was a tenure *in capite*: for other services are *servitia requisita*, required by the words of patents or grants; but that only is *servitium debitum*, by the rules of law.

The court therefore that I will hold in the proof of the first main point, shall be this. First I will shew, maintain, and fortify my former grounds, that wheresoever the law createth the tenure of the King, the law hath no variety, but always raiseth a tenure *in capite*.

Secondly, that in the case present, there is not any such tenure expressed, as can take place, and exclude the tenure in law, but that there is as it were a lapse to the law.

And lastly, I will shew in what cases the former general rule receiveth some shew of exception; and will shew the difference between them and our case; wherein I shall include an answer to all that hath been said on the other side.

For my first proposition I will divide into four branches: first, I say, where there is no tenure reserved, the law createth a tenure *in capite*; secondly, where the tenure is uncertain; thirdly, where the tenure reserved is impossible or repugnant to law; and lastly, where a tenure once created is afterwards extinct.

*Per Præsentem in
Jun. 53 H. 6.
f. 8 H. 7.
f. 3. b.*

For the first, if the King give lands and say nothing of the tenure, this is a tenure *in capite*; nay, if the King give whiteacre, and blackacre, and reserves a tenure only of whiteacre, and that a tenure expressed to be in socage; yet you shall not for fellowship sake, because they are in one patent, intend the like tenure of blackacre; but that shall be held *in capite*.

So if the King grant land, held as of a manor, with warranty, and a special clause of recompense, and the tenant be impleaded, and recover in value, this land shall be held *in capite*, and not of the manor.

So if the King exchange the manor of Dale for the manor of Sale, which is held in socage, although it be by the word *excambium*; yet that goeth to equality of the state, not of the tenure, and the manor of Dale, if no tenure be expressed, shall be held *in capite*. So much for silence of tenure.

For the second branch, which is uncertainty of tenure; first, where an *ignoramus* is found by office, this by the common law is a tenure *in capite*, which is most for the

the King's benefit; and the presumption of law is so strong, that it amounts to a direct finding or affirmative, and the party shall have a negative or traverse, which is somewhat strange to a thing indefinite. 7 Mod. Dyer. 111. Dyer.

So if in ancient time, one held of the King, as of a manor by knight's service, and the land return to the King by attainder, and then the King granteth it *tenend' per fidelitatem tantum*, and it returneth the second time to the King, and the King granteth it *per servitia antehac consueta*; now because of the uncertainty neither service shall take place, and the tenure shall be *in capite*, as was the opinion of you my lord chief justice, where you were commissioner to find an office after Austin's death. Austin's office.

So if the King grant land *tenend' de manerio de Eastgreenwich vel de honore de Hampton*; this is void for the non-certainty, and shall be held of the King *in capite*.

For the third branch, if the King limit land to be discharged of tenure, as *aliquo aliquo inde reddendo*, this is a tenure *in capite*; and yet if one should go to the next, *ad proximum*, it should be a socage, for the least is next to none at all: but you may not take the King's grant by argument; but where they cannot take place effectually and punctually, as they are expressed, there you shall resort wholly to the judgment of the law. 33 H. 6. f. 7.

So if the King grant land *tenend' si frankment come il en son corone*, this is a tenure *in capite*. 14 H. 6. f. 12.

If land be given to be held of a lordship not capable, as of Salisbury plain, or a corporation not *in esse*, or of the manor of a subject, this is a tenure *in capite*. Merefield's case.

So if land be given to hold by impossible service, as by performing the office of the sheriff of Yorkshire, which no man can do but the sheriff, and fealty for all service, this is a tenure *in capite*.

For the fourth branch, which cometh nearest to our case; let us see where a feignory was once, and is after extinguished; this may be in two manners, by release in fact, or by unity of profession, which is a release or discharge in law.

And therefore let the case be, that the King releaseth to his tenant that holds of him in socage; this release is good, and the tenant shall hold now *in capite*, for the former tenure being discharged, the tenure in law ariseth. 1 Mod. 301. Dyer. 311. 7. f. 13.

So the case, which is in 1 E. III. a fine is levied to J. S. in tail, the remainder ouster to the King, the state tail shall be held *in capite*, and the first tenancy, if it were in socage, by the unity of the tenancy, shall be discharged, and a new raised thereupon: and therefore the opinion, or rather the query in Dyer no law. 1 E. 3. f. 4. fine accept.

Thus much for my major proposition; now for the minor, or the assumption, it is this: first, that the land in question is discharged of tenure by the purchase of the manor; then that the reservation of the service upon the manor cannot possibly inure to the tenancy; and then if a corruption be of the first tenure, and no generation of the new; then cometh in the tenure *per normam legis*, which is *in capite*. 4 et 5 P. M.

And the course of my proof shall be *ab enumeratione partium*, which is one of the clearest and most forcible kinds of argument.

If this parcel of land be held by fealty and rent *tantum*, either it is the old fealty before the purchase of the manor, or it is the new fealty reserved and expressed upon the grant of the manor; or it is a new fealty raised by intendment of law in conformity and congruity of the fealty reserved upon the manor; but none of these, *ergo*, etc.

That it should be the old fealty, is void of sense; for it is not *ad eosdem terminos*. The first fealty was between the tenancy and the manor, that tenure is by the unity extinct. Secondly, that was a tenure of a manor, this is a tenure in gross. Thirdly, the rent of 26l. 10s. must needs be new, and will you have a new rent with an old fealty? These things are *portenta in lege*; nay I demand, if the tenure of the tenancy, Low's tenure, had been by knight's service, would you have said that had remained? No, but that it was altered by the new reservation; *ergo*, no colour of the old fealty.

That it cannot be the new fealty is also manifest; for the new reservation is upon the manor, and this is no part of the manor: for if it had escheated to the King in an ordinary escheat, or come to him upon a mortmain, in these cases it had come in lieu of the feignory, and been parcel of the manor, and so within the reservation, but clearly not upon a purchase in fact.

Again, the reservation cannot inure, but upon that which is granted; and this tenancy was never granted, but was in the tenant before; and therefore no colour it should come under the reservation. But if it be said, that nevertheless the feignory of that tenancy was parcel of the manor, and is also granted; and although it be extinct in substance, yet it may be *in esse* as to the King's service: this deserveth answer: for this assertion may be colourably inferred out of Carr's case.

9 L. z. Coke.
Lib. 3. f. 30.

King Edw. VI. grants a manor, rendring 94l. rent in fee farm *tenendum de East-greenwich* in socage; and after, Queen Mary granteth these rents amongst other things *tenendum in capite*, and the grantee released to the heir of the tenant; yet the rent shall be *in esse*, as to the King, but the land, saith the book, shall be devisable by the statute for the whole, as not held *in capite*.

25 Aff. pl. 60

And so the case of the honour of Pickeringe, where the King granted the bailywick rendring rent; and after granted the honour, and the bailywick became forfeited, and the grantee took forfeiture thereof, whereby it was extinct; yet the rent remaineth as to the King out of the bailywick extinct.

These two cases partly make not against us, and partly make for us: there be two differences that avoid them. First, there the tenures or rents are *in esse* in those cases for the King's benefit, and here they should be *in esse* to the King's prejudice, who should otherwise have a more beneficial tenure. Again, in these cases the first reservation was of a thing *in esse*, at the time of the reservation; and then there is no reason the act subsequent of the King's tenant should prejudice the King's interest once vested and settled: but here the reservation was never good, because it is out of a thing extinct in the instant.

But the plain reason which turneth Carr's case mainly for us, is; for that where the tenure is of a rent or feignory, which is afterwards drowned or extinct in the land; yet the law judgeth the same rent or feignory to be *in esse*, as to support the tenure: but of what? Only of the said rent or feignory, and never of the land itself? for the land shall be held by the same tenure it was before. And so is the rule of Carr's case, where it is adjudged, that though the rent be held *in capite*, yet the land was nevertheless devisable for the whole, as no ways charged with that tenure.

Why then, in our case, let the fealty be reserved out of the feignory extinct, yet that toucheth not at all the land: and then of necessity the land must be also held; and therefore you must seek out a new tenure for the land, and that must be *in capite*.

And

And let this be noted once for all, that our case is not like the common cases of a menalty extinct, where the tenant shall hold of the lord, as the mean held before; as where the menalty is granted to the tenant, or where the tenancy is granted to the mean, or where the menalty descendeth to the tenant, or where the menalty is forejudged. In all these cases the tenancy, I grant, is held as the menalty was held before, and the difference is because there was an old feignory in being; which remaineth untouched and unaltered, save that it is drawn a degree nearer to the land, so as there is no question in the world of a new tenure: but in our case there was no lord paramount, for the manor itself was in the crown, and not held at all, nor no feignory of the manor *in esse*; so as the question is wholly upon the creation of a new feignory, and not upon the continuance of an old.

For the third course, that the law should create a new distinct tenure by fealty of this parcel, guided by the express tenure upon the manor; it is the probablest course of the three: but yet if the former authorities, I have alledged, be well understood and marked, they shew the law plainly, that it cannot be; for you shall ever take the King's grant *ad idem*, and not *ad simile*, or *ad proximum*: no more than in the case of the *absque aliquo reddendo*, or as free as the crown; who would not say that in those cases it should amount to a socage tenure? for *minimum est nibilo proximum*; and yet they are tenures by knight's service *in capite*. So if the King by one patent pass two acres, and a fealty reserved but upon the one of them, you shall not resort to this *ut expressum servitium regat, vel declarat tacitum*. No more shall you in our case imply that the express tenure reserved upon the manor shall govern, or declare the tenure of the tenancy, or control the intendment of law concerning the same.

Now will I answer the cases, which give some shadow on the contrary side, and shew they have their particular reasons, and do not impugn our case.

First, if the King have land by attainder of treason, and grant the land to be held of himself, and of other lords, this is no new tenure *per norman legis communis*; but the old tenure *per norman statuti*, which taketh away the intendment of the common law; for the statute directeth it so, and otherwise the King shall do a wrong.

So if the King grant land parcel of the demesne of a manor *tenendum de nobis*, or reserving no tenure at all, this is a tenure of the manor or of the honour, and not *in capite*: for here the more vehement presumption controlet the less; for the law doth presume the King hath no intent to dismember it from the manor, and so to lose his court and the perquisites.

So if the King grant land *tenendum* by a rose *pro omnibus servitiis*; this is not like the cases of the *absque aliquo inde reddendo*, or as free as the crown: for *pro omnibus servitiis* shall be intended for all express service; whereas fealty is incident, and passeth tacit, and so it is no impossible or repugnant reservation. 25 H. 6. f. 30.

The case of the frankalmoigne, I mean the case where the King grants lands of the Templers to J. S. to hold as the Templers did, which cannot be frankalmoigne; and yet hath been ruled to be no tenure by knight's service *in capite*, but only a socage tenure, is easily answered; for that the frankalmoigne is but a *species* of a tenure in socage with a privilege, so the privilege ceaseth, and the tenure remains. This is not frankalmoigne. Wood's case.

LOW'S CASE OF TENURES.

To conclude therefore, I sum up my arguments thus. My major is, where *calamus legis* doth write the tenure, it is knight's service *in capite*. My minor is, this tenure is left to the law; *ergo* this tenure is *in capite*.

For the second point, I will first speak of it according to the rules of the common law, and then upon the statutes of the duchy.

First I do grant, that where a feignory and a tenancy, or a rent and land, or trees and land, or the like primitive and secondary interest are conjoined in one person, yea though it be in *autre droit*; yet if it be of like perdurable estate, they are so extinct, as by act in law they may be revived, but by grant they cannot.

For if a man have a feignory in his own right, and the land descend to his wife, and his wife dieth without issue, the feignory is revived; but if he will make a feoffment in fee, saving his rent, he cannot do it. But there is a great difference, and let it be well observed, between *autre capacite* and *autre droit*; for in case of *autre capacite* the interests are *contigua*, and not *continua*, conjoined, but not confounded. And therefore if the master of an hospital have a feignory, and the mayor and commonalty of St. Albans have a tenancy, and the master of the hospital be made mayor, and the mayor grant away the tenancy under the seal of the mayor and commonalty, the feignory of the hospital is revived.

So between natural capacity and politic, if a man have a feignory to him and his heirs, and a bishop is tenant, and the lord is made bishop, and the bishop before the statute grants away the land under the chapter's seal, the feignory is revived.

The same reason is between the capacity of the crown and the capacity of the duchy, which is in the King's natural capacity, though illustrated with some privileges of the crown; if the King have the feignory in the right of his crown, and the tenancy in the right of the duchy, as our case is, and make a feoffment of the tenancy, the tenure must be revived; and this is by the ground of the common law. But the case is the more strong by reason of the statute of 1 H. IV. 3 H. V. and 1 H. VII. of the duchy, by which the duchy-seal is enabled to pass lands of the duchy, but no ways to touch the crown; and whether the King be in actual possession of the thing that should pass, or have only a right, or a condition, or a thing in suspense, as our case is, all is one; for that seal will not extinguish so much as a spark of that which is in the right of the crown; and so a plain revivor.

And if it be said that a mischief will follow; for that upon every duchy patent men shall not know how to hold, because men must go back to the ancient tenure, and not rest in the tenure limited: for this mischief there grows an easy remedy, which likewise is now in use, which is to take both seals, and then all is safe.

Secondly, as the King cannot under the duchy-seal grant away his ancient feignory in the right of his crown; so he cannot make any new reservation by that seal, and so of necessity it falleth to the law to make the tenure: for every reservation must be of the nature of that that passeth, as a dean and chapter cannot grant land of the chapter, and reserve a rent to the dean and his heirs, nor *à converso*: nor no more can the King grant land of the duchy under that seal, and reserve a tenure to the crown: and therefore it is warily put in the end of the case

of

of the duchy in the commentaries, where it is said, if the King make a feoffment of the duchy land, the feoffee shall hold *in capite*; but not a word of that it should be by way of express reservation, but upon a feoffment simply, the law shall work it and supply it.

To conclude, there is direct authority in the point, but that it is *via versa*; and it was the bishop of Salisbury's case: the King had in the right of the duchy a rent issuing out of land, which was monastery land, which he had in the right of the crown, and granted away the land under the great seal to the bishop; and yet nevertheless the rent continued to the duchy, and so upon great and grave advice it was in the duchy decreed: so as your lordship seeth, whether you take the tenure of the tenancy, or the tenure of the manor, this land must be held *in capite*. And therefore, *etc.*



T H E
C A S E
O F
R E V O C A T I O N of U S E S.

In the KING's Bench.

The case shortly put, without names or dates more than of necessity, is this.

SIR John Stanhope conveys the manor of Burrough-ash to his lady for part of her jointure, and intending, as is manifest, not to restrain himself, nor his son, from disposing some proportion of that land according to their occasions, so as my lady were at no loss by the exchange, inserteth into the conveyance a power of revocation and alteration in this manner; provided that it shall be lawful for himself and his son successively to alter, and make void the uses, and to limit and appoint new uses, so it exceed not the value of 20l. to be computed after the rents then answered; and that immediately after such declaration, or making void, the feoffees shall stand seised to such new uses; *Ita quod* he or his son, within six months after such declaration, or making void, shall assure, within the same town, *tantum terrarum et tenementorum, et similis valoris*, as were so revoked, to the uses expressed in the first conveyance.

Sir John Stanhope his son revokes the land in Burrough-ash, and other parcels not exceeding the value of 20l. and within six months assures to my lady and to the former uses Burton-joice and other lands; and the jury have found that the lands revoked contain twice so much in number of acres, and twice so much in yearly value, as the new lands; but yet that the new lands are rented at 21l. and find the lands of Burrough-ash, now out of lease formerly made: and that no notice of this new assurance was given before the ejectment, but only that Sir John Stanhope had by word told his mother, that such an assurance was made, not shewing or delivering the deed.

The question is, Whether Burrough-ash be well revoked? Which question divides itself into three points.

First, whether the *ita quod* be a void and idle clause? for if so, then there needs no new assurance, but the revocation is absolute *per se*.

The next is, if it be an effectual clause, whether it be pursued or no? wherein the question will rest, whether the value of the re-assured lands shall be only computed by rents?

And the third is, if in other points it should be well pursued, yet whether the revocation can work until a sufficient notice of the new assurance?

And

And I shall prove plainly, that *ita quod* stands well with the power of revocation; and if it should fall to the ground, it draws all the rest of the clause with it, and makes the whole void, and cannot be void alone by itself.

I shall prove likewise that the value must needs be accounted not a tale value, or an arithmetical value by the rent, but a true value in quantity and quality.

And lastly, that a notice is of necessity, as this case is.

I will not deny, but it is a great power of wit to make clear things doubtful; but it is the true use of wit to make doubtful things clear, or at least to maintain things that are clear, to be clear, as they are. And in that kind I conceive my labour will be in this case, which I hold to be a case rather of novelty than difficulty, and therefore may require argument, but will not endure much argument: but to speak plainly to my understanding, as the case hath no equity in it, I might say piety, so it hath no great doubt in law.

First therefore this it is, that I affirm, that the clause, *so that, ita quod*, containing the recompense, governs the clause precedent of the power, and that it makes it wait and expect otherwise than as by way of inception, but the effect and operation is suspended, till that part also be performed: and if otherwise, then I say plainly, you shall not construe by fractions; but the whole clause and power is void, not *in tanto*, but *in toto*. Of the first of them I will give four reasons.

The first reason is, that the wisdom of the law useth to transpose words according to the sense; and not so much to respect how the words do take place, but how the acts, which are guided by those words, may take place.

Hill and Graunger's case comment. 171. A man in August makes a lease rendering 10l. rent yearly to be paid at the feasts of Annunciation and Michaelmas: these words shall be inverted by law, as if they had been set thus, at Michaelmas and the Annunciation: for else he cannot have a rent yearly; for there will be fourteen months to the first year.

Hill and
Graunger's
case, com. f.
171.

Fitz-Williams's case, 2 Jac. Co. p. 6. f. 33. it was contained in an indenture of uses, that Sir William Fitz-williams should have power to alter and change, revoke, determine, and make void the uses limited: the words are placed disorderly; for it is in nature first to determine the uses, and after to change them by limitation of new. But the chief question being in the book, whether it might be done by the same deed; it is admitted and thought not worth the speaking to, that the law shall marshal the acts against the order of the words, that is, first to make void, then to limit.

Fitz-Wil-
liams's case,
2 Jac. Co. p.
6. f. 33.

So if I convey land and covenant with you to make farther assurance, so that you require it of me, there though the request be placed last, yet it must be acted first.

So if I lett land to you for a term, and say farther, it shall be lawful for you to take twenty timber-trees to erect a new tenement upon the land, so that my bailiff do assign you where you shall take them; here the assignment, though last placed, must precede. And therefore the Grammarians do infer well upon the word *period*, which is a full and complete clause or sentence, that it is *complexus orationis circularis*: for as in a circle there is not *prius* nor *posterius*, so in one sentence you shall not respect the placing of words; but though the words lie in length, yet the sense is round, so as *prima erunt novissima, et novissima prima*. For though you cannot speak all at once so, yet you must construe and judge upon all at once.

To

THE CASE OF REVOCATION OF USES.

To apply this; I say these words, *so that*, though *ita et tunc posterius*, yet they be *prolate et post prima*: as if they had been penned thus, that it shall be lawful for Sir Thomas Stanhope, *so that* he assure lands, *etc.* to revoke; and what difference between, *so that* he assure, he may revoke; or, he may revoke, *so that* he assure: for you must either make the *so that* to be precedent or void, as I shall tell you anon. And therefore the law will rather invert the words, than pervert the sense.

But it will be said, that in the cases I put, it is left indefinite, when the act last limited shall be performed; and so the law may marshal it, as it may stand with possibility; and so if it had been in this case no more but, *so that* Sir Thomas or John should assure new lands, and no time spoken of, the law might have intended it precedent. But in this case it is precisely put to be at any time within six months after the declaration, and therefore you cannot vary in the times.

To this I answer, that the new assurance must be in deed in time after the instrument or deed of the declaration; but on the other side it must be time precedent to the operation of the law, by determining the uses thereupon: so as it is not to be applied so much to the declaration itself, but to the warrant of the declaration. It shall be lawful, *so that, etc.* And this will appear more plainly by my second reason, to which now I come; for as for the cavillation upon the word *immediately*, I will speak to it after.

My second reason therefore is out of the use and signification of this conjunction or bond of speech, *so that*: for no man will make any great doubt of it, if the words had been *si*, if Sir Thomas shall within six months of such declaration convey; but that it must have been intended precedent; yet if you mark it well, these words *ita quod* and *si*, howsoever in propriety the *ita quod* may seem subsequent, and the *si* precedent, yet they both bow to the sense.

So we see in 4 Edw. VI. Colthurst's case, a man leaseth to J. S. a house, *si ipse velit habitare, et residere esse*; there the word *si* amounts to a condition subsequent; for he could not be resident before he took the state; and so *via versa* may *ita quod* be precedent, for else it must be idle or void. But I go farther, for I say *ita quod*, though it be good words of condition, yet more properly it is neither condition, precedent, nor subsequent, but rather a qualification, or form, or adherent to the acts, whereto it is joined, and made part of their essence, which will appear evidently by other cases. For allow it had been thus, *so that the deed of declaration be inrolled within six months*, this is all one, as by deed inrolled within six months, as it is said in Digg's case 42 Eliz. f. 173. that by deed indented to be inrolled is all one with deed indented and inrolled. It is but a *modus facendi*, a description, and of the same nature is the *ita quod*: so if it had been thus, it shall be lawful for Sir Thomas to declare, *so that* the declaration be with the consent of my lord chief justice, is it not all one with the more compendious form of penning, that Sir Thomas shall declare with the consent of my lord chief justice? And if it had been thus, *so that* Sir John within six months after such declaration shall obtain the consent of my lord chief justice, should not the uses have expected? But these you will say are forms and circumstances annexed to the conveyance required: why surely any collateral matter coupled by the *ita quod* is as strong? If the *ita quod* had been, that Sir John Stanhope within six months should have paid my lady 1000l. or entered into bond never more to disturb her, or the like, all these make but one intire idea or notion, how that his power should not be categorical,

or

1 F. 6. Pl.
Com. Col-
thurst's case.

Digg's case,
42 Eliz. f. 173.

or simple at pleasure, but hypothetical, and qualified, and restrained, that is to say, not the one without the other, and they are parts incorporated into the nature and essence of the authority itself.

The third reason is the justice of the law in taking words so, as no material part of the parties intent perish: for, as one saith, *præstat torquere verba quàm homines*, better wrest words out of place, than my lady Stanhope out of her jointure, that was meant to her. And therefore it is elegantly said in Fitz-Williams's case, which I vouched before, though words be contradictory, and, to use the phrase of the book, *pugnant tanquam ex diametro*; yet the law delighteth to make atonement, as well between words as between parties, and will reconcile them so as they may stand, and abhorreth a *vacuum*, as well as nature abhorreth it; and as nature to avoid a *vacuum* will draw substances contrary to their propriety, so will the law draw words. Therefore saith Littleton, if I make a feoffment *reddendo* rent to a stranger, this is a condition to the feoffor, rather than it shall be void, which is quite cross; it sounds a rent, it works a condition, it is limited to a third person, it inureth to the feoffor; and yet the law favoureth not conditions, but to avoid a *vacuum*.

So in the case of 45 E. III. a man gives land in frank-marriage, the remainder ^{45 E. 3.} in fee. The frank-marriage is first put, and that can be but by tenure of the donor; yet rather than the remainder should be void, though it be last placed, the frank-marriage being but a privilege of estate shall be destroyed.

So 33 H. VI. Tresham's case: the King granteth a wardship; before it fall; good, because it cannot inure by covenant, and if it should not be good by plea, as the book terms it, it were void: so that, no, not in the King's case, the law will not admit words to be void.

So then the intent appears most plainly, that this act of Sir John should be *actus geminus*, a kind of twine to take back, and to give back; and to make an exchange, and not a resumption; and therefore upon a conceit of repugnancy, to take the one part, which is the privation of my lady's jointure, and not the other, which is the restitution or compensation, were a thing utterly injurious in matter, and absurd in construction.

The fourth reason is out of the nature of the conveyance, which is by way of use, and therefore ought to be construed more favourably according to the intent, and not literally or strictly: for although it be said in Frene and Dillon's case, and in Fitz-Williams's case, that it is safe so to construe the statute of 27 H. VIII. as that uses may be made subject to the rules of the common law, which the professors of the law do know, and not leave them to be extravagant and irregular; yet if the late authorities be well marked, and the reason of them, you shall find this difference, that uses in point of operation are reduced to a kind of conformity with the rules of the common law, but that in point of exposition of words, they retain somewhat of their ancient nature, and are expounded more liberally according to the intent; for with that part the statute of 27 doth not meddle. And therefore if the question be, whether a bargain and sale upon condition be good to reduce the state back without an entry? or whether if a man make a feoffment in fee to the use of John a Style for years, the remainder to the right heirs of John a Downe, this remainder be good or no? these cases will follow the grounds of the common law for possessions, in point of operation; but so will it not be in point of exposition.

The case of
the manor of
Odiam.

For if I have the manor of Dale and the manor of Sale lying both in Vale, and I make a lease for life of them both, the remainder of the manor of Dale, and all other my lands in Vale to John a Style, the remainder of the manor of Sale to John a Downe, this latter remainder is void, because it comes too late, the general words having carried it before to John a Style. But put it by way of use a man makes a feoffment in fee of both manors, and limits the use of the manor of Dale, and all other the lands in Vale, to the use of himself, and his wife for her jointure, and of the manor of Sale to the use of himself alone. Now his wife shall have no jointure in the manor of Sale, and so was it judged in the case of the manor of Odiam.

41 Eliz. Co
7 s. f. 24.

And therefore our case is more strong, being by way of use, and you may well construe the latter part to control and qualify the first, and to make it attend and expect: nay, it is not amiss to see the case of Peryman 41 Eliz. Coke p. 5. f. 84. where by a custom a livery may expect; for the case was, that in the manor of Portchester, the custom was, that a feoffment of land should not be good, except it were presented within a year in the court of the manor, and there ruled that it was but *actus inchoatus*, till it was presented; now if it be not merely against reason of law, that so solemn a conveyance as livery, which keeps state, I tell you, and will not wait, should expect a farther perfection, *à fortiori* may a conveyance in use or declaration of use receive a consummation by degrees, and several acts. And thus much for the main point.

Now for the objection of the word *immediate*, it is but light and a kind of sophistry. They say that the words are, that the uses shall rise immediately after the declaration, and we would have an interposition of an act between, namely, that there should be a declaration first, then a new assurance within the six months; and lastly, the uses to rise: whereunto the answer is easy; for we have shewed before, that the declaration and the new assurance are in the intent of him that made the conveyance, and likewise in eye of law, but as one compounded act. So as *immediately after the declaration* must be understood of a perfect and effectual declaration, with the adjuncts and accouplements expressed.

49 E. 3. f. 11.

So we see in 49 E. III. f. 11. if a man be attainted of felony, that holds lands of a common person, the King shall have his year, day and waste: but when? Not before an office found: and yet the words of the statute of *praerogativa regis* are, *rex habebit catalla felonum, et si ipsi habent liberum tenementum, statim capiatur in manus domini, et rex habebit annum, diem et vastum*: and here the word *statim* is understood of the effectual and lawful time, that is, after office found.

2 H. 4. f. 17.

So in 2 H. IV. f. 17. it appears that by the statute of Acton Burnell, if the debt be acknowledged, and the day past that the goods of the debtors shall be sold *statim*, in French *maintenant*; yet nevertheless this *statim* shall not be understood, before the process of law requisite passed, that is, the day comprised in the extent.

27 H. 8. f. 19.

So it is said 27 H. VIII. f. 19. by Audley the chancellor, that the present tense shall be taken for the future; *à fortiori*, say I, the immediate future tense may be taken for a distant future tense: as if I be bound that my son being of the age of twenty one years shall marry your daughter, and that he be now of twelve years; yet this shall be understood, when he shall be of the age of twenty one years. And so in our case *immediately after the declaration* is intended when all things shall be performed, that are coupled with the said declaration.

But

But in this I doubt I labour too much; for no man will be of opinion, that it was intended that the lady Stanhope should be six whole months without either the old jointure or the new; but that the old should expect until the new were settled without any *interim*. And so I conclude this course of atonements, as Fitz-Williams's case calls it, whereby I have proved, that all the words, by a true marshalling of the acts, may stand according to the intent of the parties.

I may add *tanquam ex abundanti*, that if both clauses do not live together, they must both die together; for the law loves neither fractions of estates, nor fractions of constructions: and therefore in Jermin and Alkew's case, 37 Eliz. a man did devise lands in tail with proviso, that if the devisee did attempt to alien, his estate should cease, as if he were naturally dead. It is said there, that the words, *as if he were naturally dead*, shall be void, and the words, *that his estate shall cease*, good? No, but the whole clause shall be void. And it is all one reason of a *jo that*, as of an *as if*, for they both suspend the sentence.

So if I make a lease for life, upon condition he shall not alien, nor take the profits, shall this be good for the first part, and void for the second? No, but it shall be void for both.

So if the power of declaration of uses had been thus penn'd, that Sir John Stanhope might by his deed indented declare new uses, so that the deed were inrolled before the mayor of St. Albans, who hath no power to take inrollments; or so that the deed were made in such sort, as might not be made void by parliament: in all these and the like cases the impossibility of the last part doth strike upwards, and infect, and destroy the whole clause. And therefore, that all the words may stand, is the first and true course; that all the words be void, is the second and probable; but that the revoking part should be good, and the assuring part void, hath neither truth nor probability.

Now come I to the second point, how this value should be measured, wherein methinks you are as ill a measurer of values, as you are an expounder of words; which point I will divide, first considering what the law doth generally intend by the word *value*; and secondly to see what special words may be in these clauses, either to draw it to a value of a present arrentation, or to understand it of a just and true value.

The word *value* is a word well known to the law, and therefore cannot be, except it be willingly, misunderstood. By the common law there is upon a warranty a recovery in value. I put the case therefore that I make a feoffment in fee with warranty of the manor of Dale, being worth 20 l. *per annum*, and then in lease for 20 s. The lease expires, for that is our case, though I hold it not needful, the question is, whether upon an eviction there shall not be recovered from me land to the value of 20 l.

So if a man give land in frank-marriage then rented at 40 l. and no more worth; there descendeth other lands, lett perhaps for a year or two for 20 l. but worth 80 l. shall not the donee be at liberty to put this land in hotchpotch?

So if two parceners be in tail, and they make partition of lands equal in rent, but far unequal in value, shall this bind their issues? By no means; for there is no calendar so false to judge of values as the rent, being sometimes improved, sometimes ancient, sometimes where great fines have been taken, sometimes where no fines; so as in point of recompense you were as good put false weights into the hands of the law, as to bring in this interpretation of value by a present arrentation.

tion. But this is not worth the speaking to in general; that which giveth colour is the special words in the clause of revocation, that the 20 l. value should be according to the rents then answered; and therefore that there should be a correspondence in the computation likewise of the recompense. But this is so far from countenancing that exposition, as, well noted, it crosseth it; for *opposita juxta se posita magis clarescunt*: first, it may be the intent of Sir Thomas, in the first clause, was double, partly to exclude any land in demesne, partly knowing the land was double, and as some say quadruple, better than the rent, he would have the more scope of revocation under his 20 l. value.

But what is this to the clause of recompense; first, are there any words *secundum computationem prædictam*? There are none. Secondly, doth the clause rest upon the words *similis valoris*? No, but joineth *tantum et similis valoris*: confound not predicaments; for they are the mere-stones of reason. Here is both quantity and quality; nay he saith farther within the same towns. Why, marry, it is somewhat to have mens possessions lie about them, and not dispersed. So it must be as much, as good, as near; so plainly doth the intent appear, that my lady should not be a loser.

[For the point of the notice, it was discharged by the court.]



T H E

JURISDICTION of the MARCHES.

The effect of the first argument of the King's Solicitor-general, in maintaining the jurisdiction of the Council of the marches over the four shires.

THE question for the present is only upon the statute of 32 H. VIII. and though it be a great question, yet it is contracted into small room; for it is but a true construction of a monosyllable, the word *march*.

The exposition of all words resteth upon three proofs, the propriety of the word, and the matter precedent, and subsequent.

Matter precedent concerning the intent of those that speak the words, and matter subsequent touching the conceit and understanding of those that construe and receive them.

First therefore as to *vis termini*, the force and propriety of the word; this word *marches* signifieth no more but limits, or confines, or borders, in Latin *limites*, or *confinea*, or *contermina*; and thereof was derived at the first *marchio*, a marquiss, which was *comes limitaneus*.

Now these limits cannot be *linea imaginaria*, but it must have some contents and dimension, and that can be no other but the counties adjacent: and for this construction we need not wander out of our own state, for we see the counties of Northumberland, Cumberland, and Westmoreland, lately the borders upon Scotland. Now the middle shires were commonly called the east, west, and middle *marches*.

To proceed therefore to the intention of those that made the statute, in the use of this word; I shall prove that the parliament took it in this sense by three several arguments.

The first is, that otherwise the word should be idle; and it is a rule, *verba sunt accipienda, ut sortientur effectum*: for this word *marches*, as is confessed on the other side, must be either for the counties marches, which is our sense, or the lordships marchers, which is theirs; that is, such lordships, as by reason of the incursions and infestation of the Welsh in ancient time, were not under the constant possession of either dominion, but like the bateable ground where the war played. Now if this latter sense be destroyed, then all equivocation ceaseth.

That it is destroyed, appears manifestly by the statute of 27 H. VIII. made seven years before the statute of which we dispute; for by that statute all the lordships marchers are made shire ground, being either annexed to the ancient counties of Wales, or to the ancient counties of England, or erected into new counties, and made parcel of the dominion of Wales and so no more marches after the statute of 27: so as there were no marches in that sense at the time of the making of the statute of 34.

The second argument is from the comparing of the place of the statute, whereupon our doubt resteth, namely, that there shall be an *analogia* of the precedent

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and council in the dominion of Wales and the marches of the same, *etc.* with another place of the same statute, where the word *marches* is left out; for the rule is, *opposita juxta se posita magis elucescunt*. There is a clause in the statute, which gives power and authority to the King to make and alter laws for the weal of his subjects of his dominion of Wales; there the word *marches* is omitted, because it was not thought reasonable to invest the King with a power to alter the laws, which is the subjects birthright, in any part of the realm of *England*; and therefore by the omission of the word *marches* in that place you may manifestly collect the signification of the word in the other, that is to be meant of the four counties of England.

The third argument which we will use is this: the council of the marches was not erected by the act of parliament, but confirmed; for there was a president and council long before in E. IV. his time, by matter yet appearing; and it is evident upon the statute itself, that in the very clause which we now handle, it referreth twice to the usage, *as heretofore hath been used*.

This then I infer, that whatsoever was the King's intention in the first erection of this court, was likewise the intention of the parliament in the establishing thereof, because the parliament builded upon an old foundation.

The King's intention appeareth to have had three branches, whereof every of them doth manifestly comprehend the four shires.

The first was the better to bridle the subject of Wales, which at that time was not reclaimed: and therefore it was necessary for the president and council there to have jurisdiction and command over the English shires; because that by the aid of them, which were undoubted good subjects, they might the better govern and suppress those that were doubtful subjects.

And if it be said, that it is true, that the four shires were comprehended in the commission of *oyer* and *terminer*, for the suppressing of riots and misdemeanors, but not for the jurisdiction of a court of equity; to that I answer, that their commission of *oyer* and *terminer* was but *gladius in vagina*, for it was not put in practice amongst them; for even in punishment of riots and misdemeanors, they proceed not by their commission of *oyer* and *terminer* by way of jury, but as a council by way of examination. And again it was necessary to strengthen that court for their better countenance with both jurisdictions, as well civil as criminal, for *gladius gladium jurat*.

The second branch of the King's intention was to make a better equality of commerce, and intercourse in contracts and dealings between the subjects of Wales and the subjects of England; and this of necessity must comprehend the four shires: for otherwise, if the subject of England had been wronged by the Welsh on the sides of Wales, he might take his remedy nearer hand. But if the subject of Wales, for whose weal and benefit the statute was chiefly made, had been wronged by the English in any of the shires, he might have sought his remedy at Westminster.

The third branch of the King's intent was to make a convenient dignity and state of the mansion and residence of his eldest son, when he should be created Prince of Wales, which likewise must plainly include the four shires: for otherwise to have sent *primogenitum Regis* to a government, which without the mixture of the four shires, as things then were, had more pearl than honour or command:

or to have granted him only a power of lieutenantancy in those shires, where he was to keep his state, not adorned with some authority civil, had not been convenient.

So that here I conclude the second part of that I am to say touching the intention of the parliament precedent.

Now touching the construction subsequent, the rule is good, *optimus legum interpretis consuetudo*; for our labour is not to maintain an usage against a statute, but by an usage to expound a statute; for no man will say, but the word *marches* will bear the sense that we give it.

This usage or custom is fortified by four notable circumstances; first, that it is ancient and not late or recent; secondly, it is authorized and not popular or vulgar; thirdly, that it hath been admitted and quiet, and not litigious or interrupted; and fourthly, when it was brought in question, which was but once, it hath been affirmed *judicio controverso*.

For the first, there is record of a president and council, that hath exercised and practised jurisdiction in these shires, as well sixty years before the statute, namely, since 18 E. IV. as the like number of years since: so that it is *Janus bifrons*, it hath a face backward from the statute, as well as forwards.

For the second, it hath received these allowances by the practice of that court, by suits originally commenced there, by remanding from the courts of Westminster, when causes within those shires have been commenced here above; sometimes in chancery, sometimes in the star-chamber, by the admittance of divers great learned men and great judges, that have been of that council and exercised that jurisdiction; as at one time Bromley, Morgan, and Brook, being the two chief justices, and chief baron, and divers others; by the King's learned council, which always were called to the penning of the King's instructions; and lastly, by the King's instructions themselves, which though they be not always extant, yet it is manifest that since 17 H. VIII. when Princess Mary went down, that the four shires were ever comprehended in the instructions, either by name, or by that that amounts to so much. So as it appears that this usage or practice hath not been an obscure custom practised by the multitude, which is many times erroneous, but authorized by the judgment and consent of the state: for as it is *vera vox* to say, *maximus erroris populus magister*; so it is *dura vox* to say, *maximus erroris princeps magister*.

For the third, it was never brought in question till 16 Eliz. in the case of one Wynde.

And for the fourth, the controversy being moved in that case, it was referred to Gerrard attorney, and Bromley solicitor who was afterwards chancellor of England, and had his whole state of living in Shropshire and Worcester, and by them reported to the lords of the council in the star-chamber, and upon their report decreed, and the jurisdiction affirmed.

Lastly, I will conclude with two manifest badges and tokens, though but external yet violent in demonstration, that these four shires were understood by the word *marches*; the one the denomination of that council, which was ever in common appellation termed and stiled *the council of the marches*, or in the *marches*, rather than the council of Wales, or in Wales, and *denominatio est à digniore*. If it had been intended of lordships marchers, it had been as if one should have called my lord mayor, my lord mayor of the suburbs. But it was plainly intended of the four English shires, which indeed were the more worthy.

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And the other is of the perpetual residence and mansion of the council, which was evermore in the shires; and to imagine that a court should not have jurisdiction where it sitteth, is a thing utterly improbable, for they should be *tanquam pias in arido*.

So as upon the whole matter, I conclude that the word *marches* in that place by the natural sense, and true intent of the statute, is meant the four shires.

The effect of that, that was spoken by serjeant Hutton and serjeant Harris, in answer of the former argument, and for the excluding of the jurisdiction of the marches in the four shires.

THAT, which they both did deliver, was reduced to three heads:

The first to prove the use of the word *marches* for lordships marchers.

The second to prove the continuance of that use of the word, after the statute of 27, that made the lordships marchers shire-grounds; whereupon it was inferred, that though the marches were destroyed in nature, yet they remained in name.

The third was some collections they made upon the statute of 34; whereby they inferred, that that statute intended that word in that signification.

For the first, they did alledge divers statutes before 27 H. VIII. and divers book-cases of law in print, and divers offices and records, wherein the word *marches* of Wales was understood of the lordships marchers.

They said farther, and concluded, that whereas we shew our sense of the word but rare, they shew theirs common and frequent; and whereas we shew it but in a vulgar use and acceptation, they shew theirs in a legal use in statutes, authorities of books, and ancient records.

They said farther, that the example we brought of marches upon Scotland, was not like, but rather contrary; for they were never called *marches* of Scotland, but the *marches* of England: whereas the statute of 34 doth not speak of the *marches* of England, but of the *marches* of Wales.

They said farther, that the county of Worcester did in no place or point touch upon Wales, and therefore that county could not be termed *marches*.

To the second they produced three proofs; first, some words in the statute of 22 H. VIII. where the statute, providing for a form of trial for treason committed in Wales, and the *marches* thereof, doth use that word, which was in time after the statute of 27; whereby they prove the use of the word continued.

The second proof was out of two places of the statute, whereupon we dispute, where the word *marches* is used for the lordships of marchers.

The third proof was the stile and form of the commission of *oyer and terminer* even to this day, which run to give power and authority to the president and council there, *infra principalitat. Walliae*, and *infra* the four counties by name, with this clause farther, *et marchias Walliae eisdem comitatibus adiacent*: whereby they infer two things strongly, the one that the *marches* of Wales must needs be a distinct thing from the four counties; the other that the word *marches* was used for the lordships marchers long after both statutes.

They said farther, that otherwise the proceeding, which had been in the four new erected counties of Wales by the commission of *oyer and terminer*, by force whereof many had been proceeded with both for life, and otherways should be called

called in question, as *coram non judice*, inſomuch as they neither were part of the principality of Wales, nor part of the four ſhires; and therefore muſt be contained by the word *marches*, or not at all.

For the third head, they did inſiſt upon the ſtatute of 34, and upon the preamble of the ſame ſtatute.

The title being an act for certain ordinances in the King's Maſteſty's dominion and principality of Wales; and the preamble being for the tender zeal and affection that the King bears to his ſubjects of Wales; and again, at the humble ſuit and petition of his ſubjects of Wales: whereby they infer that the ſtatute had no purpoſe to extend or intermeddle with any part of the King's dominions or ſubjects but only within Wales.

And for uſage and practice, they ſaid, it was nothing againſt an act of parliament.

And for the inſtructions, they preſſed to ſee the inſtructions immediately after the ſtatute made.

And for the certificate and opinions of Gerrard and Bromley, they ſaid they doubted not, but that if it were now referred to the attorney and ſolicitor, they would certify as they did.

And laſtly, they relied, as upon their principal ſtrength, upon the precedent of that, which was done of the exempting of Cheſhire from the late juriſdiction of the ſaid council; for they ſaid, that from 34 of H. VIII. until 11 of Queen Eliz. the court of the marches did uſurp juriſdiction upon that county, being likewise adjacent to Wales, as the other four are; but that in the eleventh year of Queen Elizabeth aforeſaid, the ſame being queſtioned at the ſuit of one Radforde, was referred to the lord Dyer, and three other judges, who, by their certificate at large remaining of record in the chancery, did pronounce the ſaid ſhire to be exempted, and that in the concluſion of their certificate they gave this reaſon, becauſe it was no part of the principality or marches of Wales. By which reaſon, they ſay, it ſhould appear their opinion was, that the word *marches* could not extend to counties adjacent. This was the ſubſtance of their defence.

The reply of the King's Solicitor to the arguments of the two ſerjeants.

HAVING divided the ſubſtance of their arguments, *ut ſupra*, he did purſue the ſame diviſion in his reply, obſerving nevertheleſs both a great redundancy and a great defect in that which was ſpoken. For touching the uſe of the word *marches*, great labour had been taken, which was not denied: but touching the intent of the parliament, and the reaſons to demonſtrate the ſame, which were the liſe of the queſtion, little or nothing had been ſpoken.

And therefore as to the firſt head, that the word *marches* had been often applied to the lordſhips marchers, he ſaid it was the ſophiſm which is called *ſciomachia*, fighting with their ſhadows; and that the ſound of ſo many ſtatutes, ſo many printed book caſes, ſo many records, were *nomina magna*, but they did not preſs the queſtion; for we grant that the word *marches* had ſignifications, ſometimes for the counties, ſometimes for the lordſhips marchers, like as Northampton and Warwick are ſometimes taken for the towns of Northampton and Warwick, and ſometimes for the counties of Northampton and Warwick. And Dale and Sale are ſometimes taken for the villages or hamlets of Dale and Sale, and ſometimes taken

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for the parishes of Dale and Sale : and therefore that the most part of that they had said, went not to the point.

To that answer, which was given to the example of the middle shires upon Scotland, it was said, it was not *ad idem* ; for we used it to prove that the word *marches* may and doth refer to whole counties ; and so much it doth manifestly prove ; neither can they deny it. But then they pinch upon the addition, because the English counties adjacent upon Scotland are called the *marches* of England, and the English counties adjacent upon Wales are called the *marches* of Wales ; which is but a difference in phrase : for sometimes limits and borders have their names of the inward country, and sometimes of the outward country ; for the distinction of *exclusive* and *inclusive* is a distinction both in time and place ; as we see that that which we call this day fortnight, excluding the day, the French and the law-phrase calls this day fifteen days, or *quindena*, including the day. And if they had been called the marches upon Wales or the marches against Wales, then it had been clear and plain ; and what difference between the banks of the sea and the banks against the sea ? So that he took this to be but a toy or cavillation, for that phrases of speech are *ad placitum, et recipiunt eorum*.

As to the reason of the map, that the county of Worcester doth no way touch upon Wales, it is true ; and I do find when the lordships marchers were annexed, some were laid to every other of the three shires, but none to Worcester. And no doubt but this emboldened Wynd to make the claim to Worcester, which he durst not have thought on for any of the other three. But it falls out well that that, which is the weakest in probability, is strongest in proof ; for there is a case ruled in that more than in the rest. But the true reason is, that usage must over-rule propriety of speech ; and therefore if all commissions, and instructions, and practices, have coupled these four shires, it is not the map that will sever them.

To the second head he gave this answer. First he observed in general that they had not shewed one statute, or one book-case, or one record, the commissions of *oyer* and *terminer* only excepted, wherein the word *marches* was used for lordships marches since the statute of 34. So that it is evident, that as they granted the nature of those marches was destroyed and extinct by 27 ; so the name was discontinued soon after, and did but remain a very small while, like the sound of a bell, after it hath been rung ; and as indeed it is usual when names are altered, that the old name, which is expired, will continue for a small time.

Secondly, he said, that whereas they had made the comparison, that our acceptance of the word was popular, and theirs was legal, because it was extant in book-cases, and statutes, and records, they must needs confess that they are beaten from that hold : for the name ceased to be legal clearly by the law of 27, which made the alteration in the thing itself, whereof the name is but a shadow ; and if the name did remain afterwards, then it was neither legal, nor so much as vulgar, but it was only by abuse, and by a trope or *catachresis*.

Thirdly, he shewed the impossibility how that signification should continue, and be intended by the statute of 34. For if it did, it must be in one of these two senses, either that it was meant of the lordships marchers made part of Wales, or of the lordships marchers annexed to the four shires of England.

For the first of these, it is plainly impugned by the statute itself : for the first clause of the statute doth set forth that the principality and deminion of Wales shall consist of twelve shires ; wherein the four new-erected counties, which were formerly

formerly lordships marchers, and whatsoever else was lordships marchers annexed to the ancient counties of Wales, is comprehended; so that of necessity all that territory or border must be Wales: then followeth the clause *immediately*, whereupon we now differ, namely, that there shall be and remain a president and council in the principality of Wales, and the marches of the same; so that the parliament could not forget so soon what they had said in the clause next before: and therefore by the marches they meant somewhat else besides that which was Wales. Then if they fly to the second signification, and say that it was meant by the lordships marchers annexed to the four English shires; that device is merely *imper nata oratio*, a mere fiction and invention of wit, crossed by the whole stream and current of practice; for if that were so, the jurisdiction of the council should be over part of those shires, and in part not; and then in the suits commenced against any of the inhabitants of the four shires, it ought to have been laid or shewed that they dwelt within the ancient lordships marchers, whereof there is no shadow that can be shewed.

Then he proceeded to the three particulars. And for the statute of 32, for trial of treason, he said it was necessary that the word *marches* should be added to Wales, for which he gave this reason; that the statute did not only extend to the trial of treasons, which should be committed after the statute, but did also look back to treasons committed before: and therefore this statute being made but five years after the statute of 27, that extinguished the lordships marchers, and looking back, as was said, was fit to be penned with words that might include the preterperfect tense, as well as the present tense; for if it had rested only upon the word *Wales*, then a treason committed before the lordships marchers were made part of Wales, might have escaped the law.

To this also another answer was given, which was, that the word *marches* as used in that statute, could not be referred to the four shires, because of the words following, wherewith it is coupled, namely, in Wales, and the marches of the same, where the King's writ runs not.

To the two places of the statute of 34 itself, wherein the word *marches* is used for lordships marchers; if they be diligently marked, it is merely sophistry to alledge them; for both of them do speak by way of recital of the time past before the statute of 27, as the words themselves being read over will shew without any other enforcement; so that this is still to use the almanack of the old year with the new.

To the commissions of *oyer and terminer*, which seemeth to be the best evidence they shew for the continuance of the name in that tropical or abused sense, it might move somewhat, if this form of penning those commissions had been begun since the statute of 27. But we shew forth the commission in 17 H. VIII. when the Princess Mary went down, running in the same manner *verbatim*, and in that time it was proper, and could not otherwise be. So that it appeareth that it was but merely a *fac simile*, and that notwithstanding the case was altered, yet the clerk of the crown pursued the former precedent; hurt it did none, for the word *marches* is there superfluous.

And whereas it was said, that the words in those commissions were effectual, because else the proceeding in the four new-erected shires of Wales should be *coram non iudice*, that objection carrieth no colour at all; for it is plain, they have authority by the word *principality of Wales*, without adding the word *marches*; and that

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is proved by a number of places in the statute of 34, where if the word *Wales* should not comprehend those shires, they should be excluded in effect of the whole benefit of that statute; for the word *marches* is never added in any of these places.

To the third head, touching the true intent of the statute, he first noted how naked their proof was in that kind, which was the life of the question, for all the rest was but *in litera et in certice*.

He observed also that all the strength of our proof, that concerned that point, they had passed over in silence, as belike not able to answer: for they had said nothing to the first intentions of the erections of the court, whereupon the parliament built; nothing to the diversity of penning, which was observed in the statute of 34, leaving out the word *marches*, and resting upon the word *Wales* alone; nothing to the reliance, nothing to the denomination, nothing to the continual practice before the statute and after, nothing to the King's instructions, *etc.*

As for that, that they gather out of the title and preamble, that the statute was made for Wales, and for the weal and government of Wales, and at the petition of the subjects of Wales, it was little to the purpose; for no man will affirm on our part the four English shires were brought under the jurisdiction of that council, either first by the King, or after by the parliament, for their own sakes, being in parts no farther remote; but it was for congruity's sake, and for the good of Wales, that that commixture was requisite: and *turpis est pars, quae non congruit cum toto*. And therefore there was no reason, that the statute should be made at their petition, considering they were not *primi in intentione*, but came *ex consequenti*.

And whereas they say that usage is nothing against an act of parliament, it seems they do voluntarily mistake, when they cannot answer; for we do not bring usage to cross an act of parliament, where it is clear, but to expound an act of parliament, where it is doubtful, and evermore *contemporanea interpretatio*, whether it be of statute or Scripture, or author whatsoever, is of greatest credit: for to come now, above sixty years after, by subtilty of wit to expound a statute otherwise than the ages immediately succeeding did conceive it, is *expositio contentiosa*, and not *naturalis*. And whereas they extenuate the opinion of the attorney and solicitor, it is not so easy to do: for first they were famous men, and one of them had his patrimony in the shires: secondly, it was of such weight, as a decree of the council was grounded upon it; and thirdly, it was not unlike, but that they had conferred with the judges, as the attorney and solicitor do often use in like cases.

Lastly, for the exemption of Cheshire he gave this answer. First, that the certificate in the whole body of it, till within three or four of the last lines, doth rely wholly upon that reason, because it was a county Palatine; and to speak truth, it stood not with any great sense or proportion, that that place, which was privileged and exempted from the jurisdiction of the courts of Westminster, should be meant by the parliament to be subjected to the jurisdiction of that council.

Secondly, he said that those reasons, which we do much insist upon for the four shires, hold not for Cheshire; for we say it is fit the subject of Wales be not forced to sue at Westminster, but have his justice near hand; so may he have in Cheshire, because there is both a justice for common law and a chancery; we say it is convenient for the Prince, if it please the King to send him down, to have some jurisdiction civil as well as for the peace; so may he have in Cheshire, as
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earl of Chester. And therefore those grave men had great reason to conceive that the parliament did not intend to include Cheshire.

And whereas they pinch upon the last words in the certificate, namely, that Cheshire was no part of the dominion, nor of the marches, they must supply it with this sense, not within the meaning of the statute; for otherwise the judges could not have discerned of it; for they were not to try the fact, but to expound the statute; and that they did upon those reasons, which were special to Cheshire, and have no affinity with the four shires.

And therefore if it be well weighed, that certificate makes against them; for as *exceptio firmat legem in casibus non exceptis*, so the excepting of that shire by itself doth fortify, that the rest of the shires were included in the very point of difference.

After this he shewed a statute in 18 Eliz. by which provision is made for the repair of a bridge called Chepstow-bridge between Monmouth and Gloucester, and the charge lay in part upon Gloucestershire; in which statute there is a clause, that if the justices of peace do not their duty in levying of the money, they shall forfeit five pounds to be recovered by information before the council of the marches: whereby he inferred that the parliament would never have assigned the suit to that court, but that it conceived Gloucestershire to be within the jurisdiction thereof. And therefore he concluded that here is in the nature of a judgment by parliament, that the shires are within the jurisdiction.

The third and last argument of the King's Solicitor in the case of the marches, in reply to serjeant Harris.

THIS case groweth now to some ripeness, and I am glad we have put the other side into the right way; for in former arguments they laboured little upon the intent of the statute of 34 H. VIII. and busied themselves in effect altogether about the force and use of the word *marches*: but now finding that *littera mortua non prodest*, they offer at the true state of the question, which is the intent; I am determined therefore to reply to them in their own order, *ut manifestum sit*, as he saith, *me nihil aut labor fugere soluisse reticendo, aut obscurare dicendo*.

All which hath been spoken on their part consisteth upon three proofs.

The first was by certain inferences to prove the intent of the statute.

The second was to prove the use of the word *marches* in their sense long after both statutes; both that of 27, which extinguished the lordships marchers, and that of 34, whereupon our question ariseth.

The third was to prove an interruption of that practice and use of jurisdiction, upon which we mainly insist, as the best exposition of the statute.

For the first of these, concerning the intention, they brought five reasons.

The first was that this statute of 34, was grounded upon a platform, or preparative of certain ordinances made by the King two years before, namely, 32; in which ordinances there is the very clause, whereupon we dispute, namely, That there should be and remain in the dominion and principality of Wales a president and a council: In which clause nevertheless the word *marches* is left out, whereby they collect that it came into the statute of 34, but as a slip, without any farther reach or meaning.

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The first was, that the mischief before the statute, which the statute means to remedy, was, that Wales was not governed according to similitude or conformity with the laws of England. And therefore, that it was a crois and perverse construction, when the statute laboured to draw Wales to the laws of England, to confound it, that it should abridge the ancient subjects of England of their own laws.

The third was, that in a case of so great importance it is not like that if the statute had meant to include the four shires, it would have carried it in a dark general word, as it were *voluntate*, but would have named the shires to be comprehended.

The fourth was, the more to fortify the third reason, they observed that the four shires are remembred and named in several places of the statute, three in number; and therefore it is not like that they would have been forgotten in the principal place, if they had been meant.

The fifth and last was, that there is no clause of attendance, that the sheriffs of the four shires should attend the lord president and the council; wherein there was urged the example of the acts of parliament, which erected courts; as the court of augmentations, the court of wards, the court of survey; in all which there are clauses of attendance; whereupon they inferred that evermore, where a statute gives a court jurisdiction, it strengtheneth it with a clause of attendance; and therefore no such clause being in this statute, it is like there was no jurisdiction meant. Nay, farther they noted, that in this very statute for the justices of Wales, there is a clause of attendance from the sheriffs of Wales.

In answer to their first reason, they do very well, in my opinion, to consider Mr. Attorney's business and mine, and therefore to find out for us evidence and proofs, which we have no time to search; for certainly nothing can make more for us than these ordinances, which they produce: for the diversity of penning of that clause in the ordinances, where the word *marches* is omitted, and that clause in the statute where the word *marches* is added, is a clear and perfect direction what was meant by that word. The ordinances were made by force and in pursuance of authority given to the King by the statute of 27; to what did the statute extend? Only to Wales. And therefore the word *marches* in the ordinances is left out; but the statute of 34 respected not only Wales, but the commixed government, and therefore the word *marches* was put in. They might have remembred that we built an argument upon the difference of penning of that statute of 34 itself in the several clauses of the same; for that in all other clauses, which concern only Wales, the word *marches* is ever omitted; and in that clause alone that concerneth the jurisdiction of the president and council, it is inserted. And this our argument is notably fortified by that they now shew of the ordinances, where in the very self-same clause touching the president and council, because the King had no authority to meddle but with Wales, the word *marches* is omitted. So that it is most plain that this word comes not in by chance or slip, but with judgment and purpose, as an effectual word: for, as it was formerly said, *appellata jura se ipsa magis elucidant*; and therefore I may likewise urge another place in the statute which is left out in the ordinance; for I find there is a clause that the town of Bewlley, which is confessed to be no lordships marcher, but to lie within the county of Worcester; yet because it was an exempted jurisdiction, is by the statute annexed unto the body of the said county.

First,

First, this shews that the statute of 34 is not confined to Wales, and the lordships marchers, but that it intermeddles with Worcestershire. Next, do you find any such clause in the ordinance of 32? No. Why? Because they were appropriated to Wales. So that in my opinion nothing could inforce our exposition better than the collating of the ordinance of 32 with the statute of 34.

In answer to the second reason, the course, that I see often taken in this cause, makes me think of the phrase of the Psalm, *starting aside like a broken bow*: to when they find their reasons broken, they start aside to things not in question. For now they speak, as if we went about to make the four shires Wales, or to take from them the benefit of the laws of England, or their being accounted amongst the ancient counties of England: doth any man say that those shires are not within the circuits of England, but subject to the justices of Wales? or that they should send but one knight to the parliament, as the shires of Wales do? or that they may not sue at Westminster, in chancery, or at common law, or the like? No man affirms any such things; we take nothing from them, only we give them a court of summary justice in certain causes at their own doors.

And this is *nova doctrina* to make such an opposition between law and equity, and between formal justice and summary justice. For there is no law under heaven which is not supplied with equity; for *summum jus, summa injuria*, or, as some have it, *summa lex, summa crux*. And therefore all nations have equity; but some have law and equity mixed in the same court, which is the worse; and some have it distinguished in several courts, which is the better. Look into any counties Palatine, which are small models of the great government of kingdoms, and you shall never find any but had a chancery.

Lastly, it is strange that all other places do require courts of summary justice, and esteem them to be privileges and graces; and in this cause only they are thought to be servitudes and loss of birth-right. The universities have a court of summary justice, and yet I never heard that scholars complain their birth-right was taken from them. The stannaries have them, and you have lately affirmed the jurisdiction: and yet you have taken away no man's birth-right. The court at York, whosoever looks into it, was erected at the petition of the people, and yet the people did not mean to cast away their birth-right. The court of wards is mixed with discretion and equity; and yet I never heard that infants and innocents were deprived of their birth-right. London, which is the seat of the kingdom, hath a court of equity, and holdeth it for a grace and favour; how then cometh this case to be singular? And therefore these be new phrases and conceits proceeding of error or worse; and it makes me think that a few do make their own desires the desires of the country; and that this court is desired by the greater number, though not by the greater stomachs.

In answer to the third reason, if men be conversant in the statutes of this kingdom, it will appear to be no new thing to carry great matters in general words without other particular expressing. Consider but of the statute of 26 H. VIII. which hath carried estates tails under the general words of estates of inheritance. Consider of the statute of 16 R. II. of *praemunire*, and see what great matters are thought to be carried under the word *alibi*. And therefore it is an ignorant assertion to say that the statute would have named the shires, if it had meant them.

Secondly, the statute had more reason to pass it over in general words, because it did not ordain a new matter, but referreth to usage: and though the statute speaks

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speaks generally, yet usage speaks plainly and particularly, which is the strongest kind of utterance or expressing. *Quid verba audiam, cum facta videam.*

And thirdly, this argument of theirs may be strongly retorted against them, for as they infer that the shires were not meant, because they were not included by name; so we infer that they are meant, because they are not excepted by name, as is usual by way of proviso in like cases: and our inference hath far greater reason than theirs, because at the time of the making of the statute they were known to be under the jurisdiction: and therefore that ought to be most plainly expressed, which should work a change, and not that which should continue things as they were.

In answer to their fourth reason, it makes likewise plainly against them; for there be three places where the shires be named, the one for the extinguishing of the custom of Gavelkind; the second for the abolishing of certain forms of assurance which were too light to carry inheritance and freehold; the third for the restraining of certain franchises to that state they were in by a former statute. In these three places the words of the statute are, The lordships marchers annexed unto the counties of Hereford, Salop, *etc.*

Now mark, if the statute conceived the word *marches* to signify lordships marchers, what needeth this long circumlocution? It had been easier to have said, within the *marches*. But because it was conceived that the word *marches* would have comprehended the whole counties, and the statute meant but of the lordships marchers annexed; therefore they were enforced to use that *periphrasis* or length of speech.

In answer to the fifth reason, I give two several answers; the one, that the clause of attendance is supplied by the word *incidents*; for the clause of establishment of the court hath that word, *with all incidents to the same as heretofore hath been used*: for execution is ever incident to justice or jurisdiction. The other because it is a court, that standeth not by the act of parliament alone, but by the King's instructions, whereto the act refers. Now no man will doubt but the King may supply the clause of attendance; for if the King grant forth a commission of *oyer and terminer*, he may command what sheriff he will to attend it; and therefore there is a plain diversity between this case and the cases they vouch of the court of wards, survey, and augmentations: for they were courts erected *de novo* by parliament, and had no manner of reference either to usage or instructions; and therefore it was necessary that the whole frame of those courts, and their authority both for judicature and execution, should be described and expressed by parliament. So was it of the authority of the justices of Wales in the statute of 34 mentioned, because there are many ordinances *de novo* concerning them; so that it was a new erection, and not a confirmation of them.

Thus have I, in confutation of their reasons, greatly, as I conceive, confirmed our own, as it were with new matter; for most of that they have said, made for us. But as I am willing to clear your judgments, in taking away the objections; so I must farther pray in aid of your memory for those things which we have said, whereunto they have offered no manner of answer; for unto all our proofs which we made touching the intent of the statute, which they grant to be the spirit and life of this question, they said nothing: as not a word to this; That otherwise the word *marches* in the statute should be idle or superfluous: not a word to this; That the statute doth always omit the word *marches* in things that concern only Wales:

not a word to this ; That the statute did not mean to innovate but to ratify, and therefore if the shires were in before, they are in still : not a word to the reason of the commixed government, as that it was necessary for the reclaiming of Wales to have them conjoined with the shires ; that it was necessary for commerce and contracts, and properly for the ease of the subjects of Wales against the inhabitants of the shires ; that it was not probable that the parliament meant the Prince should have no jurisdiction civil in that place, where he kept his house. To all these things, which we esteem the weightiest, there is *altum silentium*, after the manner of children that skip over, where they cannot spell.

Now to pass from the intent to the word ; first, I will examine the proofs they have brought that the word was used in their sense after the statute 27 and 34 ; then I will consider what is gained, if they should prove so much ; and lastly, I will briefly state our own proofs, touching the use of the word.

For the first, it hath been said, that whereas I called the use of the word *marches* after the statute of 27, but a little chime at most of an old word, which soon after vanished, they will now ring us a peal of statutes to prove it ; but if it be a peal, I am sure it is a peal of bells, and not a peal of shot : for it clatters, but it doth not strike : for of all the catalogue of statutes I find scarcely one, save those that were answered in my former argument ; but we may with as good reason affirm in every of them the word *marches* to be meant of the counties marches, as they can of the lordships marches : for to begin upwards :

The statute 39 Eliz. for the repair of Wilton-bridge, no doubt doth mean the word *marches* for the counties ; for the bridge itself is in Herefordshire, and the statute imposeth the charge of reparation upon Herefordshire by compulsory means, and permitteth benevolence to be taken in Wales, and the marches ; who doubts, but this meant of the other three shires, which have far greater use of the bridge than the remote counties of Wales ?

For the statute 5 Eliz. concerning perjury, it hath a proviso, that it shall not be prejudicial to the council of the marches for punishing of perjury ; who can doubt, but that here *marches* is meant of the shires, considering the perjuries committed in them have been punished in that court as well as in Wales ?

For 2 Ed. VI. and the clause therein for restraining tithes of marriage-portions in Wales and the marches, why should it not be meant of counties ? For if any such customs had crept and incroached into the body of the shires out of the lordships marchers, no doubt the statute meant to restrain them as well there as in the other places.

And so for the statute of 32 H. VIII. which ordains that the benefit of that statute for distress to be had by executors, should not extend to any lordship in Wales, or the marches of the same where *misses* are paid, because that imports a general release ; what absurdity is there, if there the marches be meant for the whole shires ? for if any such custom had spread so far, the reason of the statute is alike.

As for the statutes of 37 H. VIII. and 4 Ed. IV. for the making and appointing of the *custos rotularum*, there the word *marches* must needs be taken for limits, according to the etymology and derivation : for the words refer not to Wales, but are thus, *within England and Wales, and other the King's dominions, marches and territories*, that is, *limits and territories* ; so as I see no reason, but I may truly maintain my former assertion, that after the lordships marchers were extinct by

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the statute of 27, the name also of marches was discontinued, and rarely if ever used in that sense.

But if it should be granted that it was now and then used in that sense, it helps them little; for first it is clear that the legal use of it is gone, when the thing was extinct, for *nomen est rei nomen*; so it remains but *abusivè*, as if one should call *Guletta*, *Carthage*, because it was once *Carthage*; and next, if the word should have both senses, and that we admit an equivocation, yet we so overweigh them upon the intent, as the balance is soon cast.

Yet one thing I will note more, and that is, that there is a certain confusion of tongues on the other side, and that they cannot well tell themselves what they would have to be meant by the word *marches*; for one while they say it is meant for the lordships marchers *generally*, another while they say that it is meant for the inward marches on *Wales side only*; and now at last they are driven to a poor shift, that there should be left some *little lordship marcher* in the dark, as *casus omissus*, not annexed at all to any county; but if they would have the statute satisfied upon that only, I say no more to them, but *aquila non capit muscas*.

Now I will briefly remember unto you the state of our proofs of the word.

First, according to the laws of speech we prove it by the etymology or derivation, because *march* is the Saxon word for limit, and *marchio* is *comes limitaneus*, this is the opinion of Camden and others.

Next we prove the use of the word in the like case to be for counties, by the example of the marches of Scotland: for as it is prettily said in Walker's case by Gawdy, if a case have no cousin, it is a sign it is a bastard, and not legitimate; therefore we have shewed you a cousin, or rather a brother, here within our own island of the like use of the word. And whereas a great matter was made that the now middle shires were never called the marches of Scotland, but the marches of England against Scotland, or upon Scotland; it was first answered that that made no difference; because sometimes the *marches* take their name of the inward country, and sometimes of the out-country; so that it is but *inclusivè* and *exclusivè*: as for example, that which we call vulgar in speech this day *fortnight*, excluding the day, that the law calls *quindena*, including the day; and so likewise, who will make a difference between the banks of the sea, and the banks against the sea, or upon the sea? But now to remove all scruple, we shew them Littleton in his chapter *Of grand serjanty*, where he saith, there is a tenure by cornage in the *marches* of Scotland: and we shew them likewise the statute of 25 Edw. III. *Of labourers*, where they are also called the *marches of Scotland*.

Then we shew some number of bills exhibited to the council there before the statute, where the plaintiffs have the addition of place confessed within the bodies of the shires, and no lordships marchers, and yet are laid to be in the *marches*.

Then we shew divers accounts of auditors in the Duchy from H. IV. downwards, where the indorsement is *in marchiis Walliae*, and the contents are possessions only of Hereford and Gloucestershire, for in Shropshire and Worcestershire the Duchy hath no lands, and whereas they would put it off with a *casus in jura ante recordationem*, they would believe them, if it were in matter of accounts; we do not alledge them as auditors, but as those that speak English to prove the common use of the word, *legationis et regni*.

We shew likewise an ancient record of a patent to Herbert in 15 E. IV. where *Kilcock* is laid to be in *com. Hereford in marchiis Walliae*; and lastly, we shew again the

the statute of 27 E. III. where provision is made, that men shall labour in the summer where they dwell in the winter; and there is an exception of the people of the counties of Stafford and Lancashire, *etc.* and of the marches of Wales and Scotland; where it is most plain, that the marches of Wales are meant for counties, because they are coupled both with Stafford and Lancashire, which are counties, and with the marches of Scotland, which are likewise counties; and as it is informed, the labourers of those four shires do come forth of their shires, and are known by the name of Cokers to this day.

To this we add two things, which are worthy consideration; the one, that there is no reason to put us to the proof of the use of this word *marches* sixty years ago, considering that usage speaks for us; the other, that there ought not to be required of us to shew so frequent an use of the word *marches* of ancient time in our sense, as they shewed in theirs, because there was not the like occasion: for when a lordship marcher was mentioned it was of necessity to lay it in the *marches*, because they were out of all counties; but when land is mentioned in any of these counties, it is superfluous to add, in the marches; so as there was no occasion to use the word *marches*, but either for a more brief and compendious speech to avoid the naming of the four shires, as it is in the statute of 25 E. III. and in the indorsement of accounts; or to give a court cognisance and jurisdiction, as in the bills of complaint; or *ex abundanti*, as in the record of Kilpeck.

There resteth the third main part, whereby they endeavour to weaken and extenuate the proofs which we offer touching practice and possession, wherein they alledge five things.

First, that Bristol was in until 7 Eliz. and then exempted.

Secondly, that Cheshire was in until 11 Eliz. and then went out.

Thirdly, they alledge certain words in the instructions to Cholmley vice-president in 11 Eliz. at which time the shires were first comprehended in the instructions by name, and in these words, *annexed by our commission*: whereupon they would infer that they were not brought in the statute, but only came in by instructions, and do imagine that when Cheshire went out they came in.

Fourthly, they say that the intermeddling with those four shires before the statute was but an usurpation and toleration, rather than any lawful and settled jurisdiction; and it was compared to that, which is done by the judges in their circuits, who end many causes upon petitions.

Fifthly, they alledge Sir John Mullen's case, where it is said *consuetudo non praejudicat veritati*.

There was moved also, though it were not by the council, but from the judges themselves, as an extenuation, or at least an obscuring of the proofs of the usage and practice, in that we shew forth no instructions from 17 H. VIII. to 1 Mariae.

To these six points I will give answer, and, as I conceive, with satisfaction.

For Bristol, I say it teacheth them the right way, if they can follow it; for Bristol was not exempt by any opinion of law, but was left out of the instructions upon supplication made to the Queen.

For Cheshire, we have answered it before, that the reason was, because it was not probable that the statute meant to make that shire subject to the jurisdiction of that council, considering it was not subject to the high courts at Westminster, in regard it was a county Palatine. And whereas they said, that so was Flintshire

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too, it matcheth not, because Flintshire is named in the statute for one of the twelve shires of Wales.

We shewed you likewise essential differences between Cheshire and these other shires: for that Cheshire hath a chancery in itself; and over Cheshire the Princes claim jurisdiction, as earl of Chester; to all which you reply nothing.

Therefore I will add this only, that Cheshire went out *secundo flumine*, with the good-will of the state; and this is sought to be evicted *adverso flumine*, cross the state; and as they have opinion of four judges for the excluding of Cheshire, so we have the opinions of two great learned men, Gerrard and Bromley, for the including of Worcester; whose opinions, considering it was but matter of opinion, and came not judicially in question, are not inferior to any two of the other; but we say that there is no opposition or repugnancy between them, but both may stand.

For Cholmley's instructions, the words may well stand, *that those shires are annexed by commission*; for the King's commission or instructions, for those words are commonly confounded, must co-operate with the statute, or else they cannot be annexed. But for that conceit that they should come in but in 11, when Cheshire went out, no man that is in his wits can be of that opinion, if he mark it: for we see that the town of Gloucester, *etc.* is named in the instructions of 1 Mar. and no man, I am sure, will think that Gloucester town should be in, and Gloucestershire out.

For the conceit, that they had it but *jurisdictionem praecariam*, the precedents shew plainly the contrary; for they had coercion, and they did fine and imprison, which the judges do not upon petitions; and besides, they must remember that many of our precedents, which we did shew forth, were not of suits originally commenced there, but of suits remanded from hence out of the King's courts as to their proper jurisdiction.

For Sir John Mullen's case, the rule is plain and found, that where the law appears contrary, usage cannot control law; which doth not at all infringe the rule of *optima legum interpretis consuetudo*; for usage may expound law, though it cannot over-rule law.

But of the other side I could shew you many cases, where statutes have been expounded directly against their express letter to uphold precedents and usage, as 2 and 3 Phil. et Mar. upon the statute of Westminster that ordained that the judges *certam quibus formatum erit appellum* shall enquire of the damages, and yet the law ruled that it shall be inquired before the judges of *Nisi prius*. And the great reverence given to precedents appeareth in 39 H. VI. 3 E. IV. and a number of other books; and the difference is exceedingly well taken in Slade's case, Coke's Reports 4. that is, where the usage runs but amongst clerks, and where it is in the eye and notice of the judge; for there it shall be presumed, saith the book, that if the law were otherwise than the usage hath gone, that either the council or the parties would have excepted to it, or the judges *ex officio* would have discerned of it, and found it; and we have ready for you a calendar of judges more than fit at this table, that have exercised jurisdiction over the shires in that county.

As for exception, touching the want of certain instructions, I could wish we had them; but the want of them, in my understanding, obscureth the case little. For let me observe unto you, that we have three forms of instructions concerning these

these shires extant; the first names them not expressly, but by reference it doth, namely, that they shall hear and determine, *etc.* within any the *places* or *counties* within any of their commissions; and we have one of the commissions, wherein they were named; so as upon the matter they are named. And of this form are the ancient instructions before the statute 17 H. VIII. when the Princess Mary went down.

The second form of instructions go farther, for they have the towns, and exempted places within the counties named, with *tanquam* as well within the city of Gloucester, the liberties of the Duchy of Lancaster, *etc.* as within any of the counties of any of their commissions; which clearly admits the counties to be in before. And of this form are the instructions 1 Mariae, and so long until 11 Eliz.

And the third form, which hath been continued ever since, hath the shires comprehended by name. Now it is not to be thought, but the instructions which are wanting, are according to one of these three forms which are extant. Take even your choice, for any of them will serve to prove that the practice there was ever authorised by the instructions here. And so upon the whole matter, I pray report to be made to his Majesty, that the president and the council hath jurisdiction, according to his instructions, over the four shires, by the true construction of the statute of 34 H. VIII.



A D R A U G H T O F A N A C T

Against an usurious shift of gain, in delivering commodities instead of money.

WH E R E A S it is an usual practice, to the undoing and overthrowing many young gentlemen and others, that when men are in necessity, and desire to borrow money, they are answered, that money cannot be had, but that they may have commodities sold unto them upon credit, whereof they may make money as they can: in which course it ever comes to pass, not only that such commodities are bought at extreme high rates, and sold again far under foot to a double loss; but also that the party which is to borrow, is wrapt in bonds and counter-bonds; so that upon a little money which he receiveth, he is subject to penalties and suits of great value.

Be it therefore enacted, by the authority of this present parliament, that if any man, after forty days from the end of this present session of parliament to be accounted, shall sell in gross sale any quantity of wares or commodities unto such a one as is no retailer, chapman, or known broker of the same commodities, and knowing that it is bought to be sold again, to help and furnish any person, that tradeth not in the same commodity, with money, he shall be without all remedy by law, or custom, or decree, or otherwise, to recover or demand any satisfaction for the said wares or commodities, what assurance soever he shall have by bond, surety, pawn or promise of the party, or any other in his behalf. And that all bonds and assurances whatsoever, made for that purpose directly or indirectly, shall be utterly void.

And be it further enacted, by the authority aforesaid, that every person, which shall after the time aforesaid be used or employed as a broker, mean or procurer, for the taking up of such commodities, shall forfeit for every such offence the sum of one hundred pounds, the same to be and shall be farther punished by six months imprisonment, without bail or mainprize, and by the pillory.

A
P R E P A R A T I O N
T O W A R D T H E
U N I O N of the L A W S
O F
E N G L A N D and S C O T L A N D.

YOUR Majesty's desire of proceeding towards the union of this whole island of Great Britain under one law, is, as far as I am capable to make any opinion of so great a cause, very agreeable to policy and justice. To policy, because it is one of the best assurances, as human events can be assured, that there will be never any relapse in any future ages to a separation. To justice, because *dulcis tractus pari jugo*: it is reasonable that communication of privilege draw on communication of discipline and rule. This work being of greatness and difficulty, needeth not to embrace any greater compass of designment, than is necessary to your Majesty's main end and intention. I consider therefore, that it is a true and received division of law into *jus publicum* and *privatum*, the one being the finews of property, and the other of government; for that which concerneth private interest of *meum* and *tuum*, in my simple opinion, it is not at this time to be meddled with; men love to hold their own as they have held, and the difference of this law carrieth no mark of separation; for we see in any one kingdom, which is most at unity in itself, there is diversity of customs for the guiding of property and private rights: *in veste varietas fit, scissura non fit*. All the labour is to be spent in the other part, though perhaps not in all the other part; for, it may be, your Majesty, in your high wisdom, will discern that even in that part there will not be requisite a conformity in all points. And although such conformity were to be wished, yet perchance it will be scarcely possible in many points to pass them for the present by assent of parliament. But because we that serve your Majesty in the service of our skill and profession, cannot judge what your Majesty, upon reason of state, will leave and take; therefore it is fit for us to give, as near as we can, a general information: wherein I, for my part, think good to hold myself to one of the parallels, I mean that of the English laws. For although I have read, and read with delight, the Scottish statutes, and some other collection of their laws; with delight I say, partly to see their brevity and propriety of speech, and partly to see them come so near to our laws: yet I am unwilling to put my sickle in another's harvest, but to leave it to the lawyers of the Scottish nation; the rather, because I imagine with myself that if a Scottish lawyer should undertake, by reading of the English statutes, or other our books of law, to fet
down

A P R E P A R A T I O N F O R

down positively in articles what the law of England were, he might oftentimes err: and the like errors, I make account, I might incur in theirs. And therefore, as I take it, the right way is, that the lawyers of either nation do set down in brief articles what the law is of their nation, and then after, a book of two columns, either having the two laws placed respectively, to be offered to your Majesty, that your Majesty may by a ready view see the diversities, and so judge of the reduction, or leave it as it is.

Jus publicum I will divide, as I hold it fittest for the present purpose, into four parts. The first, concerning criminal causes, which with us are truly accounted *publicis juris*, because both the prejudice and the prosecution principally pertain to the crown and public estate. The second, concerning the causes of the church. The third, concerning magistrates, offices, and courts: wherein falleth the consideration of your Majesty's regal prerogative, whereof the rest are but streams. And the fourth, concerning certain special politic laws, usages, and constitutions, that do import the public peace, strength, and wealth of the kingdom. In which part I do comprehend not only constant ordinances of law, but likewise forms of administration of law, such as are the commissions of the peace, the visitations of the provinces by the judges of the circuits, and the like. For these in my opinion, for the purpose now in hand, deserve a special observation, because they being matters of that temporary nature, as they may be altered, as I suppose, in either kingdom, without parliament, as to your Majesty's wisdom may seem best; it may be the most profitable and ready part of this labour will consist in the introducing of some uniformity in them.

To begin therefore with capital crimes, and first that of treason.

C A S E S O F T R E A S O N.

WHIERE a man doth compass or imagine the death of the King, if it appear by any overt act, it is treason.

Where a man doth compass or imagine the death of the King's wife, if it appear by any overt act, it is treason.

Where a man doth compass or imagine the death of the King's eldest son and heir, if it appear by any overt act, it is treason.

Where a man doth violate the King's wife, it is treason.

Where a man doth violate the King's eldest daughter unmarried, it is treason.

Where a man doth violate the wife of the King's eldest son and heir, it is treason.

Where a man doth levy war against the King and his realm, it is treason.

Where a man is adherent to the King's enemies, giving them aid and comfort, it is treason.

Where a man counterfeiteth the King's great seal, it is treason.

Where a man counterfeiteth the King's privy seal, it is treason.

Where a man counterfeiteth the King's privy signet, it is treason.

Where a man doth counterfeit the King's sign manual, it is treason.

Where a man counterfeits the King's money, it is treason.

Where a man bringeth into the realm false money, counterfeited to the likeness of the coin of England, with intent to merchandise or make payment therewith, and knowing it to be false, it is treason.

Where a man counterfeiteth any foreign coin current in payment within this realm, it is treason.

Where

Where a man doth bring in foreign money, being current within the realm, the same being false and counterfeit, with intent to utter it, and knowing the same to be false, it is treason.

Where a man doth clip, wash, round, or file any of the King's money, or any foreign coin current by proclamation, for gain's sake, it is treason.

Where a man doth any ways impair, diminish, falsify, scale, or lighten the King's money, or any foreign moneys current by proclamation, it is treason.

Where a man killeth the Chancellor, being in his place and doing his office, it is treason.

Where a man killeth the Treasurer, being in his place and doing his office, it is treason.

Where a man killeth the King's Justice in eyre, being in his place and doing his office, it is treason.

Where a man killeth the King's Justice of assise, being in his place and doing his office, it is treason.

Where a man killeth the King's Justice of Oyer and Terminer, being in his place and doing his office, it is treason.

Where a man doth persuade or withdraw any of the King's subjects from his obedience, or from the religion by his Majesty established, with intent to withdraw him from the King's obedience, it is treason.

Where a man is absolved, reconciled, or withdrawn from his obedience to the King, or promiseth his obedience to any foreign power, it is treason.

Where any Jesuit, or other priest ordained since the first year of the reign of Queen Elizabeth, shall come into, or remain in any part of this realm, it is treason.

Where any person being brought up in a college of Jesuits, or seminary, shall not return within six months after proclamation made, and within two days after his return submit himself to take the oath of supremacy, if otherwise he do return, or be within the realm, it is treason.

Where a man doth affirm or maintain any authority of jurisdiction spiritual, or doth put in use or execute any thing for the advancement or setting forth thereof, such offence the third time committed, is treason.

Where a man refuseth to take the oath of supremacy, being tendred by the bishop of the diocese, if he be an ecclesiastical person; or by commission out of the chancery, if he be a temporal person; such offence, the second time, is treason.

Where a man committed for treason doth voluntarily break prison, it is treason.

Where a jailor doth voluntarily permit a man committed for treason to escape, it is treason.

Where a man procureth or consenteth to a treason, it is treason.

Where a man relieveth or comforteth a traitor, knowing it, it is treason.

The punishment, trial, and proceedings in cases of treason.

In treason, the corporal punishment is by drawing on a hurdle from the place of the prison to the place of execution, and by hanging and being cut down alive, bowelling, and quartering: and in women by burning.

In treason, there ensueth a corruption of blood in the line ascending and descending.

A P R E P A R A T I O N F O R

In treason, lands and goods are forfeited, and inheritances, as well intailed as fee simple, and the profits of estates for life.

In treason, the escheats go to the King, and not to the lord of the fee.

In treason, the lands forfeited shall be in the King's actual possession without office.

In treason there be no accessaries, but all are principals.

In treason, no benefit of clergy, or sanctuary, or peremptory challenge.

In treason, if the party stand mute, yet nevertheless judgment and attainder shall proceed all one as upon verdict.

In treason, bail is not permitted.

In treason, no counsel is to be allowed to the party.

In treason, no witness shall be received upon oath for the party's justification.

In treason, if the fact be committed beyond the seas, yet it may be tried in any county where the King will award his commission.

In treason, if the party be *non sanæ memoriae*, yet if he had formerly confessed it before the King's council, and that it be certified that he was of good memory at the time of his examination and confession, the court may proceed to judgment without calling or arraignment of the party.

In treason, the death of the party before conviction dischargeth all proceedings and forfeitures.

In treason, if the party be once acquitted, he shall not be brought in question again for the same fact.

In treason, no new case not expressed in the statute of 25 Ed. III. nor made treason by any special statute since, ought to be judged treason, without consulting with the parliament.

In treason, there can be no prosecution but at the King's suit, and the King's pardon dischargeth.

In treason, the King cannot grant over to any subject power and authority to pardon it.

In treason, a trial of a peer of the kingdom is to be by special commission before the Lord High Steward, and those that pass upon him to be none but peers: and the proceeding is with great solemnity, the Lord Steward sitting under a cloth of estate with a white rod of justice in his hand: and the peers may confer together, but are not any ways shut up; and are demanded by the Lord Steward their voices one by one, and the plurality of voices carrieth it. In treason, it hath been an ancient use and favour from the Kings of this realm to pardon the execution of hanging, drawing, and quartering; and to make warrant for their beheading.

The proceeding in case of treason with a common subject is in the King's bench, or by commission of *Oyer and Terminer*.

M I S P R I S I O N O F T R E A S O N .

Cases of misprison of treason.

WHIERE a man concealeth high treason only, without any comforting or abetting, it is misprison of treason.

Where a man counterfeiteth any foreign coin of gold or silver not current in the realm, it is misprison of treason.

The punishment, trial, and proceeding in cases of misprision of treason.

The punishment of misprision of treason is by perpetual imprisonment, loss of the issues of their lands during life, and loss of goods and chattels.

The proceeding and trial is, as in cases of treason.

In misprision of treason bail is not admitted.

P E T I T T R E A S O N .

Cases of petit treason.

WHERE the servant killeth the master, it is petit treason.

Where the wife killeth her husband, it is petit treason.

Where a spiritual man killeth his prelate, to whom he is subordinate, and oweth faith and obedience, it is petit treason.

Where the son killeth the father or mother, it hath been questioned whether it be petit treason, and the late experience and opinion seemeth to weigh to the contrary, though against law and reason in my judgment.

The punishment, trial, and proceeding in cases of petit treason.

In petit treason, the corporal punishment is by drawing on an hurdle, and hanging, and in a woman burning.

In petit treason, the forfeiture is the same with the case of felony.

In petit treason, all accessaries are but in case of felony.

F E L O N Y .

Cases of felony.

WHERE a man committeth murder, that is, homicide of premeditated malice, it is felony.

Where a man committeth manslaughter, that is, homicide of sudden heat, and not of malice premeditated, it is felony.

Where a man committeth burglary, that is, breaking of an house with an intent to commit felony, it is felony.

Where a man rideth armed, with a felonious intent, it is felony.

Where a man doth maliciously and feloniously burn a house, it is felony.

Where a man doth maliciously and feloniously burn corn upon the ground, or in stacks, it is felony.

Where a man doth maliciously cut out another's tongue, or put out his eyes, it is felony.

Where a man robbeth or stealeth, that is, taketh away another man's goods, above the value of twelve pence, out of his possession, with an intent to conceal it, it is felony.

Where a man imbezleth or withdraweth any of the King's records at Westminster, whereby any judgment is reversed, it is felony.

Where a man that hath custody of the King's armour, munition, or other habiliments of war, doth maliciously convey away the same, to the value of twenty shillings, it is felony.

A P R E P A R A T I O N F O R

Where a servant hath goods of his master's delivered unto him, and goeth away with them, it is felony.

Where a man conjures, or invocates wicked spirits, it is felony.

Where a man doth use or practise any manner of witchcraft, whereby any person shall be killed, wasted, or lamed in his body, it is felony.

Where a man practiseth any witchcraft, to discover treasure hid, or to discover stolen goods, or to provoke unlawful love, or to impair or hurt any man's cattle or goods, the second time, having been once before convicted of like offence, it is felony.

Where a man useth the craft of multiplication of gold or silver, it is felony.

Where a man committeth rape, it is felony.

Where a man taketh away a woman against her will, not claiming her as his ward or bondwoman, it is felony.

Where any person marrieth again, her or his former husband or wife being alive, it is felony.

Where a man committeth buggery with man or beast, it is felony.

Where any persons, above the number of twelve, shall assemble themselves with intent to put down inclosures, or bring down prices of victuals, *etc.* and do not depart after proclamation, it is felony.

Where a man shall use any words to encourage or draw any people together, *ut supra*, and they do assemble accordingly, and do not depart after proclamation, it is felony.

Where a man being the King's sworn servant, conspireth to murder any lord of the realm or any of the privy council, it is felony.

Where a soldier hath taken any parcel of the King's wages, and departeth without licence, it is felony.

Where a man receiveth a seminary priest, knowing him to be such a priest, it is felony.

Where a recusant, which is a seducer, and persuader, and inciter of the King's subjects against the King's authority in ecclesiastical causes, or a persuader of conventicles; *etc.* shall refuse to abjure the realm, it is felony.

Where vagabonds be found in the realm, calling themselves Egyptians, it is felony.

Where a purveyor taketh without warrant, or otherwise doth offend against certain special laws, it is felony.

Where a man hunteth in any forest, park, or warren, by night or by day, with vizards or other disguisements, and is examined thereof and concealeth his fact, it is felony.

Where a man stealeth certain kinds of hawks, it is felony.

Where a man committeth forgery the second time, having been once before convicted, it is felony.

Where a man transporteth rams or other sheep out of the King's dominions, the second time, it is felony.

Where a man being imprisoned for felony, breaks prison, it is felony.

Where a man procureth or consenteth to a felony to be committed, it is felony, as to make him accessory before the fact.

Where a man receiveth or relieveth a felon, knowing thereof, it is felony, as to make him accessory after the fact.

Where

Where a woman, by the constraint of her husband, in his presence, joineth with him in committing of felony, it is not felony, neither as principal, nor as accessary.

The punishment, trial, and proceeding in cases of felony.

In felony, the corporal punishment is by hanging, and it is doubtful whether the King may turn it into beheading in the case of a Peer or other person of dignity, because in treason the striking off the head is part of the judgment, and so the King pardoneth the rest: but in felony, it is no part of the judgment, and the King cannot alter the execution of law; yet precedents have been both ways.

In felony, there followeth corruption of blood, except in be in cases made felony by special statutes, with a proviso that there shall be no corruption of blood.

In felony, lands in fee simple and goods are forfeited, but not lands intailed, and the profits of estates for life are likewise forfeited: And by some customs lands in fee simple are not forfeited;

The father to the bough, son to the plough;
as in Gavelkind in Kent, and other places.

In felony, the escheats go to the lord of the fee, and not to the King, except he be lord: But the profits of estates for lives, or in tail during the life of tenant in tail, go to the King; and the King hath likewise, in fee simple lands holden of common lords, *annum, diem, et vastum*.

In felony, the lands are not in the King before office, nor in the lord before entry or recovery in writ of escheat, or death of the party attainted.

In felony, there can be no proceeding with the accessary before there be a proceeding with the principal; which principal if he die, or plead his pardon, or have his clergy before attainder, the accessaries can never be dealt with.

In felony, if the party stand mute, and will not put himself upon his trial, or challenge peremptorily above the number that the law allows, he shall have judgment not of hanging, but of penance of pressing to death; but then he saves his lands, and forfeits only his goods.

In felony, at the common-law, the benefit of clergy or sanctuary was allowed; but now by statutes it is taken away in most cases.

In felony, bail may be admitted where the fact is not notorious, and the person not of evil fame.

In felony, no counsel is to be allowed to the party, no more than in treason.

In felony, no witness shall be received upon oath for the party's justification, no more than in treason.

In felony, if the fact be committed beyond the seas, or upon the seas, *super altum mare*, there is no trial at all in the one case, nor by course of jury in the other case, but by the jurisdiction of the Admiralty.

In felony, if the party be *non sanas memoriae*, although it be after the fact, he cannot be tried nor adjudged, except it be in course of outlawry, and that is also erroneous.

In felony, the death of the party before conviction dischargeth all proceedings and forfeitures.

In felony, if the party be once acquitted, or in peril of judgment of life lawfully, he shall never be brought in question again for the same fact.

In

A P R E P A R A T I O N F O R

In felony, the prosecution may be either at the King's suit, by way of indictment, or at the party's suit, by way of appeal; and if it be by way of appeal, the defendant shall have his counsel, and produce witnesses upon oath, as in civil causes.

In felony, the King may grant *hault justice* to a subject, with the regality of power to pardon it.

In felony, the trial of Peers is all one as in case of treason.

In felony, the proceedings are in the King's bench, or before Commissioners of *Oyer and Terminer*, or of gaol delivery, and in some cases before justices of peace.

Cases of Felonia de se, with the punishment, trial, and proceeding therein.

In the civil law, and other laws, they make a difference of cases of *felonia de se*; for where a man is called in question upon any capital crime, and killeth himself to prevent the law, they give the same judgment in all points of forfeiture, as if they had been attainted in their life-time: And on the other side, where a man killeth himself upon impatience of sickness or the like, they do not punish it at all: but the law of England taketh it all in one degree, and punisheth it only with loss of goods to be forfeited to the King, who generally granteth them to his Almoner, where they be not formerly granted unto special liberties.

O F F E N C E S O F P R A E M U N I R E.

Cases of Praemunire.

WHERE a man purchaseth or accepteth any provision, that is, collation of any spiritual benefice or living, from the see of Rome, it is case of praemunire.

Where a man shall purchase any process to draw any people of the King's allegiance out of the realm, in plea, wherof the cognizance pertains to the King's court, and cometh not in person to answer his contempt in that behalf before the King and his council, or in his chancery, it is case of praemunire.

Where a man doth sue in any court which is not the King's court, to defeat or impeach any judgment given in the King's court, and doth not appear to answer his contempt, it is case of praemunire.

Where a man doth purchase or pursue in the court of Rome, or elsewhere, any process, sentence of excommunication, bull, instrument, or other thing which touches the King in his regality, or his realm in prejudice, it is case of praemunire.

Where a man doth affirm or maintain any foreign authority of jurisdiction spiritual, or doth put in use or execute any thing for the advancement or setting forth thereof; such offence, the second time committed, is case of praemunire.

Where a man refuseth to take the oath of supremacy, being tendered by the bishop of the diocese, if he be an ecclesiastical person; or by commission out of the chancery, if he be a temporal person, it is case of praemunire.

Where the dean and chapter of any church, upon the *Congé d'elire* of an archbishop or bishop, doth refuse to elect any such archbishop or bishop as is nominated unto them in the King's letters missive, it is case of praemunire.

Where a man doth contribute or give relief unto any Jesuit or seminary priests, or to any college of Jesuits or seminary priests, or to any person brought up therein, and called home, and not returning, it is case of praemunire.

Where

Where a man is broker of an usurious contract above ten in the hundred, it is case of praemunire.

The punishment, trial, and proceedings in cases of praemunire.

The punishment is by imprisonment during life, forfeiture of goods, forfeiture of lands in fee simple, and forfeiture of the profits of lands intailed, or for life.

The trial and proceeding is as in cases of misprision of treason; and the trial is by peers, where a peer of the realm is the offender.

OFFENCES of ABJURATION and EXILE.

Cases of abjuration and exile, and the proceedings therein.

WHERE a man committeth any felony, for the which at this day he may have privilege of sanctuary, and taketh sanctuary, and confesseth the felony before the coroner, he shall abjure the liberty of the realm, and choose his sanctuary; and if he commit any new offence, or leave his sanctuary, he shall lose the privilege thereof, and suffer as if he had not taken sanctuary.

Where a man not coming to the church, and, being a popish recusant, doth persuade any of the King's subjects to impugn his Majesty's authority in causes ecclesiastical, or shall persuade any subject from coming to church, or receiving the communion, or persuade any subject to come to any unlawful conventicles, or shall be present at any such unlawful conventicles, and shall not after conform himself within a time, and make his submission, he shall abjure the realm, and forfeit his goods and lands during life; and if he depart not within the time prefixed, or return, he shall be in the degree of a felon.

Where a man being a popish recusant, and not having lands to the value of twenty marks *per annum*, nor goods to the value of 40*l.* shall not repair to his dwelling, or place where he was born, and there confine himself within the compass of five miles, he shall abjure the realm; and if he return, he shall be in the degree of a felon.

Where a man kills the King's deer in chases or forests, and can find no sureties after a year's imprisonment, he shall abjure the realm.

Where a man is a trespasser in parks, or in ponds of fish, and after three years imprisonment cannot find sureties, he shall abjure the realm.

Where a man is a ravisher of any child within age, whose marriage belongs to any person, and marrieth the said child after years of consent, and is not able to satisfy for the marriage, he shall abjure the realm.

OFFENCE OF HERESY.

Cases of heresy, and the trial and proceeding therein.

THE declaration of heresy, and likewise the proceeding and judgment upon heretics, is by the common laws of this realm referred to the jurisdiction ecclesiastical, and the secular arm is reached unto them by the common laws, and not by any statute for the execution of them by the King's writ *de haereticis comburendo*.

A P R E P A R A T I O N F O R
C A S E S O F T H E K I N G ' S P R E R O G A T I V E .

The King's prerogative in parliament.

1. **T**HE King hath an absolute negative voice to all bills that pass the parliament, so as without his royal assent they have a mere nullity, and not so much as *authoritas praescripta*, as *senatus consultum* had, notwithstanding the intercession of tribunes.
2. The King may summon parliaments, dissolve them, adjourn and prorogue them at his pleasure.
3. The King may add voices in parliament at his pleasure, for he may give privileges to borough towns, and call and create barons at his pleasure.
4. No man can sit in parliament unless he take the oath of allegiance.

The King's prerogative in war and peace.

1. The King hath power to declare and proclaim war, and make and conclude peace.
2. The King hath power to make leagues and confederacies with foreign estates, more or less strait, and to revoke and disannul them at his pleasure.
3. The King hath power to command the bodies of his subjects for service of his wars, and to muster, train, and levy men, and to transport them by sea or land at his pleasure.
4. The King hath power in time of war to execute martial law, and to appoint all officers of war at his pleasure.
5. The King hath power to grant his letters of mart and reprisal for remedy to his subjects upon foreign wrongs.
6. The King may give knighthood, and thereby enable any subject to perform knight's service.

The King's prerogative in matter of money.

1. The King may alter his standard in baseness or fineness.
2. The King may alter his stamp in the form of it.
3. The King may at his pleasure alter the valuations, and raise and fall monies.
4. The King may by proclamation make monies of his own current or not.
5. The King may take or refuse the subjects bullion, or coin for more or less money.
6. The King by proclamation may make foreign money current, or not.

The King's prerogative in matters of trade and traffick.

1. The King may constrain the person of any of his subjects not to go out of the realm.
2. The King may restrain any of his subjects to go out of the realm in any special part foreign.
3. The King may forbid the exportation of any commodities out of the realm.
4. The King may forbid the importation of any commodities into this realm.
5. The King may set a reasonable impost upon any foreign wares that come into the realm, and so of native wares that go out of the realm.

The King's prerogative in the person of his subjects.

1. The King may create any corporation or body politic, and enable them to purchase, to grant, to sue, and be sued; and with such restrictions and limitations as he pleases.

2. The King may make denizens, and enable any foreigner for them and his descendents after the charter, though he cannot naturalise, nor enable him to make pedigree from ancestor paramount.

3. The King may enable any attainted person, by the charter of pardon, and purge the blood for time to come, though he cannot restore the blood for the time past.

4. The King may enable any dead persons in the law, as men professed in religion, to take and purchase to the King's benefit.

A twofold power of the law.

1. A Direction: In this respect the King is underneath the law, because his acts are guided thereby.

2. Correction: In this respect the King is above the law; for it may not correct him for any offence.

A twofold power in the King.

1. His absolute power, whereby he may levy forces against any nation.

2. His limited power, which is declared and expressed in his laws what he may do.



A N

E X P L A N A T I O N

What manner of Persons those should be,

That are to execute the Power or Ordinance of the

K I N G ' S P R E R O G A T I V E .

1. **T**HAT absolute prerogative, according to the King's pleasure, revealed by his laws, may be exercised and executed by any subject, to whom power may be given by the King, in any place of judgment or commission, which the King by his law hath ordained: in which the judge subordinate cannot wrong the people, the law laying down a measure by which every judge should govern and execute; against which law if any judge proceed, he is by the law questionable, and punishable for his transgression.

In this nature are all the judges and commissioners of the land, no otherwise than in their courts, in which the King in person is supposed to sit, who cannot make that trespass, felony, or treason, which the law hath not made so to be, neither can punish the guilty by other punishment than the laws have appointed.

This prerogative or power as it is over all the subjects, so being known by the subjects, they are without excuse if they offend, and suffer no wrong if they be justly punished; and by this prerogative the King governeth all sorts of people according unto known will.

2. The absolute prerogative, which is in Kings according to their private will and judgment, cannot be executed by any subject; neither is it possible to give such power by commission; or fit to subject the people to the same; for the King, in that he is the substitute of God immediately, the father of his people, and head of the commonwealth, hath, by participation with God, and with his subjects, a discretion, judgment, and feeling love towards those, over whom he reigneth, only proper to himself, or to his place and person; who, feeling he cannot in any others infuse his wisdom, power, or gifts, which God, in respect of his place and charge, hath enabled him withal, can neither subordinate any other judge to govern by that knowledge, which the King can no otherwise, than by his known will, participate unto him: and if any such subordinate judge shall obtain commission according to the discretion of such judge to govern the people, that judge is bound to think that to be his truest discretion, which the law, in which is the King's known will, sheweth unto him to be that justice which he ought to administer; otherwise he might seem to esteem himself above the King's law, who will not govern by it, or to have a power derived from other than from the King, which in the kingdom will administer justice contrary unto the justice of the land: neither can such a judge or commissioner under the name of the King's authority shroud his own high action, being the conscience and discre-

tion

tion of every man is particular and private to himself, so as the discretion of the judge cannot be properly or possibly the discretion or the conscience of the King; and if not his discretion, neither the judgment that is ruled by another man's only.

Therefore it may seem they rather desire to be Kings, than to rule the people under the King, which will not administer justice by law, but by their own will.

3. This administration in a subject is derogative to the King's prerogative; for he administheth justice out of a private direction, being not capable of a general direction how to use the King's subjects at pleasure, in causes of particular respect; which if no other than the King himself can do, how can it be so that any man should desire that which is unfit and impossible, but that it must proceed out of some exorbitant affection? the rather, seeing such places be full of trouble and altogether unnecessary, no man will seek to thrust himself into them but for hopes of gain. Then is not any prerogative oppugned, but maintained, though it be desired, that every subordinate magistrate may not be made supreme, whereby he may seize upon the hearts of the people, take from the King the respect due unto him only, or judge the people otherwise than the King doth himself.

4. And although the Prince be not bound to render any account to the law, which in person he administheth himself, yet every subordinate judge must render an account to the King, by his laws, how he hath administred justice in his place where he is set. But if he hath power to rule by private direction, for which there is no law, how can he be questioned by a law, if in his private censure he offends?

5. Therefore, it seemeth, that in giving such authority, the King ordaineth not subordinate magistrates, but absolute Kings: and what doth the King leave to himself, who giveth so much to others, as he hath himself? Neither is there a greater bond to tie the subject to his Prince in particular, than when he shall have recourse unto him, in his person, or in his power, for relief of the wrongs which from private men be offered; or for reformation of the oppressions which any subordinate magistrate shall impose upon the people. There can be no offence in the judge, who hath power to execute according to his discretion, when the discretion of any judge shall be thought fit to be limited, and therefore there can be therein no reformation; whereby the King in this useth no prerogative to gain his subjects right; then the subject is bound to suffer helpless wrong; and the discontent of the people is cast upon the King; the laws being neglected, which with their equity in all other causes and judgments, saving this, interpose themselves and yield remedy.

6. And to conclude, custom cannot confirm that which is any ways unreasonable of itself.

Wisdom will not allow that, which is many ways dangerous, and no ways profitable.

Justice will not approve that government, where it cannot be but wrong must be committed.

Neither can there be any rule by which to try it, nor means of reformation of it.

7. Therefore, whosoever desireth government must seek such as he is capable of, not such as seemeth to himself most easy to execute; for it is apparent, that it is easy to him that knoweth not law nor justice, to rule as he listeth, his will never wanting a power to itself: But it is safe and blameless, both for the judge and people, and honour to the King, that judges be appointed who know the law, and that they be limited to govern according to the law.

THE
OFFICE of CONSTABLES,
ORIGINAL and USE of
COURTS LEET, SHERIFF'S TURN, etc.
WITH

The Answers to the Questions propounded by Sir Alexander Hay, Knt.
touching the Office of Constables. A. D. 1608.

1. Question. **W**HAT is the original of constables?

Answer. To the first question of the original of constables it may be said, *caput inter nubila condit*; for the authority was granted upon the ancient laws and customs of this kingdom practised long before the Conquest, and intended and executed for conservation of peace, and repression of all manner of disturbance and hurt of the people, and that as well by way of prevention as punishment; but yet so, as they have no judicial power, to hear and determine any cause, but only a ministerial power, as in the answer to the seventh article is demonstrated.

As for the office of high or head constable, the original of that is yet more obscure; for though the high constable's authority hath more ample circuit, for he being over the hundred, and the petty-constable over the village; yet I do not find that the petty-constable is subordinate to the high-constable, or to be ordered or commanded by him; and therefore, I doubt, the high-constable was not *ab origine*; but that when the business of the county increased, the authority of justices of peace was enlarged by divers statutes, and then, for conveniency sake, the office of high-constable grew in use for the receiving of the commandments and precepts from the justices of peace, and distributing them to the petty-constables: and in token of this, the election of high-constables in most parts of the kingdom is by the appointment of the justices of the peace, whereas the election of the petty-constable is by the people.

But there are two things unto which the office of constables hath special reference, and which of necessity, or at least a kind of congruity, must precede the jurisdiction of that office; either the things themselves, or something that hath a similitude or analogy towards them.

1. The division of the territory, or grofs of the shires, into hundreds, villages, and towns; for the high-constable is officer over the hundred, and the petty-constable is over the town or village.

2. The court-leet, unto which the constable is attendant and minister; for there the constables are chosen by the jury, there sworn, and there that part of their office which concerneth information is principally to be performed: for the jury
being

being to prevent offences and offenders, are chiefly to take light from the constable of all matters of disturbance and nuisance of the people; which they, in respect of their office, are presumed to have best and most particular knowledge of.

The jurisdiction of the court-leet, is to three ends.

1. To take the ancient oath of allegiance of all males above twelve years.
2. To inquire of all offences against the peace; and for those that are against the crown and peace both, to inquire of only, and certify to the justices of gaol-delivery; but those that are against the peace simply, they are to inquire of and punish.
3. To inquire of, punish, and remove all public nuisances and grievances concerning infection of air, corruption of victuals, ease of chaffer, and contract of all other things that may hurt or grieve the people in general, in their health, quiet, and welfare.

And to these three ends, as matters of policy subordinate, the court-leet hath power to call upon the pledges that are to be taken of the good behaviour of the resiants that are not tenants, and to inquire of all defaults of officers, as constables, ale-tasters, and the like: and likewise for the choice of constables, as was said.

The jurisdiction of these leets is either remaining in the King, and in that case exercised by the sheriff in his Turn, which is the grand leet, granted over to subjects; but yet it is still the King's court.

2. *Quest. Concerning the election of constables?*

Ans. The election of the petty-constable, as was said, is at the court-leet by the inquest that make the presentments; and election of head constables is by the justices of the peace at their quarter sessions.

3. *Quest. How long is their office?*

Ans. The office of constable is annual, except they be removed.

4. *Quest. Of what rank or order of men are they?*

Ans. They be men, as it is now used, of inferior yea of base condition, which is a mere abuse or degenerating from the first institution; for the petty-constables in towns ought to be of the better sort of resiants in the same; save that they be not aged or sickly, but of able bodies in respect of keeping watch and toil of their place; nor must they be in any man's livery. The high-constables ought to be of the ablest freeholders, and substantiallest sort of yeomen, next to the degree of gentlemen; but should not be incumbered with any other office, as mayor of a town, under-sheriff, bailiff, &c.

5. *Quest. What allowance have they?*

Ans. They have no allowance, but are bound by duty to perform their office *gratis*; which may the rather be endured because it is but annual, and they are not tied to keep or maintain any servants or under-ministers, for that every one of the King's people within their limits are bound to assist them.

6. *Quest. What if they refuse to do their office?*

Ans. Upon complaint made of their refusal to any one justice of peace, the said justice may bind them over to the sessions, where, if they cannot excuse themselves by some allegation that is just, they may be fined and imprisoned for their contempt.

7. *Quest. What is their authority or power?*

OFFICE OF CONSTABLES.

Ans. The authority of the constable, as it is substantive, and of itself, or substituted, and abstracted to the warrants and commands of the justices of the peace; so again it is original, or additional: for either it was given them by the common law, or else annexed by divers statutes. And as for subordinate power, wherein the constable is only to execute the commands of the justices of peace, likewise the additional power which is given by divers statutes, it is hard to comprehend in any brevity; for that they do correspond to the office and authority of justices of peace, which is very large, and are created by the branches of several statutes: but for the original and substantive power of constables, it may be reduced to three heads; namely.

1. For matter of peace only.
2. For peace and the crown.
3. For matter of nuisance, disturbance, and disorder, although they be not accompanied with violence and breach of the peace.

First, For pacifying of quarrel begun, the constable may, upon hot words given or likelihood of breach of the peace to ensue, command them in the King's name to keep peace, and depart and forbear: and so he may, where an affray is made, part the same, and keep the parties asunder, and arrest and commit the breakers of the peace, if they will not obey; and call power to assist him for that purpose.

For punishment of breach of peace past, the law is very sparing in giving any authority to constables, because they have not power judicial, and the use of his office is rather for preventing or staying of mischief, than for punishment of offences; for in that part he is rather to execute the warrants of the justices; or, when sudden matter ariseth upon his view or notorious circumstances, to apprehend offenders, and to carry them before the justices of peace, and generally to imprison in like cases of necessity, where the case will not endure the present carrying of the party before the justices. And so much for peace.

Secondly, For matters of the crown, the office of the constable consisteth chiefly in these four parts:

1. To arrest.
2. To make hue and cry.
3. To search.
4. To seize goods.

All which the constable may perform of his own authority, without any warrant from the justices of the peace.

1. For, first, if any man will lay murder or felony to another's charge, or do suspect him of murder or felony, he may declare it to the constable, and the constable ought, upon such declaration or complaint, to carry him before a justice of peace; and if by common voice or fame any man be suspected, the constable of duty ought to arrest him, and bring him before a justice of peace, though there be no other accusation or declaration.

2. If any house be suspected for receiving or harbouring of any felon, the constable, upon complaint or common fame, may search.

3. If any fly upon the felony, the constable ought to raise hue and cry.

4. And the constable ought to seize his goods, and keep them safe without impairing, and inventory them in presence of honest neighbours.

Thirdly,

Thirdly, For matters of common nuisance and grievances, they are of very variable nature, according to the several comforts which man's life and society requireth, and the contraries which infest the same.

In all which, be it matter of corrupting air, water, or victuals, stopping, straitening, or indangering of passages, or general deceits in weights, measures, sizes, or counterfeiting wares, and things vendible; the office of constable is to give, as much as in him lies, information of them, and of the offenders, in leets, that they may be presented; but because leets are kept but twice in the year, and many of those things require present and speedy remedy, the constable, in things notorious and of vulgar nature, ought to forbid and repress them in the mean time: if not, they are for their contempt to be fined and imprisoned, or both, by the justices in their sessions.

8. *Quest. What is their oath?*

Ans. The manner of the oath they take is as followeth:

“ You shall swear that you shall well and truly serve the King, and the lord of this law-day; and you shall cause the peace of our sovereign lord the King well and truly to be kept to your power: and you shall arrest all those that you see committing riots, debates, and affrays in breach of peace: and you shall well and truly endeavour yourself to your best knowledge, that the statute of Winchester for watching, hue and cry, and the statutes made for the punishment of sturdy beggars, vagabonds, rogues, and other idle persons coming within your office be truly executed, and the offenders be punished: and you shall endeavour, upon complaint made, to apprehend barreters and riotous persons making affrays, and likewise to apprehend felons; and if any of them make resistance with force, and multitude of misdemeanors, you shall make out-cry, and pursue them till they be taken; and shall look unto such persons as use unlawful games; and you shall have regard unto the maintenance of artillery; and you shall well and truly execute all process and precepts sent unto you from the justices of the peace of the county; and you shall make good and faithful presentments of all bloodsheds, out-cries, affrays, and rescues made within your office: and you shall well and truly, according to your own power and knowledge, do that which belongeth to your office of constable to do, for this year to come. So help.” *etc.*

9. *Quest. What difference is there betwixt the high constables and petty constables?*

Ans. Their authority is the same in substance, differing only in the extent; the petty-constable serving only for one town, parish, or borough; the head-constable for the whole hundred: nor is the petty-constable subordinate to the head-constable for any commandment that proceeds from his own authority; but it is used, that the precepts of the justices be delivered unto the high-constables, who being few in number, may better attend the justices, and then the head-constables, by virtue thereof, make their precepts over to the petty-constables.

10. *Quest. Whether a constable may appoint a deputy?*

Ans. In case of necessity a constable may appoint a deputy, or in default thereof, the steward of the court-leet may; which deputy ought to be sworn before the said steward.

The constable's office consists in three things:

1. Conservation of the peace.
2. Serving precepts and warrants.
3. Attendance for the execution of statutes.

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OFFICE OF CONSTABLES, etc.

Of the jurisdiction of Justices itinerant in the principality of Wales.

1. THEY have power to hear and determine all criminal causes, which are called, in the laws of England, pleas of the crown; and herein they have the same jurisdiction that the justices have in the court of the King's bench.

2. They have power to hear and determine all civil causes, which in the laws of England are called common-pleas, and to take knowledge of all fines levied of lands or hereditaments, without suing any *dedimus potestatem*; and herein they have the same jurisdiction that the justices of the common-pleas do execute at Westminster.

3. They have power also to hear and determine all assizes upon disseisin of lands or hereditaments, wherein they equal the jurisdiction of the justices of assize.

4. Justices of *oyer and terminer* therein may hear all notable violences and outrages perpetrated within their several precincts in the said principality of Wales.

The
are in the
King's Bench.

The Prothonotary's office is to draw all pleadings, and entereth and ingrosseth all the records and judgments in all trivial causes.

The Clerk of the crown his office is to draw and ingross all proceedings, arraignments, and judgments in criminal causes.

The
are in the
King's Bench.

The Marshal's office is to attend the persons of the judges at their coming, sitting, and going from their sessions or court.

The Crier is *taquam publicus pater*, to call for such persons whose appearances are necessary, and to impose silence to the people.

The Office of Justice of Peace.

The office of
Justice of
Peace.

THERE is a commission under the great seal of England to certain gentlemen, giving them power to preserve the peace, and to repress and punish all turbulent persons, whose misdemeanors may tend to the disquiet of the people; and these be called justices of the peace, and every of them may well and truly be called *Eirenarcha*.

The chief of them is called *Custos rotulorum*, in whose custody all the records of their proceedings are resident.

Justice of
Peace ap-
pointed by
the lord-
keeper.

Others there are of that number called Justices of peace and *quorum*, because in their commission they have power to sit and determine causes concerning breach of peace and misbehaviour. The words of their commission are conceived thus, *Quorum*, such and such, *unum vel duos etc. esse volumus*; and without some one or more of the *quorum*, no sessions can be holden; and for the avoiding of a superfluous number of such justices, for through the ambition of many it is counted a credit to be burdened with that authority, the statute of 38 H. VIII. hath expressly prohibited that there shall be but eight justices of the peace in every county. These justices hold their sessions quarterly.

In every shire where the commission of the peace is established, there is a Clerk of the peace for the entering and ingrossing of all proceedings before the said justices. And this officer is appointed by the *custos rotulorum*.

The Office of Sheriffs.

EVERY shire hath a sheriff, which word, being of the Saxon English, is as much as to say shire-reeve, or minister of the county: his function or office is two-fold, namely,

1. Mini-

1. Ministerial.

2. Judicial.

1. He is the minister and executioner of all the process and precepts of the courts of law, and therefore ought to make return and certificate. ^{34 H. 8. cap. 10.}

2. The sheriff hath authority to hold two several courts of distinct natures :

1. The *Turn*, because he keepeth his turn and circuit about the shire, holdeth the same court in several places, wherein he doth inquire of all offences perpetrated against the common law, and not forbidden by any statute or act of parliament ; and the jurisdiction of this court is derived from justice distributive, and is for criminal offences, and held twice every year.

2. The *County Court*, wherein he doth determine all petty and small causes civil under the value of forty shillings, arising within the said county, and therefore it is called the county court.

The jurisdiction of this court is derived from justice commutative, and is held every month. The office of the sheriff is annual, and in the King's gift, whereof he is to have a patent.

The Office of Escheator.

EVERY shire hath an officer called an Escheator, which is to attend the King's revenue, and to seize into his Majesty's hands all lands escheated, and goods, or lands forfeited, and therefore is called escheator ; and he is to inquire by good inquest of the death of the King's tenant, and to whom the lands are descended, and to seize their bodies and lands for ward, if they be within age, and is accountable for the same ; he is named or appointed by the lord treasurer of England.

The Office of Coroner.

Two other officers there are in every county called Coroners ; and by their office they are to inquest in what manner, and by whom every person dying of a violent death, came so to their death ; and to enter the same of record ; which is matter criminal, and a plea of the crown : and therefore they are called coroners, or crowners, as one hath written, because their inquiry ought to be *in corona populi*.

These officers are chosen by the freeholders of the shire, by virtue of a writ out of the chancery *de coronatore eligendo* : and of them I need not to write more, because these officers are in use every where.

General observations touching Constables, Gaolers, and Bailiffs.

FORASMUCH as every shire is divided into hundreds, there are also by the statute of 34 H. VIII. cap. 26. ordered and appointed, that two sufficient gentlemen or yeomen shall be appointed constables of every hundred.

Also there is in every shire a gaol or prison appointed for the restraint of liberty of such persons as for their offences are thereunto committed, until they shall be delivered by course of law.

In every hundred of every shire the sheriff thereof shall nominate sufficient persons to be bailiffs of that hundred, and under-ministers of the sheriffs ; and they are to attend upon the justices in every of their courts and sessions.

Note. Archbishop Sancroft notes on this last chapter, written, say some, by Sir John Dodderidge, one of the justices of the King's-bench, 1608.

THE
A R G U M E N T
O F

Sir FRANCIS BACON, Knight,
His MAJESTY'S Solicitor General.

In the Case of the

POST-NATI of SCOTLAND,
In the Exchequer Chamber,

BEFORE THE

Lord Chancellor and all the Judges of England.

May it please your Lordships,

THIS case your lordships do well perceive to be of exceeding great consequence. For whether you do measure that by place, that reacheth not only to the realm of England, but to the whole island of Great-Britain; or whether you measure that by time, that extendeth not only to the present time, but much more to future generations,

Et nati natorum, et qui nascentur ab illis:

And therefore as that is to receive at the bar a full and free debate, so I doubt not but that shall receive from your lordships a sound and just resolution according to law, and according to truth. For, my lords, though he were thought to have said well, that said that for his word, *Rex fortissimus*; yet he was thought to have said better, even in the opinion of a King himself, that said, *Veritas fortissima, et precelestis*: And I do much rejoice to observe such a concurrence in the whole carriage of this cause to this end, that truth may prevail.

The case no feigned or framed case; but a true case between true parties.

The title handled formerly in some of the King's courts, and free-hold upon it; used indeed by his Majesty in his high wisdom to give an end to this great question, but not raised; *ocasio*, as the schoolmen say, *arrepta, non porrecta*.

The case argued in the King's bench by Mr. Walter with great liberty, and yet with good approbation of the court: the persons assigned to be of counsel on that side,

side, inferior to none of their quality and degree in learning; and some of them most conversant and exercised in the question.

The judges in the King's bench have adjourned it to this place for conference with the rest of their brethren. Your lordship, my lord Chancellor, though you be absolute judge in the court where you sit, and might have called to you such assistance of judges as to you had seemed good; yet would not forerun or lead in this case by any opinion there to be given; but have chosen rather to come yourself to this assembly; all tending, as I said, to this end, whereunto I for my part do heartily subscribe, *ut vincat veritas*, that truth may first appear, and then prevail. And I do firmly hold, and doubt not but I shall well maintain, that this is the truth, that Calvin the plaintiff is *ipso jure* by the law of England a natural born subject, to purchase free-hold, and to bring real actions within England. In this case I must so consider the time, as I must much more consider the matter. And therefore though it may draw my speech into farther length; yet I dare not handle a case of this nature confusedly, but purpose to observe the ancient and exact form of pleadings; which is,

First, to explain or induce.

Then, to confute, or answer objections.

And lastly, to prove, or confirm.

AND first for explanation. The outward question in this case is no more, but Whether a child, born in Scotland since his Majesty's happy coming to the crown of England, be naturalized in England, or no? But the inward question or state of the question evermore beginneth where that which is confessed on both sides doth leave.

It is confessed, that if these two realms of England and Scotland were united under one law and one parliament, and thereby incorporated and made as one kingdom, that the *Post-natus* of such an union should be naturalized.

It is confessed, that both realms are united in the person of our sovereign; or, because I will gain nothing by surreption, in the putting of the question, that one and the same natural person is King of both realms.

It is confessed, that the laws and parliaments are several. So then, Whether this privilege and benefit of naturalization be an accessory or dependency upon that which is one and joint, or upon that which is several, hath been, and must be the depth of this question. And therefore your lordships do see the state of this question doth evidently lead me by way of inducement to speak of three things: The king, the law, and the privilege of naturalization. For if you well understand the nature of the two principals, and again the nature of the accessory; then shall you discern, to whether principal the accessory doth properly refer, as a shadow to a body, or iron to an adamant.

And therefore your lordships will give me leave in a case of this quality, first to visit and open the foundations and fountains of reason, and not begin with the positions and eruditions of a municipal law; for so was that done in the great case of mines; and so ought that to be done in all cases of like nature. And this doth not at all detract from the sufficiency of our laws, as incompetent to decide their own cases, but rather addeth a dignity unto them, when their reason appearing as well as their authority doth shew them to be as fine moneys, which are current

not only by the stamp, because they are so received, but by the natural metal, that is, the reason and wisdom of them.

And master Littleton himself in his whole book doth commend but two things to the professors of the law by the name of his sons; the one, the inquiring and searching out the reasons of the law; and the other, the observing of the forms of pleadings. And never was there any case that came in judgment that required more, than Littleton's advice should be followed in those two points, than doth the present case in question. **And first of the King.**

It is evident that all other commonwealths, monarchies only excepted, do subsist by a law precedent. For where authority is divided amongst many officers, and they not perpetual, but annual or temporary, and not to receive their authority but by election, and certain persons to have voice only to that election, and the like; these are busy and curious frames, which of necessity do presuppose a law precedent, written or unwritten, to guide and direct them: but in monarchies, especially hereditary, that is, when several families or lineages of people do submit themselves to one line, imperial or royal, the submission is more natural and simple, which afterwards by laws subsequent is perfected and made more formal; but that is grounded upon nature. That this is so, it appeareth notably in two things; the one the platforms and patterns which are found in nature of monarchies; the original submissions, and their motives and occasions. The platforms are three:

The first is that of a father, or chief of a family; who governing over his wife by prerogative of sex, over his children by prerogative of age, and because he is author unto them of being, and over his servants by prerogative of virtue and providence (for he that is able of body, and improvident of mind, is *natura servus*) that is a very model of a King. So is the opinion of Aristotle, lib. iii. *Pol.* cap. 14. where he saith, *Forum autem regnum est, cum penes unum est rerum summa potestas: quod regnum procuratio a familia instituitur.*

And therefore Lycurgus, when one counselled him to dissolve the kingdom, and to establish another form of estate, answered, "Sir, begin to do that which you advise first at home in your own house:" noting, that the chief of a family is as a King; and that those that can least endure Kings abroad, can be content to be Kings at home. And this is the first platform, which we see is merely natural.

The second is that of a shepherd and his flock, which, Xenophon saith, Cyrus had ever in his mouth. For shepherds are not owners of the sheep; but their office is to feed and govern: no more are Kings proprietaries or owners of the people; for God is sole owner of people. *The nations*, as the Scripture saith, *are his inheritance*: but the office of Kings is to govern, maintain, and protect people. And that is not without a mystery, that the first King that was instituted by God, David, for Saul was but an untimely fruit, was translated from a shepherd, as you have it in Psalm lxxviii. *Et elegit David servum suum, de gregibus ovium suscepit eum, — pascere Jacob servum suum, et Israel hereditatem suam.* This is the second platform; a work likewise of nature.

The third platform is the government of God himself over the world, whereof lawful monarchies are a shadow. And therefore both amongst the Heathen, and amongst the Christians, the word, sacred, hath been attributed unto Kings, because of the conformity of a monarchy with a divine Majesty; never to a senate

or people. And so you find it twice in the lord Coke's Reports; once in the second book, the bishop of Winchester's case; and his fifth book, Cawdrie's case; and more anciently in the 10 of H. VII. fol. 18. *Rex est persona mixta cum sacerdoti*; an attribute, which the senate of Venice, or a canton of Swisses, can never challenge. So, we see, there be precedents or platforms of monarchies, both in nature, and above nature; even from the monarch of heaven and earth to the king, if you will, in an hive of bees. And therefore other states are the creatures of law; and this state only subsisteth by nature.

For the original submissions, they are four in number: I will briefly touch them: The first is paternity or patriarchy, which was when a family growing so great as it could not contain itself within one habitation, some branches of the descendents were forced to plant themselves into new families, which second families could not by a natural instinct and inclination but bear a reverence, and yield an obeisance to the eldest line of the ancient family from which they were derived.

The second is, the admiration of virtue, or gratitude towards merit, which is likewise naturally infused into all men. Of this Aristotle putteth the case well, when it was the fortune of some one man, either to invent some arts of excellent use towards man's life, or to congregate people, that dwelt scattered, into one place, where they might cohabit with more comfort, or to guide them from a more barren land to a more fruitful, or the like: upon these deserts, and the admiration and recompense of them, people submitted themselves.

The third, which was the most usual of all, was conduct in war, which even in nature induceth as great an obligation as paternity. For as men owe their life and being to their parents in regard of generation, so they owe that also to favours in the wars in regard of preservation. And therefore we find in chap. xviii. of the book of Judges, ver. 22. *Dixerunt omnes viri ad Gideon, Dominare nostri, tu et filii tui, quoniam servasti nos de manu Madian.* And so we read when it was brought to the ears of Saul, that the people sung in the streets, *Saul hath killed his thousand, and David his ten thousand of enemies*, he said straightways: *Quid ei superest nisi imperium regnum?* For whosoever hath the military dependence, wants little of being King.

The fourth is an enforced submission, which is conquest, whereof it seemed Nimrod was the first precedent, of whom it is said; *Ipsæ coepit potens esse in terra, et erat robustus venator coram Domino.* And this likewise is upon the same root, which is the saving or gift as it were of life and being; for the conqueror hath power of life and death over his captives; and therefore where he giveth them themselves, he may reserve upon such a gift what service and subjection he will. All these four submissions are evident to be natural and more ancient than law.

To speak therefore of law, which is the second part of that which is to be spoken of by way of inducement. Law no doubt is the great organ by which the sovereign power doth move, and may be truly compared to the sinews in a natural body, as the sovereignty may be compared to the spirits: for if the sinews be without the spirits, they are dead and without motion; if the spirits move in weak sinews, it causeth trembling: so the laws, without the King's power, are dead; the King's power, except the laws be corroborated, will never move constantly, but be full of staggering and trepidation. But towards the King himself the law doth a double office or operation: the first is to intitle the King, or design him;

and

CASE OF THE POST-NATI OF SCOTLAND.

and in that sense Bracton saith well, lib. 1. fol. 5. and lib. 3. fol. 107. *Lex facit quod ipse sit Rex*; that is, it defines his title; as in our law, That the kingdom shall go to the issue female; that it shall not be departable amongst daughters; that the half-blood shall be respected, and other points differing from the rules of common inheritance. The second is, that whereof we need not fear to speak in good and happy times, such as these are, to make the ordinary power of the King more definite or regular; for it was well said by a father, *plenitudo potestatis est plenitudo temporis*. And although the King, in his person, be *solus legibus*, yet his acts and grants are limited by law, and we argue them every day.

But I demand, Do these offices or operations of law evacuate or frustrate the original submission, which was natural; Or shall it be said that all allegiance is by law? No more than it can be said, that *potestas patris*, the power of the father over the child, is by law: and yet no doubt laws do diversly define of that also; the law of some nations having given fathers power to put their children to death; others, to sell them thrice; others, to disinherit them by testament at pleasure, and the like. Yet no man will affirm, that the obedience of the child is by law, though laws in some points do make it more positive: and even so it is of allegiance of subjects to hereditary monarchs, which is corroborated and confirmed by law, but is the work of the law of nature. And therefore you shall find the observation true, and almost general in all states, that their lawgivers were long after their first Kings, who governed for a time by natural equity without law: so was Theseus long before Solon in Athens: so was Eurytion and Sous long before Lycurgus in Sparta: so was Romulus long before the *Decemviri*. And even amongst ourselves, there were more ancient Kings of the Saxons; and yet the laws ran under the name of Edgar's laws. And in the refounding of the kingdom in the person of William the Conqueror, when the laws were in some confusion for a time, a man may truly say, that King Edward I. was the first lawgiver, who enacting some laws, and collecting others, brought the law to some perfection. And therefore I will conclude this point with the stile which divers acts of parliaments do give unto the King: which term him very effectually and truly, "our natural sovereign liege lord." And as it was said by a principal judge here present when he served in another place, and question was moved by some occasion of the title of Bullein's lands, that he would never allow that Queen Elizabeth, I remember it for the efficacy of the phrase, should be a statute Queen, but a common-law Queen: so surely I shall hardly consent that the King shall be esteemed or called only our rightful sovereign, or our lawful sovereign, but our natural liege sovereign; as acts of parliament speak: for as the common law is more worthy than the statute law; so the law of nature is more worthy than them both. Having spoken now of the King and the law, it remaineth to speak of the privilege and benefit of naturalization itself; and that according to the rules of the law of England.

Naturalization is best discerned in the degrees whereby the law doth mount and ascend thereunto. For it seemeth admirable unto me, to consider with what a measured hand and with how true proportions our law doth impart and confer the several degrees of this benefit. The degrees are four.

The first degree of persons, as to this purpose, that the law takes knowledge of, is an alien enemy; that is, such a one as is born under the obedience of a prince or state that is in hostility with the King of England. To this person the law

law giveth no benefit or protection at all, but if he come into the realm after war proclaimed, or war in fact, he comes at his own peril, he may be used as an enemy: for the law accounts of him, but, as the Scripture saith, as of a spy that comes to see the weakness of the land. And so it is in 2 Ric. III. fol. 2. Nevertheless, this admitteth a distinction. For if he come with safe-conduct otherwise it is: for then he may not be violated, either in person or goods. But yet he must fetch his justice at the fountain-head, for none of the conduit pipes are open to him; he can have no remedy in any of the King's courts; but he must complain himself before the King's privy council: there he shall have a proceeding summary from hour to hour, the cause shall be determined by natural equity, and not by rules of law; and the decree of the council shall be executed by aid of the chancery, as in 13 Ed. IV. And this is the first degree.

The second person is an alien friend, that is, such a one as is born under the obedience of such a King or state as is confederate with the King of England, or at least not in war with him. To this person the law allotteth this benefit, that as the law accounts that the hold it hath over him, is but a transitory hold, for he may be an enemy, so the law doth indue him but with a transitory benefit, that is, of moveable goods and personal actions. But for free-hold, or lease, or actions real or mixt, he is not enabled, except it be in *autre droit*. And so it is 9 E. IV. fol. 7. 19 E. IV. fol. 6. 5 Mar. and divers other books.

The third person is a denizen, using the word properly, for sometimes it is confounded with a natural born subject. This is one that is but *subditus insitivus*, or *adoptivus*, and is never by birth, but only by the King's charter, and by no other mean, come he never so young into the realm, or stay he never so long. Mansion or habitation will not indenize him, no, nor swearing obedience to the King in a leet, which doth in-law the subject; but only, as I said, the King's grace and gift. To this person the law giveth an ability and capacity abridged, not in matter, but in time. And as there was a time when he was not subject, so the law doth not acknowledge him before that time. For if he purchase free-hold after his denization, he may take it; but if he have purchased any before, he shall not hold it: so if he have children after, they shall inherit; but if he have any before, they shall not inherit. So as he is but privileged *à parte post*, as the schoolmen say, and not *à parte ante*.

The fourth and last degree is a natural born subject, which is evermore by birth, or by act of parliament; and he is complete and intire. For in the law of England there is *nil ultra*, there is no more subdivision or more subtle division beyond these: and therein it seemeth to me that the wisdom of the law, as I said, is to be admired both ways, both because it distinguisheth so far, and because it doth not distinguish farther. For I know that other laws do admit more curious distinction of this privilege; for the Romans had, besides *jus civitatis*, which answereth to naturalization, *jus suffragii*. For although a man were naturalized to take lands and inheritance, yet he was not enabled to have a voice at passing of laws, or at election of officers. And yet farther they have *jus petitionis*, or *jus honorum*. For though a man had voice, yet he was not capable of honour and office. But these be the devises commonly of popular or free estates, which are jealous whom they take into their number, and are unfit for monarchies; but by the law of England the subject that is natural born, hath a capacity or ability to all benefits whatsoever; I say capacity or ability: But to reduce *potestatem in alium*, is another

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another case. For an earl of Ireland, though he be naturalized in England, yet hath no voice in the parliament of England, except he have either a call by writ, or creation by patent; but he is capable of either. But upon this quadripartite division of the ability of persons, I do observe to your lordships three things, being all effectually pertinent to the question in hand.

The first is, that if any man conceive that the reasons for the *Post-nati* might serve as well for the *Ante-nati*, he may by the distribution which we have made, plainly perceive his error. For the law looketh not back, and therefore cannot, by any matter *ex post facto*, after birth, alter the state of the birth; wherein no doubt the law hath a grave and profound reason; which is this, in few words, *Nemo jus suum fingitur; aliud est nasci, aliud fieri*: we indeed more respect and affect those worthy gentlemen of Scotland whose merits and conversations we know; but the law that proceeds upon general reason, and looks upon no mens faces, affecteth and privilegeth those which drew their first breath under the obedience of the King of England.

The second point is, that by the former distribution it appeareth that there be but two conditions by birth, either alien, or natural born, *nam tertium penitus ignoramus*. It is manifest then, that if the *Post-nati* of Scotland be not natural born, they are alien born, and in no better degree at all than Flemings, French, Italians, Spanish, Germans, and others, which are all at this time alien friends, by reason his Majesty is in peace with all the world.

The third point seemeth to me very worthy the consideration, which is, that in all the distributions of persons, and the degrees of abilities or capacities, the King's act is all in all, without any manner of respect to law or parliament. For it is the King that makes an alien enemy, by proclaiming a war, wherewith the law or parliament intermeddles not. So the King only grants safe-conducts, wherewith law and parliament intermeddle not. It is the King likewise that maketh an alien friend, by concluding a peace, wherewith law and parliament intermeddle not. It is the King that makes a denizen by his charter, absolutely of his prerogative and power, wherewith law and parliament intermeddle not. And therefore it is strongly to be inferred, that as all these degrees depend wholly upon the King's act, and no ways upon law or parliament; so the fourth, although it cannot by the King's patent, but by operation of law, yet that the law, in that operation, respecteth only the King's person, without respect of subjection to law or parliament. And thus much by way of explanation and inducement: which being all matter in effect confessed, is the strongest ground-work to that which is contradicted or controverted.

There followeth the confutation of the arguments on the contrary side.

THAT which hath been materially objected, may be reduced to four heads.

The first is, that the privilege of naturalization followeth allegiance, and that allegiance followeth the kingdom.

The second is drawn from that common ground, *cum duo jura concurrant in una persona, alterius est ac si alter non esset*; a rule, the words whereof are taken from the civil law; but the matter of it is received in all laws; being a very line or rule of reason, to avoid confusion. •

The third consisteth of certain inconveniencies conceived to ensue of this general naturalization, *ipso jure*.

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The fourth is not properly an objection, but a pre-occupation of an objection or proof on our part, by a distinction devised between countries devolute by descent, and acquired by conquest.

For the first, it is not amiss to observe that those who maintain this new opinion, whereof there is *altum silentium* in our books of law, are not well agreed in what form to utter and exprets that: for some said that allegiance hath respect to the law, some to the crown, some to the kingdom, some to the body politic of the King: so there is confusion of tongues amongst them, as it commonly cometh to pass in opinions that have their foundations in subtilty and imagination of man's wit, and not in the ground of nature. But to leave their words, and to come to their proofs: they endeavour to prove this conceit by three manner of proofs: first, by reason; then, by certain inferences out of statutes; and lastly, by certain book-cases, mentioning and reciting the forms of pleadings.

The reason they bring is this; that naturalization is an operation of the law of England; and so indeed it is, that may be the true *genus* of it.

Then they add, that granted, that the law of England is of force only within the kingdom and dominions of England, and cannot operate but where it is in force. But the law is not in force in Scotland, therefore that cannot endure this benefit of naturalization by a birth in Scotland.

This reason is plausible and sensible, but extremely erroneous. For the law of England, for matters of benefit or forfeitures in England, operateth over the world. And because it is truly said that *respublica continetur poena et praemio*, I will put a case or two of either.

It is plain that if a subject of England had conspired the death of the King in foreign parts, it was by the common law of England treason. How prove I that? By the statute of 35 H. VIII. cap. 2. wherein you shall find no words at all of making any new case of treason which was not treason before, but only of ordaining a form of trial; *ergo*, it was treason before: and if so, then the law of England works in foreign parts. So of contempts, if the King send his privy seal to any subject beyond the seas, commanding him to return, and he disobey, no man will doubt but there is a contempt, and yet the fact enduring the contempt was committed in foreign parts.

Therefore the law of England doth extend to acts or matters done in foreign parts. So of reward, privilege or benefit, we need seek no other instance than the instance in question; for I will put you a case that no man shall deny, where the law of England doth work and confer the benefit of naturalization upon a birth neither within the dominions of the kingdom, nor King of England. By the statute of 25 E. III. which, if you will believe Hufsey, is but a declaration of the common law, all children born in any parts of the world, if they be of English parents continuing at that time as liege subjects to the King, and having done no act to forfeit the benefit of their allegiance, are *ipso facto* naturalized. Nay, if a man look narrowly into the law in this point, he shall find a consequence that may seem at the first strange, but yet cannot be well avoided; which is, that if divers families of English men and women plant themselves at Middleborough, or at Roan, or at Lisbon, and have issue, and their descendents do intermarry amongst themselves, without any intermixture of foreign blood; such descendents are naturalized to all generations: for every generation is still of liege parents, and there-

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fore naturalized ; so as you may have whole tribes and lineages of English in foreign countries.

And therefore it is utterly untrue that the law of England cannot operate or confer naturalization, but only within the bounds of the dominions of England.

To come now to their inferences upon statutes ; the first is out of this statute which I last recited. In which statute it is said, that in four several places there are these words, “ born within the allegiance of England ;” or again, “ born without the allegiance of England,” which, say they, applies the allegiance to the kingdom, and not to the person of the King. To this the answer is easy ; for there is no trope of speech more familiar than to use the place of addition for the person. So we say commonly, the line of York, or the line of Lancaster, for the lines of the duke of York, or the duke of Lancaster.

So we say the possessions of Somerset or Warwick, intending the possessions of the dukes of Somerset or earls of Warwick. So we see earls sign, Salisbury, Northampton, for the earls of Salisbury or Northampton. And in the very same manner the statute speaks, allegiance of England, for allegiance of the King of England. Nay more, if there had been no variety in the penning of that statute, this collection had had a little more force ; for those words might have been thought to have been used of purpose and in propriety ; but you may find in three other several places of the same statute, allegiance and obedience of the King of England, and especially in the material and concluding place, that is to say, children whose parents were at the time of their birth at the faith and obedience of the King of England. So that it is manifest by this indifferent and promiscuous use of both phrases, the one proper, the other improper, that no man can ground any inference upon these words, without danger of cavillation.

The second statute out of which they infer, is a statute made in 32 Hen. VIII. touching the policy of strangers tradesmen within this realm. For the parliament finding that they did eat the Englishmen out of trade, and that they entertained no apprentices but of their own nation, did prohibit that they should receive any apprentice but the King’s subjects. In which statute is said, that in nine several places there is to be found this context of words, “ aliens born out of the King’s obedience ;” which is pregnant, say they, and doth imply that there be aliens born within the King’s obedience. Touching this inference, I have heard it said, *qui haeret in litera, haeret in cortice* ; but this is not worthy the name of *cortex*, it is but *muscus corticis*, the moss of the bark. For it is evident that the statute meant to speak clearly and without equivocation, and to a common understanding. Now then there are aliens in common reputation, and aliens in precise construction of law ; the statute then meaning not to comprehend Irishmen, or Jersey men, or Calais men, for explanation sake, lest the word alien might be extended to them in a vulgar acceptance, added those further words, “ born out of the King’s obedience.” Nay, what if we should say, that those words, according to the received laws of speech, are no words of difference or limitation, but of declaration or description of an alien, as if it had been said, with a *terminet*, aliens ; that is, such as are born out of the King’s obedience ? they cannot put us from that construction. But sure I am, if the bark make for them, the pith makes for us ; for the privilege of liberty which the statute means to deny to aliens of entertaining apprentices, is denied to none born within the King’s obedience, call
them

them aliens or what you will. And therefore by their reason, a *Post-natus* of Scotland shall by that statute keep what stranger apprentices he will, and so is put in the degree of an English. The third statute out of which inference is made, is the statute of 14 E. III. *cap. solo*, which hath been said to be our very case; and I am of that opinion too, but directly the other way. Therefore to open the scope and purpose of that statute: After that the title to the crown of France was devolute to K. E. III. and that he had changed his stile, changed his arms, changed his seal, as his Majesty hath done, the subjects of England, saith the statute, conceived a fear that the realm of England might become subject to the realm of France, or to the King as King of France. And I will give you the reasons of the double fear, that it should become subject to the realm of France. They had this reason of fear: Normandy had conquered England, Normandy was feudal of France, therefore because the superior feignory of France was now united in right with the tenancy of Normandy, and that England, in regard of the conquest, might be taken as a perquisite to Normandy, they had probable reason to fear that the kingdom of England might be drawn to be subject to the realm of France. The other fear, that England might become subject to the King as King of France, grew no doubt of this foresight, that the Kings of England might be like to make their mansion and feat of their estate in France, in regard of the climate, wealth, and glory of that kingdom; and thereby the kingdom of England might be governed by the King's mandates and precepts issuing as from the King of France. But they will say, whatsoever the occasion was, here you have the difference authorised of subjection to a King generally, and subjection to a King as King of a certain kingdom: but to this I give an answer three-fold:

First, it presseth not the question; for doth any man say that a *Post-natus* of Scotland is naturalized in England, because he is a subject of the King as King of England? No, but generally because he is the King's subject.

Secondly, The scope of this law is to make a distinction between crown and crown; but the scope of their argument is to make a difference between crown and person. Lastly, this statute, as I said, is our very case retorted against them; for this is a direct statute of separation, which presupposeth that the common law had made an union of the crowns in some degree, by virtue of the union in the King's person: if this statute had not been made to stop and cross the course of the common law in that point, as if Scotland now should be suitors to the King, that an act might pass to like effect, and upon like fear. And therefore if you will make good your distinction in this present case, shew us a statute for that. But I hope you can shew no statute of separation between England and Scotland. And if any man say that this was a statute declaratory of the common law, he doth not mark how that is penned: for after a kind of historical declaration in the preamble, that England was never subject to France, the body of the act is penned thus: "The King doth grant and establish;" which are words merely introductive *novae legis*, as if the King gave a charter of franchise, and did invest, by a donative, the subjects of England with a new privilege or exemption, which by the common law they had not.

To come now to the book-cases which they put; which I will couple together, because they receive one joint answer.

The first is 42 E. III. fol. where the book saith, exception was taken that the plaintiff was born in Scotland at Ross, out of the allegiance of England.

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The next is 22 H. VI. fol. 38. Adrian's case ; where it is pleaded that a woman was born at Bruges, out of the allegiance of England.

The third is 13 Eliz. Dyer, fol. 300. where the case begins thus : *Doctor Story qui notorie dignoscitur esse subditus regni Angliae.* In all these three, say they, that is pleaded, that the party is subject of the kingdom of England, and not of the King of England.

To these books I give this answer, that they be not the pleas at large, but the words of the reporter, who speaks compendiously and narratively, and not according to the solemn words of the pleading. If you find a case put, that it is pleaded a man was seized in fee-simple, you will not infer upon that, that the words of the pleading were *in feodo simplici*, but *sibi et haeredibus suis*. But shew me some precedent of a pleading at large, of *natus sub ligeantia regni Angliae* ; for whereas Mr. Walter said that pleadings are variable in this point, he would fain bring it to that ; but there is no such matter ; for the pleadings are constant and uniform in this point : they may vary in the word *fides*, or *ligeantia*, or *obedientia*, and some other circumstances ; but in the form of *regni* and *regis* they vary not : neither can there, as I am persuaded, be any one instance shewed forth to the contrary. See 9 Eliz. 4. Baggot's Assize, fol. 7. where the pleading at large is entred in the book ; there you have *alienigena natus extra ligeantiam domini regis Angliae.* See the precedents in the book of entries, pl. 7. and two other places ; for there be no more : and there you shall find still *sub ligeantia domini regis*, or *extra ligeantiam domini regis.* And therefore the forms of pleading, which are things so reverend, and are indued towards the reasons of the law, as *palma*, and *pugnis*, containing the reason of the law, opened or unfolded, or displayed, they make all for us. And for the very words of reporters in books, you must acknowledge and say, *ilicet obruimur numero.* For you have 22 Ass. pl. 25. 27 Ass. the prior of Shells case, pl. 48. 14 H. IV. fol. 19. 3 H. VI. fol. 35. 6 H. VIII. in my lord Dyer, fol. 2. In all these books, the very words of the reporters have " the allegiance of the King," and not, the allegiance of England. And the book in the 24 Edw. III. which is your best book, although while it is tossed at the bar, you have sometimes the words " allegiance of England," yet when it comes to Thorp, chief justice, to give the rule, he saith, " we will be certified by the roll, whether " Scotland be within the allegiance of the King." Nay, that farther form of pleading beateth down your opinion : That it sufficeth not to say that he is born out of the allegiance of the King, and stay there, but he must shew in the affirmative, under the allegiance of what King or state he was born. The reason whereof cannot be, because it may appear whether he be a friend or an enemy, for that in a real action is all one : nor it cannot be because issue shall be taken thereupon ; for the issue must arise on the other side upon *indigena* pleaded and traversed. And therefore it can have no other reason, but to apprise the court more certainly, that the country of the birth is none of those that are subject to the King. As for the trial, that it should be impossible to be tried, I hold it not worth the answering ; for the *l'ouire facias* shall go either where the natural birth is laid, although it be but by fiction, or if it be laid according to the truth, it shall be tried where the action is brought, otherwise you fall upon a main rock, that breaketh your argument in pieces ; for how should the birth of an Irishman be tried, or of a Jerseyman ? nay, how should the birth of a subject be tried, that is born of English parents in Spain or Florence, or any part of the world ? For to all

all these the like objection of trial may be made, because they are within no counties: and this receives no answer. And therefore I will now pass on to the second main argument.

It is a rule of the civil law, say they, *Cum duo jura*, etc. when two rights do meet in one person, there is no confusion of them, but they remain still in the eye of law distinct, as if they were in several persons: and they bring examples of one man bishop of two sees, or one parson that is rector of two churches. They say this unity in the bishop or the rector doth not create any privity between the parishioners or dioceseners, more than if there were several bishops or several parsons. This rule I allow, as was said, to be a rule not of the civil law only but of common reason, but receiveth no forced or coined but a true and sound distinction or limitation, which is, that it evermore faileth and deceiveth in cases where there is any vigour or operation of the natural person; for generally in corporations the natural body is but *suffulcimentum corporis corporati*, it is but as a stock to uphold and bear out the corporate body; but otherwise it is in the case of the crown, as shall be manifestly proved in due place. But to shew that this rule receiveth this distinction, I will put but two cases: the statute of 21 H. VIII. ordaineth that a marquis may retain six chaplains qualified, a lord treasurer of England four, a privy-counsellor three. The lord treasurer Paulet was marquis of Winchester, lord treasurer of England, and privy-counsellor, all at once. The question was, whether he should qualify thirteen chaplains? Now by the rule *Cum duo jura* he should; but adjudged, he should not. And the reason was, because the attendance of chaplains concerned and respected his natural person; he had but one soul, though he had three offices. The other case which I will put is the case of homage. A man doth homage to his lord for a tenancy held of the manor of Dale; there descendeth unto him afterwards a tenancy held of the manor of Sale, which manor of Sale is likewise in the hands of the same lord. Now by the rule *Cum duo jura*, he should do homage again, two tenancies and two feignories, though but one tenant and one lord, *aequum est ac si esset in duobus*: but ruled that he should not do homage again: nay in the case of the King he shall not pay a second respect of homage, as upon grave and deliberate consideration it was resolved, 24 Hen. VIII. and *usus scaccarii*, as there is said, accordingly. And the reason is no other but because when a man is sworn to his lord, he cannot be sworn over again: he hath but one conscience, and the obligation of this oath trencheth between the natural person of the tenant and the natural person of the lord. And certainly the case of homage and tenure, and of homage liege, which is one case, are things of a near nature, save that the one is much inferior to the other; but it is good to behold these great matters of state in cases of lower element, as the eclipse of the sun is used to be in a pail of water.

The third main argument containeth certain supposed inconveniencies, which may ensue of a general naturalization *ipso jure*, of which kind three have been specially remembered.

The first is the loss of profit to the King upon letters of denization and purchases of aliens.

The second is the concourse of Scotsmen into this kingdom, to the infeebling of that realm of Scotland in people, and the impoverishing of this realm of England in wealth.

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The third is, that the reason of this case stayeth not within the compass of the present case; for although it were some reason that Scotsmen were naturalized, being people of the same island and language, yet the reason which we urge, which is, that they are subject to the same King, may be applied to persons every way more estranged from us than they are; as if in future time, in the King's descendent, there should be a match with Spain, and the dominions of Spain should be united with the crown of England, by one reason, say they, all the West-Indies should be naturalized; which are people not only *alterius soli* but *alterius coeli*.

To these conceits of inconvenience, how easy it is to give answer, and how weak they are in themselves, I think no man that doth attentively ponder them can doubt; for how small revenue can arise of such denizations, and how honourable were it for the King to take escheats of his subjects, as if they were foreigners, for seizure of aliens lands are in regard the King hath no hold or command of their persons and services, every one may perceive. And for the confluence of Scotsmen, I think, we all conceive the spring-tide is past at the King's first coming in. And yet we see very few families of them throughout the cities and boroughs of England. And for the naturalizing of the Indies, we can readily help that, when the case comes; for we can make an act of parliament of separation if we like not their consort. But these being reasons politic, and not legal, and we are not now in parliament, but before a judgment-seat, I will not meddle with them, especially since I have one answer which avoids and confounds all their objections in law; which is, that the very self-same objections do hold in countries purchased by conquest. For in subjects obtained by conquest, it were more profit to indurate by the poll; in subjects obtained by conquest, they may come in too fast. And if King Henry VII. had accepted the offer of Christopher Columbus, whereby the crown of England had obtained the Indies by conquest or occupation, all the Indies had been naturalized by the confession of the adverse part. And therefore since it is confessed, that subjects obtained by conquest are naturalized, and that all these objections are common and indifferent, as well to case of conquest as case of descent, these objections are in themselves destroyed.

And therefore, to proceed now to overthrow that distinction of descent and conquest. Plato saith well, the strongest of all authorities is, if a man can alledge the authority of his adversary against himself: we do urge the confession of the other side, that they confessed the Irish are naturalized; that they confess the subjects of the isles of Jersey and Guernsey, and Berwick, to be naturalized, and the subjects of Calais and Tournay, when they were English, were naturalized; as you may find in the 5 Eliz. in Dyer, upon the question put to the judges by Sir Nicholas Bacon lord keeper.

To avoid this, they fly to a difference, which is new-coined, and is, I speak not to the disadvantage of the persons that use it; for they are driven to it *tanquam ad ultimum refugium*; but the difference itself, it is, I say, full of ignorance and error. And therefore, to take a view of the supports of this difference, they alledge four reasons.

The first is, that countries of conquest are made parcel of England, because they are acquired by the arms and treasure of England. To this I answer, that it were a very strange argument, that if I wax rich upon the manor of Dale, and upon the revenue thereof purchase a close by it, that it should make that parcel of the manor of Dale. But I will set this new learning on ground with a question or

or case put. For I oppose them that hold this opinion with this question, If the King should conquer any foreign country by an army compounded of Englishmen and Scotsmen, as it is like, whensoever wars are, so it will be, I demand, whether this country conquered shall be naturalized both in England and Scotland, because it was purchased by the joint arms of both? and if yea, Whether any man will think it reasonable, that such subjects be naturalized in both kingdoms; the one kingdom not being naturalized towards the other? These are the intricate consequences of conceits.

A second reason they allege is, that countries won by conquest become subject to the laws of England, which countries patrimonial are not, and that the law doth draw the allegiance, and allegiance naturalization.

But to the major proposition of that argument, touching the dependency of allegiance upon law, somewhat hath been already spoken, and full answer shall be given when we come to it. But in this place it shall suffice to say, that the minor proposition is false; that is, that the laws of England are not superinduced upon any country by conquest; but that the old laws remain until the King by his proclamation or letters patent declare other laws; and then if he will he may declare laws which be utterly repugnant, and differing from the laws of England. And hereof many ancient precedents and records may be shewed, that the reason why Ireland is subject to the laws of England is not *ipso jure* upon conquest, but grew by a charter of King John; and that extended but to so much as was then in the King's possession; for there are records in the time of King E. I. and II. of divers particular grants to sundry subjects of Ireland and their heirs, that they might use and observe the laws of England.

The third reason is, that there is a politic necessity of intermixture of people in case of subjection by conquest, to remove alienations of mind, and to secure the state; which holdeth not in case of descent. Here I perceive Mr. Walter hath read somewhat in matter of state; and so have I likewise; though we may both quickly lose ourselves in causes of this nature. I find by the best opinions, that there be two means to assure and retain in obedience countries conquered, both very differing, almost in extremes, the one towards the other.

The one is by colonies, and intermixture of people, and transplantation of families, which Mr. Walter spoke of; and it was indeed the Roman manner: but this is like an old relic, much revered and almost never used. But the other, which is the modern manner, and almost wholly in practice and use, is by garrisons and citadels, and lists or companies of men of war, and other like matters of terror and bridle.

To the first of these, which is little used, it is true that naturalization doth conduce, but to the latter it is utterly opposite, as putting too great pride and means to do hurt in those that are meant to be kept short and low. And yet in the very first case, of the Roman proceeding, naturalization did never follow by conquest, during all the growth of the Roman empire; but was ever conferred by charters, or donations, sometimes to cities and towns, sometimes to particular persons, and sometimes to nations, until the time of Adrian the emperor, and the law *In orbe romano*: and that law or constitution is not referred to title of conquest and arms only, but to all other titles; as by the donation and testament of Kings, by submission, and dedition of states, or the like: so as this difference was as strange to them as to us. And certainly I suppose it will sound strangely in the hearing of
foreign

foreign nations, that the law of England should *ipso facto* naturalize subjects of conquests, and should not naturalize subjects which grow unto the King by descent; that is, that it should confer the benefit and privilege of naturalization upon such as cannot at the first but bear hatred and rancour to the state of England, and have had their hands in the blood of the subjects of England, and should deny the like benefit to those that are conjoined with them by a more amiable mean; and that the law of England should confer naturalization upon slaves and vassals, for people conquered are no better in the beginning, and should deny it to freemen: I say, it will be marvelled at abroad, of what complexion the laws of England be made, that breedeth such differences. But there is little danger of such scandals; for this is a difference that the law of England never knew.

The fourth reason of this difference is, that in case of conquest the territory united can never be separated again. But in case of descent, there is a possibility; if his Majesty's line should fail, the kingdoms may sever again to their respective heirs; as in the case of 8 Hen. VI. where it is said, that if land descend to a man from the ancestor on the part of his father, and a rent issuing out of it from an ancestor on the part of the mother; if the party die without issue, the rent is revived. As to this reason, I know well the continuance of the King's line is no less dear to those that allege the reason, than to us that confute it. So as I do not blame the passing of the reason: but it is answered with no great difficulty; for, first, the law doth never respect remote and foreign possibilities, as notably appeared in the great case between Sir Hugh Cholmley and Houlford in the exchequer, where one in the remainder, to the end to bridle tenant in tail from suffering a common recovery, granted his remainder to the King; and because he would be sure to have it out again without charge or trouble when his turn was served, he limited it to the King during the life of tenant in tail. Question grew, whether this grant of remainder were good, yea or no. And it was said to be frivolous and void, because it could never by any possibility execute; for tenant in tail cannot surrender; and if he died, the remainder likewise ceased. To which it was answered, that there was a possibility that it might execute, which was thus: Put case, that tenant in tail should enter into religion, having no issue; then the remainder should execute, and the King should hold the land during the natural life of tenant in tail, notwithstanding his civil death. But the court *una voce* exploded this reason, and said, that monasteries were down, and entries into religion gone, and they must be up again ere this could be; and that the law did not respect such remote and foreign possibilities. And so we may hold this for the like: for I think we all hope, that neither of those days shall ever come, either for monasteries to be restored, or for the King's line to fail. But the true answer is, that the possibility subsequent, remote or not remote, doth not alter the operation of law for the present. For that should be, as if in case of the rent which you put, you should say, that in regard that the rent may be severed, it should be said to be *in esse* in the mean time, and should be grantable; which is clearly otherwise. And so in the principal case, if that should be, which God of his goodness forbid, *ejuncte causa cessat effectus*, the benefit of naturalization for the time to come is dissolved. But that altereth not the operation of the law; *rebus sic stantibus*. And therefore I conclude, that this difference is but a devise full of weakness and ignorance; and that there is one and the same reason of naturalizing subjects by descent, and subjects by conquest; and that is the

the union in the person of the King; and therefore that the case of Scotland is as clear as that of Ireland, and they that grant the one cannot deny the other. And so I conclude the second part, touching confutation.

To proceed therefore to the proofs of our part, your lordships cannot but know many of them must be already spent in the answer which we have made to the objections. For *corruptio unius, generatio alterius*, holds as well in arguments, as in nature, the destruction of an objection begets a proof. But nevertheless I will avoid all iteration, lest I should seem either to distract your memories, or to abuse your patience; but will hold myself only to these proofs which stand substantially of themselves, and are not intermixed with matter of confutation. I will therefore prove unto your lordships, that the *post-natus* of Scotland is by the law of England natural, and ought so to be adjudged, by three courses of proof.

1. First, upon point of favour of law.
2. Secondly, upon reasons and authorities of law.
3. And lastly, upon former precedents and examples.

1. Favour of law: what mean I by that? The law is equal, and favoureth not. It is true, not persons; but things or matters it doth favour. Is it not a common principle, that the law favoureth three things, life, liberty, and dower? And what is the reason of this favour? This, because our law is grounded upon the law of nature. And these three things do flow from the law of nature, preservation of life natural; liberty, which every beast or bird seeketh and affecteth naturally; the society of man and wife, whereof dower is the reward natural. It is well, doth the law favour liberty so highly, as a man shall enfranchise his bondman when he thinketh not of it, by granting to him lands or goods; and is the reason of it *quia naturâ omnes homines erant liberi*; and that servitude or villenage doth cross and abridge the law of nature? And doth not the self-same reason hold in the present case? For, my lords, by the law of nature all men in the world are naturalized one towards another; they were all made of one lump of earth, of one breath of God; they had the same common parents: nay, at the first they were, as the Scripture sheweth, *unius labii*, of one language, until the curse; which curse, thanks be to God, our present case is exempted from. It was civil and national laws that brought in these words, and differences, of *civis* and *exterus*, alien and native. And therefore because they tend to abridge the law of nature, the law favoureth not them, but takes them strictly; even as our law hath an excellent rule, That customs of towns and boroughs shall be taken and construed strictly and precisely, because they do abridge and derogate from the law of the land. So by the same reason all national laws whatsoever are to be taken strictly and hardly in any point wherein they abridge, and derogate from the law of nature. Whereupon I conclude that your lordships cannot judge the law for the other side, except the case be *lucè clarius*. And if it appear to you but doubtful, as I think no man in his right senses but will yield it to be at least doubtful, then ought your lordships, under your correction be it spoken, to pronounce for us because of the favour of the law. Furthermore as the law of England must favour naturalization as a branch of the law of nature, so it appears manifestly, that it doth favour it accordingly. For is it not much to make a subject naturalized? By the law of England, it should suffice, either place or parents, if he be born in England it is no matter though his parents be Spaniards, or what

you will. On the other side, if he be born of English parents, it skilleth not though he be born in Spain, or in any other place of the world. In such sort doth the law of England open her lap to receive in people to be naturalized; which indeed sheweth the wisdom and excellent composition of our law, and that it is the law of a warlike and magnanimous nation fit for empire. For look, and you shall find that such kind of estates have been ever liberal in point of naturalization: whereas merchant-like and envious estates have been otherwise.

For the reasons of law joined with authorities, I do first observe to your lordships, that our assertion or affirmation is simple and plain: that it sufficeth to naturalization, that there be one King, and that the party be *natus ad fidem regis*, agreeable to the definition of Littleton, which is: Alien is he which is born out of the allegiance of our lord the King. They of the other side speak of respects, and *quoad*, and *quatenus*, and such subtilities and distinctions. To maintain therefore our assertion, I will use three kinds of proofs.

The first is, that allegiance cannot be applied to the law or kingdom, but to the person of the King, because the allegiance of the subject is more large and spacious, and hath a greater latitude and comprehension than the law or the kingdom. And therefore it cannot be a dependency of that without the which it may of itself subsist.

The second proof which I will use is, that the natural body of the King hath an operation and influence into his body politic, as well as his body politic hath upon his body natural; and therefore that although his body politic of King of England, and his body politic of King of Scotland, be several and distinct, yet nevertheless his natural person, which is one, hath an operation upon both, and createth a privity between them.

And the third proof is the binding text of five several statutes.

For the first of these, I shall make it manifest, that the allegiance is of a greater extent and dimension than laws or kingdom, and cannot consist by the laws merely; because it began before laws, it continueth after laws, and it is in vigour where laws are suspended and have not their force. That it is more ancient than law, appeareth by that which was spoken in the beginning by way of inducement, where I did endeavour to demonstrate, that the original age of kingdoms was governed by natural equity, that Kings were more ancient than lawgivers, that the first submissions were simple, and upon confidence to the person of Kings, and that the allegiance of subjects to hereditary monarchies can no more be said to consist by laws, than the obedience of children to parents.

That allegiance continueth after laws, I will only put the case, which was remembered by two great judges in a great assembly, the one of them now with God: which was; That if a King of England should be expelled his kingdom, and some particular subjects should follow him in flight or exile in foreign parts, and any of them there should conspire his death; that, upon his recovery of his kingdom, such a subject might by the law of England be proceeded with for treason committed and perpetrated at what time he had no kingdom, and in place where the law did not bind.

That allegiance is in vigour and force where the power of law hath a cessation, appeareth notably in time of wars, for *silent leges inter arma*. And yet the sovereignty and imperial power of the King is so far from being then extinguished or suspended, as contrariwise it is raised and made more absolute; for then he may
 proceed

proceed by his supreme authority, and martial law, without observing formalities of the laws of his kingdom. And therefore whosoever speaketh of laws, and the King's power by laws, and the subjects obedience or allegiance to laws, speak but of one half of the crown. For Bracton, out of Justinian, doth truly define the crown to consist of laws and arms, power civil and martial, with the latter whereof the law doth not intermeddle: so as where it is much spoken, that the subjects of England are under one law, and the subjects of Scotland are under another law, it is true at Edinburgh or Sterling, or again in London or York; but if Englishmen and Scotsmen meet in an army royal before Calais, I hope, then they are under one law. So likewise not only in time of war, but in time of peregrination: If a King of England travel or pass through foreign territories, yet the allegiance of his subjects followeth him; as appeareth in that notable case which is reported in Fleta, where one of the train of King Edward I. as he passed through France from the Holy Land, imbezeled some silver plate at Paris, and jurisdiction was demanded of this crime by the French King's counsel at law, *ratione soli*, and demanded likewise by the officers of King Edward *ratione personae*; and after much solemnity, contestation, and interpleading, it was ruled and determined for King Edward, and the party tried and judged before the knight marshal of the King's house, and hanged after the English law, and execution in St. Germain's meadows. And so much for my first proof.

For my second main proof, that is drawn from the true and legal distinction of the King's several capacities; for they that maintain the contrary opinion do in effect destroy the whole force of the King's natural capacity, as if it were drowned and swallowed up by his politic. And therefore I will first prove to your lordships, that his two capacities are in no sort confounded. And secondly, that as his capacity politic worketh so upon his natural person, as it makes it differ from all other the natural persons of his subjects; so *è converso*, his natural body worketh so upon his politic, as the corporation of the crown utterly differeth from all other corporations within the realm.

For the first, I will vouch you the very words which I find in that notable case of the duchy, where the question was, whether the grants of King Edward VI. for duchy lands should be avoided in points of nonage? The case, as your lordships know well, is reported by Mr. Plowden as the general resolution of all the judges of England, and the King's learned counsel, Rouswell the solicitor only excepted; there I find the said words, Comment. fol. 215. "There is in the King not a body natural alone, nor a body politic alone, but a body natural and politic together: *corpus corporatum in corpore naturali, et corpus naturale in corpore corporato.*" The like I find in the great case of the lord Berkley fet down by the same reporter, Comment. fol. 234. "Though there be in the King two bodies, and that those two bodies are conjoined, yet are they by no means confounded the one by the other."

Now then to see the mutual and reciprocal intercourse, as I may term it, or influence or communication of qualities, that these bodies have the one upon the other: the body politic of the crown induceth the natural person of the King with these perfections: That the King in law shall never be said to be within age: that his blood shall never be corrupted; and that if he were attainted before, the very assumption of the crown purgeth it. That the King shall not take but by matter of record, although he take in his natural capacity as upon a gift in tail. That

his body in law shall be said to be as it were immortal; for there is no death of the King in law, but a demise, as it is termed: with many other the like privileges and differences from other natural persons, too long to rehearse, the rather because the question laboureth not in that part. But on the contrary part let us see what operations the King's natural person hath upon his crown and body politic: of which the chiefest and greatest is, that it cauleth the crown to go by descent, which is a thing strange, and contrary to the course of all corporations, which evermore take in succession, and not by descent; for no man can shew me in all the corporations of England, of what nature soever, whether they consist of one person, or of many; or whether they be temporal or ecclesiastical, any one takes to him and his heirs, but all to him and his successors. And therefore here you may see what a weak course that is, to put cases of bishops and parsons, and the like, and to apply them to the crown. For the King takes to him and his heirs in the manner of a natural body, and the word, successors, is but superfluous; and where that is used, that is ever duly placed after the word, heirs, "the King, his heirs, and successors."

Again, no man can deny but *uxor et filius sunt nomina naturae*. A corporation can have no wife, nor a corporation can have no son: how is it then that it is treason to compass the death of the Queen or of the Prince? There is no part of the body politic of the crown in either of them, but it is intirely in the King. So likewise we find in the case of the lord Berkley, the question was, whether the statute of 35 Henry VIII. for that part which concerned Queen Catharine Par's jointure, were a public act or no, of which the judges ought to take notice, not being pleaded; and judged a public act. So the like question came before your lordship, my lord Chancellor, in Serjeant Heale's case; whether the statute of 11 Edward III. concerning the intailing of the dukedom of Cornwall to the Prince, were a public act or no; and ruled likewise a public act. Why? No man can affirm but these be operations of law, proceeding from the dignity of the natural person of the King; for you shall never find that another corporation whatsoever of a bishop, or master of a college, or mayor of London, worketh any thing in law upon the wife or son of the bishop or the mayor. And to conclude this point, and withal to come near to the case in question, I will shew you where the natural person of the King hath not only an operation in the case of his wife and children, but likewise in the case of his subjects, which is the very question in hand. As for example, I put this case: Can a Scotsman, who is a subject to the natural person of the King, and not to the crown of England; can a Scotsman, I say, be an enemy by the law to the subjects of England? Or must he not of necessity, if he should invade England, be a rebel and no enemy, not only as to the King, but as to the subject? Or can any letters of mart or reprisal be granted against a Scotsman that shall spoil an Englishman's goods at sea? And certainly this case doth press exceeding near the principal case; for it proveth plainly, that the natural person of the King hath such a communication of qualities with his body politic, as it makes the subjects of either kingdom stand in another degree of privity one towards the other, than they did before. And so much for the second proof.

For the five acts of parliament which I spoke of, which are concluding to this question.

The first of them is that concerning the banishment of Hugh Spencer in the time of King Edward II. in which act there is contained the charge and accusation

tion whereupon his exile proceeded. One article of which charge is set down in these words: "Homage and oath of the subject is more by reason of the crown than by reason of the person of the King. So that if the King doth not guide himself by reason in right of the crown, his lieges are bound by their oath to the crown to remove the King."

By which act doth plainly appear the perilous consequence of this distinction concerning the person of the King and the crown. And yet I do acknowledge justly and ingenuously a great difference between that assertion and this, which is now maintained: for it is one thing to make things distinct, another thing to make them separable, *aliud est distinctio, aliud separatio*; and therefore I assure myself, that those that now use and urge that distinction, do as firmly hold, that the subjection to the King's person and to the crown are inseparable, though distinct, as I do. And it is true that the poison of the opinion and assertion of Spencer is like the poison of a scorpion, more in the tail than in the body: for it is the inference that they make, which is, that the King may be deposed or removed, that is the treason and disloyalty of that opinion. But by your leave, the body is never a whit the more wholesome meat for having such a tail belonging to it: therefore we see that is *locus lubricus*, an opinion from which a man may easily slide into an absurdity. But upon this act of parliament I will only note one circumstance more, and so leave it, which may add authority unto it in the opinion of the wisest; and that is, that these Spencers were not ancient nobles or great patriots that were charged and prosecuted by upstarts and favourites: for then it might be said, that it was but the action of some flatterers, who use to extol the power of monarchs to be infinite: but it was contrary; a prosecution of those persons being favourites by the nobility; so as the nobility themselves, which seldom do subscribe to the opinion of an infinite power of monarchs, yet even they could not endure, but their blood did rise to hear that opinion, that subjection is owing to the crown rather than to the person of the King.

The second act of parliament which determined this case, is the act of recognition in the first year of his Majesty, wherein you shall find, that in two several places, the one in the preamble, the other in the body of the act, the parliament doth recognise, that these two realms of England and Scotland are under one imperial crown. The parliament doth not say under one monarchy or King, which might refer to the person, but under one imperial crown, which cannot be applied but to the sovereign power of regiment comprehending both kingdoms. And the third act of parliament is the act made in the fourth year of his Majesty's reign, for the abolition of hostile laws; wherein your lordships shall find likewise in two places, that the parliament doth acknowledge, that there is an union of these two kingdoms already begun in his Majesty's person: so as by the declaration of that act, they have not only one King, but there is an union in inception in the kingdoms themselves.

These two are judgments in parliament by way of declaration of law, against which no man can speak. And certainly these are righteous and true judgments to be relied upon; not only for the authority of them, but for the verity of them; for to any that shall well and deeply weigh the effects of law upon this conjunction, it cannot but appear, that although *partes integrales* of the kingdom, as the philosophers speak, such as the laws, the officers, the parliament, are not yet conmixed; yet nevertheless there is but one and the self-same fountain of so-
verign

vereign power depending upon the ancient submission, whereof I spake in the beginning; and in that sense the crowns and the kingdoms are truly said to be united.

And the force of this truth is such, that a grave and learned gentleman, that defended the contrary opinion, did confess thus far: That in ancient times, when monarchies, as he said, were but heaps of people without any exact form of policy; that then naturalization and communication of privileges did follow the person of the monarch; but otherwise since states were reduced to a more exact form: so as thus far we did consent; but still I differ from him in this, that these more exact forms, wrought by time, and custom, and laws, are nevertheless still upon the first foundation, and do serve only to perfect and corroborate the force and bond of the first submission, and in no sort to disannul or destroy it.

And therefore with these two acts do I likewise couple the act of 14 Edward III. which hath been alleged of the other side. For by collating of that act with this former two, the truth of that we affirm will the more evidently appear, according unto the rule of reason: *opposita juxta se posita magis clarificant*. That act of 14 is an act of separation. These two acts formerly recited are acts tending to union. This act is an act that maketh a new law; it is by the words of grant and establish. These two acts declare the common law as it is, being by words of recognition and confession.

And therefore upon the difference of these laws you may substantially ground this position: That the common law of England, upon the adjunction of any kingdom unto the King of England, doth make some degree of union in the crowns and kingdoms themselves; except by a special act of parliament they be dislevered.

Lastly, the fifth act of parliament which I promised, is the act made in the 42 of E. III. cap. 10. which is an express decision of the point in question. The words are, "Item, (upon the petition put into parliament by the commons) " that infants born beyond the seas in the seignories of Calais, and elsewhere " within the lands and seignories that pertain to our sovereign lord the King be- " yond the seas, be as able and inheritable of their heritage in England, as other " infants born within the realm of England, it is accorded that the common law " and the statute formerly made be holden."

Upon this act I infer thus much; first, that such as the petition mentioneth were naturalized, the practice shews; then if so, it must be either by common law or statute, for so the words report: not by statute, for there is no other statute but 25 E. III. and that extends to the case of birth out of the King's obedience, where the parents are English; *ergo* it was by the common law, for that only remains. And so by the declaration of this statute at the common law, "all infants, born " within the lands and seignories, for I give you the very words again, that per- " tain to our sovereign lord the King, it is not said, as are the dominions of Eng- " land, are as able and inheritable of their heritage in England, as other infants " born within the realm of England." What can be more plain? And so I leave statutes and go to precedents; for though the one do bind more, yet the other sometimes doth satisfy more.

For precedents, in the producing and using of that kind of proof, of all others it behoveth them to be faithfully vouched; for the suppressing or keeping back of a circumstance, may change the case: and therefore I am determined to urge only

such precedents, as are without all colour or scruple of exception or objection, even of those objections which I have, to my thinking, fully answered and confuted. This is now, by the providence of God, the fourth time that the line and Kings of England have had dominions and feignories united unto them as patrimonie, and by descent of blood; four unions, I say, there have been inclusive with this last. The first was of Normandy, in the person of William, commonly called the Conqueror. The second was of Gascoigne, and Guienne, and Anjou, in the person of King Henry II. in his person, I say, though by several titles. The third was of the crown of France, in the person of King Edward III. And the fourth of the kingdom of Scotland, in his Majesty. Of these I will set aside such as by any cavillation can be excepted unto. First I will set aside Normandy, because it will be said, that the difference of countries accruing by conquest, from countries annexed by descent, in matter of communication of privileges, holdeth both ways, as well of the part of the conquering kingdom, as the conquered; and therefore that although Normandy was not a conquest of England, yet England was a conquest of Normandy, and so a communication of privileges between them. Again, set aside France, for that it will be said that although the King had a title in blood and by descent, yet that title was executed and recovered by arms, so as it is a mixt title of conquest and descent, and therefore the precedent not so clear.

There remains then Gascoigne and Anjou, and that precedent likewise I will reduce and abridge to a time, to avoid all question. For it will be said of them also, that after they were lost and recovered *in ore gladii*, that the ancient title of blood was extinct; and that the King was in upon his new title by conquest: and Mr. Walter hath found a book-case in 13 H. VI. abridged by Mr. Fitz-Herbert, in title of *Protection, placito 56.* where a protection was cast, *quia prefecturus in Gajconiam* with the earl of Huntingdon, and challenged because it was not a voyage royal; and the justices thereupon required the sight of the commission, which was brought before them, and purported power to pardon felonies and treason, power to coin money, and power to conquer them that resist: whereby Mr. Walter, finding the word *conquest*, collected that the King's title at that time was reputed to be by conquest; wherein I may not omit to give *obiter* that answer, which law and truth provide, namely, that when any King obtaineth by war a country whereunto he hath right by birth, that he is ever in upon his ancient right, not upon his purchase by conquest; and the reason is, that there is as well a judgment and recovery by war and arms, as by law and course of justice. For war is a tribunal-seat, wherein God giveth the judgment, and the trial is by battle, or duel, as in the case of trial of private right: and then it follows, that whosoever cometh in by eviction, comes in his *remitter*: so as there will be no difference in countries whereof the right cometh by descent, whether the possession be obtained peaceably or by war. But yet nevertheless, because I will utterly take away all manner of evasion and subterfuge, I will yet set apart that part of time, in and during the which the subjects of Gascoigne and Guienne might be thought to be subdued by a re-conquest. And therefore I will not meddle with the prior of Shelley's case, though it be an excellent case; because it was in the time of 27 E. III. neither will I meddle with any cases, records, or precedents, in the time of King H. V. or King H. VI. for the same reason; but will hold myself to a portion of time from the first uniting of these provinces in the time of King H. II. until the
time

De exceptionibus, lib. 5. fol. 427. and his words are these: *Est etiam et alia exceptio quae tenenti competit ex persona petentis, propter defectum nationis, quae dilatoria est, et non perimit actionem, ut si quis alienigena qui fuerit ad fidem regis Franciae, et actionem instituat versus aliquem, qui fuerit ad fidem regis Angliae, tali non respondeatur, saltem donec terrae fuerint communes.*

By these words it appeareth, that after the loss of the provinces beyond the seas, the naturalization of the subjects of those provinces was in no sort extinguished, but only was in suspense during the time of war, and no longer; for he saith plainly, that the exception, which we call plea, to the person of an alien, was not peremptory, but only dilatory, that is to say, during the time of war, and until there were peace concluded, which he terms by these words *donec terrae fuerint communes*: which, though the phrase seem somewhat obscure, is expounded by Bracton himself in his fourth book, fol. 297. to be of peace made and concluded, whereby the inhabitants of England and those provinces might enjoy the profits and fruits of their lands in either place *communiter*, that is, respectively, or as well the one as the other: so as it is clear they were no aliens in right, but only interrupted and debarred of suits in the King's courts in time of war.

The authority after the statute is that of Mr. Stamford, the best expositor of a statute that hath been in our law; a man of reverend judgment and excellent order in his writings; his words are in his exposition upon the branch of the statute which we read before. "By this branch it should appear, that at this time men of Normandy, Gascoigne, Guienne, Anjou, and Britain, were inheritable within this realm, as well as Englishmen, because that they were sometimes subjects to the Kings of England, and under their dominion, until King John's time, as is afore said; and yet after his time, those men, saving such whose lands were taken away for treason, were still inheritable within this realm till the making of this statute; and in the time of peace between the two Kings of England and France, they were answerable within this realm, if they had brought any action for their lands and tenements."

So as by these three authorities, every one so plainly pursuing the other, we conclude that the subjects of Gascoigne, Guienne, Anjou, and the rest, from their first union by descent, until the making of the statute of *praerogativa regis*, were inheritable in England, and to be answered in the King's courts in all actions, except it were in time of war. Nay more, which is *de abundantia*, that when the provinces were lost, and disannexed, and that the King was but King *de jure* over them, and not *de facto*; yet nevertheless the privilege of naturalization continued.

There resteth yet one objection, rather plausible to a popular understanding than any ways forcible in law or learning, which is a difference taken between the kingdom of Scotland and these duchies, for that the one is a kingdom, and the other was not so; and therefore that those provinces being of an inferior nature, did acknowledge our laws and seals, and parliament, which the kingdom of Scotland doth not.

This difference was well given over by Mr. Walter; for it is plain that a kingdom and absolute dukedom, or any other sovereign estate, do differ *honore*, and not *potestate*: for divers duchies and countries that are now, were sometimes kingdoms; and divers kingdoms that are now, were sometimes duchies, or of other inferior stile: wherein we need not travel abroad, since we have in our own

state so notorious an instance of the country of Ireland, whereof King H. VIII. of late time was the first that writ himself King, the former Rile being lord of Ireland, and no more; and yet Kings had the same authority before, that they have had since, and the same marks of a sovereign state, as their parliaments, their arms, their coins, as they now have: so as this is too superficial an allegation to labour upon.

And if any do conceive that Gascoigne and Guienne were governed by the laws of England: First, that cannot be in reason; for it is a true ground, That where-soever any prince's title unto any country is by law, he can never change the laws, for that they create his title: and therefore no doubt those duchies retained their own laws; which if they did, then they could not be subject to the laws of England. And next, again, the fact or practice was otherwise, as appeareth by all consent of story and record: for those duchies continued governed by the civil law, their trials by witnesses, and not by jury, their lands testamentary, and the like.

Now for the colours that some have endeavoured to give, that they should have been subordinate to the government of England; they were partly weak, and partly such as make strongly against them: for as to that, that writs of *Habeas corpus* under the great seal of England have gone to Gascoigne, it is no manner of proof; for that the King's writs, which are mandatory, and not writs of ordinary justice, may go to his subjects into any foreign parts whatsoever, and under what seal it pleaseth him to use. And as to that, that some acts of parliament have been cited, wherein the parliaments of England have taken upon them to order matters of Gascoigne; if those statutes be well looked into, nothing doth more plainly convince the contrary, for they intermeddle with nothing but that that concerneth either the English subjects personally, or the territories of England locally, and never the subjects of Gascoigne; for look upon the statute of 27 E. III. cap. 5 there it is said, that there shall be no forstalling of wines. But by whom? Only by English merchants; not a word of the subjects of Gascoigne, and yet no doubt they might be offenders in the same kind.

So in the sixth chapter it is said, that all merchants Gascoignes may safely bring wines into what part it shall please them: here now are the persons of Gascoignes; but then the place whither? Into the realm of England. And in the seventh chapter, that erects the parts of Bourdeaux and Bayonne for the staple towns of wine; the statute ordains "that if any," but who? "English merchant, or his servants," shall buy or bargain other where, his body shall be arrested by the steward of Gascoigne, or the constable of Bourdeaux: true, in the officers of England could not catch him in Gascoigne; but what shall become of him, shall he be proceeded with within Gascoigne? No, but he shall be sent over into England into the Tower of London.

And this doth notably disclose the reason of this custom which some have thought to swell the other way: that custom, I say, whereof a form doth yet remain, that in every parliament the King doth appoint certain commissioners in the upper-house to receive the petitions of Normandy, Guienne, and the rest, which, as by the former Statute doth appear, could not be for the ordering of the governments there, but for the fourteen had great vices of the subjects of those parts when they came

came hither, or *vice versa*, for the restraining of the abuses and misdemeanors of our subjects when they went thither.

Wherefore I am now at an end. For us to speak of the mischiefs, I hold it not fit for this place, lest we should seem to bend the laws to policy, and not to take them in their true and natural sense. It is enough that every man knows, that it is true of these two kingdoms, which a good father said of the churches of Christ: *si inæparabiles inuperabiles*. Some things I may have forgot, and some things perhaps I may forget willingly; for I will not press any opinion or declaration of late time which may prejudice the liberty of this debate; but *ex dictis, et ex non dictis*, upon the whole matter I pray judgment for the plaintiff.



A

PROPOSITION to his MAJESTY

BY

Sir FRANCIS BACON, Knight,

His MAJESTY'S Attorney-General, and one of his Privy Council ;

TOUCHING THE

COMPILING and AMENDMENT

OF THE

L A W S of E N G L A N D.

YOUR Majesty, of your favour, having made me Privy-Counsellor, and continuing me in the place of your Attorney-General, which is more than was these hundred years before, I do not understand it to be, that by putting off the dealing in causes between party and party, I should keep holy-day the more ; but that I should dedicate my time to your service with less distraction. Wherefore, in this plentiful accession of time, which I have now gained, I take it to be my duty, not only to speed your commandments and the business of my place ; but to mediate and to excogitate of myself, wherein I may best, by my travels, derive your virtues to the good of your people, and return their thanks and increase of love to you again. And after I had thought of many things, I could find, in my judgment, none more proper for your Majesty as a master, nor for me as a workman, than the reducing and recompiling of the laws of England.

Your Majesty is a King blessed with posterity ; and these Kings sort best with acts of perpetuity, when they do not leave them, instead of children ; but transmit both line and merit to future generations. You are a great master in justice and judicature, and it were pity that the fruit of that virtue should die with you. Your Majesty also reigneth in learned times ; the more, in regard of your own perfections and patronage of learning ; and it hath been the mishap of works of this nature, that the less learned time hath wrought upon the more learned, which now will not be so. As for myself the law is my profession, to which I am a debtor. Some little helps I may have of other learning, which may give form to matter ; and your Majesty hath set me in an eminent place, whereby in a work, which must be the work of many, I may the better have coadjutors. Therefore, not to hold your Majesty with any long preface, in that which I conceive to be
nothing

nothing less than words, I will proceed to the matter : which matter itself nevertheless requireth somewhat briefly to be said, both of the dignity, and likewise of the safety, and convenience of this work : and then to go to the main : that is to say, to shew how the work is to be done : which incidently also will best demonstrate, that it is no vast nor speculative thing, but real and feasible. Callisthenes, that followed Alexander's court, and was grown in some displeasure with him, because he could not well brook the Persian adoration ; at a supper, which with the Grecians was ever a great part talk, was desired, because he was an eloquent man, to speak of some theme ; which he did, and chose for his theme the praise of the Macedonian nation ; which though it were but a filling thing to praise men to their faces, yet he did it with such advantage of truth, and avoidance of flattery, and with such life, as the hearers were so ravished with it that they plucked the roses off from their garlands, and threw them upon him ; as the manner of applauses then was. Alexander was not pleased with it, and by way of discountenance said, It was easy to be a good orator in a pleasing theme : " But, saith he to Callisthenes, turn your stile, and tell us now of our faults, that we may have the profit, and not you only the praise ;" which he presently did with such a force, and so piquantly, that Alexander said, The goodness of his theme had made him eloquent before ; but now it was the malice of his heart, that had inspired him.

1. Sir, I shall not fall into either of those two extremes, concerning the laws of England ; they commend themselves best to them that understand them ; and your Majesty's chief justice of your bench hath in his writings magnified them not without cause : certainly they are wise, they are just and moderate laws ; they give to God, they give to Cæsar, they give to the subjects, that which appertaineth. It is true, they are as mixt as our language, compounded of British, Roman, Saxon, Danish, Norman customs. And as our language is so much the richer, so the laws are the more complete : neither doth this attribute less to them, than those that would have them to have stood out the same in all mutations ; for no tree is so good first set, as by transplanting.

2. As for the second extreme, I have nothing to do with it by way of taxing the laws. I speak only by way of perfecting them, which is easiest in the best things : for that which is far amiss, hardly receiveth amendment ; but that which hath already, to that more may be given. Besides, what I shall propound is not to the matter of the laws, but to the manner of their registry, expression, and tradition : so that it giveth them rather light than any new nature. This being so, for the dignity of the work I know scarcely where to find the like : for surely that scale, and those degrees of sovereign honour, are true and rightly marshalled : First the founders of states ; then the lawgivers ; then the deliverers and saviours after long calamities ; then the fathers of their countries, which are just and prudent princes ; and lastly, conquerors, which honour is not to be received amongst the rest, except it be where there is an addition of more country and territory to a better government than that was of the conquered. Of these, in my judgment, your Majesty may with more truth than flattery be intitled to the first, because of your uniting of Britain and planting Ireland ; both which favour of the founder. That which I now propound to you, may adopt you also into the second : lawgivers have been called *principes perpetui*, because as bishop Gardiner said in a bad sense, that he would be bishop an hundred years after his death, in respect of the

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the long leases he made : so lawgivers are still Kings and Rulers after their decease, in their laws. But this work, shining so in itself, needs no taper. For the safety and convenience thereof, it is good to consider, and to answer those objections or scruples which may arise or be made against this work.

Obj. I. That it is a thing needless ; and that the law, as it now is, is in good estate comparable to any foreign law ; and that it is not possible for the wit of man, in respect of the frailty thereof, to provide against the incertainties and evasions, or omissions of law.

Resp. For the comparison with foreign laws, it is in vain to speak of it ; for men will never agree about it. Our lawyers will maintain for our municipal laws ; civilians, scholars, travellers, will be of the other opinion.

But certain it is, that our laws, as they now stand, are subject to great uncertainties, and variety of opinion, delays, and evasions : whereof ensueth,

1. That the multiplicity and length of suits is great.
2. That the contentious person is armed, and the honest subject wearied and oppressed.
3. That the judge is more absolute ; who, in doubtful cases, hath a greater stroke and liberty.
4. That the chancery courts are more filled, the remedy of law being often obscure and doubtful.
5. That the ignorant lawyer shroudeth his ignorance of law, in that doubts are so frequent and many.
6. That mens assurances of their lands and estates by patents, deeds, wills, are often subject to question, and hollow ; and many the like inconveniencies.

It is a good rule and direction, for that all laws, *secundum magis et minus*, do participate of uncertainties, that followeth : Mark, whether the doubts that arise, are only in cases not of ordinary experience ; or which happen every day. If in the first only, impute it to the frailty of man's foresight, that cannot reach by law to all cases ; but, if in the latter, be assured there is a fault in the law. Of this I say no more, but that, to give every man his due, had it not been for Sir Edward Coke's *Reports*, which though they may have errors, and some peremptory and extrajudicial resolutions more than are warranted ; yet they contain infinite good decisions, and rulings over of cases ; the law, by this time, had been almost like a ship without ballast ; for that the cases of modern experience are fled from those that are adjudged and ruled in former time.

But the necessity of this work is yet greater in the statute law. For first, there are a number of ensnaring penal laws, which lie upon the subject ; and if in bad times they should be awaked and put in execution, would grind them to powder.

There is a learned civilian that expoundeth the curse of the prophet, *Pluet super eos laqueos*, of a multitude of penal laws ; which are worse than showers of hail or tempest upon cattle, for they fall upon men.

There are some penal laws fit to be retained, but their penalty too great ; and it is ever a rule, That any over-great penalty, besides the acerbity of it, deadens the execution of the law.

There is a further inconvenience of penal laws, obsolete, and out of use ; for that it brings a prejudice, neglect, and habit of disobedience upon other whole-

some

Some laws, that are fit to be continued in practice and execution; so that our laws endure the torment of Mezentius:

The living die in the arms of the dead.

Lastly, There is such an accumulation of statutes concerning one matter, and they so cross and intricate, as the certainty of law is lost in the heap; as your Majesty had experience last day upon the point, Whether the incendiary of Newmarket should have the benefit of his clergy.

Obj. II. That it is a great innovation; and innovations are dangerous beyond foresight.

Resp. All purgings and medicines, either in the civil or natural body, are innovations: so as that argument is a common place against all noble reformations. But the truth is, that this work ought not to be termed or held for any innovation in the suspected sense. For those are the innovations which are quarreled and spoken against, that concern the consciences, estates, and fortunes of particular persons: but this of general ordinance pricketh not particulars, but passeth *sine strepitu*. Besides, it is on the favourable part; for it easeth, it presseth not: and lastly, it is rather matter of order and explanation than of alteration. Neither is this without precedent in former governments.

The Romans, by their Decemvirs, did make their twelve tables; but that was indeed a new enacting or constituting of laws, not a registering or recompiling; and they were made out of the laws of the Grecians, not out of their own customs.

In Athens they had *Sexviri*, which were standing commissioners to watch and to discern what laws waxed improper for the time; and what new law did, in any branch, cross a former law, and so *ex officio*, propounded their repeals.

King Lewis XI. of France, had it in his intention to have made one perfect and uniform law, out of the civil law Roman, and the provincial customs of France.

Justinian the Emperor, by commissions directed to divers persons learned in the laws, reduced the Roman laws from vastness of volume, and a labyrinth of uncertainties, unto that course of the civil law which is now in use. I find here at home of late years, that King Henry VIII. in the twenty-seventh of his reign, was authorized by parliament to nominate thirty two commissioners, part ecclesiastical, part temporal, to purge the canon law, and to make it agreeable to the law of God, and the law of the realm; and the same was revived in the fourth year of Edward VI. though neither took effect.

For the laws of Lycurgus, Solon, Minos, and others of ancient time, they are not the worse, because grammar scholars speak of them: but things too ancient wax children with us again.

Edgar, the Saxon King, collected the laws of this kingdom, and gave them the strength of a tagg and bound, which formerly were dispersed.

The statutes of King Edward the first were fundamental. But, I doubt, I err in producing so many examples: for, as Cicero saith to Cato, so may I say to your Majesty; *Nihil est in se alienum nisi in seipso*.

Obj. III. In this purging of the courts of the common laws and statutes, much good may be taken away.

Resp. In all purging, some good humours may pass away; but that is longly recomputed by enlightning the body of much bad.

Obj.

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Obj. IV. Labour were better bestowed, in bringing the common laws of England to a text law, as the statutes are, and setting both of them down in method and by titles.

Resp. It is too long a business to debate, whether *lex scripta, aut non scripta*, a text law, or customs well registred, with received and approved grounds and maxims, and acts, and resolutions judicial, from time to time duly entered and reported, be the better form of declaring and authorising laws. It was the principal reason or oracle of Lycurgus, that none of his laws should be written. Customs are laws written in living tables, and some traditions the church doth not disauthorise. In all sciences they are the soundest, that keep close to particulars; and, sure I am, there are more doubts that rise upon our statutes, which are a text law, than upon the common law, which is no text law. But, howsoever that question be determined, I dare not advise to cast the law into a new mold. The work, which I propound, tendeth to pruning and grafting the law, and not to plowing up and planting it again; for such a remove I should hold indeed for a perilous innovation.

Obj. V. It will turn the judges, counsellors of law, and students of law to school again, and make them to seek what they shall hold and advise for law; and it will impose a new charge upon all lawyers to furnish themselves with new books of law.

Resp. For the former of those, touching the new labour, it is true it would follow, if the law were new molded into a text law; for then men must be new to begin, and that is one of the reasons for which I disallow that course.

But in the way that I shall now propound, the intire body and substance of law shall remain, only discharged of idle and unprofitable or hurtful matter; and illustrated by order and other helps, towards the better understanding of it and judgment thereupon.

For the latter, touching the new charge, it is not worthy the speaking of in a matter of so high importance; it might have been used of the new translation of the Bible, and such like works. Books must follow sciences, and not sciences books.

The work itself; and the way to reduce and recompile the LAWS of ENGLAND.

THIS work is to be done, to use some few words, which is the language of action and effect, in this manner.

It consisteth of two parts; the digest or recompiling of the common laws, and that of the statutes.

In the first of these three things are to be done:

1. The compiling of a book *De antiquitatibus juris*.
2. The reducing or perfecting of the course or corps of the common laws.
3. The composing of certain introductive and auxiliary books touching the study of the laws.

For the first of these, all ancient records in your Tower, or elsewhere, containing acts of parliament, letters, patents, commissions, and judgments, and the like, are to be searched, perused, and weighed: and out of these are to be selected those that are of most worth and weight, and in order of time, not of titles, for the more conformity with the year-books, to be set down and registred, rarely in *hæc verba*; but summed with judgment, not omitting any material part; these are to be used for reverend precedents, but not for binding authorities.

For

For the second, which in the main there is to be made a perfect course of the law *in serie temporis*, or year-books, as we call them, from Edward the First to this day: in the compiling of this course of law, or year-books, the points following are to be observed.

First, All cases which are at this day clearly no law, but constantly ruled to the contrary, are to be left out; they do but fill the volumes, and season the wits of students in a contrary sense of law. And so likewise all cases, wherein that is solemnly and long debated, whereof there is now no question at all, are to be entered as judgments only, and resolutions, but without the arguments, which are now become but frivolous: yet for the observation of the deeper sort of lawyers, that they may see how the law hath altered, out of which they may pick sometimes good use, I do advise, that upon the first in time of those obsolete cases there was a *memorandum* set, that at that time the law was thus taken, until such a time, *etc.*

Secondly, *Homonymiae*, as Justinian calleth them, that is, cases merely of iteration and repetition, are to be purged away; and the cases of identity, which are best reported and argued, to be retained instead of the rest; the judgments nevertheless to be set down, every one in time as they are, but with a quotation or reference to the case where the point is argued at large: but if the case consist part of repetition, part of new matter, the repetition is only to be omitted.

Thirdly, As to the *Antinomiae*, cases judged to the contrary, it were too great a trust to refer to the judgment of the composers of this work, to decide the law either way, except there be a current stream of judgments of later times; and then I reckon the contrary cases amongst cases obsolete, of which I have spoken before: nevertheless this diligence would be used, that such cases of contradiction be specially noted and collected, to the end those doubts, that have been so long militant, may either, by assembling all the judges in the exchequer chamber, or by parliament, be put into certainty. For to do it by bringing them in question under feigned parties, is to be disliked. *Nulla causa foret in forma.*

Fourthly, All idle queries, which are but seminaries of doubts, and uncertainties, are to be left out and omitted, and no queries set down, but of great doubts well debated and left undecided for difficulty; but no doubting or upstarting queries, which though they be touched in argument for explanation, yet were better to die than to be put into the books.

Lastly, Cases reported with too great prolixity, would be drawn into a more compendious report; not in the nature of an abridgment, but tautologies and impertinences to be cut off: as for misprinting, and insensible reporting, which many times confound the students, that will be *obiter* amended; but more principally, if there be any thing in the report which is not well warranted by the record, that is also to be rectified: the course being thus compiled, then it resteth but for your Majesty to appoint some grave and sound lawyers, with some honourable stipend, to be ^{*}reporters for the time to come, and then this is settled for all times.

FOR the auxiliary books that conduce to the study and science of the law, they are three: Institution; a treatise *De regibus juris*; and a better book: *De ver-*

* This was done by the order of the King, after I was Chancellor; and there are two printed books, each a fine printed book.

A PROPOSAL FOR AMENDING

Lex non significatio, or terms of the law. For the Institutions, I know well there be books of introductions, wherewith students begin, of good worth, especially Littleton and Fitzherbert's *Natura brevium*; but they are no ways of the nature of an institution; the office wherof is to be a key and general preparation to the reading of the courts. And principally it ought to have two properties; the one a perspicuity and clear order or method; and the other, an universal latitude or comprehensiveness, that the students may have a little perception of every thing, like a model towards a great building. For the treatise *De regulis juris*, I hold it, of all other things, the most important to the health, as I may term it, and good institutions of any laws: it is indeed like the ballast of a ship, to keep all upright and stable; but I have seen little in this kind, either in our law or other laws, that satisfieth me. The naked rule or maxim doth not the effect: It must be made useful by good differences, ampliations, and limitations, warranted by good authorities; and this not by rasing up of quotations and references, but by discourse and deducement in a just tractate. In this I have travelled myself, at the first more cursorily*, since with more diligence, and will go on with it, if God and your Majesty will give me leave. And I do assure your Majesty, I am in good hope, that when Sir Edward Coke's Reports, and my rules and decisions shall come to posterity, there will be, whatsoever is now thought, question, who was the greater lawyer? For the books Of the terms of the law, there is a poor one, but I wish a diligent one, wherein should be comprised not only the exposition of the terms of law, but of the words of all ancient records and precedents.

* See above, p. 333—372.

For the Abridgments, I could wish, if it were possible, that none might use them, but such as had read the courts first, that they might serve for repertories to learned lawyers, and not to make a lawyer in haste: but since that cannot be, I wish there were a good abridgment composed of the two that are extant, and in better order. So much for the common law.

Statute Law.

FOR the reforming and recompiling of the statute law, it consisteth of four parts.

1. The first, to discharge the books of those statutes, where the case, by alteration of time, is vanished; as Lombards Jews, Gauls half-pence, *etc.* Those may nevertheless remain in the libraries for antiquities, but no reprinting of them. The like of statutes long since expired and clearly repealed; for if the repeal be doubtful, it must be so propounded to the parliament.

2. The next is, to repeal all statutes which are sleeping and not of use, but yet snaring and in force: in some of those it will perhaps be requisite to substitute some more reasonable law, instead of them, agreeable to the time; in others a simple repeal may suffice.

3. The third, that the grievousness of the penalty in many statutes be mitigated, though the ordinance stand.

4. The last is, the reducing of concurrent statutes, heaped one upon another, to one clear and uniform law. Towards this there hath been already, upon my motion, and your Majesty's direction, a great deal of good pains taken; my Lord Hobart, myself, Serjeant Finch, Mr. Heneage Finch, Mr. Noye, Mr. Hackwell, and others, whose labours being of a great bulk, it is not fit now to trouble your

Majesty

Majesty with any further particularity therein ; only by this you may perceive the work is already advanced : but because this part of the work, which concerneth the statute laws, must of necessity come to parliament, and the houses will best like that which themselves guide, and the persons that themselves employ, the way were to imitate the precedent of the commissioners for the canon laws in 27 Hen. VIII. and 4 Edw. VI. and the commissioners for the union of the two realms, *primo* of your Majesty, and so to have the commissioners named by both houses ; but not with a precedent power to conclude, but only to prepare and propound to parliament.

This is the best way, I conceive, to accomplish this excellent work, of honour to your Majesty's times, and of good to all times ; which I submit to your Majesty's better judgment.



An OFFER to King JAMES
OF
A D I G E S T
To be made of the
L A W S of E N G L A N D.

MOST EXCELLENT SOVEREIGN,

AMONGT the degrees and acts of sovereign, or rather heroical honour, the first or second is the person and merit of a lawgiver. Princes that govern well are fathers of the people: but if a father breed his son well, or allow him well while he liveth, but leave him nothing at his death, whereby both he and his children, and his childrens children, may be the better, surely the care and piety of a father is not in him complete. So Kings, if they make a portion of an age happy by their good government, yet if they do not make testaments, as God Almighty doth, whereby a perpetuity of good may descend to their country, they are but mortal and transitory benefactors. Domitian, a few days before he died, dreamed that a golden head did rise upon the nape of his neck: which was truly performed in the golden age that followed his times for five successions. But Kings, by giving their subjects good laws, may, if they will, in their own time, join and graft this golden head upon their own necks after their death. Nay, they may make Nabuchodonozor's image of monarchy golden from head to foot. And if any of the meaner sort of politics, that are sighted only to see the worst of things, think, that laws are but cobwebs, and that good Princes will do well without them, and bad will not stand much upon them; the discourse is neither good nor wise. For certain it is, that good laws are some bridle to bad Princes, and as a very wall about government: And if tyrants sometime make a breach into them, yet they mollify even tyranny itself, as Solon's laws did the tyranny of Pisistratus: and then commonly they get up again, upon the first advantage of better times. Other means to perpetuate the memory and merits of sovereign Princes are inferior to this. Buildings of temples, tombs, palaces, theatres, and the like, are honourable things, and look big upon posterity: but Constantine the Great gave the name well to those works, when he used to call Trajan, that was a great builder, *Parietaria*, wall-flower, because his name was upon so many walls: so if that be the matter, that a King would turn wall-flower, or pellitory of the wall, with cost he may. Adrian's vein was better, for his mind was to wrestle a fall with time; and being a great progressor through all the Roman empire, whenever he found any decays of bridges, or highways, or cuts of rivers and sewers, or walls, or banks, or the like, he gave substantial order for their repair with the better. He gave also multitudes of charters and liberties for the comfort

comfort of corporations and companies in decay: so that his bounty did strive with the ruins of time. But yet this, though it were an excellent disposition, went but in effect to the cases and shells of a commonwealth. It was nothing to virtue or vice. A bad man might indifferently take the benefit and ease of his ways and bridges, as well as a good; and bad people might purchase good charters. Surely the better works of perpetuity in Princes are those, that wash the inside of the cup: such as are foundations of colleges and lectures for learning and education of youth; likewise foundations and institutions of orders and fraternities, for nobleness, enterprise, and obedience, and the like. But yet these also are but like plantations of orchards and gardens, in plots and spots of ground here and there; they do not till over the whole kingdom, and make it fruitful, as doth the establishing of good laws and ordinances; which makes a whole nation to be as a well-ordered college or foundation.

This kind of work, in the memory of times, is rare enough to shew it excellent; and yet not so rare, as to make it suspected for impossible, inconvenient, or unsafe. Moses, that gave laws to the Hebrews, because he was the scribe of God himself, is fitter to be named for honour's sake to other lawgivers, than to be numbered or ranked amongst them. Minos, Lycurgus, and Solon, are examples for themes of grammar scholars. For ancient personages and characters now-a-days use to wax children again; though that parable of Pindarus be true, the best thing is water: for common and trivial things are many times the best, and rather despised upon pride, because they are vulgar, than upon cause or use. Certain it is, that the laws of those three lawgivers had great prerogatives. The first of fame, because they were the pattern amongst the Grecians: the second of lasting, for they continued longest without alteration: the third, of a spirit of reviver, to be often oppressed, and often restored.

Amongst the seven Kings of Rome four were lawgivers: for it is most true, that a discourser of Italy saith; "there was never state so well swaddled in the infancy, as the Roman was by the virtue of their first Kings; which was a principal cause of the wonderful growth of that state in after-times."

The Decemvirs laws were laws upon laws, not the original; for they grafted laws of Græcia upon the Roman stock of laws and customs: but such was their success, as the twelve tables which they compiled were the main body of the laws which framed and wielded the great body of that estate. These lasted a long time, with some supplementals and the Pretorian edicts *in albo*; which were, in respect of laws, as writing tables in respect of brass; the one to be put in and out, as the other is permanent. Lucius Cornelius Sylla reformed the laws of Rome: for that man had three singularities, which never tyrant had but he; that he was a lawgiver, that he took part with the nobility, and that he turned private man, not upon fear, but upon confidence.

Cæsar long after desired to imitate him only in the first, for otherwise he relied upon new men; and for resigning his power Seneca describeth him right: *Caesar gladium suo condidit, nunquam posuit*. Cæsar sheathed his sword, but never put it off. And himself took it upon him, saying in scorn of Sylla's resignation; *Sylla nescivit literas, dicere non potuit*, "Sylla knew no letters, he could not dictate." But for the part of a lawgiver, Cicero giveth him the attribute; *Caesar, si ab eo quærentur, cum esset in toga, de usque rebus, et moribus et precibus iudicis*; "If you had asked Cæsar what he did in the gown, he would have answered, that

“ that he made many excellent laws.” His nephew Augustus did tread the same steps, but with deeper print, because of his long reign in peace; whereof one of the poets of his time saith,

*Pace data terris, animum ad civilia vertit
Jura suum; legesque tulit justissimus auctor.*

From that time there was such a race of wit and authority, between the commentaries and decisions of the lawyers, and the edicts of the emperors, as both law and lawyers were out of breath. Whereupon Justinian in the end recompiled both, and made a body of laws such as might be wielded, which himself calleth gloriously, and yet not above truth, the edifice or structure of a sacred temple of justice, built indeed out of the former ruins of books, as materials, and some novel constitutions of his own.

In Athens they had *Sexviri*, as Æschines observeth, which were standing commissioners, who did watch to discern what laws waxed improper for the times, and what new law did in any branch cross a former law, and so *ex officio* pronounced their repeal.

King Edgar collected the laws of this kingdom, and gave them the strength of a faggot bound, which formerly were dispersed; which was more glory to him, than his sailing about this island with a potent fleet: for that was, as the Scripture saith, *via navis in mari*, “ the way of a ship in the sea;” it vanished, but this lasteth. Alphonso the wise, the ninth of that name, King of Castile, compiled the digest of the laws of Spain, intitled the *Siete Partidas*; an excellent work, which he finished in seven years. And as Tacitus noteth well, that the capitol, though built in the beginnings of Rome, yet was fit for the great monarchy that came after; so that building of laws sufficeth the greatness of the empire of Spain, which since hath ensued.

Lewis XI. had it in his mind, though he performed it not, to have made one constant law of France, extracted out of the civil Roman law, and the customs of provinces which are various, and the King’s edicts, which with the French are statutes. Surely he might have done well, if, like as he brought the crown, as he said himself, from Page, so he had brought his people from Lackey; not to run up and down for their laws to the civil law, and the ordinances and the customs and the discretions of courts, and discourses of philosophers, as they use to do.

King Henry VIII. in the twenty seventh year of his reign, was authorized by parliament to nominate thirty-two commissioners, part ecclesiastical, and part temporal, to purge the canon law, and to make it agreeable to the law of God, and the law of the land; but it took not effect: for the acts of that King were commonly rather proffers and fumes, than either well-grounded, or well pursued: but, I doubt, I err in producing so many examples. For as Cicero said to Cæsar, so I may say to your Majesty, *Nil vulgare te dignum videri possit*. Though indeed this well understood is far from vulgar: for that the laws of the most kingdoms and states have been like buildings of many pieces, and patched up from time to time according to occasions, without frame or model.

Now for the laws of England, if I shall speak my opinion of them without partiality either to my profession or country, for the matter and nature of them, I hold them wise, just, and moderate laws: they give to God, they give to Cæsar, they give to the subject, what appertaineth. It is true they are as mixt as our language,

language, compounded of British, Roman, Saxon, Danish, Norman customs : and surely as our language is thereby so much the richer, so our laws are likewise by that mixture the more complete.

Neither doth this attribute less to them, than those that would have them to have stood out the same in all mutations. For no tree is so good first set, as by transplanting and grafting. I remember what happened to Calliithenes, that followed Alexander's court, and was grown into some displeasure with him, because he could not well brook the Persian adoration. At a supper, which with the Grecians was a great part talk, he was desired, the King being present, because he was an eloquent man, to speak of some theme, which he did ; and chose for his theme, the praise of the Macedonian nation, which though it were but a filling thing to praise men to their faces, yet he performed it with such advantage of truth, and avoidance of flattery, and with such life, as was much applauded by the hearers. The King was the less pleased with it, not loving the man, and by way of discountenance said : It was easy to be a good orator in a pleasing theme. " But," saith he to him, " turn your stile, and tell us now of our faults, that we may have the profit, and not you the praise only ;" which he presently did with such quickness, that Alexander said, That malice made him eloquent then, as the theme had done before. I shall not fall into either of these extremes, in this subject of the laws of England ; I have commended them before for the matter, but surely they ask much amendment for the form ; which to reduce and perfect, I hold to be one of the greatest dowries that can be conferred upon this kingdom : which work, for the excellency, as it is worthy your Majesty's act and times, so it hath some circumstance of propriety agreeable to your person. God hath blessed your Majesty with posterity, and I am not of opinion that Kings that are barren are fittest to supply perpetuity of generations by perpetuity of noble acts ; but contrariwise, that they that leave posterity are the more interested in the care of future times ; that as well their progeny, as their people, may participate of their merit.

Your Majesty is a great master in justice and judicature, and it were pity the fruit of that your virtue should not be transmitted to the ages to come. Your Majesty also reigneth in learned times, the more, no doubt, in regard of your own perfection in learning, and your patronage thereof. And it hath been the mishap of works of this nature, that the less learned time hath, sometimes, wrought upon the more learned, which now will not be so. As for myself, the law was my profession, to which I am a debtor : some little helps I have of other arts, which may give form to matter ; and I have now, by God's merciful chastisement, and by his special providence, time and leisure to put my talent, or half talent, or what it is, to such exchanges as may perhaps exceed the interest of an active life. Therefore, as in the beginning of my troubles I made offer to your Majesty to take pains in the story of England, and in compiling a method and digest of your laws, so have I performed the first, which rested but upon myself, in some part ;, and I do in all humbleness renew the offer of this latter, which will require help and assistance, to your Majesty, if it shall stand with your good pleasure to employ my service therein.

T H E

THE
J U D I C I A L C H A R G E
O F

Sir F R A N C I S B A C O N, Knight,
The K I N G ' s Solicitor,

Upon the commission of Oyer and Terminer held for the

V E R G E of the C O U R T.

Lex vitiorum emendatrix, virtutum commendatrix est.

YOU are to know, and consider well the duty and service to which you are called, and whereupon you are by your oath charged. It is the happy estate and condition of the subject of this realm of England, that he is not to be impeached in his life, lands, or goods, by flying rumours, or wandering fables and reports, or secret and privy inquisitions; but by the oath and presentment of men of honest condition, in the face of justice. But this happy estate of the subject will turn to hurt and inconvenience, if those that hold that part which you are now to perform, shall be negligent and remiss in doing their duty; for as of two evils it were better mens doings were looked into over-strictly and severely, than that there should be a notorious impunity of malefactors; as was well and wisely said of ancient time, “ a man were better live where nothing is lawful, than where “ all things are lawful.” This therefore rests in your care and conscience, forasmuch as at you justice begins, and the law cannot pursue and chase offenders to their deserved fall, except you first put them up and discover them, whereby they may be brought to answer; for your verdict is not concluding to condemn, but it is necessary to charge, and without it the court cannot proceed to condemn.

Considering therefore that ye are the eye of justice, ye ought to be single, without partial affection; watchful, not asleep, or false asleep in winking at offenders, and sharp-sighted to proceed with understanding and discretion: for in a word, if you shall not present unto the court all such offences, as shall appear unto you either by evidence given in, or otherwise, mark what I say, of your own knowledge, which have been committed within the verge, which is as it were the limits of your survey, but shall smother and conceal any offence willingly, then the guiltiness of others will cleave to your consciences before God; and besides, you are answerable in some degree to the king and his law for such your default and oppression
and

and therefore take good regard unto it, you are to serve the King and his people, you are to keep and observe your oath, you are to acquit yourselves.

But there is yet more cause why you should take more special regard to your presentments, than any other grand juries within the counties of this kingdom at large: for as it is a nearer degree and approach unto the King, which is the fountain of justice and government, to be the King's servant, than to be the King's subject; so this commission ordained for the King's servants and household, ought in the execution of justice to be exemplary unto other places. David saith, who was a King, "The wicked man shall not abide in my house;" as taking knowledge that it was impossible for Kings to extend their care, to banish wickedness over all their land or empire; but yet at least they ought to undertake to God for their house.

We see further, that the law doth so esteem the dignity of the King's settled mansion-house, as it hath laid unto it a plot of twelve miles round, which we call the verge, to be subject to a special and exempted jurisdiction depending upon his person and great officers. This is as a half-pace or carpet spread about the King's chair of estate, which therefore ought to be cleared and voided more than other places of the kingdom; for if offences should be shrouded under the King's wings, what hope is there of discipline and good justice in more remote parts? We see the sun, when it is at the brightest, there may be perhaps a bank of clouds in the north, or the west, or remote regions, but near his body few or none; for where the King cometh, there should come peace and order, and an awe and reverence in mens hearts.

And this jurisdiction was in ancient time executed, and since by statute ratified, by the lord steward with great ceremony, in the nature of a peculiar King's bench for the verge; for it was thought a kind of eclipsing to the King's honour, that where the King was, any justice should be sought but immediately from his own officers. But in respect that office was oft void, this commission hath succeeded, which change I do not dislike; for though it hath less state, yet it hath more strength legally: therefore I say, you that are a jury of the verge, should lead and give a pattern unto others in the care and conscience of your presentments.

Concerning the particular points and articles whereof you shall inquire, I will help your memory and mine own with order; neither will I load you, or trouble myself with every branch of several offences, but stand upon those that are principal and most in use: the offences therefore that you are to present are of four natures.

- I. The first, such as concern God and his church.
- II. The second, such as concern the King and his state.
- III. The third, such as concern the King's people, and are capital.
- IV. The fourth, such as concern the King's people, not capital.

The service of almighty God, upon whose blessing the peace, safety, and good estate of King and kingdom doth depend, may be violated, and God dishonoured in three manners, by profanation, by contempt, and by division, or breach of unity.

First, if any-man hath depraved or abused in word or deed the blessed sacrament, or disturbed the preacher or congregation in the time of divine service; or if any have maliciously striken with weapon, or drawn weapon in any church

Articuli super
Cnatas, c. 3.
13 R. 2. c. 3.
33 H. 8. c. 12.

Profanations,
1 E. 6. c. 1.
11. c. 2.
11. c. 3.

5 E. 6. c. 4.
13 E. 1.
Stat. of Win-
ton.

or church-yard; or if any fair or market have been kept in any church-yard, these are profanations within the purview of several statutes, and those you are to present: for holy things, actions, times, and sacred places, are to be preserved in reverence and divine respect.

Contempts,
name, Re-
cusancy.

For contempts of our church and service, they are comprehended in that known name, which too many, if it pleased God, bear, recusancy; which offence hath many branches and dependencies: the wife-recusant, she tempts; the church-papist, he feeds and relieves; the corrupt schoolmaster, he soweth tares; the disssembler, he conformeth and doth not communicate. Therefore if any person, man or woman, wife or sole, above the age of sixteen years, not having some lawful excuse, have not repaired to church according to the several statutes; the one, for the weekly, the other, for the monthly repair, you are to present both the offence and the time how long. Again, such as maintain, relieve, keep in service of livery recusants, though themselves be none, you are likewise to present; for these be like the roots of nettles, which sting not themselves, but bear and maintain the stinging leaves: so if any that keepeth a schoolmaster that comes not to church, or is not allowed by the bishop, for that infection may spread far: so such recusants as have been convicted and conformed, and have not received the sacrament once a year, for that is the touch-stone of their true conversion: and of these offences of recusancy take you special regard. Twelve miles from court is no region for such subjects. In the name of God, why should not twelve miles about the King's chair be as free from papist-recusants, as twelve miles from the city of Rome, the Pope's chair, is from protestants? There be hypocrites and atheists, and so I fear there be amongst us; but no open contempt of their religion is endured. If there must be recusants, it were better they lurked in the country, than here in the bosom of the kingdom.

Breach of
unity.

For matter of division and breach of unity, it is not without a mystery that Christ's coat had no seam, nor no more should the church if it were possible. Therefore if any minister refuse to use the book of Common-prayer, or wilfully swerveth in divine service from that book; or if any person whatsoever do scandalize that book, and speak openly and maliciously in derogation of it; such men do but make a rent in the garment, and such are by you to be inquired of. But much more, such as are not only differing, but in a sort opposite unto it, by using a superstitious and corrupted form of divine service; I mean, such as say or hear mass.

These offences which I have recited to you, are against the service and worship of God: there remain two which likewise pertain to the dishonour of God; the one, is the abuse of his name by perjury; the other, is the adhering to God's declared enemies, evil and out-cast spirits, by conjuration and witchcraft.

Perjury.

For perjury, it is hard to say whether it be more odious to God, or pernicious to man; for an oath, saith the apostle, is the end of controversies: if therefore that boundary of suits be taken away or mis-set, where shall be the end? Therefore you are to inquire of wilful and corrupt perjury in any of the King's courts, yea of court-barons and the like, and that as well of the actors, as of the procurer and suborner.

Conjuration
and witch-
craft.
1 Jac. c. 1. 2.

For witchcraft, by the former law it was not death, except it were actual and gross invocation of evil spirits, or making covenant with them, or taking away life by witchcraft: but now by an act in his Majesty's times, charms and juggles in
certain,

certain cafes of procuring of unlawful love or bodily hurt, and ſome others, are made felony the ſecond offence; the firſt being imprifonment and pillory.

And here I do conclude my firſt part concerning religion and eccleſiaſtical cauſes; wherein it may be thought that I do forget matters of ſupremacy, or of Jeſuits, and ſeminaries, and the like, which are uſually ſorted with cauſes of religion: but I muſt have leave to direct myſelf according to mine own perſuaſion, which is, that, whatſoever hath been ſaid or written on the other ſide, all the late ſtatutes, which inflict capital puniſhment upon extollers of the Pope's ſupremacy, deniers of the King's ſupremacy, Jeſuits and ſeminaries, and other offenders of that nature, have for their principal ſcope, not the puniſhment of the error of conſcience, but the reſpreſſing of the pearl of the eſtate. This is the true ſpirit of theſe laws, and therefore I will place them under my ſecond diviſion, which is of offences that concern the King and his eſtate, to which now I come.

Supremacy
connected with
offences of
religion.

THESE offences therefore reſpect either the ſafety of the King's perſon, or the ſafety of his eſtate and kingdom, which though they cannot be delivered in deed, yet they may be diſtinguiſhed in ſpeech. Firſt then, if any have conſpired againſt the life of the King, which God have in his cuſtody! or of the Queen's Majeſty, or of the moſt noble Prince their eldeſt ſon; the very compaſſing and inward imagination thereof is high treaſon, if it can be proved by any fact that is overt: for in the caſe of ſo ſudden, dark, and pernicious, and peremptory attempts, it were too late for the law to take a blow before it gives; and this high treaſon of all other is moſt hainous, of which you ſhall inquire, though I hope there be no cauſe.

The King and
the ſtate.

The King's
perſon.

There is another capital offence that hath an affinity with this, whereof you here within the verge are moſt properly to inquire; the King's privy-council are as the principal watch over the ſafety of the King, ſo as their ſafety is a portion of his: if therefore any of the King's ſervants within his cheque-roll, for to them only the law extends, have conſpired the death of any the King's privy-council, this is felony, and thereof you ſhall inquire.

Privy-council.

And ſince we are now in that branch of the King's perſon, I will ſpeak alſo of the King's perſon by representation, and the treaſons which touch the ſame.

Representa-
tion of his
perſon.

The King's perſon and authority is repreſented in three things; in his ſeals, in his monies, and in his principal magiſtrates: if therefore any have counterfeited the King's great ſeal, privy ſeal, or ſeal manual; or counterfeited, clipped, or ſcaled his monies, or other monies current, this is high treaſon; ſo is it to kill certain great officers or judges executing their office.

We will paſs now to thoſe treaſons which concern the ſafety of the King's eſtate, which are of three kinds, anſwering to three perils which may happen to an eſtate; theſe perils are, foreign invaſion, open rebellion and ſedition, and privy practice to alienate and eſtrange the hearts of the ſubjects, and to prepare them either to adhere to enemies, or to burſt out into tumults and commotions of themſelves.

The eſtate.

Therefore if any perſon have ſolicited or procured any invaſion from foreigners; or if any have combined to raiſe and ſtir the people to rebellion within the realm, theſe are high treaſons, tending to the overthrow of the eſtate of this commonwealth, and to be inquired of.

Invaſion and
rebellion.

The third part of practice hath divers branches, but one principal root in theſe our times, which is the vaſt and over-ſpreading ambition and uſurpation of the ſeignors.

Uſurpation of
the ſeignors.

of Rome : for the Pope of Rome is, according to his late challenges and pretences, became a competitor and corrival with the King, for the hearts and obediences of the King's subjects : he stands for it, he sends over his love-tokens and brokers, under colour of conscience, to steal and win away the hearts and allegiances of the people, and to make them as fuel ready to take fire upon any his commandments. This is that yoke which this kingdom hath happily cast off, even at such time when the popish religion was nevertheless continued, and that divers states, which are the Pope's vassals, do likewise begin to shake off.

Secretary, If therefore any person have maintained and extolled the usurped authority of the bishop of Rome within the King's dominions, by writing, preaching, or deed, advisedly, directly and maliciously; or if any person have published or put in use any of the Pope's bulls or instruments of absolution; or if any person have withdrawn, and reconciled, any of the King's subjects from their obedience, or been withdrawn and reconciled; or if any subject have refused the second time to take the oath of supremacy lawfully tendred; or if any Jesuit or seminary come and abide within this realm; these are by several statutes made cases of high treason, 28 El. cap. 1. the law accounting these things as preparatives, and the first wheels and secret motions of seditions and revolts from the King's obedience. Of these you are to inquire, both of the actors and of their abettors, comforters, receivers, maintainers; 13 El. cap. 2. and concealers, which in some cases are traitors, as well as the principal, in some cases in *praemunire*, in some other, in misprision of treason, which I will not stand to distinguish, and in some other, felony; as namely, that of the receiving and relieving of Jesuits and priests; the bringing in and dispersing of *Agnus Dei's*, crosses, pictures, or such trash, is likewise *praemunire*; and so is the denial to take the oath of supremacy the first time.

Military men. And because in the disposition of a state to troubles and perturbations, military men are most tickle and dangerous; therefore if any of the King's subjects go over to serve in foreign parts, and do not first endure the touch, that is, take the oath of allegiance; or if he have born office in any army, and do not enter into bond with sureties as is prescribed, this is made felony; and such as you shall inquire.

Prophesies. Lastly, because the vulgar people are sometimes led with vain and fond prophecies; if any such shall be published, to the end to move stirs or tumults, this is not felony, but punished by a year's imprisonment and loss of goods: and of this also shall you inquire.

You shall likewise understand that the escape of any prisoner committed for treason, is treason; whereof you are likewise to inquire.

The people's capital. Now come I to the third part of my division: that is, those offences which concern the King's people, and are capital; which nevertheless the law terms offences against the crown, in respect of the protection that the King hath of his people, and the interest he hath in them and their welfare; for touch them, touch the King. These offences are of three natures: the first concerneth the conservation of their lives; the second, of honour and honesty of their persons and families; and the third, of their substance.

Life. First for life. I must say unto you in general, that life is grown too cheap in these times, it is set at the price of words, and every petty scorn and disgrace can have no other reputation; nor so many mens lives are taken away with im-

punity, that the very life of the law is almost taken away, which is the execution; and therefore though we cannot restore the life of those men that are slain, yet I pray let us restore the law to her life, by proceeding with due severity against the offenders; and most especially this plot of ground, which, as I said, is the King's carpet, ought not to be stained with blood, crying in the ears of God and the King. It is true nevertheless, that the law doth make divers just differences of life taken away; but yet no such differences as the wanton humours and brave-ries of men have under a reverend name of honour and reputation invented.

The highest degree is where such a one is killed, unto whom the offender did bear faith and obedience; as the servant to the master, the wife to the husband, the clerk to the prelate; and I shall ever add, for so I conceive of the law, the child to the father or the mother; and this the law terms petty treason.

The second is, Where a man is slain upon fore-thought malice, which the law terms murder; and it is an offence horrible and odious, and cannot be blanced, nor made fair, but foul.

The third is, Where a man is killed upon a sudden heat or affray, whereunto the law gives some little favour, because a man in fury is not himself, *ira furor brevis*, wrath is a short madness; and the wisdom of law in his Majesty's time hath made a sub-division of the stab given, where the party stabbed is out of defence, and had not given the first blow, from other manslaughters. 1 Jac. cap. 6.

The fourth degree is, That of killing a man in the party's own defence, or by misadventure, which though they be not felonies, yet nevertheless the law doth not suffer them to go unpunished; because it doth discern some sparks of a bloody mind in the one, and of carelessness in the other.

And the fifth is, Where the law doth admit a kind of justification, not by plea, for a man may not, that hath shed blood, affront the law with pleading not guilty. but when the case is found by verdict, being disclosed upon the evidence; as where a man in the King's highway and peace is assailed to be murdered or robbed; or when a man defending his house, which is his castle, against unlawful violence; or when a sheriff or minister of justice is killed in the execution of his office; or when the patient dieth in the chirurgeon's hands, upon cutting or otherwise: for these cases the law doth privilege, because of the necessity, and because of the innocency of the intention.

Thus much for the death of man, of which cases you are to inquire; together with the accessories before and after the fact.

For the second kind, which concerneth the honour and chancellies of persons and families; you are to inquire of the ravishment of women, of the taking of women life out of the possession of their parents or guardians against their will, or murdering them, or abusing them; of double marriages, where there was not first seven years absence, and no notice that the party so absent was alive, and other felonies against the honesty of life. 1 Jac. cap. 11.

For the third kind, which concerneth mens substance, you shall inquire of bur- Substance.glaries, robberies, cutting of purses, and taking of any thing from the person; and generally other felonies, as well in the open place, as where they are committed, whereof I will by and by speak: but first I must require you to use diligence in presenting especially those purloinings and imbezlements, which are of plate, vessel, or whatsoever within the King's house. The King's house is an open place; it ought to be kept safe by law, and not by lock, and therefore needeth the more severity.

Now

28 E. 1. *Ar-*
restis super
chartas, c. 2.
31 E. 1. c. 4.
33 H. 6. c. 1.
21 H. 8. c. 7.

Now for coloured and disguised robberies; I will name two or three of them: the parveyor that takes without warrant, is no better than a thief, and it is felony. The servant that hath the keeping of his Majesty's goods, and going away with them, though he came to the possession of them lawfully, it is felony. Of these you shall likewise inquire, principals and accessories. The voluntary escape of a felon is also felony.

The people,
not capital.

FOR the last part, which is of offences concerning the people not capital, they are many: but I will select only such as I think fittest to be remembered unto you, still dividing, to give you the better light. They are of four natures.

1. The first, is matter of force and outrage.
2. The second, matter of fraud and deceit.
3. Public nuisances and grievances.
4. The fourth, breach and inobservance of certain wholesome and politic laws for government.

Force.

For the first, you shall inquire of riots and unlawful assemblies, of forcible entries, and detainers with force; and properly of all assaults of striking, drawing weapon or other violence within the King's house, and the precincts thereof: for the King's house, from whence example of peace should flow unto the farthest parts of the kingdom, as the ointment of Aaron's head to the skirts of his garment, ought to be sacred and inviolate from force and brawls, as well in respect of reverence to the place, as in respect of danger of greater tumult, and of ill example to the whole kingdom; and therefore in that place all should be full of peace, order, regard, forbearance, and silence.

Besides open force, there is a kind of force that cometh with an armed hand, but disguised, that is no less hateful and hurtful; and that is, abuse and oppression by authority. And therefore you shall inquire of all extortions in officers and ministers; as sheriffs, bailiffs of hundreds, escheators, coroners, constables, ordinaries, and others, who by colour of office do poll the people.

For frauds and deceits, I do chiefly commend to your care the frauds and deceits in that which is the chief means of all just contract and permutation, which is, weights and measures; wherein, although God hath pronounced that a false weight is an abomination, yet the abuse is so common and so general, I mean of weights, and I speak upon knowledge and late examination, that if one were to build a church, he should need but false weights, and not seek them far, of the piles of brass to make the bells, and the weights of lead to make the battlements: and herein you are to make special inquiry, whether the clerk of the market within the verge, to whom properly it appertains, hath done his duty.

Nuisance.

For nuisances and grievances, I will for the present only single out one, that ye present the decays of highways and bridges; for where the Majesty of a King's house draws recourse and access, it is both disgraceful to the King, and disagreeable to the people, if the ways near-about be not fair and good; wherein it is strange to see the chargeable pavements and causeways in the avenues and entrances of towns abroad beyond the seas; whereas London, the second city at the least of Europe, in glory, in greatness, and in wealth, cannot be discerned by the fairness of the ways, though a little perhaps by the broadness of them, from a village.

For the last part, because I put these things over briefly, I will make mention unto you of three laws.

1. The

1. The one, concerning the King's pleasure.
2. The second, concerning the people's food.
3. And the third, concerning wares and manufactures.

You shall therefore inquire of the unlawful taking partridges and pheasants or King's pleasure fowl, the destruction of the eggs of the wild-fowl, the killing of hares or deer, ^{fur.} and the felling of venison or hares: for that which is for exercise and sport and courtesy should not be turned to gluttony and sale victual.

You shall also inquire whether bakers and brewers keep their assize, and whether as well they as butchers, innholders and victuallers, do sell that which is wholesome, and at reasonable prices, and whether they do link and combine to raise prices.

Lately, you shall inquire whether the good statute be observed, whereby a man ^{Manufactures.} may have that he thinketh he hath, and not be abused or mis-served in that he buys: I mean that statute that requireth that none use any manual occupation but ^{5 Eliz. c. 4.} such as have been seven years apprentice to it; which law being generally transgressed, makes the people buy in effect chaff for corn; for that which is mis-wrought will mis-wear.

There be many more things inquirable by you throughout all the former parts, which it were over-long in particular to recite. You may be supplied either out of your own experience, or out of such bills and informations as shall be brought unto you, or upon any question that you shall demand of the court, which will be ready to give you any farther direction as far as is fit: but these which I have gone through, are the principal points of your charge; which to present, you have taken the name of God to witness; and in the name of God: perform it.



A

C H A R G E

DELIVERED BY

Sir FRANCIS BACON, Knight,

The KING'S Solicitor-General,

A T

The Arraignment of the Lord SANQUHAR,

In the King's Bench at Westminster.

T H E A R G U M E N T.

The Lord Sanquhar, a Scotch nobleman, having, in private revenge, suborned Robert Carlile to murder John Turner, master of sence, thought, by his greatness, to have born it out; but the King, respecting nothing so much as justice, would not suffer nobility to be a shelter for villainy; but, according to law, on the 29th of June 1612, the said Lord Sanquhar, having been arraigned and condemned, by the name of Robert Creighton, Esq; was before Westminster-hall Gate executed, where he died very penitent. At whose arraignment my Lord Bacon, then Solicitor-General to King James, made this speech following:

IN this cause of life and death, the jury's part is in effect discharged; for after a frank and formal confession, their labour is at an end: so that what hath been said by Mr. Attorney, or shall be said by myself, is rather convenient than necessary.

My lord Sanquhar, your fault is great, and cannot be extenuated, and it need not be aggravated; and if it needed, you have made so full an anatomy of it out of your own feeling, as it cannot be touched by myself, or any man else, out of conceit; so as that part of aggravation I leave. Nay, more, this christian and penitent course of yours draws me thus far, that I will agree, in some sort extenuates it: for certainly, as even in extreme evils there are degrees; so this particular of your offence is such, as though it be foul spilling of blood, yet there are more foul: for if you had sought to take away a man's life for his vineyard, as Ahab did; or for envy, as Cain did; or to possess his bed, as David did; surely the murder had been more odious.

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Your temptation was revenge, which the more natural it is to man, the more have laws both divine and human sought to repress it; *Mibi vindicta*. But in one thing you and I shall never agree, that generous spirits, you say, are hard to forgive: no, contrariwise, generous and magnanimous minds are readiest to forgive; and it is a weakness and impotency of mind to be unable to forgive;

Corpora magnanimo satis est prostrata leoni.

But howsoever murders may arise from several motives, less or more odious, yet the law both of God and man involves them in one degree, and therefore you may read that in Joab's case, which was a murder upon revenge, and matcheth with your case; he for a dear brother, and you for a dear part of your own body; yet there was a severe charge given, it should not be unpunished.

And certainly the circumstance of time is heavy upon you: it is now five years since this unfortunate man Turner, be it upon accident, or be it upon despite, gave the provocation, which was the seed of your malice. All passions are suaged with time: love, hatred, grief; all fire itself burns out with time, if no new fuel be put to it. Therefore for you to have been in the gall of bitterness so long, and to have been in a restless chace of this blood so many years, is a strange example; and I must tell you plainly, that I conceive you have sucked those affections of dwelling in malice, rather out of Italy, and outlandish manners, where you have conversed, than out of any part of this island, England or Scotland.

But that which is fittest for me to spend time in, the matter being confessed, is to set forth and magnify to the hearers the justice of this day; first of God, and then of the King.

My lord, you have friends and entertainments in foreign parts; it had been an easy thing for you to set Carlile, or some other bloodhound on work, when your person had been beyond the seas; and so this news might have come to you in a packet, and you might have looked on how the storm would pass: but God bereaved you of this foresight, and closed you here under the hand of a King, that though abundant in clemency, yet is no less zealous of justice.

Again, when you came in at Lambeth, you might have persisted in the denial of the procurement of the fact; Carlile, a resolute man, might perhaps have cleared you, for they that are resolute in mischief, are commonly obstinate in concealing the procurers, and so nothing should have been against you but presumption. But then also God, to take away all obstruction of justice, gave you the grace, which ought indeed to be more true comfort to you, than any device whereby you might have escaped, to make a clear and plain confession.

Other impediments there were, not a few, which might have been an interruption to this day's justice, had not God in his providence removed them.

But, now that I have given God the honour, let me give it likewise where it is next due, which is, to the King our sovereign.

This murder was no sooner committed, and brought to his Majesty's ears, but his just indignation, wherewith he first was moved, cast itself into a great deal of care and providence to have justice done. First came forth his proclamation, somewhat of a rare form, and devised, and in effect dictated by his Majesty himself; and by that he did prosecute the offenders, as it were with the breath and blast of his mouth. Then did his Majesty stretch forth his long arms, for Kings have long arms when they will extend them, one of them to the sea, where he took hold of Grey shipped for Sweden, who gave the first sight of testimony; the

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other arm to Scotland, and took hold of Carlile, ere he was warm in his house, and brought him the length of his kingdom under such safe watch and custody, as he could have no means to escape, no nor to mischief himself, no nor learn any lessons to stand mute; in which cases, perhaps, this day's justice might have received a stop. So that I may conclude his Majesty hath shewed himself God's true lieutenant, and that he is no respecter of persons; but the English, Scottish, nobleman, fencer, are to him alike in respect of justice.

Nay, I must say farther, that his Majesty hath had, in this, a kind of prophetic spirit; for what time Carlile and Grey, and you, my lord, yourself, were fled no man knew whither, to the four winds, the King ever spake in a confident and undertaking manner, that wheresoever the offenders were in Europe, he would produce them forth to justice; of which noble word God hath made him master.

Lastly, I will conclude towards you, my lord, that though your offence hath been great, yet your confession hath been free, and your behaviour and speech full of discretion; and this shews, that though you could not resist the tempter, yet you bear a christian and generous mind, answerable to the noble family of which you are descended. This I commend unto you, and take it to be an assured token of God's mercy and favour, in respect whereof all worldly things are but trash; and so it is fit for you, as your state now is, to account them. And this is all I will say for the present.

[*Note*, The reader, for his fuller information in this story of the lord Sanquhar, is desired to peruse the case in the ninth book of the lord Coke's Reports; at the end of which the whole series of the murder and trial is exactly related.]



THE
C H A R G E
O F
Sir FRANCIS BACON, Knight,
The KING's Attorney-General,
T O U C H I N G
D U E L S.
U P O N

An Information in the Star-Chamber against Priest and Wright.

With the DECREE of the Star-Chamber in the same Cause.

MY LORDS,

I Thought it fit for my place, and for these times, to bring to hearing before your lordships some cause touching private duels, to see if this court can do any good to tame and reclaim that evil which seems unbridled. And I could have wished that I had met with some greater persons, as a subject for your censure, both because it had been more worthy of this presence, and also the better to have shewed the resolution myself hath to proceed without respect of persons in this business: but finding this cause on foot in my predecessor's time, and published and ready for hearing, I thought to lose no time in a mischief that groweth every day: and besides, it passes not amiss sometimes in government, that the greater sort be admonished by an example made in the meaner, and the dog to be beaten before the lion. Nay, I should think, my lords, that men of birth and quality will leave the practice when it begins to be vilified, and come so low as to barber-surgeons and butchers, and such base mechanical persons.

And for the greatness of this presence, in which I take much comfort, both as I consider it in itself, and much more in respect it is by his Majesty's direction, I will supply the meanness of the particular cause by handling of the general point: to the end, that by the occasion of this present cause, both my purpose of prosecution against duels, and the opinion of the court, without which I am nothing, for the censure of them, may appear, and thereby offenders in that kind may read their own case, and know what they are to expect; which may serve for a warn-

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ing until example may be made in some greater person: which I doubt the times will but too soon afford.

Therefore before I come to the particular, whereof your lordships are now to judge, I think it time best spent to speak somewhat.

First, Of the nature and greatness of this mischief.

Secondly, Of the causes and remedies.

Thirdly, Of the justice of the law of England, which some stick not to think defective in this matter.

Fourthly, Of the capacity of this court, where certainly the remedy of this mischief is best to be found.

And fifthly, Touching mine own purpose and resolution, wherein I shall humbly crave your lordships aid and assistance.

For the mischief itself, it may please your lordships to take into your consideration that when revenge is once extorted out of the magistrates hands, contrary to God's ordinance, *Mibi vindicta, ego retribuam*, and every man shall bear the sword, not to defend, but to assail; and private men begin once to presume to give law to themselves, and to right their own wrongs, no man can foresee the danger and inconveniencies that may arise and multiply thereupon. It may cause sudden storms in court, to the disturbance of his Majesty, and unsafety of his person: it may grow from quarrels to bandying, and from bandying to trooping, and so to tumult and commotion; from particular persons to dissension of families and alliances; yea, to national quarrels, according to the infinite variety of accidents, which fall not under foresight: so that the state by this means shall be like to a ditterpered and imperfect body, continually subject to inflammations and convulsions.

Besides, certainly, both in divinity and in policy, offences of presumption are the greatest. Other offences yield and consent to the law that it is good, not daring to make defence, or to justify themselves; but this offence expressly gives the law an affront, as if there were two laws, one a kind of gown-law, and the other a law of reputation, as they term it; so that Paul's and Westminster, the pulpit and the courts of justice, must give place to the law, as the King speaketh in his proclamation, of ordinary tables, and such reverend assemblies: the year-books and statute-books must give place to some French and Italian pamphlets, which handle the doctrine of duels, which if they be in the right, *transseamus ad illa*, let us receive them, and not keep the people in conflict and distraction between two laws.

Again, my lords, it is a miserable effect, when young men full of towardness and hope, such as the poets call *aurorae filii*, sons of the morning, in whom the expectation and comfort of their friends consisteth, shall be cast away and destroyed in such a vain manner; but much more it is to be deplored when so much noble and genteel blood should be spilt upon such follies, as, if it were adventured in the field in service of the King and realm, were able to make the fortune of a day, and to change the fortune of a kingdom. So as your lordships see what a desperate evil this is; it troubleth peace, it dis-furnisheth war, it bringeth calamity upon private men, peril upon the state, and contempt upon the law.

Touching the causes of it; the first motive, no doubt, is a false and erroneous imagination of honour and credit; and therefore the King, in his last proclamation, doth most aptly and excellently call them bewitching duels. For, if one judge of
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it truly, it is no better than a forcery that enchanteth the spirits of young men, that bear great minds with a false shew, *species falsa*; and a kind of satanical illusion and apparition of honour against religion, against law, against moral virtue, and against the precedents and examples of the best times and valiantest nations; as I shall tell you by and by, when I shall shew you that the law of England is not alone in this point.

But then the seed of this mischief being such, it is nourished by vain discourses, and green and unripe conceits, which nevertheless have so prevailed, as though a man were staid and sober-minded, and a right believer touching the vanity and unlawfulness of these duels; yet the stream of vulgar opinion is such, as it imposeth a necessity upon men of value to conform themselves, or else there is no living or looking upon mens faces: so that we have not to do, in this case, so much with particular persons, as with unsound and depraved opinions, like the dominations and spirits of the air which the Scripture speaketh of.

Hereunto may be added, that men have almost lost the true notion and understanding of fortitude and valour. For fortitude distinguisheth of the grounds of quarrels whether they be just; and not only so, but whether they be worthy; and setteth a better price upon mens lives than to bestow them idly: nay, it is weakness and disesteem of a man's self, to put a man's life upon such lieder performances: a man's life is not to be trifled away; it is to be offered up and sacrificed to honourable services, public merits, good causes, and noble adventures. It is in expence of blood as it is in expence of money; it is no liberality to make a profusion of money upon every vain occasion, nor no more it is fortitude to make effusion of blood, except the cause be of worth. And thus much for the causes of this evil.

For the remedies, I hope some great and noble person will put his hand to this plough, and I wish that my labours of this day may be but forerunners to the work of a higher and better hand. But yet to deliver my opinion as may be proper for this time and place, there be four things that I have thought on, as the most effectual for the repressing of this depraved custom of particular combats.

The first is, that there do appear and be declared a constant and settled resolution in the state to abolish it. For this is a thing, my lords, must go down at once, or not at all; for then every particular man will think himself acquitted in his reputation, when he sees that the state takes it to heart, as an insult against the King's power and authority, and thereupon hath absolutely resolved to master it; like unto that which was set down in express words in the edict of Charles IX. of France touching duels, that the King himself took upon him the honour of all that took themselves grieved or interested for not having performed the combat. So must the state do in this business; and in my conscience there is none that is but of a reasonable sober disposition, be he never so valiant, except it be some furious person that is like a firework, but will be glad of it, when he shall see the law and rule of state disinterest him of a vain and unnecessary hazard.

Secondly, Care must be taken that this evil be no more cockered, nor the humour of it fed; wherein I humbly pray your lordships that I may speak my mind freely, and yet be understood aright. The proceedings of the great and noble commissioners martial I honour and reverence much, and of them I speak not in any sort; but I fly the compounding of quarrels, which is otherwise in use by private

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vate noblemen and gentlemen, it is so punctual, and hath such reference and respect unto the received conceits, what's before-hand, and what's behind-hand, and I cannot tell what, as without all question it doth, in a fashion, countenance and authorize this practice of duels, as if it had in it somewhat of right.

Thirdly, I must acknowledge that I learned out of the King's last proclamation, the most prudent and best applied remedy for this offence, if it shall please his Majesty to use it, that the wit of man can devise. This offence, my Lords, is grounded upon a false conceit of honour, and therefore it would be punished in the same kind, *in eo quis rectissime plectitur, in quo peccat*. The fountain of honour is the King and his aspect, and the access to his person continueth honour in life, and to be banished from his presence is one of the greatest eclipses of honour that can be; if his Majesty shall be pleased that when this court shall censure any of these offences in persons of eminent quality, to add this out of his own power and discipline, that these persons shall be banished and excluded from his court for certain years, and the courts of his Queen and prince, I think there is no man that hath any good blood in him will commit an act that shall cast him into that darkness, that he may not behold his sovereign's face.

Lastly, And that which more properly concerneth this court: we see, my Lords, the root of this offence is stubborn; for it despiseth death, which is the utmost of punishments; and it were a just but a miserable severity, to execute the law without all remission or mercy, where the case proveth capital. And yet the late severity in France was more, where, by a kind of martial law, established by ordinance of the King and parliament, the party that had slain another was presently had to the gibbet, inasmuch as gentlemen of great quality were hanged, their wounds bleeding, lest a natural death should prevent the example of justice. But, my Lords, the course which we shall take is of far greater lenity, and yet of no less efficacy; which is to punish, in this court, all the middle acts and proceedings which tend to the duel, which I will enumerate to you anon, and so to hew and vex the root in the branches, which, no doubt, in the end will kill the root, and yet prevent the extremity of law.

Now for the law of England, I see it excepted to, though ignorantly, in two points:

The one, That it should make no difference between an insidious and foul murder, and the killing of a man upon fair terms, as they now call it.

The other, That the law hath not provided sufficient punishment, and reparations, for contumely of words, as the lye, and the like.

But these are no better than childish novelties against the divine law, and against all laws in effect, and against the examples of all the bravest and most virtuous nations of the world.

For first, for the law of God, there is never to be found any difference made in homicide, but between homicide voluntary, and involuntary, which we term misadventure. And for the case of misadventure itself, there were cities of refuge; so that the offender was put to his flight, and that flight was subject to accident, whether the revenger of blood should overtake him before he had gotten sanctuary or no. It is true that our law hath made a more subtle distinction between the will inflamed and the will advised, between manslaughter in heat and murder upon premeditated malice or cold blood, as the soldiers call it, an indulgence
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not unfit for a choleric and warlike nation; for it is true, *ira furor brevis*; a man in fury is not himself. This privilege of passion the ancient Roman law restrained, but to a case: that was, if the husband took the adulterer in the manner; to that rage and provocation only it gave way, that an homicide was justifiable. But for a difference to be made in case of killing and destroying man, upon a fore-thought purpose, between foul and fair, and as it were between single murder and viad murder, it is but a monstrous child of this latter age, and there is no shadow of it in any law divine or human. Only it is true, I find in the Scripture that Cain incited his brother into the field and slew him treacherously; but Lamech vaunted of his manhood, that he would kill a young man, and if it were to his hurt: so as I see no difference between an insidious murder and a braving or presumptuous murder, but the difference between Cain and Lamech.

As for examples in civil states, all memory doth content, that Græcia and Rome were the most valiant and generous nations of the world; and, that which is more to be noted, they were free estates, and not under a monarchy; whereby a man would think it a great deal the more reason that particular persons should have righted themselves; and yet they had not this practice of duels, nor any thing that bare shew thereof: and sure they would have had it, if there had been any virtue in it. Nay, as he saith, *Fas est et ab hoste doceri*. It is memorable, that is reported by a counsellor ambassador of the emperor's, touching the censure of the Turks of these duels: there was a combat of this kind performed by two persons of quality of the Turks, wherein one of them was slain, the other party was convented before the council of bashaws; the manner of the reprehension was in these words: "How durst you undertake to fight one with the other? Are there not Christians enough to kill? Did you not know that whether of you shall be slain, the loss would be the Great Seignior's?" So as we may see that the most warlike nations, whether generous or barbarous, have ever despised this wherein now men glory.

It is true, my lords, that I find combats of two natures authorized, how justly I will not dispute as to the latter of them.

The one, when upon the approaches of armies in the face one of the other, particular persons have made challenges for trial of valours in the field upon the public quarrel.

This the Romans called *Pugna per provocationem*. And this was never, but either between the generals themselves, who were absolute, or between particulars by licence of the generals; never upon private authority. So you see David asked leave when he fought with Goliah; and Joab, when the armies were met, gave leave, and said, "Let the young men play before us." And of this kind was that famous example in the wars of Naples, between twelve Spaniards and twelve Italians, where the Italians bare away the victory; besides other infinite like examples worthy and laudable, sometimes by singles, sometimes by numbers.

The second combat is a judicial trial of right, where the right is obscure, introduced by the Goths and the Northern nations, but more anciently entertained in Spain; and this yet remains in some cases as a divine lot of battle, though controverted by divines, touching the lawfulness of it: so that a wise writer saith, *Taliter pugnantes videntur tentare Deum, quia hoc volunt ut Deus ostendat et faciat miraculum, ut justam causam habens victor efficiatur, quod sæpe contra accidit*. But
howsoever

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howsoever it be, this kind of fight taketh its warrant from law. Nay, the French themselves, whence this folly seemeth chiefly to have flown, never had it but only in practice and toleration, and never as authorized by law; and yet now of late they have been fain to purge their folly with extreme rigour, in so much as many gentlemen left between death and life in the duels, as I spake before, were hastened to hanging with their wounds bleeding. For the state found it had been neglected to bring, as nothing could be thought cruelly which tended to the putting of it down.

As for the second defect pretended in our law, that it hath provided no remedy for lyes and fillips, it may receive like answer. It would have been thought a madness amongst the ancient lawgivers, to have set a punishment upon the lye given, which in effect is but a word of denial, a negative of another's saying. Any lawgiver, if he had been asked the question, would have made Solon's answer: That he had not ordained any punishment for it, because he never imagined the world would have been so fantastical as to take it so highly. The civilians, they dispute whether an action or injury lie for it, and rather resolve the contrary. And Francis the first of France, who first set on and stamped this disgrace so deep, is taxed by the judgment of all wise writers for beginning the vanity of it; for it was he, that when he had himself given the lye and defy to the Emperor, to make it current in the world, said in a solemn assembly, "That he was no honest man that would bear the lye:" which was the fountain of this new learning.

As for words of reproach and contumely, whereof the lye was esteemed none, it is not credible, but that the orations themselves are extant, what extreme and exquisite reproaches were tossed up and down in the senate of Rome and the places of assembly, and the like in Grecia, and yet no man took himself fouled by them, but took them but for breath, and the stile of an enemy, and either despised them or returned them, but no blood spilt about them.

So of every touch or light blow of the person, they are not in themselves considerable, save that they have got upon them the stamp of a disgrace, which maketh these light things pass for great matter. The law of England, and all laws, hold these degrees of injury to the person, slander, battery, maim, and death; and if there be extraordinary circumstances of despite and contumely, as in case of libels, and bastinadoes, and the like, this court taketh them in hand and punisheth them exemplarily. But for this apprehension of a disgrace, that a fillip to the person should be a mortal wound to the reputation, it were good that men did hearken unto the saying of Consalvo, the great and famous commander, that was wont to say, a gentleman's honour should be *deft in a cap*, or a good strong warp or web, that every little thing should not catch in it; when as now it seems they are but of cobweb-lawn or such light stuff, which certainly is weakness, and not true greatness of mind, but like a sick man's body, that is so tender that it feels every thing. And so much in maintenance and demonstration of the wisdom and justice of the law of the land.

For the capacity of this court, I take this to be a ground infallible: that wheresoever an offence is capital, or matter of felony, though it be not acted, there the combination or practice tending to that offence is punishable in this court as a high rate misdemeanor. So practice to imprison, though it took no effect; waylaying

to murder, though it took no effect, and the like; have been adjudged hainous misdemeanors punishable in this court. Nay, inceptions and preparations in inferior crimes, that are not capital, as suborning and preparing of witnesses that were never deposed, or deposed nothing material, have likewise been censured in this court, as appeareth by the decree in Garnon's case.

Why then, the major proposition being such, the minor cannot be denied: for every appointment of the field is but combination and plotting of murder; let them gild it how they list, they shall never have fairer terms of me in place of justice. Then the conclusion followeth, that it is a case fit for the censure of the court. And of this there be precedents in the very point of challenge.

It was the case of Wharton, plaintiff against Ellekar and Acklam defendants, where Acklam being a follower of Ellekar's, was censured for carrying a challenge from Ellekar to Wharton, though the challenge was not put in writing, but delivered only by word of message; and there are words in the decree, that such challenges are to the subversion of government.

These things are well known, and therefore I needed not so much to have insisted upon them, but that in this case I would be thought not to innovate any thing of my own head, but to follow the former precedents of the court, though I mean to do it more thoroughly, because the time requires it more.

Therefore now to come to that which concerneth my part; I say, that by the favour of the King and the court, I will prosecute in this court in the cases following.

If any man shall appoint the field, though the fight be not acted or performed.

If any man shall send any challenge in writing, or any message of challenge.

If any man carry or deliver any writing or message of challenge.

If any man shall accept or return a challenge.

If any man shall accept to be a second in a challenge of either side.

If any man shall depart the realm, with intention and agreement to perform the fight beyond the seas.

If any man shall revive a quarrel by any scandalous bruits or writings, contrary to a former proclamation published by his Majesty in that behalf.

Nay, I hear there be some counsel learned of duels, that tell young men when they are before-hand, and when they are otherwise, and thereby incense and incite them to the duel, and make an art of it; I hope I shall meet with some of them too: and I am sure, my lords, this course of preventing duels in nipping them in the bud, is fuller of clemency and providence than the suffering them to go on, and hanging men with their wounds bleeding, as they did in France.

To conclude, I have some petitions to make first to your lordship, my lord chancellor, that in case I be advertised of a purpose in any to go beyond the sea to fight, I may have granted his Majesty's writ of *Ne exeat regnum* to stop him, for this giant bestrideth the sea, and I would take and snare him by the foot on this side; for the combination and plotting is on this side, though it should be acted beyond sea. And your lordship said notably the last time I made a motion in this business, that a man may be as well *fur de se*, as *felo de se*, if he steal out of the realm for a bad purpose; as for the satisfying of the words of the writ, no man will doubt but he doth *machinari contra coronam*, as the words of the writ be, that seeketh to murder a subject; for that is ever *contra coronam et dignitatem*. I have

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also a suit to your lordships all in general, that for justice sake, and for true honour's sake, honour of religion, law, and the King our master, against this fond and false disguise or puppetry of honour, I may in my prosecution, which, it is like enough, may sometimes stir coals, which I esteem not for my particular, but as it may hinder the good service, I may, I say, be countenanced and assisted from your lordships. Lastly, I have a petition to the nobles and gentlemen of England, that they would learn to esteem themselves at a just price. *Non hos quaesitum munus in usus*, their blood is not to be spilt like water or a vile thing; therefore that they would rest persuaded there cannot be a form of honour, except it be upon a worthy matter. But for this, *ipsi viderint*, I am resolved. And thus much for the general, now to the present case.



T H E

DECREE of the Star-Chamber against D U E L S.

In Camera stellata coram concilio ibidem, 26 Januarii, 11 Jac. regis.

P R E S E N T.

George Lord Archbishop of Canterbury.	William Lord Knolles, Treasurer of the Household.
Thomas Lord Ellesmere, Lord Chancellor of England.	Edward Lord Wotton, Comptroller.
Henry Earl of Northampton, Lord Privy Seal.	John Lord Stanhope, Vice-chamberlain.
Charles Earl of Nottingham, Lord High Admiral of England.	Sir Edward Coke, Knight, Lord Chief Justice of England.
Thomas E. of Suffolk, Lord Chamberlain.	Sir Henry Hobart, Knight, Lord Chief Justice of the Common-pleas.
John Lord Bishop of London.	Sir Julius Cæsar, Knight, Chancellor of the Exchequer.
Edward Lord Zouch.	

THIS day was heard and debated at large the several matters of informations here exhibited by Sir Francis Bacon, knight, his Majesty's attorney-general, the one against William Priest, gentleman, for writing and sending a letter of challenge, together with a stick, which should be the length of the weapon: and the other against Richard Wright, esquire, for carrying and delivering the said letter and stick unto the party challenged, and for other contemptuous and insolent behaviour used before the justices of the peace in Surry at their sessions, before whom he was convented. Upon the opening of which cause, his Highness's said attorney-general did first give his reason to the court, why, in a case which he intended should be a leading case for the repressing of so great a mischief in the commonwealth, and concerning an offence which reigneth chiefly amongst persons of honour and quality, he should begin with a cause which had passed between so mean persons as the defendants seemed to be; which he said was done, because he found this cause ready published, and in so growing an evil, he thought good to lose no time; whereunto he added, that it was not amiss sometimes to beat the dog before the lion; saying farther, that he thought it would be some motive for persons of high birth and countenance to leave it, when they saw it was taken up by base and mechanical fellows; but concluded, that he resolved to proceed without respect of persons for the time to come, and for the present to supply the meanness of this particular case by insisting the longer upon the general point.

Wherein he did first express unto the court at large the greatness and dangerous consequence of this presumptuous offence, which extorted revenge out of the magistrate's hands, and gave boldness to private men to be lawgivers to themselves; the rather, because it is an offence that doth justify itself against the law, and plainly gives the law an affront; describing also the miserable effect which it draweth upon private families, by cutting off young men, otherwise of good

hope; and chiefly the loss of the King and the commonwealth, by the casting away of much good blood, which, being spent in the field upon occasion of service, were able to continue the renown which this kingdom hath obtained in all ages, of being esteemed victorious.

Secondly, his Majesty's said attorney-general did discourse touching the causes and remedies of this mischief that prevailed so in these times; shewing the ground thereof to be a false and erroneous imagination of honour and credit, according to the term which was given to those duels by a former proclamation of his Majesty's, which called them bewitching duels, for that it was no better than a kind of sorcery, which enchanteth the spirits of young men, which bear great minds, with a shew of honour in that which is no honour indeed; being against religion, law, moral virtue, and against the precedents and examples of the best times, and valiantest nations of the world; which though they excelled for prowess and military virtue in a public quarrel, yet know not what these private duels meant; saying farther, that there was too much way and countenance given unto these duels, by the court that is held by noblemen and gentlemen in compounding of quarrels, who use to stand too punctually upon conceits of satisfactions and distinctions, what is before-hand, and what behind-hand, which do but feed the humour: adding likewise, that it was no fortitude to shew valour in a quarrel, except there were a just and worthy ground of the quarrel; but that it was weakness to set a man's life at so mean a rate as to bestow it upon trifling occasions, which ought to be rather offered up and sacrificed to honourable services, public merits, good causes, and noble adventures. And as concerning the remedies, he concluded, that the only way was, that the state would declare a constant and settled resolution to master and put down this presumption in private men, of whatsoever degree, of writing their own wrongs, and this to do at once; for that then every particular man would think himself acquitted in his reputation, when that he shall see that the state takes his honour into their own hands, and standeth between him and any interest or prejudice, which he might receive in his reputation for obeying: whereunto he added likewise, that the wisest and mildest way to suppress these duels, was rather to punish in this court all the acts of preparation, which did in any wise tend to the duels, as this of challenges and the like, and so to prevent the capital punishment, and to vex the root in the branches, than to suffer them to run on to the execution, and then to punish them capitally after the manner of France; where of late times gentlemen of great quality that had killed others in duel, were carried to the gibbet with their wounds bleeding, lest a natural death should keep them from the example of justice.

Thirdly, His Majesty's said attorney-general did, by many reasons which he brought and alledged, free the law of England from certain vain and childish exceptions, which are taken by these duellists: the one, because the law makes no difference in punishment between an insidious and foul murder, and the killing a man upon challenge and fair terms, as they call it. The other, for that the law hath not provided sufficient punishment and reparation for contumely of words, as the lye, and the like; wherein his Majesty's said attorney-general did shew, by many weighty arguments and examples, that the law of England did consent with the law of God and the law of nations in both these points, and that this distinction in murder between foul and fair, and this grounding of mortal quarrels upon uncivil and reproachful words, or the like disgraces, was never authorized by any
law

law or ancient examples ; but it is a late vanity crept in from the practice of the French, who themselves since have been so weary of it, as they have been forced to put it down with all severity.

Fourthly, His Majesty's said Attorney-general did prove unto the court by rules of law and precedents, that this court hath capacity to punish sending and accepting of challenges, though they were never acted nor executed ; taking for a ground infallible, that wheretoever an offence is capital or matter of felony, if it be acted and performed, there the conspiracy, combination, or practice tending to the same offence, is punishable as a high misdemeanor, although they never were performed. And therefore, that practice to impoison, though it took no effect, and the like, have been punished in this court ; and cited the precedent in Garnon's case, wherein a crime of a much inferior nature, the suborning and preparing of witnesses, though they never were deposed, or deposed nothing material, was censured in this court : whereupon he concluded, that for as much as every appointment of the field is in law but a combination of plotting of a murder, howsoever men might gild it ; that therefore it was a case fit for the censure of this court : and therein he vouched a precedent in the very point, that in a case between Wharton plaintiff, and Ellekar and Acklam defendants ; Acklam being a follower of Ellekar, had carried a challenge unto Wharton ; and although it were by word of mouth, and not by writing, yet it was severely censured by the court ; the decree having words, that such challenges do tend to the subversion of government. And therefore his Majesty's attorney willed the standers-by to take notice that it was no innovation that he brought in, but a proceeding according to former precedents of the court, although he purposed to follow it more thoroughly than had been done ever heretofore, because the times did more and more require it. Lastly, his Majesty's said attorney-general did declare and publish to the court in several articles, his purpose and resolution in what cases he did intend to prosecute offences of that nature in this court ; that is to say, that if any man shall appoint the field, although the fight be not acted or performed ; if any man shall send any challenge in writing or message of challenge ; if any man shall carry or deliver any writing or message of challenge ; if any man shall accept or return a challenge ; if any man shall accept to be a second in a challenge of either part ; if any man shall depart the realm with intention and agreement to perform the fight beyond the seas ; if any man shall revive a quarrel by any scandalous bruits or writings contrary to a former proclamation, published by his Majesty in that behalf ; that in all these cases his Majesty's attorney-general, in discharge of his duty, by the favour and assistance of his Majesty and the court, would bring the offenders, of what state or degree soever, to the justice of this court, leaving the lords commissioners martial to the more exact remedies : adding farther, that he heard there were certain counsel learned of duels, that tell young men when they are before-hand, and when they are otherwise, and did incense and incite them to the duel, and made an art of it ; who likewise should not be forgotten. And so concluded with two petitions, the one in particular to the lord chancellor, that in case advertisement were given of a purpose in any to go beyond the seas to fight, there might be granted his Majesty's writ of *Ne exeat regnum* against him ; and the other to the lords in general, that he might be assisted and countenanced in this service.

After

After which opening and declaration of the general cause, his Majesty's said attorney did proceed to set forth the proofs of this particular challenge and offence now in hand, and brought to the judgment and censure of this honourable court; whereupon it appeared to this honourable court by the confession of the said defendant Priest himself, that he having received some wrong and disgrace at the hands of one Hutcheft, did thereupon, in revenge thereof, write a letter to the said Hutcheft, containing a challenge to fight with him at single rapier, which letter the said Priest did deliver to the said defendant Wright, together with a stick containing the length of the rapier, wherewith the said Priest meant to perform the fight. Whereupon the said Wright did deliver the said letter to the said Hutcheft and did read the same unto him; and after the reading thereof, did also deliver to the said Hutcheft the said stick, saying, that the same was the length of the weapon mentioned in the said letter. But the said Hutcheft, dutifully respecting the preservation of his Majesty's peace, did refuse the said challenge, whereby no farther mischief did ensue thereupon.

This honourable court, and all the honourable presence this day sitting, upon grave and mature deliberation, pondering the quality of these offences, they generally approved the speech and observations of his Majesty's said attorney-general, and highly commended his great care and good service in bringing a cause of this nature to public punishment and example, and in professing a constant purpose to go on in the like course with others: letting him know, that he might expect from the court all concurrence and assistance in so good a work. And thereupon the court did by their several opinions and sentences declare how much it imported the peace and prosperous estate of his Majesty and his kingdom to nip this practice and offence of duels in the head, which now did over-spread and grow universal, even among mean persons, and was not only entertained in practice and custom, but was framed into a kind of art and precepts: so that, according to the saying of the Scripture, *mischief is imagined like a law*. And the court with one consent did declare their opinions: That by the ancient law of the land, all inceptions, preparations, and combinations to execute unlawful acts, though they never be performed, as they be not to be punished capitally, except it be in case of treason, and some other particular cases of statute law; so yet they are punishable as misdemeanors and contempts: and that this court was proper for offences of such nature; especially in this case, where the bravery and insolency of the times are such as the ordinary magistrates and justices that are trusted with the preservation of the peace, are not able to master and repress those offences, which were by the court at large set forth, to be not only against the law of God, to whom, and his substitutes, all revenge belongeth, as part of his prerogative, but also against the oath and duty of every subject unto his Majesty, for that the subject doth swear unto him by the ancient law allegiance of life and member; whereby it is plainly inferred, that the subject hath no disposing power over himself of life and member to be spent or ventured according to his own passions and fancies, insomuch as the very practice of chivalry in jousts and tournaments, which are but images of martial actions, appear by ancient precedents not to be lawful without the King's licence obtained. The court also noted, that these private duels or combats were of another nature from the combats which have been allowed by the law as well of this land as of other nations for the trial of rights or

4. p. 441.

appeals. For that those combats receive direction and authority from the law; whereas these contrariwise spring only from the unbridled humours of private men. And as for the pretence of honour, the court much misliking the confusion of degrees which is grown of late, every man assuming unto himself the term and attribute of honour, did utterly reject and condemn the opinion that the private duel, in any person whatsoever, had any grounds of honour; as well because nothing can be honourable that is not lawful, and that it is no magnanimity or greatness of mind, but a swelling and tumour of the mind, where there faileth a right and sound judgment; as also for that it was rather justly to be esteemed a weakness, and a conscience of small value in a man's self to be dejected so with a word or trifling disgrace, as to think there is no re-cure of it, but by the hazard of life; whereas true honour in persons that know their own worth is not of any such brittle substance, but of a more strong composition. And finally, the court shewing a firm and settled resolution to proceed with all severity against these duels, gave warning to all young noblemen and gentlemen, that they should not expect the like connivance or toleration as formerly have been, but that justice should have a full passage without protection or interruption. Adding, that after a strait inhibition, whosoever should attempt a challenge or combat, in case where the other party was restrained to answer him, as now all good subjects are, did by their own principles receive the dishonour and disgrace upon himself.

And for the present cause, the court hath ordered, adjudged, and decreed, that the said William Priest and Richard Wright be committed to the prison of the Fleet, and the said Priest to pay five hundred pounds, and the said Wright five hundred marks, for their several fines to his Majesty's use. And to the end, that some more public example may be made hereof amongst his Majesty's people, the court hath further ordered and decreed, that the said Priest and Wright shall at the next assizes, to be holden in the county of Surry, publicly, in face of the court, the judges sitting, acknowledge their high contempt and offence against God, his Majesty, and his laws, and shew themselves penitent for the same.

Moreover, the wisdom of this high and honourable court thought it meet and necessary that all sorts of his Majesty's subjects should understand and take notice of that which hath been said and handled this day touching this matter, as well by his Highness's attorney-general, as by the lords judges, touching the law in such cases. And therefore the court hath enjoined Mr. Attorney to have special care to the penning of this decree, for the setting forth in the same summarily the matters and reasons, which have been opened and delivered by the court touching the same; and nevertheless also at some time convenient to publish the particulars of his speech and declaration, as very meet and worthy to be remembered and made known unto the world, as these times are. And this decree, being in such sort carefully drawn and penned, the whole court though it meet, and so have ordered and decreed, that the same be not only read and published at the next assizes for Surry, at such time as the said Priest and Wright are to acknowledge their offences as aforesaid; but that the same be likewise published and made known in all shires of this kingdom. And to that end the justices of assize are required by this honourable court to cause this decree to be solemnly read and published in all the places and sittings of their several circuits, and in the greatest assembly; to the end, that all his Majesty's subjects may take knowledge and understand

derstand the opinion of this honourable court in this case, and in what measure his Majesty and this honourable court purposeth to punish such as shall fall into the like contempt and offences hereafter. Lastly, this honourable court much approving that which the right honourable Sir Edward Coke, knight, lord Chief Justice of England, did now deliver touching the law in this case of duels, hath enjoined his lordship to report the same in print, as he hath formerly done divers other cases, that such as understand not the law in that behalf, and all others, may better direct themselves, and prevent the danger thereof hereafter.



T H E
C H A R G E
O F
Sir F R A N C I S B A C O N, Knight,
His M A J E S T Y ' s Attorney-General,
A G A I N S T
W I L L I A M T A L B O T,
A Counsellor at Law, of Ireland,

Upon an information in the Star-Chamber *Ore tenus*, for a writing under his hand, whereby the said William Talbot being demanded, Whether the doctrine of Suarez, touching deposing and killing of Kings excommunicated, were true or no? he answered, That he referred himself unto that which the catholic Roman church should determine thereof.

Ultimo die termini Hilarii, undecimo Jacobi Regis.

MY LORDS,

I Brought before you the first sitting of this term the cause of duels; but now this last sitting I shall bring before you a cause concerning the greatest duel which is in the Christian world, the duel and conflict between the lawful authority of sovereign Kings, which is God's ordinance for the comfort of human society, and the swelling pride and usurpation of the see of Rome *in temporalibus*, tending altogether to anarchy and confusion. Wherein if this pretence in the Pope of Rome, by cartels to make sovereign princes as the banditti, and to proscribe their lives, and to expose their kingdoms to prey; if these pretences, I say, and all persons that submit themselves to that part of the Pope's power in the least degree, be not by all possible severity repressed and punished, the state of Christian Kings will be no other than the ancient torment described by the poets in the hell of the heathen; a man sitting richly robed, solemnly attended, delicious fare, *etc.* with a sword hanging over his head, hanging by a small thread, ready every moment to be cut down by an accursing and accursed hand. Surely I had thought they had been the prerogatives of God alone, and of his secret judgments: *Solvam cingula regum, I will loosen the girdles of Kings*; or again, *Ile periret contemptu upon princes*; or *I will give a King in my wrath, and take him away again in my displeasure*; and the

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like : but if these be the claims of a mortal man, certainly they are but the mysteries of that person which *exalts himself above all that is called God, supra omne quod dicitur Deus*. Note it well, not above God, though that in a sense be true, but above all that is called God ; that is, lawful Kings and magistrates.

But, my lords, in this duel I find this Talbot, that is now before you, but a coward ; for he hath given ground, he hath gone backward and forward ; but in such a fashion, and with such interchange of repenting and relapsing, as I cannot tell whether it doth extenuate or aggravate his offence. If he shall more publicly in the face of the court fall and settle upon a right mind, I shall be glad of it ; and he that would be against the King's mercy, I would he might need the King's mercy : but nevertheless the court will proceed by rules of justice.

The offence therefore wherewith I charge this Talbot, prisoner at the bar, is this in brief and in effect : That he hath maintained, and maintaineth under his hand, a power in the Pope for the deposing and murdering of Kings. In what sort he doth this, when I come to the proper and particular charge, I will deliver it in his own words without pressing or straining.

But before I come to the particular charge of this man, I cannot proceed so coldly ; but I must express unto your lordships the extreme and imminent danger wherein our dear and dread Sovereign is, and in him we all ; nay, all Princes of both religions, for it is a common cause, do stand at this day, by the spreading and enforcing of this furious and pernicious opinion of the pope's temporal power : which though the modest sort would blanch with the distinction of *in ordine ad spiritualia*, yet that is but an elusion ; for he that maketh the distinction, will also make the case. This peril, though it be in itself notorious, yet because there is a kind of dulness, and almost a lethargy in this age, give me leave to set before you two glasses, such as certainly the like never met in one age ; the glass of France, and the glass of England. In that of France the tragedies acted and executed in two immediate Kings ; in the glass of England, the same, or more horrible, attempted likewise in a Queen and King immediate, but ending in a happy deliverance. In France, Henry III. in the face of his army, before the walls of Paris, stabbed by a wretched Jacobine frier. Henry IV. a prince that the French do surname the Great, one that had been a saviour and redeemer of his country from infinite calamities, and a restorer of that monarchy to the ancient state and splendor, and a prince almost heroicall, except it be in the point of revolt from religion, at a time when he was as it were to mount on horseback by the commanding of the great forces that of long time had been levied in France, this King likewise affected by a rural votary, which had been a ceremonial and conjured for the purpose.

In England, Queen Elizabeth, of blessed memory, a Queen comparable and to be ranked with our great Kings, surrounded attentively by like youths, Sempronius, Parry, Savage, and others, but still protected by the virtues of our lives and honors. Again, our excellent Sovereign King James, the Reverend and Christian of whose nature were enough to quench and smother all malignity, and a King thuddeat and supported by posterity ; yet this King in the chair of Majesty, his youth and brave branches about him, surrounded by his nobles and third estate in parliament, ready, in the twinkling of an eye, as if it had been a particular commodity, to have been brought to ashes, dispersed to the four winds. I noted the last day, my lord chief justice, when he spake of this powder treason, he libeled for
words,

words; though they came from him with great efficacy, yet he truly confessed, and so must all men, that that treason is above the charge and report of any words whatsoever.

Now, my lords, I cannot let pass, but in these glasses which I spake of, besides the facts themselves and danger, to shew you two things; the one, the ways of God Almighty, which turneth the sword of Rome upon the Kings that are the vassals of Rome, and over them gives it power; but protecteth those Kings which have not accepted the yoke of his tyranny, from the effects of his malice: the other, that, as I said at first, this is a common cause of Princes; it involveth Kings of both religions; and therefore his Majesty did most worthily and prudently ring out the alarm-bell, to awake all other Princes to think of it seriously, and in time. But this is a miserable case the while, that these Roman soldiers do either thrust the spear into the sides of God's anointed, or at least they crown them with thorns; that is, piercing and pricking cares and fears, that they can never be quiet or secure of their lives or states. And as this peril is common to Princes of both religions, so Princes of both religions have been likewise equally sensible of every injury that touched their temporals.

Thuanus reports in his story, that when the realm of France was interdicted by the violent proceedings of Pope Julius the second, the King, otherwise noted for a moderate Prince, caused coins of gold to be stamped with his own image, and this superscription, *Perdam nomen Babylonis è terra*. Of which Thuanus saith, himself had seen divers pieces thereof. So as this catholic King was so much incensed at that time, in respect of the Pope's usurption, as he did apply Babylon to Rome. Charles the fifth, emperor, who was accounted one of the Pope's best sons, yet proceeded in matter temporal towards Pope Clement with strange rigour: never regarding the pontificality, but kept him prisoner thirteen months in a pestilent prison; and was hardly dissuaded by his council from having sent him captive into Spain; and made sport with the threats of Frosberg the German, who wore a silk rope under his cassock, which he would shew in all companies; telling them that he carried it to strangle the Pope with his own hands. As for Philip the Fair, it is the ordinary example, how he brought Pope Boniface the eighth to an ignominious end, dying mad and enraged; and how he stiled his rescript to the Pope's bull, whereby he challenged his temporals, *Sciat fatuus regno*, not your beatitude, but your stultitude; a stile worthy to be continued in the like cases; for certainly that claim is mere folly and fury. As for native examples here, it is too long a field to enter into them. Never Kings of any nation kept the partition-wall between temporal and spiritual better in times of greatest superstition: I report me to King Edward I. that set up so many crosses, and yet crossed that part of the Pope's jurisdiction, no man more strongly. But these things, have passed better pens and speeches: here I end them.

But now to come to the particular charge of this man, I must inform your lordships the occasion and nature of this offence: There hath been published lately to the world a work of Suarez a Portuguese, a professor in the university of Coimbra, a confident and daring writer, such an one as Tully describes in denition; *non tam verens, quam ne dubitare aliqua de re videretur*: one that fears nothing but this, lest he should seem to doubt of any thing. A fellow that thinks with his magistrality and goose-quill to give laws and menages to crowns and scepters. In this man's writings this doctrine of deposing or murdering Kings, seems to come

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to a higher elevation than heretofore; and it is more arted and posited than in others. For in the passages which your lordships shall hear read anon, I find three assertions which run not in the vulgar track, but are such as wherewith mens ears, as I suppose, are not much acquainted; whereof the first is, That the Pope hath a superiority over Kings, as subjects, to depose them; not only for spiritual crimes, as heresy and schism, but for faults of a temporal nature; forasmuch as a tyrannical government tendeth ever to the destruction of souls. So by this position, Kings of either religion are alike comprehended, and none exempted. The second, that after a sentence given by the Pope, this writer hath defined of a series, or succession, or substitution of hangmen, or *bourreaux*, to be sure, lest an executioner should fail. For he saith, That when a King is sentenced by the Pope to deprivation or death, the executioner, who is first in place, is he to whom the Pope shall commit the authority, which may be a foreign prince, it may be a particular subject, it may be general, to the first undertaker. But if there be no direction or assignation in the sentence special nor general, then, *de jure*, it appertains to the next successor, a natural and pious opinion; for commonly they are sons, or brothers, or near of kin, all is one: so as the successor be apparent; and also that he be a catholic. But if he be doubtful, or that he be no catholic, then it devolves to the commonalty of the kingdom; so as he will be sure to have it done by one minister or other. The third is, he distinguisheth of two kinds of tyrants, a tyrant in title, and a tyrant in regiment; the tyrant in regiment cannot be resisted or killed without a sentence precedent by the Pope; but a tyrant in title may be killed by any private man whatsoever. By which doctrine he hath put the judgment of Kings titles, which I will undertake are never so clean but that some vain quarrel or exception may be made unto them, upon the fancy of every private man; and also couples the judgment and execution together, that he may judge him by a blow, without any other sentence.

Your lordships see what monstrous opinions these are, and how both these beasts, the beast with seven heads, and the beast with many heads, Pope and people, are at once let in, and set upon the sacred persons of Kings.

Now to go on with the narrative; there was an extract made of certain sentences and portions of this book, being of this nature that I have set forth, by a great prelate and counsellor, upon a just occasion; and there being some hollownes and hesitation in these matters, wherein it is a thing impious to doubt, discovered and perceived in Talbot; he was asked his opinion concerning these assertions, in the presence of the best: and afterwards they were delivered to him, that upon advice, and *sedato animo*, he might declare himself. Whereupon, under his hand, he subscribes thus;

Most honorable and excellent lordships: Concerning the doctrine of Suarez, I do protest, by what I have read in this book, that the same doth concern matter of faith, the controversies growing upon exposition of Scripture and councils, wherein, being ignorant and unskilled, I cannot take upon me to judge; but I do submit my opinion therein to the judgment of the catholic Roman church, as in all other points concerning faith I do. And for matter concerning my loyalty, I do acknowledge my Sovereign Liege Lord King James, to be lawful and undoubted King of all the Kingdoms of England, Scotland, and Ireland; and I will bear true faith and allegiance to his Highness during my life.

WILLIAM TALBOT.

My

My lords, upon these words I conceive Talbot hath committed a great offence, and such a one, as if he had entered into a voluntary and malicious publication of the like writing, it would have been too great an offence for the capacity of this court. But because it grew by a question asked by a council of estate, and so rather seemeth, in a favourable construction, to proceed from a kind of submission to answer, than from any malicious or insolent will; it was fit, according to the clemency of these times, to proceed in this manner before your lordships: and yet let the hearers take these things right; for certainly, if a man be required by the council to deliver his opinion whether King James be King or no? and he deliver his opinion that he is not, this is high treason: but I do not say that these words amount to that; and therefore let me open them truly to your lordships, and therein open also the understanding of the offender himself, how far they reach.

My lords, a man's allegiance must be independent and certain, and not dependent and conditional. Elizabeth Barton, that was called the holy maid of Kent, affirmed, that if King Henry VIII. did not take Catharine of Spain again to his wife within a twelvemonth, he should be no King: and this was treason. For though this act be contingent and future, yet the preparing of the treason is present.

And in like manner, if a man should voluntarily publish or maintain, that whosoever a bull of deprivation shall come forth against the King, that from thenceforth he is no longer King; this is of like nature. But with this I do not charge you neither; but this is the true latitude of your words, That if the doctrine touching the killing of Kings be matter of faith, then you submit yourself to the judgment of the catholic Roman church: so as now, to do you right, your allegiance doth not depend simply upon a sentence of the Pope's deprivation against the King; but upon another point also, if these of doctrines be already, or shall be declared to be matter of faith. But, my lords, there is little won in this: there may be some difference to the guilt of the party, but there is little to the danger of the King. For the same Pope of Rome may, with the same breath, declare both. So as still, upon the matter, the King is made but tenant at will of his life and kingdoms; and the allegiance of his subjects is pinned upon the Pope's acts. And certainly it is time to stop the current of this opinion of acknowledgment of the Pope's power *in temporalibus*; or else it will sap and supplant the seat of Kings. And let it not be mistaken, that Mr. Talbot's offence should be no more than the refusing the oath of allegiance. For it is one thing to be silent, and another thing to affirm. As for the point of matter of faith, or not of faith, to tell your lordships plain, it would astonish a man to see the gulf of this implied belief. Is nothing excepted from it? If a man should ask Mr. Talbot, Whether he do condemn murder, or adultery, or rape, or the doctrine of Mahomet, or of Arius, instead of Suarez? Must the answer be with this exception, that if the question concern matter of faith, as no question it doth, for the moral law is matter of faith, that therein he will submit himself to what the church shall determine? And, no doubt, the murder of princes is more than simple murder. But to conclude, Talbot, I will do you this right, and I will not be reserved in this, but to declare that, that is true; that you came afterwards to a better mind; wherein, if you had been constant, the King, out of his

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his great goodness, was resolved not to have proceeded with you in course of justice : but then again you started aside like a broken bow. So that by your variety and vacillation you lost the acceptable time of the first grace, which was not to have convented you.

Nay, I will go farther with you : your last submission I conceive to be satisfactory and complete ; but then it was too late, the King's honour was upon it ; it was published and a day appointed for hearing ; yet what preparation that may be to the second grace of pardon, that I know not : but I know my lords, out of their accustomed favour, will admit you not only to your defence concerning that that hath been charged ; but to extenuate your fault by any submission that now God shall put into your mind to make.



THE
C H A R G E

GIVEN BY

Sir FRANCIS BACON, Knight,
His MAJESTY'S Attorney-General,

Against Mr. OLIVER ST. JOHN, for scandalizing and traducing in the public sessions, letters sent from the lords of the council touching the benevolence.

MY LORDS,

I Shall inform you *ore tenus*, against this gentleman Mr. I. S. a gentleman, as it seems, of an ancient house and name; but, for the present, I can think of him by no other name, than the name of a great offender. The nature and quality of his offence, in sum, is this: This gentleman hath, upon advice, not suddenly by his pen, nor by the slip of his tongue; not privately, or in a corner, but publicly, as it were, to the face of the King's ministers and justices, slandered and traduced the King our sovereign, the law of the land, the parliament, and infinite particulars of his Majesty's worthy and loving subjects. Nay, the slander is of that nature, that it may seem to interest the people in grief and discontent against the state; whence might have ensued matter of murmur and sedition. So that it is not a simple slander, but a seditious slander, like to that the poet speaketh of, — *Calamosque armare veneno*. A venomous dart that hath both iron and poison.

To open to your lordships the true state of this offence, I will set before you, first, the occasion whereupon Mr. I. S. wrought: then the offence itself in his own words: and lastly, the points of his charge.

My lords, you may remember that there was the last parliament an expectation to have had the King supplied with treasure, although the event failed. Herein it is not fit for me to give opinion of an house of parliament, but I will give testimony of truth in all places. I served in the lower house, and I observed somewhat. This I do affirm, that I never could perceive but that there was in that house a general disposition to give, and to give largely. The clocks in the house perchance might differ; some went too fast, some went too slow; but the disposition to give was general: so that I think I may truly say, *solo tempore lapsus curi*.

This accident happening thus besides expectation, it stirred up and awaked in divers of his Majesty's worthy servants and subjects of the clergy, the nobility, the court, and others here near at hand, an affection loving and chearful, to present the King some with plate, some with money, as free-will offerings, a thing that
God

God Almighty loves, a cheerful giver : what an evil eye doth I know not. And, my lords, let me speak it plainly unto you : God forbid any body should be so wretched as to think that the obligation of love and duty, from the subject to the King, should be joint and not severall. No, my lords, it is both. The subject petitioneth to the King in parliament. He petitioneth likewise out of parliament. The King on the other side gives graces to the subject in parliament : he gives them likewise, and poureth them upon his people out of parliament ; and so no doubt the subject may give to the King in parliament, and out of parliament. It is true the parliament is *intercurfus magnus*, the great intercourse and main current of graces and donatives from the King to the people, from the people to the King : but parliaments are held but at certain times ; whereas the passages are always open for particulars ; even as you see great rivers have their tides, but particular springs and fountains run continually.

To proceed therefore : As the occasion, which was the failing of supply by parliament, did awake the love and benevolence of those that were at hand to give ; so it was apprehended and thought fit by my lords of the council to make a proof whether the occasion and example both, would not awake those in the country of the better sort to follow. Whereupon, their lordships devised and directed letters unto the sheriffs and justices, which declared what was done here above, and wished that the country might be moved, especially men of value.

Now, my lords, I beseech you give me favour and attention to set forth and observe unto you five points : I will number them, because other men may note them ; and I will but touch them, because they shall not be drowned or lost in discourse, which I hold worthy the observation, for the honour of the state and confusion of slanderers ; whereby it will appear most evidently what care was taken, that that which was then done might not have the effect, no nor the shew, no nor so much as the shadow of a tax ; and that it was so far from breeding or bringing in any ill precedent or example, as contrariwise it is a corrective that doth correct and allay the harshness and danger of former examples.

The first is, that what was done was done immediately after such a parliament, as made general profession to give, and was interrupted by accident : so as you may truly and justly esteem it, *tanquam posthuma proles parliamenti*, as an after-child of the parliament, and in pursuit, in some small measure, of the firm intent of a parliament past. You may take it also, if you will, as an advance or provisional help until a future parliament ; or as a gratification simply without any relation to a parliament ; you can no ways take it amiss.

The second is, that it wrought upon example, as a thing not devised or projected, or required ; no nor so much as recommended, until many that were never moved nor dealt with, *ex motu motu*, had freely and frankly sent in their protest. So that the letters were rather like letters of news, what was done at London, than otherwise : and we know *exemplum ductum, non trahunt* ; examples they do but lead, they do not draw nor drive.

The third is, that it was not done by commission under the great seal ; a thing warranted by a multitude of precedents, both ancient, and of late time, as you shall hear anon, and no doubt warranted by law : so that the commissions be of that stile and tenour, as that they be to move and not to levy : but this was done by letters of the council, and no higher hand or form.

The

The fourth is, that these letters had no manner of shew of any binding act of state: for they contain not any special frame or direction how the business should be managed; but were written as upon trust, leaving the matter wholly to the industry and confidence of those in the country; so that it was an *absque compato*; such a form of letters as no man could fitly be called to account upon.

The fifth and last point is, that the whole carriage of the business had no circumstance compulsory. There was no proportion or rate set down, not so much as by way of a will; there was no menace of any that should deny; no reproof of any that did deny; no certifying of the names of any that had denied. Indeed, if men could not content themselves to deny, but that they must censure and inveigh, nor to excuse themselves, but they must accuse the state, that is another case. But I say, for denying, no man was apprehended, no nor noted. So that I verily think, that there is none so subtle a disputer in the controversy of *liberum arbitrium*, that can with all his distinctions fasten or carp upon the act, but that there was free-will in it.

I conclude therefore, my lords, that this was a true and pure benevolence; not an imposition called a benevolence, which the statute speaks of; as you shall hear by one of my fellows. There is a great difference, I tell you, though Pilate would not see it, between *Rex Judaeorum* and *se dicens Regem Judaeorum*. And there is a great difference between a benevolence and an exaction called a benevolence, which the duke of Buckingham speaks of in his oration to the city; and defineth it to be not what the subject of his good-will would give, but what the King of his good-will would take. But this, I say, was a benevolence wherein every man had a prince's prerogative, a negative voice; and this word, *excuse moy*, was a plea peremptory. And therefore I do wonder how Mr. I. S. could foul or trouble to clear a fountain; certainly it was but his own bitterness and unsound humours.

Now to the particular charge: Amongst other countries, these letters of the lords came to the justices of D—shire, who signified the contents thereof, and gave directions and appointments for meetings concerning the business, to several towns and places within that county: and amongst the rest, notice was given unto the town of A. The mayor of A conceiving that this Mr. I. S. being a principal person, and a dweller in that town, was a man likely to give both money and good example, dealt with him to know his mind: he intending, as it seems, to play prizes, would give no answer to the mayor in private, but would take time. The next day then being an appointment of the justices to meet, he takes occasion, or pretends occasion to be absent, because he would bring his papers upon the stage: and thereupon takes pen in hand, and instead of excusing himself, sits down and contriveth a seditious and libellous accusation against the King and state, which your lordships shall now hear, and sends it to the mayor: and withal, because the feather of his quill might fly abroad, he gives authority to the mayor to impart it to the justices, if he so thought good. And now, my lords, because I will not mistake or mis-repeat, you shall hear the seditious libel in the proper terms and words thereof.

[Here the papers were read.]

My lords, I know this paper offends your ears much, and the ears of any good subject; and sorry I am that the times should produce offences of this nature:

but since they do, I would be more sorry they should be passed without severe punishment: *Non trahit fallum*, as the verse says, altered a little, *ad se trahit, sed et quo trahit primum*. If any man have a mind to discourse of the fact, let him likewise discourse of the punishment of the fact.

In this writing, my lords, there appears a monster with four heads, of the progeny of him that is the father of lyes, and takes his name from slander.

The first is a wicked and seditious slander; or, if I shall use the Scripture phrase, a blaspheming of the King himself; setting him forth for a Prince perjured in the great and solemn oath of his coronation, which is as it were the knot of the diadem; a Prince that should be a violator and infringer of the liberties, laws, and customs of the kingdom; a mark for an Henry the Fourth; a match for a Richard the Second.

The second is a slander and falsification, and wresting of the law of the land gross and palpable: it is truly said by a civilian, *Tortura legum pessima*, the torture of laws is worse than the torture of men.

The third is a slander and false charge of the parliament, that they had denied to give to the King; a point of notorious untruth.

And the last is a slander and taunting of an infinite number of the King's loving subjects, that have given towards this benevolence and free contribution; charging them as accessary and co-adjutors to the King's perjury. Nay, you leave us not there, but you take upon you a pontifical habit, and couple your slander with a curse; but thanks be to God we have learned sufficiently out of the Scripture, that *as the bird flies away, so the causeless curse shall not come*.

For the first of these, which concerns the King, I have taken to myself the opening and aggravation thereof; the other three I have distributed to my fellows.

My lords, I cannot but enter into this part with some wonder and astonishment, how it should come into the heart of a subject of England to vapour forth such a wicked and venomous slander against the King, whose goodness and grace is comparable, if not incomparable, unto any of the Kings his progenitors. This therefore gives me a just and necessary occasion to do two things: The one, to make some representation of his Majesty; such as truly he is found to be in his government, which Mr. I. S. chargeth with violation of laws and liberties: The other, to search and open the depth of Mr. I. S. his offence. Both which I will do briefly; because the one, I cannot express sufficiently; and the other, I will not press too far.

My lords, I mean to make no panegyric or laudative; the King delights not with it, neither am I fit for it: but if he were but a counsellor or gentleman, whose name had suffered, and were to receive some kind of reparation in this high court, I would do him that duty as not to pass his merits and just attributes, especially such as are limited with the present case, in silence: for it is fit to burn incense where evil odours have been cast and raised. Is it so that King James shall be said to be a violator of the liberties, laws, and customs of his kingdoms? Or is he not rather a noble and constant protector and conservator of them all? I conceive this consisteth in maintaining religion and the true church; in maintaining the laws of the kingdom, which is the subject's birth-right; in temperate use of the prerogative; in due and free administration of justice, and conservation of the peace of the land.

For

For religion, we must ever acknowledge in the first place, that we have a King that is the principal conservator of true religion through the Christian world. He hath maintained it not only with sceptre and sword, but likewise by his pen; wherein also he is potent.

He hath awaked and re-authorized the whole party of the reformed religion throughout Europe; which through the intolency and divers artifices and enchantments of the adverse part, was grown a little dull and dejected: He hath summoned the fraternity of Kings to enfranchise themselves from the usurpation of the See of Rome: He hath made himself a mark of contradiction for it.

Neither can I omit, when I speak of religion, to remember that excellent act of his Majesty, which though it were done in a foreign country, yet the church of God is one, and the contagion of these things will soon pass seas and lands: I mean, in his constant and holy proceeding against the heretic Vorstius, whom, being ready to enter into the chair, and there to have authorized one of the most petulant and heathenish heresies that ever was begun, his Majesty by his constant opposition dismounted and pulled down. And I am persuaded there sits in this court one whom God doth the rather bless for being his Majesty's instrument in that service.

I cannot remember religion and the church, but I must think of the seed-plots of the same, which are the universities. His Majesty, as for learning amongst Kings, he is incomparable in his person; so likewise hath he been in his government a benign or benevolent planet towards learning: by whose influence those nurseries and gardens of learning, the universities, were never more in flower nor fruit.

For the maintaining of the laws, which is the hedge and fence about the liberty of the subject, I may truly affirm it was never in better repair. He doth concur with the votes of the nobles; *Nolumus leges Angliae mutare*. He is an enemy of innovation. Neither doth the universality of his own knowledge carry him to neglect or pass over the very forms of the laws of the land. Neither was there ever King, I am persuaded, that did consult so oft with his judges, as my lords that sit here know well. The judges are a kind of council of the King's by oath and ancient institution; but he useth them so indeed: he confers regularly with them upon their returns from their visitations and circuits: he gives them liberty, both to inform him, and to debate matters with him; and in the fall and conclusion commonly relies on their opinions.

As for the use of the prerogative, it runs within the ancient channels and banks: some things that were conceived to be in some proclamations, commissions, and patents, as overflows, have been by his wisdom and care reduced; whereby, no doubt, the main channel of his prerogative is so much the stronger. For evermore overflows do hurt the channel.

As for administration of justice between party and party, I pray observe these points. There is no news of great seal or signet that the crown for commutation or duty of exiles; protection rarely granted, and only upon great necessity, or by consent. My lords here of the council and the King himself meddle not, as hath been used in former times, with matters of *meum* and *tuum*, except they have apparent mixture with matters of estate, but leave them to the King's courts of law or equity. And for mercy and grace, without which there is no standing before justice, we see, the King now hath retained twelve years in his white robe, without

CHARGE AGAINST

almost any aspersion of the crimson dye of blood. There sits my Lord Hobart, that served attorney seven years. I served with him. We were so happy, as there passed not through our hands any one arraignment for treason; and but one for any capital offence, which was that of the Lord Sanquhar; the noblest piece of justice, one of them, that ever came forth in any King's time.

As for penal laws, which lie as snares upon the subjects, and which were as a *nemo scit* to King Henry VII; it yields a revenue that will scarce pay for the parchment of the King's records at Westminster.

And lastly for peace, we see manifestly his Majesty bears some resemblance of that great name, a *Prince of peace*: he hath preserved his subjects during his reign in peace, both within and without. For the peace with states abroad, we have it *usque ad satietatem*: and for peace in the lawyers phrase, which count trespasses, and forces, and riots, to be *contra pacem*; let me give your lordships this token or taste, that this court, where they should appear, had never less to do. And certainly there is no better sign of *cumia bene*, than when this court is in a still.

But, my lords, this is a sea of matter; and therefore I must give it over, and conclude, that there was never King reigned in this nation that did better keep covenant in preserving the liberties and procuring the good of his people: so that I must needs say for the subjects of England,

O fortunatus numerum sua se esse vidit;

as no doubt they do both know and acknowledge it; whatsoever a few turbulent discourfers may, through the lenity of the time, take boldness to speak.

And as for this particular, touching the benevolence, wherein Mr. I. S. doth assign this breach of covenant, I leave it to others to tell you what the King may do, or what other Kings have done; but I have told you what our King and my lords have done: which, I say and say again, is so far from introducing a new precedent, as it doth rather correct, and mollify, and qualify former precedents.

Now, Mr. I. S. let me tell you your fault in few words: for that I am persuaded you see it already, though I woo no man's repentance; but I shall, as much as in me is, cherish it where I find it. Your offence hath three parts knit together:

Your slander,
Your menace, and
Your comparison.

For your slander, it is no less than that the King is perjured in his coronation-oath. No greater offence than perjury; no greater oath than that of a coronation. I leave it; it is too great to aggravate.

Your menace, that if there were a Bullingbroke, or I cannot tell what, there were matter for him, is a very seditious passage. You know well, that howsoever Henry the Fourth's act, by a secret providence of God, prevailed, yet it was but an usurpation; and if it were possible for such a one to be this day, wherewith it seems your dreams are troubled, I do not doubt, his end would be upon the block; and that he would sooner have the ravens sit upon his head at London-bridge, than the crown at Westminster. And it is not your interlacing of your "God forbid," that will salve these seditious speeches: neither could it be a fore-warning, because the matter was past and not revocable, but a very stirring up and incensing of the people. If I should say to you, for example, "If these times

"were like some former times, of King Henry VIII. or some other times which

"God

“ God forbid, Mr. I. S. it would cost you your life ;” I am sure you would not think this to be a gentle warning, but rather that I incensed the court against you.

And for your comparison with Richard II. I see, you follow the example of them that brought him upon the stage, and into print, in Queen Elizabeth’s time, a most prudent and admirable Queen. But let me intreat you, that when you will speak of Queen Elizabeth or King James, you would compare them to King Henry VII. or King Edward I. or some other parallels to which they are alike. And this I would wish both you and all to take heed of, how you speak seditious matter in parables, or by tropes or examples. There is a thing in an indictment called an innuendo ; you must beware how you beckon or make signs upon the King in a dangerous sense : but I will contain myself and press this no farther. I may hold you for turbulent or presumptuous ; but I hope you are not disloyal : you are graciously and mercifully dealt with. And therefore having now opened to my lords, and, as I think, to your own heart and conscience, the principal part of your offence, which concerns the King, I leave the rest, which concerns the law, parliament, and the subjects that have given, to Mr. Serjeant and Mr. Solicitor.



THE
C H A R G E
O F
O W E N, indicted of HIGH TREASON,
In the King's Bench.
B Y
Sir F R A N C I S B A C O N, Knight,
His M A J E S T Y ' S Attorney-General.

THE treason wherewith this man standeth charged, is for the kind and nature of it ancient, as ancient as there is any law of England; but in the particular, late and upstart: and again, in the manner and boldness of the present case, new and almost unheard of till this man. Of what mind he is now, I know not; but I take him as he was, and as he standeth charged. For high treason is not written in ice; that when the body relenteth, the impression should go away.

In this cause the evidence itself will spend little time: time therefore will be best spent in opening fully the nature of this treason, with the circumstances thereof; because the example is more than the man. I think good therefore by way of inducement and declaration in this cause to open unto the court, jury and hearers, five things.

The first is the clemency of the King; because it is news, and a kind of rarity to have a proceeding in this place upon treason: and perhaps it may be marvelled by some, why after so long an intermission it should light upon this fellow; being a person but contemptible, a kind of venomous fly, and a hang-by of the seminaries.

The second is, the nature of this treason, as concerning the fact, which, of all kinds of conspiring the King's death, I hold to be the most perilous, and to much differing from other conspiracies, as the lifting up of a thousand hands against the King, like the giant Briareus, differs from lifting up one or a few hands.

The third point that I will speak unto is the doctrine or opinion, which is the ground of this treason; wherein I will not argue or speak like a divine or scholar, but as a man bred in a civil life: and to speak plainly, I hold the opinion to be such that deserveth rather detestation than contestation.

The fourth point is the degree of this man's offence, which is more presumptuous than I have known any other to have fallen into in this kind, and hath a greater overflow of malice and treason.

And

And fifthly, I will remove somewhat that may seem to qualify and extenuate this man's offence; in that he hath not affirmed simply that it is lawful to kill the King, but conditionally; that if the King be excommunicate, it is lawful to kill him: which maketh little difference either in law or peril.

For the King's clemency, I have said it of late upon a good occasion, and I still speak it with comfort: I have now served his Majesty's solicitor and attorney eight years and better; yet this is the first time that ever I gave in evidence against a traitor at this bar or any other. There hath not wanted matter in that party of the subjects whence this kind of offence floweth, to irritate the King: he hath been irritated by the powder of treason, which might have turned judgment into fury. He hath been irritated by wicked and monstrous libels; irritated by a general insolency and presumption in the Papists throughout the land; and yet I see his Majesty keepeth Cæsar's rule: *Nil melo, quam eos esse faciles jui, et me moi.* He leaveth them to be like themselves; and he remaineth like himself, and striveth to overcome evil with goodness. A strange thing, bloody opinions, bloody doctrines, bloody examples, and yet the government still unstained with blood. As for this Owen that is brought in question, though his person be in his condition contemptible; yet we see by miserable examples, that these wretches which are but the scum of the earth, have been able to stir earthquakes by murdering princes: and if it were in case of contagion, as this is a contagion of the heart and soul, a ratcal may bring in a plague into the city as well as a great man: so it is not the person, but the matter that is to be considered.

For the treason itself, which is the second point, my desire is to open it in the depth thereof, if it were possible; but it is bottomless: I said in the beginning, that this treason in the nature of it was old. It is not of the treasons whereof it may be said, from the beginning it was not so. You are indicted, Owen, not upon any statute made against the Pope's supremacy, or other matters that have reference to religion; but merely upon that law which was born with the kingdom, and was law even in superstitious times, when the Pope was received. The compassing and imagining of the King's death was treason. The statute of 25 Edw. III. which was but declaratory, begins with this article as the capital of capitals in treason, and of all others the most odious and the most perilous: and so the civil law saith, *Conjuraciones omnium proditorum odiosissima et perniciosissima.* Against hostile invasions and the adherence of subjects to enemies, Kings can arm. Rebellions must go over the bodies of many good subjects before they can hurt the King: but conspiracies against the persons of Kings are like thunder-bolts that strike upon the sudden, hardly to be avoided. *Major metus à singulis,* saith he, *quàm ab universis.* There is no preparation against them: and that preparation which may be of guard or custody, is a perpetual misery. And therefore they that have written of the privileges of ambassadors and of the amplitude of safe-conducts, have defined, that if an ambassador or a man that cometh in upon the highest safe-conducts, to practise matter of sedition in a state, yet by the law of nations he ought to be remanded; but if he conspire against the life of a prince by violence or poison, he is to be justiced: *Quia odium est omni privilegio majus.* Nay, even amongst enemies, and in the most deadly wars, yet nevertheless conspiracy and assassination of princes hath been accounted villainous and execrable.

The manners of conspiring and compassing the King's death are many: but it is most apparent, that amongst all the rest this surmounteth. First, because it is grounded

grounded upon pretended religion; which is a trumpet that inflameth the heart and powers of a man with daring and resolution more than any thing else. Secondly, it is the hardest to be avoided: for when a particular conspiracy is plotted or attempted against a King by some one or some few conspirators, it meets with a number of impediments. Commonly he that hath the head to devise it, hath not the heart to undertake it: and the person that is used, sometimes faileth in courage; sometimes faileth in opportunity; sometimes is touched with remorse. But to publish and maintain, that it may be lawful for any man living to attempt the life of a King, this doctrine is a venomous sop; or, as a legion of malign spirits, or an universal temptation, doth enter at once into the hearts of all that are any way prepared, or of any predisposition to be traitors: so that whatsoever faileth in any one, is supplied in many. If one man faint, another will dare; if one man hath not the opportunity, another hath: if one man relent, another will be desperate. And thirdly, particular conspiracies have their periods of time, within which if they be not taken, they vanish; but this is endless, and importeth perpetuity of springing conspiracies. And so much concerning the nature of the fact.

For the third point, which is the doctrine; that upon an excommunication of the Pope, with sentence of deposing, a King by any son of Adam may be slaughtered; and that it is justice and no murder; and that their subjects are absolved of their allegiance, and the Kings themselves exposed to spoil and prey. I said before, that I would not argue the subtlety of the question: it is rather to be spoken to by way of accusation of the opinion as impious, than by way of dispute of it as doubtful. Nay, I say it deserveth rather some holy war or league amongst all Christian princes of either religion for the extirpating and rasing of the opinion, and the authors thereof, from the face of the earth, than the stile of pen or speech. Therefore in this kind I will speak to it a few words, and not otherwise. Nay, I protest, if I were a Papist I should say as much: nay, I should speak it perhaps with more indignation and feeling. For this horrible opinion is our advantage, and it is their reproach, and will be their ruin.

This monster of opinion is to be accused of three most evident and most miserable slanders.

First, Of the slander it bringeth to the Christian faith, being a plain plantation of irreligion and atheism.

Secondly, The subversion which it introduceth into all policy and government.

Thirdly, The great calamity it bringeth upon Papists themselves; of which the more moderate sort, as men misled, are to be pitied.

For the first, if a man doth visit the foul and polluted opinions, customs, or practices of heathenism, mahometism, and heresy, he shall find they do not attain to this height. Take the examples of damnable memory amongst the Heathens. The proscriptions in Rome of Sylla, and afterwards of the Triumvirs, what were they? They were but of a finite number of persons, and those not many that were exposed unto any man's sword. But what is that to the proscribing of a King, and all that shall take his part? And what was the reward of a soldier that amongst them killed one of the proscribed? A small piece of money. But what is now the reward of one that shall kill a King? The kingdom of heaven. The custom among the Heathen that was most scandalised was, that sometimes the priest sacrificed men; but yet you shall not read of any priesthood that sacrificed Kings.

The

The Mahometans make it a part of their religion to propagate their sect by the sword; but yet still by honourable wars, never by villanies and secret murders. Nay, I find that the Saracen prince, of whom the name of the assassins is derived, which had divers votaries at commandment, which he sent and employed to the killing of divers princes in the east, by one of whom Amurath the first was slain, and Edward the first of England was wounded, was put down and rooted out by common consent of the Mahometan princes.

The Anabaptists, it is true, come nearest. For they profess the pulling down of magistrates: and they can chaunt the psalm, *To bind their Kings in chains, and their nobles in fetters of iron.* This is the glory of the saints, much like the temporal authority that the Pope challengeth over princes. But this is the difference, that that is a furious and fanatical fury, and this is a sad and solemn mischief: he *imagineth mischief as a law; a law-like mischief.*

As for the defence which they do make, it doth aggravate the sin, and turneth it from a cruelty towards man to a blasphemy towards God. For to say that all this is *in ordine ad spirituale*, and to a good end, and for the salvation of souls, it is directly to make God author of evil, and to draw him in the likeness of the prince of darkness; and to say with those that Saint Paul speaketh of, *Let us do evil that good may come thereof;* of whom the apostle saith definitively, *that their damnation is just.*

For the destroying of government universally, it is most evident, that it is not the case of protestant princes only, but of catholic princes likewise; as the King hath excellently set forth. Nay, it is not the case of princes only, but of all subjects and private persons. For touching princes, let history be perused, what hath been the causes of excommunication; and namely, this tumour of it, the deposing of Kings; it hath not been for heresy and schism alone, but for collation and investitures of bishopricks and benefices, intruding upon ecclesiastical possessions, violating of any ecclesiastical person or liberty. Nay, generally they maintain it, that it may be for any sin: so that the difference wherein their doctors vary, that some hold that the Pope hath his temporal power immediately, and others but *in ordine ad spirituale*, is but a delusion and an abuse. For all cometh to one. What is there that may not be made spiritual by consequence; especially when he that giveth the sentence may make the case? and accordingly hath the miserable experience followed. For this murdering of Kings hath been put in practice, as well against papist Kings as protestant: save that it hath pleased God so to guide it by his admirable providence, as the attempts upon papist princes have been executed, and the attempts upon protestant princes have failed, except that of the Prince of Orange: and not that neither, until such time as he had joined too fast with the Duke of Anjou and the papists. As for subjects, I see not, nor ever could discern, but that by infallible consequence it is the case of all subjects and people; as well as of Kings; for it is manifestly seen, that a bishop, upon an excommunication of a private man, may give his lands and goods in spoil, or cause him to be slaughtered, as for the Pope to depose a King; and for a bishop to absolve the son from filial duty to the father, as for the Pope to absolve the subject from his allegiance to his King. And this is not my inference, but the very affirmative of Pope Urban the second, who in a brief to Godfrey, bishop of Luca, hath these very words, which cardinal Baronius setteth in his Annals, *Non illos levissimas arbitratur, qui ad regis excommunicationem, et ad matris ardentes cerum quælibet irradere contigerit,* speaking generally of excommunications.

T H E
C H A R G E
O F

Sir F R A N C I S B A C O N, Knight,
The K I N G ' s Attorney-General,

A G A I N S T

Mr. LUMSDEN, Sir JOHN WENTWORTH, and Sir JOHN HOLLES, for
scandal and traducing of the King's justice in the proceedings against
WESTON, in the Star-Chamber, 10 November, 1615.

THE offence wherewith I shall charge the three offenders at the bar, is a misdemeanor of a high nature, tending to the defacing and scandal of justice in a great cause capital. The particular charge is this :

The King amongst many his princely virtues is known to excel in that proper virtue of the imperial throne, which is justice. It is a royal virtue, which doth employ the other three cardinal virtues in her service : wisdom to discover, and discern nocent or innocent ; fortitude to prosecute and execute ; temperance, so to carry justice as it be not passionate in the pursuit, nor confused in involving persons upon light suspicion, nor precipitate in time. For this his Majesty's virtue of justice God hath of late raised an occasion, and erected as it were a stage or theatre, much to his honour, for him to shew it, and act it in the pursuit of the untimely death of Sir Thomas Overbury, and therein cleansing the land from blood. For, my lords, if blood spilt pure doth cry to heaven in God's ears, much more blood defiled with poison.

This great work of his Majesty's justice, the more excellent it is, your lordships will soon conclude the greater is the offence of any that have sought to affront it or traduce it. And therefore, before I descend unto the charge of these offenders, I will set before your lordships the weight of that which they have sought to impeach ; speaking somewhat of the general crime of imprisonment, and then of the particular circumstances of this fact upon Overbury ; and thirdly and chiefly, of the King's great and worthy care and carriage in this business.

The offence of imprisonment is most truly figured in that device or description, which was made of the nature of one of the Roman tyrants, that he was *lutum sanguine maceratum*, mire mingled or cemented with blood : for as it is one of the highest offences in guiltiness, so it is the basest of all others in the mind of the offenders. Treasons *magnum aliquid spectant* : they aim at great things ; but this is vile and base. I tell your lordships what I have noted, that in all God's book, both of the Old and New Testament, I find examples of all other

other offences and offenders in the world, but not any one of an impoisonment or an impoisoner. I find mention of fear of casual impoisonment: when the wild vine was shred into the pot, they came complaining in a fearful manner; Master, *mors in olla*. And I find mention of poisons of beasts and serpents; *the poison of asps is under their lips*. But I find no example in the book of God of impoisonment. I have sometime thought of the words in the psalm, *let their table be made a snare*. Which certainly is most true of impoisonment; for the table, the daily bread, for which we pray, is turned to a deadly snare: but I think rather that that was meant of the treachery of friends that were participant of the same table.

But let us go on. It is an offence, my lords, that hath the two spurs of offending; *spes perficiendi*, and *spes celandi*: it is easily committed, and easily concealed.

It is an offence that is *tanquam sagitta nocte volans*; it is the arrow that flies by night. It discerns not whom it hits: for many times the poison is laid for one, and the other takes it; as in Sanders's case, where the poisoned apple was laid for the mother, and was taken up by the child, and killed the child: and so in that notorious case, whereupon the statute of 22 Hen. VIII. cap. 9. was made, where the intent being to poison but one or two, poison was put into a little vessel of barm that stood in the kitchen of the bishop of Rochester's house; of which barm pottage or gruel was made, wherewith seventeen of the bishop's family were poisoned: nay, divers of the poor that came to the bishop's gate, and had the broken pottage in alms, were likewise poisoned. And therefore if any man will comfort himself, or think with himself, Here is great talk of impoisonment, I hope I am safe; for I have no enemies; nor I have nothing that any body should long for. Why, that is all one; for he may sit at table by one for whom poison is prepared, and have a drench of his cup, or of his pottage. And so, as the poet saith, *concidit infelix alieno vulnere*; he may die another man's death. And therefore it was most gravely, and judiciously, and properly provided by that statute, that impoisonment should be high treason; because whatsoever offence tendeth to the utter subversion and dissolution of human society, is in the nature of high treason.

Lastly, It is an offence that I may truly say of it, *non est nostri generis, nec sanguinis*. It is, thanks be to God, rare in the isle of Britain: it is neither of our country, nor of our church; you may find it in Rome or Italy. There is a region; or perhaps a religion for it: and if it should come amongst us, certainly it were better living in a wilderness than in a court.

For the particular fact upon Overbury. First, for the person of Sir Thomas Overbury: I knew the gentleman. It is true, his mind was great, but it moved not in any good order; yet certainly it did commonly fly at good things; and the greatest fault that I ever heard of him was, that he made his friend his idol. But I leave him as Sir Thomas Overbury.

But take him as he was the King's prisoner in the Tower; and then see how the case stands. In that place the state is at it were respondent to make good the body of a prisoner. And if any thing happen to him there, it may, though not in this case, yet in some others, make an aspersion and reflection upon the state itself. For the person is utterly out of his own defence; his own care and providence can serve him nothing. He is in custody and preservation of law; and we have a maxim in our law, as my lords the judges know, that when a state is in preservation of law, nothing can destroy it, or hurt it. And God forbid but

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the like should be for the persons of those that are in custody of law; and therefore this was a circumstance of great aggravation.

Lastly, To have a man chaled to death in such manner, as it appears now by matter of record; for other privacy of the cause I know not, by poison after poison, first roseaker, then arsenick, then mercury sublimate, then sublimate again; it is a thing would astonish man's nature to hear it. The poets feign, that the Furies had whips, that they were corded with poisonous snakes; and a man would think that this were the very case, to have a man tied to a post, and to scourge him to death with snakes: for so may truly be termed diversity of poisons.

Now I will come to that which is the principal; that is, his Majesty's princely, yea, and as I may truly term it, sacred proceeding in this cause. Wherein I will first speak of the temper of his justice, and then of the strength thereof.

First, It pleased my lord Chief Justice to let me know, that which I heard with great comfort, which was the charge that his Majesty gave to himself first, and afterwards to the commissioners in this case, worthy certainly to be written in letters of gold, wherein his Majesty did forerank and make it his prime direction, that it should be carried, without touch to any that was innocent; nay more, not only without impeachment, but without aspersion: which was a most noble and princely caution from his Majesty; for mens reputations are tender things, and ought to be, like Christ's coat, without seam. And it was the more to be respected in this case, because it met with two great persons; a nobleman that his Majesty had favoured and advanced, and his lady being of a great and honourable house: though I think it be true, that the writers say, That there is no pomegranate so fair or so sound, but may have a perished kernel. Nay, I see plainly, that in those excellent papers of his Majesty's own hand-writing, being as so many beams of justice issuing from that virtue which doth shine in him; I say, I see it was so evenly carried without prejudice, whether it were a true accusation of the one part, or a practice of a false accusation on the other, as shewed plainly that his Majesty's judgment was *tanquam tabula rasa*, as a clean pair of tables, and his ear *tanquam janua aperta*, as a gate not side open, but wide open to truth, as it should be by little and little discovered. Nay, I see plainly, that at the first, till farther light did break forth, his Majesty was little moved with the first tale, which he vouchsafeth not so much as the name of a tale; but calleth it a rumour, which is an heedless tale.

As for the strength or resolution of his Majesty's justice, I must tell your lordships plainly; I do not marvel to see Kings thunder out justice in cases of treason, when they are touched themselves; and that they are *judices illius propria*: but that a King should, *pro amore justitiae* only, contrary to the tide of his own affection, for the preservation of his people, take such care of a cause of justice, that is rare and worthy to be celebrated far and near. For, I think, I may truly affirm, that there was never in this kingdom, nor in any other kingdom, the blood of a private gentleman vindicated *cum tanto magno regni*, or to say better, *cum tanto plus a regni*. If it had concerned the King or Prince, there could not have been greater nor better commissioners to examine it. The term hath been almost turned into a *justitiam*, or vacancy; the people themselves being more willing to be lookers-on in this business, than to follow their own. There hath been no care of discovery omitted, no moment of time lost. And therefore I will conclude this part with the laying of Coronon, *Gloria Dei esse regis, et gloria Regis servare rem.*

And

And his Majesty's honour is much the greater for that he hath shewed to the world in this business as it hath relation to my lord of Somerslet, whose case in no sort I do prejudice, being ignorant of the secrets of the cause, but taking him as the law takes him hitherto, for a subject, I say, the King hath to his great honour shewed, that were any man, in such a case of blood, as the signet upon his right hand, as the Scripture says, yet would he put him off.

Now will I come to the particular charge of these gentlemen, whose qualities and persons I respect and love; for they are all my particular friends: but now I can only do this duty of a friend to them, to make them know their fault to the full.

And therefore, first, I will by way of narrative declare to your lordships the fact, with the occasion of it; then you shall have their confessions read, upon which you are to proceed, together with some collateral testimonies by way of aggravation: and lastly, I will note and observe to your lordships the material points which I do insist upon for their charge, and so leave them to their answer. And this I will do very briefly, for the case is not perplexed.

That wretched man Weston, who was the actor or mechanical party in this imprisonment, at the first day being indicted by a very substantial jury of selected citizens, to the number of nineteen, who found *billa vera*, yet nevertheless at the first stood mute: but after some days intermission, it pleased God to call out the dumb devil, and that he did put himself upon his trial; and was by a jury also of great value, upon his confession, and other testimonies, found guilty: so as thirty-one sufficient jurors have passed upon him. Whereupon judgment and execution was awarded against him. After this, being in preparation for another world, he sent for Sir Thomas Overbury's father, and falling down upon his knees, with great remorse and compunction, asked him forgiveness. Afterwards, again, of his own motion, desired to have his like prayer of forgiveness recommended to his mother, who was absent. And at both times, out of the abundance of his heart, confessed that he was to die justly, and that he was worthy of death. And after again at his execution, which is a kind of sealing-time of confessions, even at the point of death, although there were tempters about him, as you shall hear by and by, yet he did again confirm publicly, that his examinations were true, and that he had been justly and honourably dealt with. Here is the narrative, which induceth the charge. The charge itself is this.

Mr. L. whose offence stands alone single, the offence of the other two being in consort; and yet all three meeting in their end and center, which was to interrupt or deface this excellent piece of justice: M. L. I say, mean while between Weston's standing mute and his trial, takes upon him to make a most false, odious, and libellous relation, containing as many untruths as lines, and sets it down in writing with his own hand, and delivers it to Mr. Henry Gibb, of the bed-chamber, to be put into the King's hand; in which writing he doth falsify and pervert all that was done the first day at the arraignment of Weston; turning the pike and point of his imputations principally upon my lord Chief Justice of England; whose name, thus occurring, I cannot pass by, and yet I cannot skill to flatter. But this I will say of him, and I would say as much to ages, if I should write a story; that never man's person and his place were better met in a business, than my lord Coke and my lord Chief Justice, in the cause of Overbury.

Now, my lords, in this offence of M. L. for the particulars of these slanderous articles, I will observe them unto you when the writings and examinations are read;

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read; for I do not love to set the gloss before the text. But in general I note to your lordships, first, the person of M. L. I know he is a Scotch gentleman, and thereby more ignorant of our laws and forms: but I cannot tell whether this doth extenuate his fault in respect of ignorance, or aggravate it much, in respect of presumption; that he would meddle in that that he understood not: but I doubt it came not out of his quiver; some other man's cunning wrought upon this man's boldness. Secondly, I may note unto you the greatness of the cause, wherein he being a private mean gentleman did presume to deal. M. L. could not but know to what great and grave commissioners the King had committed this cause; and that his Majesty in his wisdom would expect return of all things from them to whose trust he had committed this business. For it is the part of commissioners, as well to report the business, as to manage the business; and then his Majesty might have been sure to have had all things well weighed, and truly informed: and therefore it should have been far from M. L. to have presumed to have put forth his hand to so high and tender a business, which was not to be touched but by employed hands. Thirdly, I note to your lordships, that this infusion of a slander into a King's ear, is of all forms of libels and slanders the worst. It is true, that Kings may keep secret their informations, and then no man ought to inquire after them, while they are shrined in their breast. But where a King is pleased that a man shall answer for his false information; there, I say, the false information to a King exceeds in offence the false information of any other kind; being a kind, since we are in matter of poison, of imposition of a King's ear. And thus much for the offence of M. L.

For the offence of S. W. and H. I. which I said was in consort, it was shortly this. At the time and place of the execution of Weston, to supplant his Christian resolution, and to scandalize the justice already past, and perhaps to cut off the thread of that which is to come, these gentlemen, with others, came mounted on horseback, and in a ruffling and facing manner put themselves forward to re-examine Weston upon questions: and what questions? Directly cross to that that had been tried and judged. For what was the point tried? That Weston had poisoned Overbury. What was S. W.'s question? Whether Weston did poison Overbury or no? A contradictory directly: Weston answered only, that he did him wrong; and turning to the sheriff, said, You promised me I should not be troubled at this time. Nevertheless, he pressed him to answer; saying he desired to know it, that he might pray with him. I know not that S. W. is an ecclesiastic, that he should cut any man from the communion of prayer. And yet for all this vexing of the spirit of a poor man, now in the gates of death; Weston nevertheless stood constant, and said, I die not unworthily; my lord Chief Justice hath my mind under my hand, and he is an honourable and just judge. This is S. W. his offence.

For H. I. he was not so much a questioner; but wrought upon the others questions, and, like a kind of confessor, wished him to discharge his conscience, and to satisfy the world. What world? I marvel! it was sure the world at Tyburn. For the world at Guildhall, and the world at London, was satisfied before; *teste* the bells that rung. But men have got a fashion now-a-days, that two or three busy-bodies will take upon them the name of the world, and broach their own conceits, as if it were a general opinion. Well, what more? When they could not work upon Weston, then H. I. in an indignation turned about his horse, when the other was turning over the ladder, and said, he was sorry for such a conclusion; that

that was, to have the state honoured or justified; but others took and reported his words in another degree: but that I leave, seeing it is not confessed.

H. I. his offence had another appendix, before this in time; which was, that at the day of the verdict given up by the jury, he also would needs give his verdict, saying openly, that if he were of the jury, he would doubt what to do. Marry, he saith, he cannot tell well whether he spake this before the jury had given up the verdict, or after; wherein there is little gained. For whether H. I. were a pre-juror or a post-juror, the one was to pre-judge the jury, the other as to taint them.

Of the offence of these two gentlemen in general, your lordships must give me leave to say, that it is an offence greater and more dangerous than is conceived. I know well that as we have no Spanish inquisitions, nor justice in a corner; so we have no gagging of mens mouths at their death; but that they may speak freely at the last hour; but then it must come from the free motion of the party, not by temptation of questions. The questions that are to be asked, ought to tend to farther revealing of their own or others guiltiness; but to use a question in the nature of a false interrogatory, to falsify that which is *res judicata*, is intolerable. For that were to erect a court or commission of review at Tyburn, against the King's bench at Westminster. And besides, it is a thing vain and idle: for if they answer according to the judgment past, it adds no credit; or if it be contrary, it derogateth nothing: but yet it subjecteth the majesty of justice to popular and vulgar talk and opinion.

My lords, these are great and dangerous offences; for if we do not maintain justice, justice will not maintain us.

But now your lordships shall hear the examinations themselves, upon which I shall have occasion to note some particular things, etc.



T H E
C H A R G E
O F
Sir F R A N C I S B A C O N, Knight,
H I S M A J E S T Y ' s A t t o r n e y - G e n e r a l ,
A G A I N S T
F R A N C E S C o u n t e s s o f S O M E R S E T ,

Intended to have been spoken by him at her arraignment, on Friday,
May 24, 1616, in case she had pleaded not guilty*.

*It may please your grace, my lord High Steward of England⁺, and you my lords
the peers :*

YOU have heard the indictment against this lady well opened; and likewise the point in law, that might make some doubt, declared and solved; wherein certainly the policy of the law of England is much to be esteemed, which requireth and respecteth form in the indictment, and substance in the proof.

This scruple it may be hath moved this lady to plead not guilty, though for the proof I shall not need much more than her own confession, which she hath formerly made, free and voluntary, and therein given glory to God and Justice. And certainly confession, as it is the strongest foundation of justice, so it is a kind of corner-stone, whereupon justice and mercy may meet.

The proofs, which I shall read in the end for the ground of your verdict and sentence, will be very short; and, as much as may, serve to satisfy your honours and consciences for the conviction of this lady, without wasting of time in a case clear and confessed; or ripping up guiltiness against one, that hath professed herself by confession; or preventing or deflowering too much of the evidence. And therefore the occasion itself doth admonish me to spare this day rather in declaration than in evidence, giving God and the King the honour, and your lordships and the hearers the contentment, to set before you the proceeding of this excellent work of the King's justice, from the beginning to the end; and so to conclude with the reading the confessions and proofs.

My lords, this is now the second time † within the space of thirteen years reign of our happy Sovereign, that this high tribunal-seat of justice, ordained for the

* She pleaded guilty, on which occasion the Attorney-General spoke a charge of great importance to her.

† Thomas Egerton, Viscount Ellesmere, Lord High Chancellor.

‡ The first time was on the trials of the Lords Cobham and Grey, in November 1603.

trial by peers, hath been opened and erected; and that, with a rare event, supplied and exercised by one and the same person; which is a great honour to you, my Lord Steward.

In all this mean time the King hath reigned in his white robe, not sprinkled with any drop of blood of any of his nobles of this kingdom. Nay, such have been the depths of his mercy, as even those noblemens bloods, against whom the proceeding was at Winchester, Cobham and Grey, were attainted and corrupted, but not spilt or taken away; but that they remained rather spectacles of justice in their continual imprisonment, than monuments of justice in the memory of their suffering.

It is true, that the objects of his justice then and now were very differing. For then, it was the revenge of an offence against his own person and crown, and upon persons that were malcontents, and contraries to the state and government. But now, it is the revenge of the blood and death of a particular subject, and the cry of a prisoner. It is upon persons that were highly in his favour; whereby his Majesty, to his great honour, hath shewed to the world, as if it were written in a sun-beam, that he is truly the lieutenant of him, with whom there is no respect of persons; that his affections royal are above his affections private: that his favours and nearness about him are not like popish sanctuaries to privilege malefactors: and that his being the best master of the world doth not let him from being the best King of the world. His people, on the other side, may say to themselves, *I will lie down in peace; for God and the King and the law protect me against great and small.* It may be a discipline also to great men, especially such as are swoln in fortunes from small beginnings, that the King is as well able to level mountains, as to fill valleys, if such be their desert.

But to come to the present case; the great frame of justice, my lords, in this present action, hath a vault, and it hath a stage: a vault, wherein these works of darkness were contrived; and a stage with steps, by which they were brought to light. And therefore I will bring this work of justice to the period of this day; and then go on with this day's work.

Sir Thomas Overbury was murdered by poison in the 15th of September 1613, 11 Reg. This foul and cruel murder did, for a time, cry secretly in the ears of God; but God gave no answer to it, otherwise than by that voice, which sometimes he useth, which is *vox populi*, the speech of the people. For there went then a murmur, that Overbury was poisoned: and yet this same submissive and soft voice of God, the speech of the vulgar people, was not without a counter-tenor, or counter-blast of the devil, who is the common author both of murder and slander: for it was given out, that Overbury was dead of a foul disease, and his body, which they had made a *corpus Judaicum* with their poisons, so as it had no whole part, must be said to be leprosed with vice, and so his name poisoned as well as his body. For as to dissoluteness, I never heard the gentleman noted with it: his faults were insolency and turbulency, and the like of that kind: the other part of the soul not the voluptuous.

Mean time, there was some industry used, of which I will not now speak, to lull asleep those that were the revengers of blood; the father and the brother of the murdered. And in these terms things stood by the space almost of two years; during which time, God so blinded the two great procurers, and dazzled them with their own greatness, and bind and nail fast the actors and instruments with security upon

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their protection, as neither the one looked about them, nor the other stirred or fled, nor were conveyed away; but remaineth here still, as under a privy arrest of God's judgments; inſomuch as Franklin, that ſhould have been ſent over to the Paſſgrave with good ſtore of money, was, by God's providence and the accident of a marriage of his, diverted and ſtayed.

But about the beginning of the progreſs laſt ſummer, God's judgments began to come out of their depths: and as the revealing of murders is commonly ſuch, as a man may ſay, *à domino hoc factum eſt*; it is God's work, and it is marvellous in our eyes: ſo in this particular it is moſt admirable; for it came forth by a compliment and matter of courteſy.

My lord of Shrewsbury*, that is now with God, recommended to a counſellor of ſtate, of eſpecial truſt by his place, the late lieutenant Helwiſſe †, only for acquaintance as an honeſt worthy gentleman; and deſired him to know him, and to be acquainted with him. That counſellor answered him civilly, that my lord did him a favour; and that he ſhould embrace it willingly: but he muſt let his lordſhip know, that there did lie a heavy imputation upon that gentleman, Helwiſſe; for that Sir Thomas Overbury, his priſoner, was thought to have come to a violent and untimely death. When this ſpeech was reported back by my lord of Shrewsbury to Helwiſſe, *perculit illico animum*, he was ſtricken with it; and being a politic man, and of likelihood doubting that the matter would break forth at one time or other, and that others might have the ſtart of him, and thinking to make his own caſe by his own tale, reſolved with himſelf, upon this occaſion, to diſcover to my lord of Shrewsbury and that counſellor, that there was an attempt, whereto he was privy, to have poiſoned Overbury by the hands of his under-keeper Weſton; but that he checked it, and put it by, and diſſuaded it, and related ſo much to him indeed: but then he left it thus, that was but an attempt, or untimely birth, never executed; and, as if his own fault had been no more, but that he was honeſt in forbidding, but fearful of revealing and impeaching or accusing great perſons; and ſo with this fine point thought to ſave himſelf.

But that great counſellor of ſtate wiſely conſidering, that by the lieutenant's own tale it could not be ſimply a permiſſion or weakneſs; for that Weſton was never diſplaced by the lieutenant, notwithstanding that attempt; and coupling the ſequel by the beginning, thought it matter fit to be brought before his Maſteſty, by whoſe appointment Helwiſſe ſet down the like declaration in writing.

Upon this ground the King playeth Solomon's part, *Gloria Dei celare rem; et Gloria Regis inveſtigare rem*; and ſets down certain papers of his own hand, which I might term to be *claves juſtitiæ*, keys of juſtice; and may ſerve for a precedent both for Princes to imitate, and for a direction for judges to follow: and his Maſteſty carried the balance with a conſtant and ſteady hand, evenly and

* Gilbert earl of Shrewsbury, knight of the Garter, who died May 8, 1616.

† Sir Gervae Helwiſſe, appointed lieutenant of the Tower, upon the removal of Sir William Waade on the 6th of May, 1613. [*Reliquiæ Wottonianæ*, p. 412, 3d Edit. 1672.] Mr. Chamberlain, in a MS. letter to Sir Dudley Carleton, dated at London, May 13, 1613, ſpeaks of Sir Gervae's promotion in theſe terms: "One Sir Gervae Helwiſſe, of Lincolnſhire, ſomewhat an unknown man, is put

" into the place [of Sir W. Waade.] by the favour
" of the Lord Chamberlain [earl of Somerſet] and
" his lady. The gentleman is of too mild and gen-
" tle a diſpoſition for ſuch an office. He is my
" old friend and acquaintance in France, and lately
" renewed in town, where he hath lived paſt a year.
" nor followed the court many a day." Sir Henry
Wotton, in a letter of the 14th of May, 1613, [*Reliquiæ Wottonianæ*, p. 13.] ſays, that Sir Gervae had been before one of the priſoners.

without

without prejudice, whether it were a true accusation of the one part, or a practice and factious device of the other: which writing, because I am not able to express according to the worth thereof, I will desire your lordship anon to hear read.

This excellent foundation of justice being laid by his Majesty's own hand, it was referred unto some counsellors to examine farther, who gained some degrees of light from Weston, but yet left it imperfect.

After it was referred to Sir Edward Coke, Chief Justice of the King's Bench, as a person best practised in legal examinations, who took a great deal of indefatigable pains in it, without intermission, having, as I have heard him say, taken at least three hundred examinations in this business.

But these things were not done in a corner. I need not speak of them. It is true, that my lord Chief Justice, in the dawning and opening of the light, finding that the matter touched upon these great persons, very discreetly became suitor to the King to have greater persons than his own rank joined with him. Whereupon, your lordship, my lord High Steward of England, to whom the King commonly resorteth *in arduis*, and my lord Steward of the King's house, and my lord Zouch, were joined with him.

Neither wanted there this while practice to suppress testimony, to deface writings, to weaken the King's resolution, to slander the justice, and the like. Nay, when it came to the first solemn act of justice, which was the arraignment of Weston, he had his lesson to stand mute; which had arrested the wheel of justice. But this dumb devil, by the means of some discreet divines, and the potent charm of justice, together, was cast out. Neither did this poisonous adder stop his ear to those charms, but relented, and yielded to his trial.

Then follow the proceedings of justice against the other offenders, Turner, Helviffe, Franklin.

But all these being but the organs and instruments of this fact, the actors and not the authors, justice could not have been crowned without this last act against these great persons. Else Weston's censure or prediction might have been verified, when he said, he hoped the small flies should not be caught, and the great escape. Wherein the King being in great straits, between the defacing of his honour and of his creature, hath, according as he useth to do, chosen the better part, reserving always mercy to himself.

The time also of this justice hath had its true motions. The time until this Lady's deliverance was due unto honour, Christianity, and humanity, in respect of her great belly. The time since was due to another kind of deliverance too; which was, that some causes of estate, that were in the womb, might likewise be brought forth, not for matter of justice, but for reason of state. Likewise this last procrastination of days had the like weighty grounds and causes. And this is the true and brief representation of this extreme work of the King's justice.

Now for the evidence against this Lady, I am sorry I must rip it up. I shall first shew you the purveyance or provisions of the poisons: that they were seven in number brought to this Lady, and by her billeted and laid up till they might be used: and this done with an oath or vow of secrecy, which is like the Egyptian darknes, a gross and palpable darknes, that may be felt.

Secondly, I shall shew you the exhibiting and sorting of this same number or volley of poisons: white arsenic was fit for salt, because it is of like body and colour. The poison of great spiders, and of the venomous fly cantharides, was

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fit for pigs sauce or partridge sauce, because it resembled pepper. As for mercury-water, and other poisons, they might be fit for tarts, which is a kind of hotch-pot, wherein no one colour is so proper : and some of these were delivered by the hands of this Lady, and some by her direction.

Thirdly, I shall prove and observe unto you the cautions of these poisons ; that they might not be too swift, lest the world should startle at it by the suddenness of the dispatch : but they must abide long in the body, and work by degrees : and for this purpose there must be essays of them upon poor beasts, *etc.*

And lastly, I shall shew you the rewards of this imposition, first demanded by Weston, and denied, because the deed was not done ; but after the deed done and perpetrated, that Overbury was dead, then performed and paid to the value of 180*l.*

And so without farther aggravation of that, which in itself bears its own tragedy, I will conclude with the confessions of this Lady herself, which is the strongest support of justice ; and yet is the footstool of mercy. For, as the Scripture says, *Mercy and Truth have kissed each other* ; there is no meeting or greeting of mercy, till there be a confession, or trial of truth. For these read,

Franklin, November 16,
Franklin, November 17,
Rich. Weston, October 1,
Rich. Weston, October 2,
Will. Weston, October 2,

Rich. Weston, October 3,
Helwisse, October 2,
The Countess's letter without date,
The Countess's confession, January 8.



T H E

C H A R G E, by way of evidence, Given May
24, 1616.

B Y

Sir F R A N C I S B A C O N, Knight,
His MAJESTY'S Attorney-General,

Before the lord High Steward, and the Peers* ;

A G A I N S T

F R A N C E S, Countess of S O M E R S E T,

Concerning the poisoning of Sir T H O M A S O V E R B U R Y.

*It may please your Grace, my lord High Steward of England, and you my lords
the peers :*

I Am very glad to hear this unfortunate lady doth take this course, to confess fully and freely, and thereby to give glory to God and to justice. It is, as I may term it, the nobleness of an offender to confess ; and therefore those meaner persons, upon whom justice passed before, confessed not ; she doth. I know your lordships cannot behold her without compassion : many things may move you, her youth, her person, her sex, her noble family ; yea, her provocations, if I should enter into the cause itself, and furies about her ; but chiefly her penitency and confession. But justice is the work of this day ; the mercy-seat was in the inner part of the temple ; the throne is public. But since this lady hath by her confession prevented my evidence, and your verdict, and that this day's labour is eased ; there resteth, in the legal proceeding, but for me to pray that her confession may be recorded, and judgment thereupon.

But because your lordships the peers are met, and that this day and to-morrow are the days that crown all the former justice ; and that in these great cases it hath been ever the manner to respect honour and satisfaction, as well as the ordinary parts and forms of justice ; the occasion itself admonisheth me to give your lordships and the hearers this contentment, as to make declaration of the proceedings of this excellent work of the King's justice, from the beginning to the end.

It may please your grace, my lord High Steward of England : this is now the second time, within the space of thirteen years reign of our happy sovereign, that this high tribunal-seat, ordained for the trial of peers, hath been opened and

* The Lord Chancellor Egerton, lord Ellesmere, and earl of Bridgewater.

erected, and that with a rare event, supplied and exercised by one and the same person, which is a great honour unto you, my lord Steward.

In all this mean time the King hath reigned in his white robe, not sprinkled with any one drop of the blood of any of his nobles of this kingdom. Nay, such have been the depths of his mercy, as even those noblemens bloods, against whom the proceeding was at Winchester, Cobham and Grey, were attainted and corrupted, but not spilt or taken away; but that they remained rather spectacles of justice in their continual imprisonment, than monuments of justice in the memory of their suffering.

It is true that the objects of his justice then and now were very differing: for then it was the revenge of an offence against his own person and crown, and upon persons that were malcontents, and contraries to the state and government; but now it is the revenge of the blood and death of a particular subject, and the cry of a prisoner: it is upon persons that were highly in his favour; whereby his Majesty, to his great honour, hath shewed to the world, as if it were written in a sun-beam, that he is truly the lieutenant of him with whom there is no respect of persons; that his affections royal are above his affections private; that his favours and nearness about him are not like popish sanctuaries, to privilege malefactors; and that his being the best master in the world doth not let him from being the best King in the world. His people, on the other side, may say to themselves, I will lie down in peace, for God, the King, and the Law, protect me against great and small. It may be a discipline also to great men, especially such as are twain in their fortunes from small beginnings, that the King is as well able to level mountains, as to fill valleys, if such be their desert.

But to come to the present case: The great frame of justice, my lords, in this present action, hath a vault, and hath a stage; a vault, wherein these works of darkness were contrived; and a stage, with steps, by which it was brought to light.

For the former of these, I will not lead your lordships into it, because I will enquire nothing against a penitent; neither will I open any thing against him that is absent. The one I will give to the laws of humanity, and the other to the laws of justice: for I shall always serve my master with a good and sincere conscience, and, I know, that he accepteth best. Therefore I will reserve that till to-morrow, and hold myself to that which I called the stage or theatre, whereunto indeed it may be fitly compared: for that things were first contained within the invisible judgments of God, as within a curtain, and after came forth, and were acted most worthily by the King, and right well by his ministers.

Sir Thomas Overbury was murdered by poison, September 15, 1613. This foul and cruel murder did for a time cry secretly in the ears of God; but God gave no answer to it, otherwise than by that voice, which sometimes he useth, which is *vox populi*, the speech of the people: for there went then a murmur that Overbury was poisoned; and yet the same submits and low voice of God, the speech of the vulgar people, was not without a counter-tenor or counter-blast of the devil, who is the common author both of murder and slander; for it was given out that Overbury was dead of a foul disease; and his body, which they had made *corpus Judaicum* with their poisons, so as it had no whole part, must be said to be leprosed with vice, and so his name poisoned as well as his body. For as to dissoluteness, I have not heard the gentleman noted with it; his faults were of insolency, turbulency, and the like of that kind.

Mean

Mean time there was some industry used, of which I will not now speak, to lull asleep those that were the revengers of the blood, the father and the brother of the murdered. And in these terms things stood by the space of two years, during which time God did so blind the two great procurers, and dazzle them with their greatness, and blind and nail fast the actors and instruments with security upon their protection, as neither the one looked about them, nor the other stirred or fled, or were conveyed away, but remained here still, as under a privy arrest of God's judgments; insomuch as Franklin, that should have been sent over to the Pallgrave with good store of money, was, by God's providence and the accident of a marriage of his, diverted and stayed.

But about the beginning of the progress the last summer, God's judgments began to come out of their depths. And as the revealing of murder is commonly such as a man said, *à Domino hoc factum est; it is God's work, and it is marvellous in our eyes*: so in this particular it was most admirable; for it came forth first by a compliment, a matter of courtesy. My lord of Shrewsbury, that is now with God, recommended to a counsellor of state, of special trust by his place, the late lieutenant Helwisse*, only for acquaintance, as an honest and worthy gentleman, and desired him to know him, and to be acquainted with him. That counsellor answered him civilly, that my lord did him a favour, and that he should embrace it willingly; but he must let his lordship know, that there did lie a heavy imputation upon that gentleman, Helwisse; for that Sir Thomas Overbury, his prisoner, was thought to have come to a violent and an untimely death. When this speech was reported back by my lord of Shrewsbury to Helwisse, *percussit illico animum*, he was stricken with it: and being a politic man, and of likelihood doubting that the matter would break forth at one time or other, and that others might have the start of him, and thinking to make his own case by his own tale, resolved with himself upon this occasion to discover unto my lord of Shrewsbury, and that counsellor, that there was an attempt, whereunto he was privy, to have poisoned Overbury by the hands of his under-keeper Weston; but that he checked it, and put it by, and dissuaded it. But then he left it thus, that it was but as an attempt, or an untimely birth, never executed; and as if his own fault had been no more, but that he was honest in forbidding, but fearful of revealing and impeaching, or accusing great persons: and so with this fine point thought to save himself.

But that counsellor of estate, wisely considering that by the lieutenant's own tale it could not be simply a permission or weakness; for that Weston was never displaced by the lieutenant, notwithstanding that attempt; and coupling the sequel by the beginning, thought it matter fit to be brought before his Majesty, by whose appointment Helwisse set down the like declaration in writing.

Upon this ground the King playeth Solomon's part, *Gloria Dei celare rem, et gloria Regis investigare rem*, and sets down certain papers of his own hand, which I might term to be *claves justitiae*, keys of justice; and may serve both for a precedent for Princes to imitate, and for a direction for judges to follow. And his Majesty carried the balance with a constant and steady hand, evenly and without prejudice, whether it were a true accusation of the one part, or a practice and

* Called in Sir H. Wotton's *Relap.* p. 413. *Et sic.* In Sir A. Welden's *Court of K. James*, p. 107. *Elucida.* In *Antic. C.* p. 141. *Silvanti.* In Sir W. Dugdale's *Baron. of England*, Tom. ii. p. 425. *Elucida.* In Baker, p. 271. *Tom.*

factious scandal of the other : which writing, because I am not able to express according to the worth thereof, I will desire your lordships anon to hear read.

This excellent foundation of justice being laid by his Majesty's own hand, it was referred unto some counsellors to examine farther ; who gained some degrees of light from Weston, but yet left it imperfect.

After it was referred to Sir Edward Coke, Chief Justice of the King's bench, as a person best practised in legal examinations ; who took a great deal of indefatigable pains in it without intermission, having, as I have heard him say, taken at least three hundred examinations in this business.

But these things were not done in a corner, I need not speak of them. It is true that my lord Chief Justice, in the dawning and opening of the light, finding the matter touched upon these great persons, very discreetly became suitor to the King, to have greater persons than his own rank joined with him ; whereupon your lordships, my lord High Steward of England, my lord Steward of the King's house, and my lord Zouch, were joined with him.

Neither wanted there, this while, practice to suppress testimony, to deface writings, to weaken the King's resolution, to slander the justice, and the like. Nay, when it came to the first solemn act of justice, which was the arraignment of Weston, he had his lesson to stand mute, which had arrested the whole wheel of justice, but this dumb devil, by the means of some discreet divines, and the potent charm of justice together, was cast out ; neither did this poisonous adder stop his ear to these charms, but relented, and yielded to his trial.

Then followed the other proceedings of justice against the other offenders, Turner, Helwisse, Franklin.

But all these being but the organs and instruments of this fact, the actors, and not the authors, justice could not have been crowned without this last act against these great persons ; else Weston's censure or prediction might have been verified, when he said, he hoped the small flies should not be caught, and the greater escape. Wherein the King, being in great straits between the defacing of his honour, and of his creature, hath, according as he used to do, chosen the better part, reserving always mercy to himself.

The time also of justice hath had its true motions. The time until this lady's deliverance was due unto honour, christianity, and humanity, in respect of her great belly. The time since was due to another kind of deliverance too ; which was, that some causes of estate which were in the womb, might likewise be brought forth, not for matter of justice, but for reason of state. Likewise this last procrastination of days had the like weighty grounds and causes.

But, my lords, where I speak of a stage, I doubt I hold you upon the stage too long. But before I pray judgment, I pray your lordships to hear the King's papers read, that you may see how well the King was inspired, and how nobly he carried it, that innocency might not have so much as aspersion.

Frances, countess of Somerset, hath been indicted and arraigned, as accessory before the fact, for the murder and imposition of Sir Thomas Overbury, and hath pleaded guilty, and confesseth the indictment : I pray judgment against the prisoner.

THE
C H A R G E
O F
Sir F R A N C I S B A C O N, Knight,
His M A J E S T Y ' s Attorney-General,
By Way of Evidence.
Before the Lord High Steward, and the Peers,
A G A I N S T
R O B E R T, Earl of S O M E R S E T,
Concerning the poisoning of O V E R B U R Y.

It may please your grace, my lord High Steward of England, and you my lords the peers :

YOU have here before you Robert earl of Somerset, to be tried for his life, concerning the procuring and consenting to the imposition of Sir Thomas Overbury, then the King's prisoner in the Tower of London, as an accessory before the fact.

I know your lordships cannot behold this nobleman, but you must remember his great favour with the King, and the great place that he hath had and born, and must be sensible that he is yet of your number and body, a peer as you are ; so that you cannot cut him off from your body but with grief ; and therefore that you will expect from us, that give in the King's evidence, sound and sufficient matter of proof to satisfy your honours and consciences.

As for the manner of the evidence, the King our master, who among his other virtues excelleth in that virtue of the imperial throne, which is justice, hath given us in commandment that we should not expatiate, nor make invectives, but materially pursue the evidence, as it conduceth to the point in question ; a matter, that though we are glad of so good a warrant, yet we should have done of ourselves : for far be it from us, by any strains of wit or art, to seek to play prizes, or to blazon our names in blood, or to carry the day otherwise than upon just grounds. We shall carry the lanthorn of justice, which is the evidence, before your eyes upright, and to be able to save it from being put out with any winds of evasion or vain defences, that is our part ; and within that we shall contain our-

selves, not doubting at all, but that the evidence itself will carry such force as it shall need no vantage or aggravation.

My lords, the course which I will hold in delivering that which I shall say, for I love order, shall be this :

First, I will speak somewhat of the nature and greatness of the offence which is now to be tried ; not to weigh down my lord with the greatness of it, but contrariwise to shew that a great offence deserveth a great proof, and that the King, however he might esteem this gentleman heretofore, as the signet upon his finger, to use the Scripture-phrase, yet in such case as this he was to put him off.

Secondly, I will use some few words touching the nature of the proofs, which in such a case are competent.

Thirdly, I will state the proofs.

Fourthly and lastly, I will produce the proofs, either out of examinations and matters in writing, or witnesses *viva voce*.

For the offence itself, it is of crimes, next unto high treason, the greatest ; it is the foulest of felonies. And take this offence with the circumstances, it hath three degrees or stages ; that it is murder ; that it is murder by impoisonment ; that it is murder committed upon the King's prisoner in the Tower : I might say, that it is murder under the colour of friendship ; but this is a circumstance moral ; I leave that to the evidence itself.

For murder, my lords, the first record of justice that was in the world was a judgment upon a murderer in the person of Adam's first-born, Cain ; and though it was not punished by death, but with banishment and mark of ignominy, in respect of the primogeniture, or population of the world, or other points of God's secret decree, yet it was judged, and was, as it is said, the first record of justice. So it appeareth likewise in Scripture, that the murder of Abner by Joab, though it were by David respited in respect of great services past, or reason of state, yet it was not forgotten. But of this I will say no more. It was ever admitted, and ranked in God's own tables, that murder is of offences between man and man, next unto treason and disobedience unto authority, which some divines have referred to the first table, because of the lieutenantcy of God in princes.

For impoisonment, I am sorry it should be heard of in this kingdom : it is not *nostri generis nec sanguinis* : it is an Italian crime, fit for the court of Rome, where that person, which intoxicateth the Kings of the earth with his cup of poison, is many times really and materially intoxicated and impoisoned himself.

But it hath three circumstances, which make it grievous beyond other murders : whereof the first is, that it takes away a man in full peace, in God's and the King's peace : thinketh no harm, but is comforting of nature with refection and food ; so that, as the Scripture saith, *his table is made a snare*.

The second is, that it is easily committed, and easily concealed ; and on the other side, hardly prevented, and hardly discovered : for murder by violence, princes have guards, and private men have houses, attendants, and arms : neither can such murder be committed but *cum sonitu*, and with some overt and apparent act that may discover and trace the offender. But as for poison, the cup itself of princes will scarce serve, in regard of many poisons that neither discolour nor distaste.

And the last is, because it concerneth not only the destruction of the maliced man, but of any other ; *Quis modo tutus erit ?* for many times the poison is prepared

pared for one, and is taken by another : so that men die other mens deaths ; *concidit scilicet aliens vulnere* : and it is, as the Psalm calleth it, *jacitta nocte volans* ; the arrow that flieth by night, it hath no aim or certainty.

Now for the third degree of this particular offence, which is, that it was committed upon the King's prisoner, who was out of his own defence, and merely in the King's protection, and for whom the King and state was a kind of respondent ; is a thing that aggravates the fault much. For certainly, my lord of Somerset, let me tell you this, that Sir Thomas Overbury is the first man that was murdered in the Tower of London, since the murder of the two young princes. Thus much of the offence, now to the proof.

For the nature of the proofs, your lordships must consider, that impositions, of all offences is the most secret ; so secret, as that if in all cases of impositions you should require testimony, you were as good proclaim impunity.

Who could have impeached Livia, by testimony, of the poison figs upon the tree, which her husband was wont to gather with his own hands ?

Who could have impeached Parisatis for the poisoning of one side of the knife that she carved with, and keeping the other side clean ; so that herself did eat of the same piece of meat that the lady did that she did impositon ? The cases are infinite, and need not to be spoken of, of the secrecy of impositions ; but wise triers must take upon them, in these secret cases, Solomon's spirit, that, where there could be no witnesses, collected the act by the affection.

But yet we are not to come to one case : for that which your lordships are to try, is not the act of impositon, for that is done to your hand ; all the world by law is concluded to say, that Overbury was impositoned by Weston.

But the question before you is of the procurement only, and of the abetting, as the law termeth it, as accessory before the fact : which abetting is no more but to do or use any act or means, which may aid or conduce unto the impositon.

So that it is not the buying or making of the poison, or the preparing, or confecting, or commixing of it, or the giving or sending or laying the poison, that are the only acts that do amount unto abetment. But if there be any other act or means done or used to give the opportunity of impositon, or to facilitate the execution of it, or to stop or divert any impediments that might hinder it, and this be with an intention to accomplish and achieve the impositon ; all these are abetments, and accessories before the fact. I will put you a familiar example. Allow there be a conspiracy to murder a man as he journeys by the way, and it be one man's part to draw him forth to that journey by invitation, or by colour of some business ; and another takes upon him to dissuade some friend of his, whom he had a purpose to take in his company, that he be not too strong to make his defence ; and another hath the part to go along with him, and to hold him in talk till the first blow be given : all these, my lords, without scruple are abettors to this murder, though none of them give the blow, nor assist to give the blow.

My lords, he is not the hunter alone that lets slip the dog upon the deer, but he that lodges the deer, or raises him, or puts him out, or he that sets a toil that he cannot escape, or the like.

But this, my lords, little needeth in this present case, where there is such a chain of acts of impositon as hath been seldom seen, and could hardly have been expected, but that greatness of fortune maketh commonly greatness in offending.

To descend to the proofs themselves, I shall keep this course.

First, I will make a narrative or declaration of the fact itself.

Secondly, I will break and distribute the proofs as they concern the prisoner.

And thirdly, according to that distribution, I will produce them, and read them, or use them.

So that there is nothing that I shall say, but your lordship, my lord of Somerset, shall have three thoughts or cogitations to answer it: First, when I open it, you may take your aim. Secondly, when I distribute it, you may prepare your answers without confusion. And lastly, when I produce the witnesses or examinations themselves, you may again ruininate and re-advise how to make your defence. And this I do the rather, because your memory or understanding may not be oppressed or overladen with length of evidence, or with confusion of order. Nay more, when your lordship shall make your answers in your time, I will put you in mind, when cause shall be, of your omissions.

First, therefore, for the simple narrative of the fact. Sir Thomas Overbury for a time was known to have had great interest and great friendship with my lord of Somerset, both in his meaner fortunes, and after: insomuch as he was a kind of oracle of direction unto him; and, if you will believe his own vaunts, being of an insolent Thraasonical disposition, he took upon him, that the fortune, reputation, and understanding of this gentleman, who is well known to have had a better teacher, proceeded from his company and counsel.

And this friendship rested not only in conversation and business of court, but likewise in communication of secrets of estate. For my lord of Somerset, at that time exercising, by his Majesty's special favour and trust, the office of the secretary provisionally, did not forbear to acquaint Overbury with the King's packets of dispatches from all parts, Spain, France, the Low-Countries, *etc.* And this not by glimpses, or now and then rounding in the ear for a favour, but in a settled manner: packets were sent, sometimes opened by my lord, sometimes unbroken, unto Overbury, who perused them, copied, registered them, made tables of them as he thought good: so that, I will undertake, the time was when Overbury knew more of the secrets of state than the council-table did. Nay, they were grown to such an inwardness, as they made a play of all the world besides themselves: so as they had ciphers and jargons for the King, the Queen, and all the great men; things seldom used, but either by princes and their ambassadors and ministers, or by such as work and practise against, or at least upon, princes.

But understand me, my lord, I shall not charge you this day with any disloyalty; only I say this for a foundation, that there was a great communication of secrets between you and Overbury, and that it had relation to matters of estate, and the greatest causes of this kingdom.

But, my lords, as it is a principle in nature, that the best things are in their corruption the worst, and the sweetest wine makes the sharpest vinegar; so fell it out with them, that this excess, as I may term it, of friendship ended in mortal hatred on my lord of Somerset's part.

For it fell out, some twelve months before Overbury's imprisonment in the Tower, that my lord of Somerset was entered into an unlawful love towards his unfortunate lady, then countess of Essex: which went so far, as it was then secretly projected, chiefly between my lord Privy Seal and my lord of Somerset, to effect a
nullity

nullity in the marriage with my lord of Essex, and so to proceed to a marriage with Somerset.

This marriage and purpose did Overbury mainly oppugn, under pretence to do the true part of a friend, for that he counted her an unworthy woman; but the truth was, that Overbury, who, to speak plainly, had little that was solid for religion or mortal virtue, but was a man possessed with ambition and vain-glory, was loth to have any partners in the favour of my lord of Somerset, and especially not the house of the Howards, against whom he had always professed hatred and opposition: so all was but miserable bargains of ambition.

And, my lords, that this is no sinister construction, will well appear unto you, when you shall hear that Overbury makes his brags to my lord of Somerset, that he had won him the love of the lady by his letters and industry: so far was he from cases of conscience in this matter. And certainly, my lords, howsoever the tragical misery of that poor gentleman Overbury ought somewhat to obliterate his faults; yet because we are not now upon point of civility, but to discover the face of truth to the face of justice; and that it is material to the true understanding of the state of this cause; Overbury was naught and corrupt, the ballads must be amended for that point.

But to proceed; when Overbury saw that he was like to be dispossessed of my lord here, whom he had possessed so long, and by whose greatness he had promised himself to do wonders; and being a man of an unbounded and impetuous spirit, he began not only to dissuade, but to deter him from that love and marriage; and finding him fixed, thought to try stronger remedies, supposing that he had my lord's head under his girdle, in respect of communication of secrets of estate, or, as he calls them himself in his letters, secrets of all natures; and therefore dealt violently with him, to make him desist, with menaces of discovery of secrets, and the like.

Hereupon grew two streams of hatred upon Overbury; the one, from the lady, in respect that he crossed her love, and abused her name, which are furies to women; the other, of a deeper and more mineral nature, from my lord of Somerset himself; who was afraid of Overbury's nature, and that if he did break from him and fly out, he would mine into him and trouble his whole fortunes.

I might add a third stream from the earl of Northampton's ambition, who desires to be first in favour with my lord of Somerset; and knowing Overbury's malice to himself and his house, thought that man must be removed and cut off. So it was amongst them resolved and decreed that Overbury must die.

Hereupon they had variety of devices. To send him beyond sea, upon occasion of employment, that was too weak; and they were so far from giving way to it, as they crossed it. There rested but two ways, quarrel or assault, and poison. For that of assault, after some proposition and attempt, they passed from it; it was a thing too open, and subject to more variety of chances. That of poison likewise was a hazardous thing, and subject to many preventions and cautions; especially to such a jealous and working brain as Overbury had, except he were first fast in their hands.

Therefore the way was first to get him into a trap; and lay him up, and then they could not miss the mark. Therefore in execution of this plot it was devised, that Overbury should be designed to some honourable employment in foreign parts, and should under-hand by the lord of Somerset be encouraged to refuse it; and

and to upon that contempt he should be laid prisoner in the Tower, and then they would look he should be close enough, and death should be his bail. Yet were they not at their end. For they considered, that if there was not a fit lieutenant of the Tower for their purpose, and likewise a fit under-keeper of Overbury; first, they should meet with many impediments in the giving and exhibiting the poison. Secondly, they should be expost to note an observation that might discover them. And thirdly, Overbury in the mean time might write clamorous and furious letters to other his friends, and so all might be disappointed. And therefore the next link of the chain was to displace the then lieutenant Waade, and to place Helwisse, a principal abettor in the imprisonment: again, to displace Cary, that was the under-keeper in Waade's time, and to place Wetton, who was the principal actor in the imprisonment: and this was done in such a while, that it may appear to be done, as it were, with one breath, as there were but fifteen days between the commitment of Overbury, the displacing of Waade, the placing of Helwisse, the displacing of Cary the under-keeper, the placing of Wetton, and the first poison given two days after.

Then when they had this poor gentleman in the Tower close prisoner, where he could not escape nor stir, where he could not feed but by their hands, where he could not speak nor write but through their trunks; then was the time to execute the last act of this tragedy.

Then must Franklin be purveyor of the poisons, and procure five, six, seven several potions, to be sure to hit his complexion. Then must Mrs. Turner be the say-mistress of the poisons to try upon poor beasts, what is present, and what works at distance of time. Then must Weston be the tormenter, and chase him with poison after poison; poison in salts, poison in meats, poison in sweetmeats, poison in medicines and vomits, until at last his body was almost come, by use of poisons, to the state that Mithridates's body was by the use of treacle and preservatives, that the force of the poisons were blunted upon him: Weston confessing, when he was chid for not dispatching him, that he had given him enough to poison twenty men. Lastly, because all this asked time, courses were taken by Somerset, both to divert all means of Overbury's delivery, and to entertain Overbury by continual letters, partly of hopes and projects for his delivery, and partly of other fables and negotiations; somewhat like some kind of persons, which I will not name, which keep men in talk of fortune-telling, when they have a felonious meaning.

And this is the true narrative of this act of imprisonment, which I have summarily recited.

Now for the distribution of the proofs, there are four heads of proofs to prove you guilty, my lord of Somerset, of this imprisonment; whereof two are precedent to the imprisonment, the third is present, and the fourth is following or subsequent. For it is in proofs as it is in lights; there is a direct light, and there is a reflexion of light, or back-light.

The first head or proof thereof is, That there was a root of bitterness, a mortal malice or hatred, mixed with deep and bottomless fears, that you had towards Sir Thomas Overbury.

The second is, That you were the principal actor, and had your hand in all those acts, which did conduce to the imprisonment, and which gave opportunity

and

and means to effect it; and without which the impoisonment could never have been, and which could serve or tend to no other end but to the impoisonment.

The third is, That your hand was in the very impoisonment itself, which is more than needs to be proved; that you did direct poison; that you did deliver poison; that you did continually hearken to the success of the impoisonment; and that you spurred it on, and called for dispatch when you thought it lingered.

And lastly, That you did all the things after the impoisonment, which may detect a guilty conscience, for the smothering of it, and avoiding punishment for it: which can be but of three kinds: That you suppressed, as much as in you was, testimony: That you did deface, and destroy, and clip and misdate all writings that might give light to the impoisonment; and that you did fly to the altar of guiltiness, which is a pardon, and a pardon of murder, and a pardon for yourself, and not for your lady.

In this, my lord, I convert my speech to you, because I would have you attend the points of your charge, and so of your defence, the better. And two of these heads I have taken to myself, and left the other two to the King's two serjeants.

For the first main part, which is, the mortal hatred, coupled with fear, that was in my lord of Somerset towards Overbury, although he did palliate it with a great deal of hypocrisy and dissimulation even to the end; I shall prove it, my lord Steward, and you my lords and peers, manifestly, by matter both of oath and writing. The root of this hatred was that that hath cost many a man's life, that is, fear of discovering secrets: secrets, I say, of a high and dangerous nature: Wherein the course that I will hold, shall be this:

First, I will shew that such a breach and malice was between my lord and Overbury, and that it burst forth into violent menaces and threats on both sides.

Secondly, That these secrets were not light, but of a high nature; for I will give you the elevation of the pole. They were such as my lord of Somerset for his part had made a vow, that Overbury should neither live in court nor country. That he had likewise opened himself and his own fears so far, that if Overbury ever came forth of the Tower, either Overbury or himself must die for it. And of Overbury's part, he had threatened my lord, that whether he did live or die, my lord's shame should never die, but he would leave him the most odious man of the world. And farther, that my lord was like enough to repent it, in the place where Overbury wrote, which was the Tower of London. He was a true prophet in that: so here is the height of the secrets.

Thirdly, I will shew you, that all the King's business was by my lord put into Overbury's hands; so as there is work enough for secrets, whatsoever they were: and like princes confederates, they had their ciphers and jargons.

And lastly, I will shew you that it is but a toy to say that the malice was only in respect he spake dishonourably of the lady; or for doubt of breaking the marriage: for that Overbury was a co-adjutor to that love, and the lord of Somerset was as deep in speaking ill of the lady as Overbury. And again, it was too late for that matter, for the bargain of the match was then made and past. And if it had been no more but to remove Overbury from disturbing of the match, it had been an easy matter to have banded over Overbury beyond seas, for which they had a fair way; but that would not serve their turn.

And lastly, *periculum periculo vincitur*, to go so far as an impoisonment, must have a deeper malice than flutes: for the cause must bear a proportion to the effect.

For

For the next general head of proofs, which consists in acts preparatory to the middle acts, they are in eight several points of the compass, as I may term it.

First, That there were devices and projects to dispatch Overbury, or to overthrow him, plotted between the countess of Somerset, the earl of Somerset, and the earl of Northampton, before they fell upon the imprisonment: for always before men fix upon a course of mischief, there be some rejections: but die he must one way or other.

Secondly, That my lord of Somerset was a principal practiser, I must speak it, in a most perfidious manner, to set a train or trap for Overbury to get him into the Tower; without which they never durst have attempted the imprisonment.

Thirdly, That the placing of the lieutenant Helwisle, one of the imprisoners, and the displacing of Waade, was by the means of my lord of Somerset.

Fourthly, That the placing of Weston the under-keeper, who was the principal imprisoner, and the displacing of Cary, and the doing of all this within fifteen days after Overbury's commitment, was by the means and countenance of my lord of Somerset. And these two were the active instruments of the imprisonment: and this was a business that the lady's power could not reach unto.

Fifthly, That because there must be a time for the tragedy to be acted, and chiefly because they would not have the poisons work upon the sudden; and for that the strength of Overbury's nature, or the very custom of receiving poison into his body, did overcome the poisons, that they wrought not so fast; therefore Overbury must be held in the Tower. And as my lord of Somerset got him into the trap, so he kept him in, and abused him with continual hopes of liberty; and diverted all the true and effectual means of his liberty, and made light of his sickness and extremities.

Sixthly, That not only the plot of getting Overbury into the Tower, and the devices to hold him and keep him there; but the strange manner of his close keeping, being in but for a contempt, was by the device and means of my lord of Somerset, who denied his father to see him, denied his servants that offered to be shut up close prisoners with him; and in effect handled it so, that he was close prisoner to all his friends, and open and exposed to all his enemies.

Seventhly, That the advertisement which my lady received from time to time from the lieutenant or Weston, touching Overbury's state of body or health, were ever sent up to the court, though it were in progress, and that from my lady: such a thirst and listening this lord had to hear that he was dispatched.

Lastly, There was a continual negotiation to set Overbury's head on work, that he should make some recognition to clear the honour of the lady; and that he should become a good instrument towards her and her friends: all which was but entertainment; for your lordships shall plainly see divers of my lord of Northampton's letters, whose hand was deep in this business, written, I must say it, in dark words and clauses; that there was one thing pretended and another intended; that there was a real charge, and there was somewhat not real; a main drift, and a dissimulation. Nay farther, there be some passages which the peers in their wisdom will discern to point directly at the imprisonment.

After this inducement followed the evidence itself.

The E F F E C T of that which was spoken
 BY THE
 Lord Keeper of the Great Seal of England,
 At the taking of his place in Chancery,

In performance of the charge his Majesty had given him when he received
 the Seal, May 7, 1617.

BEFORE I enter into the business of the court, I shall take advantage of so many honourable witnesses to publish and make known summarily, what charge the King's most excellent Majesty gave me when I received the seal, and what orders and resolutions I myself have taken in conformity to that charge; that the King may have the honour of direction, and I the part of obedience; whereby your lordships, and the rest of the presence, shall see the whole time of my sitting in the chancery, which may be longer or shorter, as it shall please God and the King, contracted into one hour. And this I do for three causes.

First, to give account to the King of his commandment.

Secondly, that it may be a guard and custody to myself, and my own doings, that I do not swerve or recede from any thing that I have professed in so noble company.

And thirdly, that all men that have to do with the chancery or the seal, may know what they shall expect, and both set their hearts and my ears at rest; not moving me in any thing against these rules; knowing that my answer is now turned from a *nolumus* into a *non possumus*. It is no more, I will not, but, I cannot, after this declaration.

And this I do also under three cautions.

This first is, that there be some things of a more secret and council-like nature, more fit to be acted than published. But those things which I shall speak of to-day are of a more public nature.

The second is, that I will not trouble this presence with every particular, which would be too long; but select those things which are of greatest efficacy, and conduce most *ad summas rerum*; leaving many other particulars to be set down in a table, according to the good example of my last predecessor in his beginning.

And lastly, that these imperatives, which I have made but to myself and my times, be without prejudice to the authority of the court, or to wiser men that may succeed me: and chiefly that they are wholly submitted unto the great wisdom of my Sovereign, and the absolute Prince in judicature that hath been in the christian world; for if any of these things which I intend to be subordinate to his directions, shall be thought by his Majesty to be inordinate, I shall be most ready to reform them. These things are but *tanquam album praetoris*; for so did the Roman praetors, which have the greatest affinity with the jurisdiction of the chan-

cellor here, who used to set down at their entrance, how they would use their jurisdiction. And this I shall do, my lords, *in verbis majestatis*; no flourishing or painted words, but such as are fit to go before deeds.

The King's charge, which is my lanthorn, rested upon four heads.

The first was, that I should contain the jurisdiction of the court within its true and due limits, without swelling or excess.

The second, that I should think the putting of the great seal to letters patents was not a matter of course to follow after precedent warrants; but that I should take it to be the maturity and fulness of the King's intentions: and therefore of the greatest parts of my trust, if I saw therein any scruple or cause of stay, that I should acquaint him, concluding with a *Quod dubites ne feceris*.

The third was, that I should retrench all unnecessary delays, that the subject might find that he did enjoy the same remedy against the fainting of the soul and the consumption of the estate; which was speedy justice. *Bis dat, qui cito dat*.

The fourth was, that justice might pass with as easy charge as might be; and that those same brambles, that grow about justice, of needless charge and expence, and all manner of exactions, might be rooted out so far as might be.

These commandments, my lords, are righteous, and, as I may term them, sacred; and therefore to use a sacred form, I pray God blest the King for his great care over the justice of the land, and give me, his poor servant, grace and power to observe his precepts.

Now for a beginning towards it, I have set down and applied particular orders to-day out of these four general heads.

For the excess or tumour of this court of chancery, I shall divide it into five natures.

The first is, when the court doth embrace and retain causes, both in matter and circumstance merely determinable and fit for the common law: for, my lords, the chancery is ordained to supply the law, and not to subvert the law. Now to describe unto you or delineate what those causes are that are fit for the court, or not fit for the court, were too long a lecture. But I will tell you what remedy I have prepared. I will keep the keys of the court myself, and will never refer any demurrer or plea, tending to discharge or dismiss the court of the cause, to any matter of the chancery, but judge of it myself, or at least the master of the rolls. Nay farther, I will appoint regularly, that on the Tuesday of every week, which is the day of orders, first to hear motions of that nature before any other, that the subject may have his *vale* at first without attending, and that the court do not keep and accumulate a miscellany and confusion of causes of all natures.

The second point concerneth the time of the complaint, and the late comers into the chancery; which stay till a judgment be passed against them at the common law, and then complain: wherein your lordships may have heard a great rattle and a noise of a *praemunire*, and I cannot tell what. But that question the King hath settled according to the ancient precedents in all times continued. And this I will say, that the opinion, not to relieve any case after judgment, would be a guilty opinion; guilty of the ruin, and naufrage, and perishing of infinite subjects: and as the King found it well out, why should a man fly into the chancery before he be hurt? The whole need not the physician, but the sick. But, my lords, the power would be preserved, but the practice would be moderate. My rule shall be therefore, that in case of complaints after judgment, except the judgments be
upon

upon *nilil dicit*, and cases which are but disguises of judgment, as that they be judgments obtained in contempt of a preceding order in this court, yea, and after verdicts also, I will have the party complainant enter into good bond to prove his suggestion: so that if he will be relieved against a judgment at common law upon matter of equity, he shall do it *tanquam in vinculis*, at his peril.

The third point of excess may be the over-frequent and facile granting of injunctions for the staying of the common laws, or the altering of possessions; wherein these shall be my rules.

I will grant no injunction merely upon priority of suit; that is to say, because this court was first possessed: a thing that was well reformed in the late lord chancellor's time, but usual in the chancellor Bromley's time; insomuch, as I remember, that Mr. Dalton the counsellor at law, put a pasquil upon the court in nature of a bill; for seeing it was no more but, My lord, the bill came in on Monday, and the arrest at common law was on Tuesday, I pray the injunction upon priority of suit: he caused his client that had a loose debtor, to put his bill into the chancery before the bond due to him was forfeited, to desire an order that he might have his money at the day, because he would be sure to be before the other. I do not mean to make it a matter of an horse-race who shall be first at Westminster-hall.

Neither will I grant an injunction upon matter contained in the bill only, be it never so smooth and specious; but upon matter confessed in the defendant's answer, or matter pregnant in writing, or of record; or upon contempt of the defendant in not appearing, or not answering, or trifling with the court by insufficient answering. For then it may be thought that the defendant stands out upon purpose to get the start at the common law, and so to take advantage of his own contempt; which may not be suffered.

As for injunctions for possession, I shall maintain possessions as they were at the time of the bill exhibited; and for the space of a year at the least before, except the possession were gotten by force or any trick.

Neither will I alter possession upon interlocutory orders, until a decree; except upon matter plainly confessed in the defendant's answer, joined also with a plain disability and insolvency in the defendant to answer the profits.

As for taking of possession away in respect of contempts, I will have all the process of the court spent first, and a sequestration of the profits before I come to an injunction.

The fourth point is concerning the communicating of the authority of the chancellor too far; and making, upon the matter, too many chancellors, by relying too much upon the reports of the masters of the chancery as concludent. I know, my lords, the masters of the chancery are reverend men; and the great mass of the business of the court cannot be sped without them; and it is a thing the chancellor may soon fall into for his own ease, to rely too much upon them. But the course that I will take generally shall be this; I will make no binding order upon any report of one of the masters, without giving a seven-night's day at the least; to shew cause against the report, which nevertheless I will have done modestly, and with due reverence towards them: and again, I must utterly discontinue the making of an hypothetical or conditional order; that if a master of the chancery do certify thus and thus, that then it is so ordered without farther motion; for that it is a surprise, and giveth no time for contradiction.

The last point of excess is, if a chancellor shall be so much of himself, as he shall neglect assistance of reverend judges in cases of difficulty, especially if they touch upon law, or calling them, shall do it but *pro forma tantum*, and give no due respect to their opinions: wherein, my lords, preserving the dignity and majesty of the court, which I account rather increased than diminished by grave and due assistance, I shall never be found so sovereign or abundant in mine own sense, but I shall both desire and make true use of assistance. Nay, I assure your lordships, if I should find any main diversity of opinion of my assistants from mine own, though I know well the judicature of the court wholly resteth in myself; yet I think I should have recourse to the oracle of the King's own judgment, before I should pronounce. And so much for the temperate use of the authority of this court; for surely the health of a court, as well as of a body, consisteth in temperance.

For the second commandment of his Majesty, touching staying of grants at the great seal; there may be just cause of stay, either in the matter of the grant, or in the manner of passing the same. Out of both which I extract these six principal cases which I will now make known: all which, nevertheless, I understand to be wholly submitted to his Majesty's will and pleasure, after by me he shall have been informed; for if *iteratum mandatum* be come, obedience is better than sacrifice.

The first case is, where any matter of revenue, or treasure, or profit, passeth from his Majesty; my first duty shall be to examine, whether the grant hath passed in the due and natural course by the great officers of the revenue, the lord treasurer and chancellor of the exchequer, and with their privy; which if I find it not to be, I must presume it to have passed in the dark, and by a kind of surreption; and I will make stay of it till his majesty's pleasure be farther known.

Secondly, if it be a grant that is not merely vulgar, and hath not of course passed at the signet by a *fac simile*, but needeth science, my duty shall be to examine whether it hath passed by the learned counsel and had their docket; which is that his Majesty reads, and leads him. And if I find it otherwise, although the matter were not in itself inconvenient, yet I hold it a just cause of stay, for precedent's sake, to keep men in the right way.

Thirdly, if it be a grant which I conceive, out of my little knowledge, to be against the law; of which nature Theodosius was wont to say, when he was pressed, "I spake it, or I wrote it, but I granted it not if it be unjust:" I will call the learned counsel to it, as well him that drew the book as the rest, or some of them: and if we find cause, I will inform his Majesty of our opinion, either by myself or some of them. And as for the judges, they are judges of grants past, but not of grants to come, except the King call them.

Fourthly, if the grants be against the King's public book of bounty, I am expressly commanded to stay them until the King either revise his book in general, or give direction in particular.

Fifthly, if, as a counsellor of estate, I do foresee inconvenience to ensue by the grant in reason of estate, in respect of the King's honour, or discontent, and murmur of the people; I will not trust mine own judgment, but I will either acquaint his Majesty with it, or the council table, or some such of my lords as I shall think fit.

Lastly, for matter of pardons; if it be for treason, misprision, murder, either expressed or involute, by a *non-oblante*; or of piracy, or of *premunure*, or of line,

or exemplary punishment in the star-chamber, or some other nature; I shall by the grace of God stay them until his Majesty, who is the fountain of grace, may resolve between God and him, how far grace shall abound or super-abound.

And if it be of persons attainted and convicted of robbery, burglary, *etc.* then will I examine whether the pardons passed the hand of any justice of assize, or other commissioners, before whom the trial was made; and if not, I think it my duty also to stay them.

And your lordships see in this matter of the seal, and his Majesty's royal commandment, concerning the same, I mean to walk in the light; so that men may know where to find me: and this publishing thereof plainly, I hope, will save the King from a great deal of abuse, and me from a great deal of envy; when men shall see that no particular turn or end leads me, but a general rule.

For the third general head of his Majesty's precepts concerning speedy justice, it rests much upon myself, and much upon others: yet so, as my procuration may give some remedy and order to it. For myself, I am resolved that my decree shall come speedily, if not instantly, after the hearing, and my signed decree speedily upon my decree pronounced. For it hath been a manner much used of late in my last lord's time, of whom I learn much to imitate, and, somewhat to avoid; that upon the solemn and full hearing of a cause nothing is pronounced in court, but breviates are required to be made; which I do not dislike in itself in causes perplexed. For I confess I have somewhat of the cunctative; and I am of opinion, that whosoever is not wiser upon advice than upon the sudden, the same man was no wiser at fifty than he was at thirty. And it was my father's ordinary word, "You must give me time." But yet I find when such breviates were taken, the cause was sometimes forgotten a term or two, and then set down for a new hearing, three or four terms after. And in the mean time the subject's pulse beats swift, though the chancery pace be slow. Of which kind of intermission I see no use, and therefore I will promise regularly to pronounce my decree within few days after my hearing; and to sign my decree at the least in the vacation after the pronouncing. For fresh justice is the sweetest. And to the end that there be no delay of justice, nor any other means-making or labouring, but the labouring of the counsel at the bar.

Again, because justice is a sacred thing, and the end for which I am called to this place, and therefore is my way to heaven; and if it be shorter, it is never a whit the worse, I shall by the grace of God, as far as God will give me strength, add the afternoon to the forenoon, and some fourth night of the vacation to the term, for the expediting and clearing of the causes of the court; only the depth of the three long vacations I would reserve in some measure free from business of estate, and for studies, arts and sciences, to which in my own nature I am most inclined.

There is another point of true expedition, which resteth much in myself, and that is in my manner of giving orders. For I have seen an affectation of dispatch turn utterly to delay at length: for the manner of it is to take the tale out of the counsellor at the bar his mouth, and to give a cursory order, nothing tending or conducing to the end of the business. It makes me remember what I heard one say of a judge that sat in chancery; that he would make forty orders in a morning out of the way, and it was out of the way indeed; for it was nothing to the end
of

SPEECH ON TAKING

of the business: and this is that which makes sixty, eighty, a hundred orders in a cause, to and fro, beggiting one another; and like Penelope's web, doing and undoing. But I mean not to purchase the praise of expeditive in that kind; but as one that have a feeling of my duty, and of the case of others. My endeavour shall be to hear patiently, and to cast my order into such a mold as may soonest bring the subject to the end of his journey.

As for delays that may concern others, first the great abuse is, that if the plaintiff have got an injunction to stay suits at the common law, then he will spin out his cause at length. But by the grace of God I will make injunctions but an hard pillow to sleep on; for if I find that he prosecutes not with effect, he may perhaps, when he is awake, find not only his injunction dissolved, but his cause dismissed.

There be other particular orders, I mean to take for *non* prosecution or faint prosecution, wherewith I will not trouble you now, because *juncta sequar fastigia rerum*. And so much for matter of expedition.

Now for the fourth and last point of the King's commandment; for the cutting off unnecessary charge of the subject, a great portion of it is fulfilled in the precedent article; for it is the length of suits that doth multiply charges chiefly; but yet there are some other remedies that do conduce thereunto.

First, therefore I will maintain strictly, and with severity, the former orders which I find my lord chancellor hath taken, for the immoderate and needless prolixity, and length of bills, and answers, and so forth; as well in punishing the party, as fining the counsel, whose hand I shall find at such bills, answers, *etc.*

Secondly, for all the examinations taken in the court, I do give charge unto the examiners, upon peril of losing their places, that they do not use any idle repetitions, or needless circumstances, in setting down the depositions taken by them; and I would I could help it likewise in the country, but that is almost impossible.

Thirdly, I shall take a diligent survey of the copies in chancery, that they have their just number of lines, and without open and wasteful writing.

Fourthly, I shall be careful there be no exaction of any new fees, but according as they have been heretofore set and tabled.

As for lawyers fees, I must leave that to the conscience and merit of the lawyer; and the estimation and gratitude of the client: but this I can do; I know there have used to attend this bar a number of lawyers that have not been heard sometimes, and scarce once or twice in a term; and that makes the client seek to great counsel and favourites, as they call them, for every order that a mean lawyer might as well dispatch, a term fitter for Kings than judges. And therefore to help the generality of lawyers, and therein to ease the client, I will constantly observe that every Tuesday, and other days of orders, after nine o'clock stricken, I will hear the bar until eleven, or half an hour after ten at the least. And since I am upon the point whom I will hear, your lordships will give me leave to tell you a fancy. It falleth out, that there be three of us the King's servants in great places, that are lawyers by descent, Mr. Attorney son of a judge, Mr. Solicitor likewise son of a judge, and myself a chancellor's son.

Now because the law roots so well in my time, I will water it at the root thus far, as besides these great ones, I will hear any judge's son before a serjeant, and any serjeant's son before a reader, if there be not many of them.

Lastly,

Lastly, for the better ease of the subjects, and the bridling of contentious suits, I shall give better, that is greater, costs where the suggestions are not proved, than hath been hitherto used.

There be divers orders for the better reglement of this court; and for granting of writs, and for granting of benefices and others, which I shall set down in a table. But I will deal with no other to-day but such as have a proper relation to his Majesty's commandment; it being my comfort that I serve such a matter, that I shall need to be but a conduit only for the conveying of his goodness to his people. And it is true, that I do affect and aspire to make good that saying, that *Optimus magistratus præstat optimæ legi*; which is true in his Majesty. And for myself, I doubt, I shall not attain it. But yet I have a domestic example to follow. My lords, I have no more to say, but now I will go on to the business of the court.



T H I S
S P E E C H

Which was used by the

Lord KEEPER of the GREAT SEAL,

In the Star-Chamber, before the Summer Circuits, the KING
being then in Scotland, 1617.

THE King, by his perfect declaration published in this place concerning judges and justices, hath made the speech of his chancellor, accustomed before the circuits, rather of ceremony than of use. For as in his book to his son he hath set forth a true character and platform of a King; so in this his speech he hath done the like of a judge and justice: which sheweth, that as his Majesty is excellently able to govern in chief; so he is likewise well seen and skilful in the inferior offices and stages of justice and government; which is a thing very rare in Kings.

Yet nevertheless, somewhat must be said to fulfil an old observance; but yet upon the King's grounds, and very briefly: for, as Solomon saith in another case, *In these things who is he that can come after the King?*

First, You that are the judges of circuits are, as it were, the planets of the kingdom, I do you no dishonour in giving you that name, and no doubt you have a great stroke in the frame of this government, as the other have in the great frame of the world. Do therefore as they do, move always, and be carried with the motion of your first mover, which is your Sovereign. A popular judge is a deformed thing: and *plaudites* are fitter for players than for magistrates. Do good to the people, love them and give them justice; but let it be, as the Psalm saith, *nihil inde expectantes*; looking for nothing, neither praise nor profit.

Yet my meaning is not, when I wish you to take heed of popularity, that you should be imperious and strange to the gentlemen of the country. You are above them in power, but your rank is not much unequal; and learn this, that power is ever of greatest strength, when it is civilly carried.

Secondly, You must remember, that besides your ordinary administration of justice, you do carry the two glasses or mirrors of the state; for it is your duty in these your visitations, to represent to the people the graces and care of the King: and again, upon your return, to present to the King the distastes and griefs of the people.

Mark what the King says in his book: "Procure reverence to the King and
"the law; inform my people truly of me, which, we know, is hard to do ac-
"cording to the excellency of his merit; but yet endeavour it, how zealous I
"am for religion; how I desire law may be maintained and flourish; that every
"court

“ court should have its jurisdiction; that every subject should submit himself to
“ the law.” And of this you have had of late no small occasion of notice and remembrance, by the great and strait charge that the King hath given me as keeper of his seal, for the governing of the chancery without tumour or excess.

Again, *è re nota*, you at this present ought to make the people know and consider the King’s blessed care and providence in governing this realm in his absence: so that fitting at the helm of another kingdom, not without great affairs and business; yet he governs all things here by his letters and directions, as punctually and perfectly as if he were present.

I assure you, my lords of the council, and I do much admire the extension and latitude of his care in all things.

In the high commission he did conceive a finew of government was a little shrunk; he recommended the care of it.

He hath called for the accounts of the last circuit from the judges to be transmitted unto him in Scotland.

Touching the infestation of pirates, he hath been careful, and is, and hath put things in a way.

All things that concern the reformation or the plantation of Ireland, he hath given in them punctual and resolute directions. All this in absence.

I give but a few instances of a public nature; the secrets of council I may not enter into, though his dispatches into France, Spain, and the Low-Countries, now in his absence, are also notorious as to the outward sending. So that I must conclude, that his Majesty wants but more kingdoms, for I see he could suffice to all.

As for the other glass I told you of, of representing to the King the griefs of his people, without doubt it is properly your part; for the King ought to be informed of any thing amiss in the state of his countries from the observations and relations of the judges, that indeed know the pulse of the country, rather than from discourse. But for this glass, thanks be to God, I do hear from you all, that there was never greater peace, obedience, and contentment in the country; though the best governments be always like the fairest crystals, wherein every little icicle or grain is seen, which in a fouler stone is never perceived.

Now to some particulars, and not many: of all other things I must begin as the King begins; that is with the cause of religion, and especially the hollow church-papist. St. Augustin hath a good comparison of such men, affirming, that they are like the roots of nettles, which themselves sting not, but yet they bear all the stinging leaves: let me know of such roots, and I will root them out of the country.

Next, for the matter of religion; in the principal place I recommend, both to you and to the justices, the countenancing of godly and zealous preachers. I mean not sectaries or novellists; but those which are sound and conform, and yet pious and reverend: for there will be a perpetual defection, except you keep men in by preaching, as well as law doth by punishing; and commonly spiritual diseases are not cured but by spiritual remedies.

Next, let me commend unto you the repressing, as much as may be, of fiction in the countries, of which ensue infinite inconveniencies, and perturbations of all good order, and crossing of all good service in court or country, or wheresoever. Cicero, when he was consul, had devised a fine remedy, a mill stone, but an effect-

SPEECH BEFORE THE SUMMER CIRCUITS.

tual and apt one, for he saith, *Eos, qui otium perturbant, reddam otiosos.* Those that trouble others quiet, I will give them quiet; they shall have nothing to do, nor no authority shall be put into their hands. If I may know from you, of any who are in the country that are heads or hands of faction, or men of turbulent spirits; I shall give them *Cicero's* reward, as much as in me is.

To conclude, study the King's book, and study yourselves how you profit by it, and all shall be well. And you the justices of peace in particular, let me say this to you, never King of this realm did you so much honour as the King hath done you in his speech, by being your immediate director, and by sorting you and your service with the service of ambassadors, and of his nearest attendance. Nay more, it seems his Majesty is willing to do the state of justice of peace honour actively also; by bringing in with time the like form of commission into the government of Scotland, as that glorious King, Edward the third, did plant this commission here in this kingdom. And therefore you are not fit to be copies, except you be fair written without blots or blurs, or any thing unworthy your authority: and so I will trouble you no longer for this time.



THE
S P E E C H
USED BY
Sir FRANCIS BACON,
Lord KEEPER of the GREAT SEAL of ENGLAND,
TO
Sir WILLIAM JONES,
Upon his calling to be
Lord CHIEF JUSTICE of IRELAND, 1617.

SIR WILLIAM JONES,

THE King's most excellent Majesty, being duly informed of your sufficiency every way, hath called you, by his writ now returned, to the state and degree of a serjeant at law; but not to stay there, but, being so qualified, to serve him as his chief justice of his King's bench in his realm of Ireland. And therefore that which I shall say to you, must be applied not to your serjeant's place, which you take but in passage, but to that great place where you are to settle; and because I will not spend time to the delay of the business of causes of the court, I will lead you the short journey by examples, and not the long by precepts.

The place that you shall now serve in, hath been fortunate to be well served in four successions before you: do but take unto you the constancy and integrity of Sir Robert Gardiner; the gravity, temper, and direction of Sir James Lea; the quickness, industry, and dispatch of Sir Humphry Winch; the care and affection to the commonwealth, and the prudent and politic administration of Sir John Denham, and you shall need no other lessons. They were all Lincolns-Inn men as you are, you have known them as well in their beginnings, as in their advancement.

But because you are to be there not only chief justice, but a counsellor of estate, I will put you in mind of the great work now in hand, that you may raise your thoughts according unto it. Ireland is the last *ex filiis Europae*, which hath been reclaimed from desolation, and a desert, in many parts, to population and plantation; and from savage and barbarous customs, to humanity and civility. This is the King's work in chief: it is his garland of heroical virtue and felicity, denied to his progenitors, and reserved to his times. The work is not yet conducted to perfection, but is in fair advance: and this I will say confidently, that if God bless this kingdom with peace and justice, no usurer is so sure in seven years space

to double his principal with interest, and interest upon interest, as that kingdom is within the same time to double the stock both of wealth and people. So as that kingdom, which once within these twenty years wise men were wont to doubt whether they should wish it to be in a pool, is like now to become almost a garden, and younger sister to Great Britain. And therefore you must set down with yourself to be not only a just governor, and a good chief justice, as if it were in England, but under the King and the deputy you are to be a matter-builder, and a master-planter, and reducer of Ireland. To which end, I will trouble you at this time but with three directions.

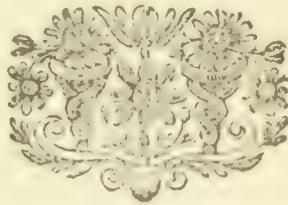
The first is, that you have special care of the three plantations. That of the north, which is in part acted; that of Wexford, which is now in distribution; and that of Longford and Letrim, which is now in survey. And take this from me, that the bane of a plantation is, when the undertakers or planters make such haste to a little mechanical present profit, as disturbeth the whole frame and nobleness of the work for times to come. Therefore hold them to their covenants, and the strict ordinances of plantation.

The second is, that you be careful of the King's revenue, and by little and little constitute him a good demesne, if it may be, which hitherto is little or none. For the King's case is hard, when every man's land shall be improved in value with increase manifold, and the King shall be tied to his dry rent.

My last direction, though first in weight, is, that you do all good endeavours to proceed resolutely and constantly, and yet with due temperance and equality, in matters of religion; lest Ireland civil become more dangerous to us than Ireland savage. So God give you comfort of your place.

After Sir William Jones's speech :

I had forgotten one thing, which was this. You may take exceeding great comfort, that you shall serve with such a deputy; one that, I think, is a man ordained of God to do great good to that kingdom. And this I think good to say to you, that the true temper of a chief justice towards a deputy is, neither servilely to second him, nor factiously to oppose him.



THE
 Lord KEEPER'S SPEECH,

In the EXCHEQUER,

TO

Sir JOHN DENHAM,

When he was called to be one of the Barons of the Exchequer, in 1617.

Sir JOHN DENHAM,

THE King, of his grace and favour, hath made choice of you to be one of the barons of the exchequer, to succeed to one of the gravest and most reverend judges of this kingdom; for so I hold Baron Altham was. The King takes you not upon credit but proof, and great proof of your former service: and that in both those kinds wherein you are now to serve: for as you have shewed yourself a good judge between party and party, so you have shewed yourself a good administer of the revenue, both when you were chief baron, and since as counsellor of estate there in Ireland, where the council, as you know, doth in great part manage and messuage the revenue.

And to both these parts I will apply some admonitions, but not vulgar or discursive, but apt for the times, and in few words, for they are best remembered.

First therefore, above all you ought to maintain the King's prerogative, and to set down with yourself, that the King's prerogative and the law are not two things; but the King's prerogative is law, and the principal part of the law, the first-born or *pars prima* of the law; and therefore in conserving or maintaining that, you conserve and maintain the law. There is not in the body of man one law of the head, and another of the body, but all is one entire law.

The next point that I would now advise you is, that you acquaint yourself diligently with the revenue; and also with the ancient records and precedents of this court. When the famous case of the copper-mines was argued in this court, and judged for the King, it was not upon the fine reasons of wit; as that the King's prerogative drew to it the chief *in quaque specie*: the lion is the chief of beasts, the eagle the chief of birds, the whale the chief of fishes, and so copper the chief of minerals; for these are but dalliances of law and ornaments: but it was the grave records and precedents that grounded the judgment of that cause; and therefore I would have you both guide and arm yourself with them against these vapours and fumes of law, which are extracted out of mens inventions and conceits.

The third advice I will give you hath a large extent; it is, that you do your endeavour in your place so to manage the King's justice and revenue, as the King may have most profit, and the subject least vexation: for when there is much
 vexation

SPEECH TO SIR JOHN DENHAM.

vexation to the subject, and little benefit to the King, then the exchequer is sick: and when there is much benefit to the King, with less trouble and vexation to the subject, then the exchequer is sound. As for example; if there shall be much racking for the King's old debts; and the more fresh and late debts shall be either more negligently called upon, or over-easily discharged, or over indulgently stalled: or if the number of informations be many, and the King's part or fines for compositions a trifle; or if there be much ado to get the King new land upon concealments, and that which he hath already be not known and surveyed, nor the woods preserved, I could put you many other cases, this falls within that which I term the sick estate of the exchequer: and this is that which makes every man ready with their undertakings and their projects to disturb the ancient frame of the exchequer; than the which, I am persuaded, there is not a better, this being the burden of the song: That much goeth out of the subject's purse, and little cometh to the King's purse. Therefore, give them not that advantage so to say. Sure I am, that besides your own associates, the barons, you serve with two superior great officers, that have honourable and true ends, and desire to serve the King and right the subject.

There resteth, that I deliver you your patent.



HIS LORDSHIP'S SPEECH,

In the COMMON-PLEAS,

T O

JUSTICE HUTTON,

When he was called to be one of the Judges of the Common-Pleas.

Mr. Serjeant HUTTON,

THE King's most excellent Majesty, being duly informed of your learning, integrity, discretion, experience, means, and reputation in your country, hath thought fit not to leave you these talents to be employed upon yourself only, but to call you to serve himself, and his people, in the place of one of his justices of the court of common-pleas.

This court where you are to serve, is the local center and heart of the laws of this realm: here the subject hath his assurance by fines and recoveries; here he hath his fixed and invariable remedies by *praecipies* and writs of right; here justice opens not by a by-gate of privilege, but by the great gate of the King's original writs out of the chancery. Here issues process of out-lawry; if men will not answer law in this center of law, they shall be cast out. And therefore it is proper for you, by all means, with your wisdom and fortitude, to maintain the laws of the realm: wherein, nevertheless, I would not have you head-strong, but heart-strong; and to weigh and remember with yourself, that the twelve judges of the realm are as the twelve lions under Solomon's throne: they must shew their stoutness in elevating and bearing up the throne. To represent unto you the lines and portraitures of a good judge:

The first is, That you should draw your learning out of your books; not out of your brain.

2. That you should mix well the freedom of your own opinion with the reverence of the opinion of your fellows.

3. That you should continue the studying of your books, and not to spend on upon the old stock.

4. That you should fear no man's face, and yet not turn stoutness into bravery.

5. That you should be truly impartial, and not so as men may see affection through fine carriage.

6. That you should be a light to jurors to open their eyes, but not a guide to lead them by the noses.

7. That you affect not the opinion of pregnancy and expedition by an impatient and catching hearing of the counsellors at the bar.

8. That your speech be with gravity, as one of the sages of the law; and not talkative, nor with impertinent flying out to shew learning.

9. That

SPEECH TO JUSTICE HUTTON.

9. That your hands, and the hands of your hands, I mean those about you, be clean, and uncorrupt from gifts, from meddling in titles, and from serving of turns, be they of great ones or small ones.

10. That you contain the jurisdiction of the court within the ancient mere-stones, without removing the mark.

11. Lastly, That you carry such a hand over your ministers and clerks, as that they may rather be in awe of you, than presume upon you.

These and the like points of the duty of a judge, I forbear to enlarge; for the longer I have lived with you, the shorter shall my speech be to you; knowing that you come so furnished and prepared with these good virtues, as whatsoever I shall say cannot be new unto you; and therefore I will say no more unto you at this time, but deliver you your patent.



O R D I N A N C E S
MADE BY THE
LORD CHANCELLOR BACON,

For the better and more regular

Adminiftration of Justice in the CHANCERY,

To be daily obferved, faving the prerogative of the Court.

NO decree fhall be reverfed, altered, or explained, being once under the great Decrees. feal, but upon bill of review: and no bill of review fhall be admitted, except it contain either error in law, appearing in the body of the decree, without farther examination of matters in fact, or fome new matter which hath rifen in time after the decree, and not any new proof which might have been ufed when the decree was made: neverthelefs upon new proof, that is come to light after the decree made, and could not poffibly have been ufed at the time when the decree paffed, a bill of review may be grounded by the fpecial licence of the court, and not otherwife.

2. In cafe of mifcalfing, being a matter demonstrative, a decree may be explained, and reconciled by an order without a bill of review; not underftanding, by mifcalfing, any pretended mifrating or mifvaluing, but only error in the auditing or numbering.

3. No bill of review fhall be admitted, or any other new bill, to change matter decreed, except the decree be firft obeyed and performed: as, if it be for land, that the poffeffion be yielded; if it be for money, that the money be paid; if it be for evidences, that the evidences be brought in; and fo in other cafes which ftand upon the ftrength of the decree alone.

4. But if any act be decreed to be done which extinguifheth the parties right at the common law, as making of affurance or releafe, acknowledging fatisfaction, cancelling of bonds, or evidences, and the like; thofe parts of the decree are to be fpared until the bill of review be determined; but fuch fparing is to be warranted by public order made in court.

5. No bill of review fhall be put in, except the party that prefers it enter into recognizance with fureties for fatisfying of cofts and damages for the delay, if it be found againft him.

6. No decrees fhall be made, upon pretence of equity, againft the exprefs provision of an act of parliament: neverthelefs if the conftruction of fuch act of parliament hath for a time gone one way in general opinion and reputation, and after by a later judgment hath been controlled, then relief may be given upon

matter of equity, for cases arising before the said judgment, because the subject was in no default.

7. Imprisonment for breach of a decree is in nature of an execution, and therefore the custody ought to be strait, and the party not to have any liberty to go abroad, but by special license of the lord Chancellor; but no close imprisonment is to be, but by express order for wilful and extraordinary contempts and disobedience, as hath been used.

8. In case of enormous and obstinate disobedience in breach of a decree, an injunction is to be granted *sub poena* of a sum; and upon affidavit, or other sufficient proof, of persisting in contempt, fines are to be pronounced by the lord Chancellor in open court, and the same to be estreated down into the hanaper, if cause be, by a special order.

9. In case of a decree made for the possession of land, a writ of execution goes forth; and if that be disobeyed, then process of contempt according to the course of the court against the person, unto a commission of rebellion; and then a serjeant at arms by special warrant: and in case the serjeant at arms cannot find him, or be resisted; or upon the coming in of the party, and his commitment, if he persist in disobedience, an injunction is to be granted for the possession; and in case also that be disobeyed, then a commission to the sheriff to put him into possession.

10. Where the party is committed for the breach of a decree, he is not to be enlarged until the decree be fully performed in all things, which are to be done presently. But if there be other parts of the decree to be performed at days, or times to come, then he may be enlarged by order of the court upon recognizance, with sureties to be put in for the performance thereof *de futuro*, otherwise not.

11. Where causes come to a hearing in court, no decree bindeth any person who was not served with process *ad audiendum judicium*, according to the course of the court, or did appear *gratis* in person in court.

12. No decree bindeth any that cometh in *bona fide*, by conveyance from the defendant before the bill exhibited, and is made no party, neither by bill nor the order: but where he comes in *pendente lite*, and while the suit is in full prosecution, and without any colour of allowance or privity of the court, there regularly the decree bindeth; but if there were any intermission of suit, or the court made acquainted with the conveyance, the court is to give order upon the special matter according to justice.

Dismissed.

13. WHERE causes are dismissed upon full hearing, and the dismissal signed by the lord Chancellor, such causes shall not be retained again, nor new bill exhibited, except it be upon new matter, like to the case of the bill of review.

14. In case of all other dismissions, which are not upon hearing of the cause, if any new bill be brought, the dismissal is to be pleaded; and after reference and report of the contents of both suits, and consideration taken of the former orders and dismissal, the court shall rule the retaining or dismissing of the new bill, according to justice and nature of the case.

15. All suits grounded upon wills nuncupative, leases parol, or upon long leases that tend to the defeating of the King's tenures, or for the establishing of perpetuities, or grounded upon remainders put into the crown, to defeat purchasers; or for brokage or rewards to make marriages; or for bargains at play and wagers; or for bargains for offices contrary to the statute of 5 and 6 Edw. VI. or for contracts

contracts

tracts upon usury or simony, are regularly to be dismissed upon motion, if they be the sole effect of the bill; and if there be no special circumstances to move the court to allow their proceedings, and all suits under the value of ten pounds, are regularly to be dismissed. *T. peñca* § 58, 60.

16. Dismissions are properly to be prayed; and had, either upon hearing, or upon plea unto the bill, when the cause comes first into the court; but dismissions are not to be prayed after the parties have been at charge of examination, except it be upon special cause.

17. If the plaintiff discontinue the prosecution, after all the defendants have answered, above the space of one whole term, the cause is to be dismissed of course without any motion; but after replication put in, no cause is to be dismissed without motion and order of the court.

18. DOUBLE vexation is not to be admitted; but if the party sue for the same Election of cause at the common law, and in chancery, he is to have a day given to make suits. his election where he will proceed, and in default of making such election to be dismissed.

19. WHERE causes are removed by special *certiorari* upon a bill, containing Certiorari. matter of equity, the plaintiff is, upon receipt of his writ, to put in bond to prove his suggestions within fourteen days after the receipt; which if he do not prove, then upon certificate from either of the examiners, presented to the lord Chancellor, the cause shall be dismissed with costs, and a *procedendo* to be granted.

20. No injunction of any nature shall be granted, revived, dissolved, or stayed Injunction. upon any private petition.

21. No injunction to stay suits at the common law shall be granted upon priority of suit only, or upon surmise of the plaintiff's bill only; but upon matter confessed in the defendant's answer, or matter of record, or writing plainly appearing, or when the defendant is in contempt for not answering, or that the debt desired to be stayed appeareth to be old, and hath slept long, or the creditor or the debtor hath been dead some good time before the suit brought.

22. Where the defendant appears not, but sits an attachment; or when he doth appear, and departs without answer, and is under attachment for not answering; or when he takes oath he cannot answer without sight of evidences in the country; or where after answer he sues at common law by attorney, and absents himself beyond sea; in these cases an injunction is to be granted for the stay of all suits at the common law, until the party answer or appear in person in court, and the court give farther order: but nevertheless upon answer put in, if there be no motion made the same term, or the next general seal after the term, to continue the injunction in regard of the insufficiency of the answer put in, or in regard of matter confessed in the answer, then the injunction to die and dissolve without any special order.

23. In the case aforesaid, where an injunction is to be awarded for stay of suits at the common law, if the like suit be in the chancery, either by *scire facias*, or privilege, or English bill, then the suit is to be stayed by order of the court, as it is in other courts by injunction, for that the court cannot injoin itself.

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24. Where

24. Where an injunction hath been obtained for staying of suits, and no prosecution is had for the space of three terms, the injunction is to fall of itself without farther motion.

25. Where a bill comes in after an arrest at the common law for debt, no injunction shall be granted without bringing the principal money into court, except there appear in the defendant's answer, or by sight of writings, plain matter tending to discharge the debt in equity: but if an injunction be awarded and disobeyed, in that case no money shall be brought in, or deposited, in regard of the contempt.

26. Injunctions for possession are not to be granted before a decree, but where the possession hath continued by the space of three years, before the bill exhibited, and upon the same title; and not upon any title by lease, or otherwise determined.

27. In case where the defendant sits all the process of contempt, and cannot be found by the serjeant at arms, or resists the serjeant, or makes rescue, a sequestration shall be granted of the land in question; and if the defendant render not himself within the year, then an injunction for the possession.

28. Injunctions against felling of timber, ploughing up of ancient pastures, or for the maintaining of inclosures, or the like, shall be granted according to the circumstances of the case; but not in case where the defendant upon his answer claimeth an estate of inheritance, except it be where he claimeth the land in truth, or upon some other special ground.

Sequestrations.

29. No sequestration shall be granted but of lands, leases, or goods in question, and not of any other lands or goods, not contained in the suits.

30. Where a decree is made for rent to be paid out of land, or a sum of money to be levied out of the profits of land, there a sequestration of the same lands, being in the defendant's hands, may be granted.

31. Where the decrees of the provincial council, or of the court of requests, or the Queen's court, are by contumacy or other means interrupted; there the court of chancery, upon a bill preferred for corroborations of the same jurisdictions, decrees, and sentences, shall give remedy.

32. Where any cause comes to a hearing, that hath been formerly decreed in any other of the King's courts at Westminster, such decree shall be first read, and then to proceed to the rest of the evidence on both sides.

Suits after judgment.

33. Suits after judgment may be admitted according to the ancient custom of the chancery, and the late royal decision of his Majesty, of record, after solemn and great deliberation: but in such suits it is ordered, that bond be put in with good sureties to prove the suggestions of the bill.

34. Decrees upon suits brought after judgment shall contain no words to make void or weaken the judgment, but shall only correct the corrupt conscience of the party, and rule him to make restitution, or perform other acts, according to the equity of the cause.

Orders and the office of the Registers.

35. THE registers are to be sworn, as hath been lately ordered.

36. If any order shall be made, and the court not informed of the last material order formerly made, no benefit shall be taken by such order, as granted by abuse and

and surreption; and to that end the registers ought duly to mention the former order in the later.

37. No order shall be explained upon any private petition but in court as they are made, and the register is to set down the orders as they were pronounced by the court, truly, at his peril, without troubling the lord Chancellor, by any private attending of him, to explain his meaning; and if any explanation be desired, it is to be done by public motion, where the other party may be heard.

38. No draught of any order shall be delivered by the register to either party, without keeping a copy by him, to the end that if the order be not entered, nevertheless the court may be informed what was formerly done, and not put to new trouble and hearing; and to the end also that knowledge of orders be not kept back too long from either party, but may presently appear at the office.

39. Where a cause hath been debated upon hearing of both parties, and opinion hath been delivered by the court, and nevertheless the cause referred to treaty, the registers are not to omit the opinion of the court, in drawing of the order of reference, except the court doth specially declare that it be entered without any opinion either way; in which case nevertheless the registers are out of their short note to draw up some more full remembrance of that that passed in court, to inform the court if the cause come back and cannot be agreed.

40. The registers, upon sending of their draught unto the counsel of the parties, are not to respect the interlineations, or alterations of the said counsel, be the said counsel never so great, farther, than to put them in remembrance of that which was truly delivered in court, and so to conceive the order, upon their oath and duty, without any farther respect.

41. The registers are to be careful in the penning and drawing up of decrees, and special matters of difficulty and weight; and therefore when they present the same to the lord Chancellor, they ought to give him understanding which are such decrees of weight, that they may be read and reviewed before his lordship sign them.

42. The decrees granted at the rolls are to be presented to his lordship, with the orders whereupon they are drawn, within two or three days after every term.

43. Injunctions for possession, or for stay of suits after verdict, are to be presented to his lordship, together with the orders whereupon they go forth, that his lordship may take consideration of the order before he sign them.

44. Where any order upon the special nature of the case shall be made against any of these general rules, there the register shall plainly and expressly set down the particulars, reasons and grounds, moving the court to vary from the general use.

45. No reference upon a demurrer, or question touching the jurisdiction of the court, shall be made to the masters of the chancery; but such demurrers shall be heard and ruled in court, or by the lord Chancellor himself. References.

46. No order shall be made for the confirming or ratifying of any report without day first given, by the space of a sevendnight at the least, to speak to it in court.

47. No reference shall be made to any masters of the court, or any other commissioners to hear and determine, where the cause is gone so far as to examination of witnesses, except it be in special causes of parties near in blood, or of extreme poverty.

poverty, or by consent and general reference of the estate of the cause, except it be by consent of the parties to be sparingly granted.

47. No report shall be respected in court, which exceedeth the warrant of the order of reference.

49. The masters of the court are required not to certify the state of any cause, as if they would make breviat of the evidence on both sides, which doth little ease the court, but with some opinion; or otherwise, in case they think it too doubtful to give opinion, and therefore make such special certificate, the cause is to go on to a judicial hearing, without respect had to the same.

50. Matters of account, unless it be in very weighty causes, are not fit for the court, but to be prepared by reference, with this difference nevertheless, that the cause comes first to a hearing; and upon the entrance into a hearing, they may receive some direction, and be turned over to have the accounts considered, except both parties, before a hearing, do consent to a reference of the examination of the accounts, to make it more ready for a hearing.

51. The like course to be taken for the examination of court rolls, upon customs and copies, which shall not be referred to any one master, but to two masters at the least.

52. No reference to be made of the insufficiency of an answer, without shewing of some particular point of the defect, and not upon surmise of the insufficiency in general.

53. Where a trust is confessed by the defendant's answer, there needeth no farther hearing of the cause, but a reference presently to be made upon the account, and so to go on to a hearing of the accounts.

Suit in court. 54. In all suits where it shall appear, upon the hearing of the cause, that the plaintiff had not *probabilem causam ligendam*, he shall pay unto the defendant his utmost costs, to be assessed by the court.

Bill, demurrer, answer, pleadings, and copies. 55. If any bill, answers, replication, or rejoinder, shall be found of an immoderate length, both the party and the counsel under whose hand it passeth shall be fined.

56. If there be contained in any bill, answer, or other pleadings, or any interrogatory, any matter libellous or slanderous against any that is not party to the suit, or against such as are parties to the suit, upon matters impertinent, or in derogation of the settled authorities of any of his Majesty's courts; such bills, answers, pleadings, or interrogatories shall be taken off the file and suppressed, and the parties severally punished by commitment or ignominy, as shall be thought fit, for the abuse of the court; and the counsellors at law, who have set their hands, shall likewise receive reproof or punishment, if cause be.

57. Demurrers and pleas which tend to discharge the suit shall be heard first upon every day of orders, that the subject may know whether he shall need farther attendance or no.

58. A demurrer is properly upon matter defective, contained in the bill itself, and no foreign matter; but a plea is of foreign matter to discharge or stay the suit, as that the cause hath been formerly dismissed, or that the plaintiff is outlawed, or excommunicated; or there is another bill depending for the same cause, or the like: and such plea may be put in without oath, in case where the matter
of

of the plea appear upon record; but if it be any thing that doth not appear upon record, the plea must be upon oath.

59. No plea of outlawry shall be allowed without pleading the record *sub pede sigilli*; nor plea of excommunication, without the seal of the ordinary.

60. Where any suit appeareth upon the bill to be of the natures which are regularly to be dismissed according to the fifteenth ordinance, such matter is to be set forth by way of demurrer.

61. Where an answer shall be certified insufficient, the defendant is to pay costs: and if a second answer be returned insufficient, in the points before certified insufficient, then double costs, and upon the third treble costs, and upon the fourth quadruple costs, and then to be committed also until he hath made a perfect answer, and to be examined upon interrogatories touching the points defective in his answer; but if any answer be certified sufficient, the plaintiff is to pay costs.

62. No insufficient answer can be taken hold of after replication put in, because it is admitted sufficient by the replication.

63. An answer to a matter charged as the defendant's own fact must be direct, without saying it is to his remembrance, or as he believeth, if it be laid down within seven years before; and if the defendant deny the fact, he must traverse it directly, and not by way of negative pregnant; as if a fact be laid to be done with divers circumstances, the defendant may not traverse it literally as it is laid in the bill, but must traverse the point of substance; so if he be charged with the receipt of one hundred pounds, he must traverse that he hath not received a hundred pounds, or any part thereof; and if he have received part, he must set forth what part.

64. If a hearing be prayed upon bill and answer, the answer must be admitted to be true in all points, and a decree ought not to be made, but upon hearing the answer read in court.

65. Where no counsel appears for the defendant at the hearing, and the process appears to have been served, the answer of such defendant is to be read in court.

66. No new matter is to be contained in any replication, except it be to avoid matter set forth in the defendant's answer.

67. All copies in chancery shall contain fifteen lines in every sheet thereof, written orderly and unwastefully, unto which shall be subscribed the name of the principal clerk of the office where it is written, or his deputy, for whom he will answer, for which only subscription no fee at all shall be taken.

68. ALL commissions for examination of witnesses shall be *super interr. inclusis* Commissions, examinations, and depositions. only, and no return of depositions into the court shall be received, but such only as shall be either comprised in one roll, subscribed with the name of the commissioners, or else in divers rolls, whereof each one shall be so subscribed.

69. If both parties join in commission, and upon warning given the defendant bring his commissioners, but produceth no witnesses, nor ministereth interrogatories, but after seek a new commission, the same shall not be granted: but nevertheless upon some extraordinary excuse of the defendant's default, he may have liberty granted by special order to examine his witnesses in court upon the former interrogatories, giving the plaintiff or his attorney notice, that he may examine ~~and if he will.~~

70. The defendant is not to be examined upon interrogatories, except it be in very special cases, by express order of the court, to sift out some fraud or practice presently appearing to the court, or otherwise upon offer of the plaintiff to be concluded by the answer of the defendant without any liberty to disprove such answer, or to impeach him after of perjury.

71. Decrees in other courts may be read upon hearing without the warrant of any special order: but no depositions taken in any other court are to be read but by special order; and regularly the court granteth no order for reading of depositions, except it be between the same parties, and upon the same title and cause of suit.

72. No examination is to be had of the credit of any witness but by special order, which is sparingly to be granted.

73. Witnesses shall not be examined *in perpetuam rei memoriam*, except it be upon the ground of a bill first put in, and answer thereunto made, and the defendant or his attorney made acquainted with the names of the witnesses that the plaintiff would have examined, and so publication to be of such witnesses; with this restraint nevertheless, that no benefit shall be taken of the depositions of such witnesses, in case they may be brought *viva voce* upon the trial, but only to be used in case of death before the trial, or age, or impotency, or absence out of the realm at the trial.

*Ad informan-
dam, et, in-
formam, iudicis.*

74. No witnesses shall be examined after publication, except it be by consent, or by special order, *ad informandam conscientiam iudicis*, and then to be brought close sealed up to the court to peruse or publish, as the court shall think good.

Affidavits.

75. No affidavit shall be taken or admitted by any master of the chancery, tending to the proof or disproof of the title, or matter in question, or touching the merits of the cause; neither shall any such matter be colourably inserted in any affidavit for serving of process.

76. No affidavit shall be taken against affidavit, as far as the masters of the chancery can have knowledge; and if any such be taken, the latter affidavit shall not be used nor read in court.

77. In case of contempts grounded upon force or ill words, upon serving of process, or upon words of scandal of the court, proved by affidavit, the party is forthwith to stand committed; but for other contempts against the orders or decrees of the court an attachment goes forth, first, upon affidavit made, and then the party is to be examined upon interrogatories, and his examination referred; and if upon his examination he confess matter of contempt, he is to be committed; if not, the adverse party may examine witnesses to prove the contempt: and therefore if the contempt appear, the party is to be committed; but if not, or if the party that pursues the contempt do fail in putting in interrogatories, or other prosecution, or fail in the proof of the contempt, then the party charged with the contempt is to be discharged with good costs.

78. They that are in contempt, specially so far as proclamation of rebellion, are not to be heard, neither in that suit, nor any other, except the court of special grace suspend the contempt.

79. Imprisonment upon contempt for matters past, may be discharged of grace, after sufficient punishment, or otherwise dispensed with: but if the imprisonment

ment be for not performance of any order of the court in force, they ought not to be discharged except they first obey, but the contempt may be suspended for a time.

80. INJUNCTIONS, sequestration, dismissions, retainers upon dismissions, or final Petitions, orders, are not to be granted upon petitions.

81. No former order made in court is to be altered, crossed, or explained upon any petition; but such orders may be stayed upon petition for a small stay, until the matter may be moved in court.

82. No commission for examination of witnesses shall be discharged; nor no examinations or depositions shall be suppressed upon petition, except it be upon point of course of the court first referred to the clerks, and certificate thereupon.

83. No demurrer shall be over-ruled upon petition.

84. No *scire facias* shall be awarded upon recognisances not enrolled, nor upon recognisances enrolled, unless it be upon examination of the record with the writ; nor no recognisance shall be enrolled after the year, except it be upon special order from the lord Chancellor.

85. No writ of *ne exeat regnum*, prohibition, consultation, statute of Northampton, *certiorari* special, or *procedendo* special, or *certiorari* or *procedendo* general, more than once in the same cause; *habeas corpus*, or *corpus cum causa*, *vi laica removend'*, or restitution thereupon, *de coronatore et viridario eligendo*, in case of a moving *de homine repleg. affix.* or special patent, *de ballivo amovend'*, *certiorari super praesentationibus fact. coram commissariis sewer'*, or *ad quod dampnum*, shall pass without warrant under the lord Chancellor's hand, and signed by him, save such writs *ad quod dampnum*, as shall be signed by master attorney.

86. Writs of privilege are to be reduced to a better rule, both for the number of persons that shall be privileged, and for the case of the privilege: and as for the number, it shall be set down by schedule: for the case, it is to be understood, that besides persons privileged as attendants upon the court, suitors and witnesses are only to have privilege, *eundo, redeundo, et morando*, for their necessary attendance, and not otherwise; and that such writ of privilege discharge only an arrest upon the first process, but yet, where at such times of necessary attendance the party is taken in execution, it is a contempt to the court, and accordingly to be punished.

87. No *supplicavit* for the good behaviour shall be granted, but upon articles grounded upon the oath of two at the least, or certificate upon any one justice of assize, or two justices of the peace, with affidavit that it is their hands, or by order of the star-chamber, or chancery, or other of the King's courts.

88. No recognisance of the good behaviour, or the peace, taken in the country, and certified into the petty bag, shall be filed in the year without warrant from the lord Chancellor.

89. Writs of *ne exeat regnum* are properly to be granted according to the suggestion of the writ, in respect of attempts prejudicial to the King and state, in which case the lord Chancellor will grant them upon prayer of any the principal secretaries without cause shewing, or upon such information as his lordship shall think of weight: but otherwise also they may be granted, according to the practice of long time used, in case of interlopers in trade, great bankrupts, in whose

where many subjects are interested, or other cases that concern multitudes of the King's subjects, also in case of writs and duties of law.

90. All writs, commissions, and other orders of the court, *ut supra* *Regis in Curia*, shall be brought into the chapel of the rolls, within convenient time after the return thereof, and shall be there filed upon their proper files and bundles as they ought to be; and all writs, commissions, and other orders, which may remain with any of the clerks of the court, as they shall think fit, the cause shall be determined by decree, or otherwise be dismissed.

91. All injunctions shall be inrolled, or the transcript filed, to the end that if occasion be, the court may take order to award writs of *scire facias* thereupon, as in ancient time hath been used.

92. All days given by the court to sheriffs to return their writs, or bring in their prisoners upon writs of privilege, or otherwise between party and party, shall be filed, either in the register's office, or in the petty-bag respectively; and all recognisances taken to the King's use, or unto the court, shall be duly inrolled in convenient time, with the clerks of the inrollment, and calendars made of them, and the calendars every Michaelmas term to be presented to the lord Chancellor.

93. In case of suits upon the commissions for charitable uses, to avoid charge, there shall need no bill, but only exceptions to the decree, and answer forthwith to be made thereunto; and thereupon, and upon sight of the inquisition, and the decree brought unto the lord Chancellor by the clerk of the petty-bag, his lordship, upon perusal thereof, will give order under his hand for an absolute decree to be drawn up.

94. Upon suit for the commission of sewers, the names of those that are desired to be commissioners are to be presented to the lord Chancellor in writing; then his lordship will send the names of some privy counsellor, lieutenant of the shire, or justices of assize, being resident in the parts for which the commission is prayed, to consider of them, that they be not put in for private respects; and upon the return of such opinion, his lordship will give farther order for the commission to pass.

95. No new commission of sewers shall be granted while the first is in force, except it be upon discovery of abuse or fault in the first commissioners, or otherwise upon some great or weighty ground.

96. No commission of bankrupt shall be granted, but upon petition first exhibited to the lord Chancellor, together with names presented, of which his lordship will take consideration, and always mingle some learned in the law with the rest; yet so as care be taken that the same parties be not too often used in commissions; and likewise care is to be taken that bond with good surety be entered into, in case of default, to prove him a bankrupt.

97. No commission of delegates in any cause of weight shall be awarded, but upon petition preferred to the lord Chancellor, who will name the commissioners himself, to the end they may be persons of convenient quality, having regard to the weight of the cause, and the dignity of the court from whence the appeal is.

98. Any man shall be admitted to defend *in forma pauperis* upon oath, but for plaintiffs they are ordinarily to be referred to the court of requests, or to the provincial councils, if the case arise in those jurisdictions, or to some gentlemen in the country, except it be in some special cases of commiseration, or potency of the adverse party.

99. Licences

99. Licences to collect for losses by fire or water are not to be granted, but upon good certificate; and not for decays of suretyship or debt, or any other casualties whatsoever; and they are rarely to be renewed; and they are to be directed ever unto the county where the loss did arise, if it were by fire, and the counties that abut upon it, as the case shall require; and if it were by sea, then unto the county where the port is, from whence the ship went, and to some sea-counties adjoining.

100. No exemplification shall be made of letters patent, *inter alia*, with omission of the general words; nor of records made void or cancelled; nor of the decrees of this court not enrolled; nor of depositions by parcel and fractions, omitting the residue of the depositions in court, to which the hand of the examiner is not subscribed; nor of records of the court not being inrolled or filed; nor of records of any other court, before the same be duly certified to this court, and orderly filed here; nor of any records upon the sight and examination of any copy in paper, but upon sight and examination of the original.

101. And because time and experience may discover some of these rules to be inconvenient, and some other to be fit to be added; therefore his lordship intendeth in any such case from time to time to publish any such revocations or additions.



THE
 PASSAGES in PARLIAMENT
 AGAINST
 FRANCIS, Viscount ST. ALBAN,
 Lord CHANCELLOR of ENGLAND.

ANNO DOMINI 1620, and 1621.

ON Monday, the nineteenth day of March 1620, in the afternoon, the commons had a conference with the lords; which conference was reported the next day by the lord treasurer, [who] delivered the desire of the commons to inform their lordships of the great abuses of the courts of justice: the information whereof was divided into these three parts.

First, The persons accused.

Secondly, Of the matters objected against them.

Thirdly, Their proof.

The persons are the lord Chancellor of England, and the now bishop of Landaff, being then no bishop, but Dr. Field.

The incomparable good parts of the lord Chancellor were highly commended, his place he holds magnified, from whence bounty, justice, and mercy were to be distributed to the subjects, with which he was solely trusted, whither all great causes were drawn, and from whence no appeal lay for any injustice or wrong done, save to the parliament.

That the lord Chancellor is accused of great bribery and corruption, committed by him in this eminent place, whereof two cases were alledged:

The one concerning Christopher Awbrey, and the other concerning Edward Egerton. In the cause depending in the chancery between this Awbrey and Sir William Bronker, Awbrey feeling some hard measure, was advised to give the lord Chancellor 100*l.* the which he delivered to his counsel Sir George Hastings, and he to the lord Chancellor. This business proceeding slowly notwithstanding, Awbrey did write divers letters, and delivered them to the lord Chancellor, but could never have any answer from his lordship; but at last delivering another letter, his lordship answered, If he importuned him he would lay him by the heels.

The proofs of this accusation are five:

The first, Sir George Hastings related it long since unto Sir Charles Montague.

Secondly, the lord Chancellor, fearing this would be complained of, desired silence of Sir George Hastings.

Thirdly,

Thirdly, Sir George Hastings's testimony thereof; which was not voluntary, but urged.

Fourthly, the lord Chancellor desired Sir George Hastings to bring the party Awbrey unto him; and promised redress of the wrong done him.

Fifthly, that the lord Chancellor said unto Sir George Hastings; if he would affirm the giving of this 100l. his lordship would and must deny it upon his honour.

The case of Mr. Edward Egerton is this: There being divers suits between Edward Egerton and Sir Rowland Egerton in the chancery, Edward Egerton presented his lordship, a little after he was lord Keeper, with a basin and ewer of 50l. and above, and afterwards he delivered unto Sir George Hastings and Sir Richard Young 400l. in gold, to be presented unto his lordship. Sir Richard Young presented it, his lordship took it, and poised [it], and said, it was too much; and returned answer, That Mr. Egerton had not only enriched him, but had laid a yoke upon his lordship to do him favour in all his just causes.

The proofs are the testimony of Sir George Hastings, and the testimony of Merefil a scrivener, thus far: That he took up 700l. for Mr. Egerton, Mr. Egerton then telling him, that a great part of it was to be given to the lord Chancellor; and that Mr. Egerton afterwards told him, that the 400l. in gold was given to the lord Chancellor. At this conference was farther declared of a bishop, who was touched in this business, upon the bye, whose function was much honoured, but his person touched herein: this business depending being ordered against Edward Egerton, he procured a new reference thereof from the King to the lord Chancellor: his lordship demanded the parties to be bound in 6000 marks, to stand to his lordship's award: they having entered into that bond, his lordship awarded the matter against Edward Egerton for Sir Rowland Egerton; and Edward Egerton refusing to stand to the said award, a new bill was exhibited in the chancery; and thereupon his lordship ordered that his bond of 6000 marks should be assigned unto Sir Rowland Egerton, and he to put the same in suit in his lordship's name.

The bishop of Landaff, as a friend to Mr. Edward Egerton, advised with Randolph Dampont and Butler, which Butler is now dead, that they would procure a stay of the decree of that award, and procure a new hearing: it was agreed that 6000 marks should be given for this by Edward Egerton, and shared amongst them, and amongst certain noble persons.

A recognizance of 10,000l. was required from Mr. Egerton to the bishop for the performance hereof: the bishop his share of this 6000 marks was to have [been] so great, as no court of justice would allow: they produce letters of the bishop naming the sum, and setting down a course how this 6000 marks might be raised, namely, the land in question to be decreed for Mr. Egerton, and out of that the money to be levied; and if this were not effected, then the bishop *in verbo sacerdotis* promised to deliver up this recognizance to be cancelled. The new recognizance is sealed accordingly, and Randolph Dampont rides to the court, and moved the lord Admiral for his lordship's letter to the lord Chancellor herein; but his lordship denied to meddle in a cause depending in suit.

Then the said Randolph Dampont assayed to get the King's letter, but failed therein also: so that the good they intended to Mr. Egerton was not effected; and yet

yet the bishop, though required, refused to deliver up the said recognizance, until Mr. Egerton threatened to complain thereof unto the King.

He shewed also that the commons do purpose, that if any more of this kind happen to be complained of before them, they will present the same to your lordships, wherein they shall follow the ancient precedents, which shew that great persons have been accused for the like in parliament.

They humbly desire, that forasmuch as this concerneth a person of so great eminency, it may not depend long before your lordships; that the examination of the proofs may be expedited, and if he be found guilty, then to be punished; if not guilty, the now accusers to be punished.

THIS being reported, the lord Admiral presented to the house a letter written unto their lordships, the tenor whereof followeth :

To the Right Honourable his very good Lords, the Lords Spiritual and Temporal, in the Upper House of Parliament assembled.

“ My very good Lords,

“ I Humbly pray your lordships all, to make a favourable and true construction
“ of my absence. It is no feigning or fainting, but sickness both of my
“ heart and of my back, though joined with that comfort of mind, that per-
“ suadeth me that I am not far from heaven, whereof I feel the first-fruits.

“ And because, whether I live or die, I would be glad to preserve my ho-
“ nour and fame, so far as I am worthy; hearing that some complaints of base
“ bribery are coming before your lordships, my requests unto your lordships are :
“ First, That you will maintain me in your good opinion, without prejudice,
“ until my cause be heard.

“ Secondly, That, in regard I have sequestered my mind at this time, in
“ great part, from worldly matters, thinking of my account and answers in a
“ higher court; your lordships will give me convenient time, according to the
“ course of other courts, to advise with my counsel, and to make my answer;
“ wherein, nevertheless, my counsel's part will be the least: for I shall not, by
“ the grace of God, trick up an innocency with cavillations, but plainly and
“ ingenuously, as, your lordships know, my manner is, declare what I know or
“ remember.

“ Thirdly, That according to the course of justice I may be allowed to except
“ to the witnesses brought against me, and to move questions to your lordships
“ for their cross examinations, and likewise to produce my own witnesses for the
“ discovery of the truth.

“ And lastly, That if there be any more petitions of like nature, that your
“ lordships would be pleased not to take any prejudice or apprehension of any
“ number or muster of them, especially against a judge that makes 2000 orders
“ and decrees in a year, not to speak of the courses that have been taken for
“ hunting out complaints against me, but that I may answer them, according to
“ the rules of justice, severally and respectively.

“ These

“ These requests, I hope, appear to your lordships no other than just. And
 “ so, thinking myself happy to have so noble peers, and reverend prelates to con-
 “ cern of my cause, and desiring no privilege of greatness for subterfuge of guil-
 “ tinefs, but meaning, as I said, to deal fairly and plainly with your lordships,
 “ and to put much upon your honours and labours; I pray God to bless your
 “ counsels and persons. And rest

“ Your humble servant,
 “ Edward Howard, Esq.”

17 March 1678.

“ Fr. St. Alban, Cant.”

UPON which letter answer was sent from the lords unto the said lord Chancellor on the said twentieth of March, namely, That the lords received his lordship's letter, delivered unto them by the lord Admiral: they intend to proceed in his cause now before their lordships, according to the right rule of justice, and they shall be glad if his lordship shall clear his honour therein: to which end they pray his lordship to provide for his just defence.

And afterwards, on Wednesday, the twenty first of March, the commons sent a message unto the lords concerning their further complaint against the said lord Chancellor, which consisted of these four points, namely,

The first in chancery being between the lady Wharton plaintiff, and Wood and others defendants, upon cross bills; the lord Chancellor upon hearing wholly dismissed them; but upon entry of the order, the cross bill against the lady Wharton was only dismissed: and afterwards, for a bribe of 300 l. given by the lady Wharton to the lord Chancellor, his lordship decreed the cause farther; and then hearing that Wood and the other defendants complained thereof to the house of commons, his lordship sent for them, and damned that decree as unduly gotten; and when the lady Wharton began to complain thereof, his lordship sent for her also, and promised her redress, saying, “ That decree is
 “ not yet entered.”

Secondly, in the suit between Hall plaintiff, and Holman defendant; Holman deferring his answer, was committed to the Fleet, where he lay twenty weeks, and petitioning to be delivered, was answered by some about the lord Chancellor, The bill shall be decreed against him, *pro confesso*, unless he would enter into a 2000 l. bond to stand to the lord Chancellor's order; which he refusing, his liberty cost him one way or other one thousand pounds. Holman being freed out of the Fleet, Hall petitioned to the lord Chancellor, and Holman finding his cause to go hard with him on his side, complained to the commons; whereupon the lord Chancellor sent for him, and to pacify him, told him he should have what order he would himself.

Thirdly, in the cause between Smithwicke and Wiche, the matter in question being for accounts with the merchant, to whom it was referred, certified in the behalf of Smithwicke; yet Smithwicke, to obtain a decree, was told by one Mr. Burrough, one near to the lord Chancellor, that it must cost him 200 l. which he paid to Mr. Burrough or Mr. Hunt, to the use of the lord Chancellor; and yet the lord Chancellor decreed but one part of the certificate; whereupon he treats again with Mr. Burrough, who demanded another 100 l. which Smithwicke also paid to the use of the lord Chancellor. Then his lordship referred the accounts again to the same merchant, who certified it again for Smithwicke; yet his

his lordship decreed the second part of the certificate against Smithwicke, and the first part, which was formerly decreed for him, his lordship made doubtful: Smithwicke petitioned to the lord Chancellor for his money again, and Smithwicke had all his money, save 20 l. kept back by Hunt for a year.

The lord Chief Justice also delivered three petitions, which his lordship received yesterday from the commons: the first by the lady Wharton, the second by Wood and Parjetor and others, and the third by Smithwicke.

The fourth part of the message consists only of instructions delivered unto the commons by one Churchill a register, concerning divers bribes and abuses in the chancery, which the commons desire may be examined.

THE lords, in the mean time, proceeded to the examination of the complaints, and took divers examinations of witnesses in the house, and appointed a select committee of themselves to take examinations also.

And on Wednesday, the twenty fourth of April, the Prince his highness signified unto their lordships, that the said lord Chancellor had sent a submission unto their lordships, which was presently read *in haec verba*:

To the Right Honourable the Lords of the Parliament in the
Upper House assembled,

The humble Submission and Supplication of the Lord Chancellor.

“ *It may please your lordships,*

“ I Shall humbly crave at your lordships hands a benign interpretation of that
“ which I shall now write; for words that come from wasted spirits, and
“ an oppressed mind, are more safe in being deposited in a noble construction,
“ than in being circled with any reserved caution.

“ This being moved, and as I hope obtained, in the nature of a protection for
“ all that I shall say; I shall now make into the rest of that, wherewith I shall at
“ this time trouble your lordships, a very strange entrance: for in the midst of a
“ state of as great affliction, as I think a mortal man can endure, honour being
“ above life, I shall begin with the professing of gladness in some things.

“ The first is, That hereafter the greatness of a judge, or magistrate, shall be
“ no sanctuary or protection of guiltiness; which, in few words, is the beginning
“ of a golden world.

“ The next, That after this example, it is like that judges will fly from any
“ thing that is in the likeness of corruption, though it were at a great distance,
“ as from a serpent; which tendeth to the purging of the courts of justice, and
“ the reducing them to their true honour and splendor.

“ And in these two points, God is my witness, that though it be my fortune
“ to be the anvil, whereupon those good effects are beaten and wrought, I take
“ no small comfort.

“ But to pass from the motions of my heart, whereof God is only judge, to the
“ merits of my cause, whereof your lordships are judges, under God and his lieu-
“ tenant. I do understand there hath been heretofore expected from me some

“ just-

“ justification: and therefore I have chosen one only justification, out of the justification of Job. For after the clear submission and confession which I shall now make unto your lordships, I hope I may say and justify with Job in these words, *I have not hid my sins, as did Adam, nor concealed my faults in my bosom.* This is the only justification which I will use.

“ It resteth therefore, that, without fig-leaves, I do ingenuously confess and acknowledge, that having understood the particulars of the charge, not formally from the house, but enough to inform my conscience and my memory, I find matters sufficient and full, both to move me to desert my defence, and to move your lordships to condemn and censure me.

“ Neither will I trouble your lordships by singling those particulars which I think might fall off. *Quid te exempta juvat spinis de pluribus una?* Neither will I prompt your lordships to observe upon the proofs, where they come not home, or the scruple touching the credit of the witnesses. Neither will I represent to your lordships, how far a defence in divers things might extenuate the offence in respect of the time and manner of the gift, or the like circumstances. But only leave these things to spring out of your own noble thoughts, and observations of the evidence, and examinations themselves; and charitably to wind about the particulars of the charge, here and there, as God shall put your minds; and so submit myself wholly to your piety and grace.

“ And now, I have spoken to your lordships as judges, I shall say a few words to you as peers and prelates; humbly commending my cause to your noble minds and magnanimous affections.

“ Your lordships are not simply judges, but parliamentary judges; you have a farther extent of arbitrary power, than other courts. And if your lordships be not tied by ordinary courses of courts or precedents in points of strictness and severity, much more in points of mercy and mitigation.

“ And yet if any thing which I shall move, might be contrary to your worthy ends to introduce a reformation, I should not seek it: but herein I beseech your lordships to give me leave to tell you a story. Titus Manlius took his son's life for giving battle against the prohibition of his general: not many years after the like severity was pursued by Papirius Cursor, the dictator, against Quintus Maximus; who being upon the point to be sentenced, by the intercession of some principal persons of the senate was spared: whereupon Livy maketh this grave and gracious observation; *Neque minus firmata est disciplina militaris periculo Quinti Manlii, quam mirabili supplicio Titi Manlii.* The discipline of war was no less established by the questioning of Quintus Maximus, than by the punishing of Titus Manlius. And the same reason is of the reformation of justice; for the questioning of men of eminent places hath the same terror, though not the same rigour with the punishment.

“ But my case standeth not there; for my humble desire is, that his Majesty would take the seal into his hands; which is a great downfall, and may serve, I hope, in itself, for an expiation of my faults.

“ Therefore, if mercy and mitigation be in your power, and do no ways cross your noble ends, why should I not hope of your lordships favour and commiseration?

“ Your lordships will be pleased to behold your chief pattern, the King our sovereign, a King of incomparable clemency, and whose heart is inscrutable for

“ wisdom and goodness. Your lordships will remember that there sat not these
 “ hundred years before, a Prince in your house, and never such a Prince, whose
 “ presence deserves to be made memorable by records and acts mixed of mercy
 “ and justice. Your lordships are either nobles, and compassion ever beateth in
 “ the veins of noble blood, or reverend prelates, who are the servants of him,
 “ who would not *break the bruised reed, nor quench the smoking flax*. You all sit
 “ upon one high stage, and therefore cannot but be more sensible of the changes
 “ of the world, and of the fall of any of high place.

“ Neither will your lordships forget that there are *vicia temporis*, as well as *vicia*
 “ *hominis*; and that the beginning of reformations hath the contrary power of the
 “ pool of Bethesda; for that had strength to cure him only, that was first cast in,
 “ and this hath commonly strength to hurt him only that is first cast in. And for
 “ my part, I wish it may stay there and go no farther.

“ Lastly, I assure myself, your lordships have a noble feeling of me, as a mem-
 “ ber of your own body, and one that in this very session had some taste of your
 “ loving affections; which, I hope, was not a lightening before the death of
 “ them, but rather a spark of that grace, which now in the conclusion will more
 “ appear.

“ And therefore my humble suit to your lordships is, That my penitent sub-
 “ mission may be my sentence, and the loss of the seal my punishment; and that
 “ your lordships will spare any farther sentence, but recommend me to his Ma-
 “ jesty's grace and pardon for all that is past. God's holy Spirit be among you.

Your lordships humble servant, and suppliant,

22 April 1621.

“ FR. ST. ALBAN, COUNCILLOR.”

THE lords having considered of this submission, and heard the collections of
 corruptions charged upon the said lord Chancellor, and the proofs thereof read,
 they sent a copy of the same without the proofs unto him the said lord Chan-
 cellor, by Mr. Baron Denham, and Mr. Attorney-General, with this message from
 their lordships, namely,

THAT the lord Chancellor's confession is not fully set down by his lordship, in
 the said submission, for three causes.

1. First, his lordship confesseth not any particular bribe or corruption.
2. Nor sheweth how his lordship heard the charge thereof.
3. The confession, such as it is, is afterwards extenuated in the same sub-
 mission; and therefore the lords have sent him a particular of the charge, and
 do expect his answer to the same with all convenient expedition.

UNTO which message the lord Chancellor answered, “ that he would return the
 “ lords an answer with speed.”

And on the twenty fifth of April the lords considered of the lord Chancellor's
 said answer, sent unto their message yesterday, and sent a second message unto
 his lordship to this effect, by the said Mr. Baron Denham, and Mr. Attorney-
 General, namely,

The lords having received a doubtful answer unto the message their lordships
 sent him yesterday; and therefore they now send to him again to know of his lord-
 ship,

ship, directly and presently, whether his lordship will make his confession, or stand upon his defence.

Answer returned by the said messengers, namely,

“ The lord Chancellor will make no manner of defence to the charge, but meaneth to acknowledge corruption, and to make a particular confession to every point, and after that an humble submission; but humbly craves liberty, that where the charge is more full than he finds the truth of the fact, he may make declaration of the truth in such particulars, the charge being brief, and containing not all circumstances.”

The lords sent the same messengers back again to the lord Chancellor, to let him know, that their lordships have granted him time until Monday next, the thirtieth * of April, by ten in the morning, to send such confession and submission as his lordship intends to make.

On which Monday the lord Chancellor sent the same accordingly, and that follows *in hæc verba*, namely,

To the Right Honourable the Lords Spiritual and Temporal,
in the high court of Parliament assembled.

The humble Confession and Submission of me the lord Chancellor.

UPON advised consideration of the charge, descending into my own conscience, and calling my memory to account, so far as I am able, I do plainly and ingenuously confess that I am guilty of corruption, and do renounce all defence, and put myself upon the grace and mercy of your lordships.

The particulars I confess and declare to be as followeth.

To the first article of the charge, namely, “ In the cause between Sir Rowland Egerton and Edward Egerton, the lord Chancellor received 300l. on the part of Sir Rowland Egerton, before he had decreed the cause.”

I do confess and declare, that upon a reference from his Majesty of all suits and controversies between Sir Rowland Egerton and Edward Egerton, both parties submitted themselves to my award by recognisances reciprocal in ten thousand marks apiece; thereupon, after divers hearings, I made my award with the advice and consent of my lord Hobard: the award was perfected and published to the parties, which was in February. Then some days after, the three hundred pounds, mentioned in the charge, was delivered unto me. Afterwards Mr. Edward Egerton fled off from the award; then in Midsummer term following a suit was begun in chancery by Sir Rowland to have the award confirmed, and upon that suit was the decree made mentioned in the article.

The second article of the charge, namely, “ In the same cause he received from Edward Egerton 400l.”

I confess and declare, that soon after my first coming to the seal, being a time when I was presented by many, the 400l. mentioned in the said charge, was delivered unto me in a purse, and, as I now call to mind, from Mr. Edward Egerton; but, as far as I can remember, it was expressed by them that brought it to be for favours past, and not in respect of favours to come.

* I presume it should be the twenty ninth.

The article of the charge, namely, "In the cause between Hody and Hody, he received a dozen of buttons of the value of 50l. about a fortnight after the cause was ended:"

I confess and declare, that, as it is laid in the charge, about a fortnight after the cause was ended, it being a suit for a great inheritance, there were gold buttons about the value of 50l. as is mentioned in the charge, presented unto me, as I remember, by Sir Thomas Perrot and the party himself.

To the fourth article of the charge, namely, "In a cause between the lady Wharton and the coheirs of Sir Francis Willoughby, he received of the lady Wharton three hundred and ten pounds:"

I confess and declare, that I did receive of the lady Wharton, at two several times, as I remember, in gold, 200l. and 100 pieces; and this was certainly *pendente lite*: but yet I have a vehement suspicion that there was some shuffling between Mr. Shute and the register in entering some orders, which afterwards I did distaste.

To the fifth article of the charge, namely, "In Sir Thomas Monk's cause he received from Sir Thomas Monk, by the hands of Sir Henry Holmes, 110l. but this was three quarters of a year after the suit was ended."

I confess it to be true, that I received 100 pieces; but it was long after the suit ended, as is contained in the charge.

To the sixth article of the charge, namely, "In the cause between Sir John Trevor and Afcue, he received on the part of Sir John Trevor 100l."

I confess and declare, that I received at new year's tide 100l. from Sir John Trevor; and, because it came as a new year's gift, I neglected to inquire whether the cause was ended or depending; but since I find, that though the cause was then dismissed to a trial at law, yet the equity is reserved, so as it was in that kind *pendente lite*.

To the seventh article of the charge, namely, "In the cause between Holman and Young, he received of Young 100l. after the decree made for him:"

I confess and declare, that, as I remember, a good while after the cause ended, I received 100l. either by Mr. Toby Matthew, or from Young himself: but whereas I have understood that there was some money given by Holman to my servant Hatcher, to that certainly I was never made privy.

To the eighth article of the charge, "In the cause between Fisher and Wrenham, the lord Chancellor, after the decree passed, received a suit of hangings worth one hundred and threescore pounds and better, which Fisher gave him by advice of Mr. Shute:"

I confess and declare, that some time after the decree passed, I being at that time upon remove to York-house, I did receive a suit of hangings of the value, I think, mentioned in the charge, by Mr. Shute, as from Sir Edward Fisher, towards the furnishing of my house, as some others, that were no ways suitors, did present me with the like about that time.

To the ninth article of the charge, "In the cause between Kennedy and Vanlore, he received a rich cabinet from Kennedy, prized at 800l."

I confess and declare, that such a cabinet was brought to my house, though nothing near half the value; and that I said to him that brought it, that I came to view it, and not to receive it; and gave commandment that it should be carried back; and was offended when I heard it was not: and some year and an half after,

as I remember, Sir John Kennedy having all that time refused to take it away, as I am told by my servants, I was petitioned by one Pinkney, that it might be delivered to him, for that he stood engaged for the money that Sir John Kennedy paid for it: and thereupon Sir John Kennedy wrote a letter to my servant Sherborne, with his own hand, desiring I would not do him that disgrace, as to return that gift back, much less to put it into a wrong hand: and so it remains yet ready to be returned to whom your lordships shall appoint.

To the tenth article of the charge, namely, "He borrowed of Vanlore 1000 l. upon his own bond at one time, and the like sum at another time, upon his lordship's own bill, subscribed by Mr. Hunt his man:"

I confess and declare, that I borrowed the money in the article set down, and that this is a true debt; and I remember well that I wrote a letter from Kew, about a twelve-month since, to a friend about the King; wherein I desired, that whereas I owed Peter Vanlore 2000 l. his Majesty would be pleased to grant me so much out of his fine, set upon him in the star-chamber.

To the eleventh article of the charge, namely, "He received of Richard Scott 200 l. after his cause was decreed, but upon a precedent promise; all which was transacted by Mr. Shute:"

I confess and declare, that some fortnight after, as I remember, that the decree passed, I received 200 l. as from Mr. Scott, by Mr. Shute: but precedent promise or transaction by Mr. Shute, certain I am, I knew of none.

To the twelfth article of the charge, namely, "He received in the same cause, on the part of Sir John Lenthall, 100 l."

I confess and declare, that some months after, as I remember, that the decree passed, I received 100 l. by my servant Sherborne, as from Sir John Lenthall, who was not in the adverse party to Scott, but a third person, relieved by the same decree, in the suit of one Power.

To the thirteenth article of the charge, namely, "He received of Mr. Worth 100 l. in respect of the cause between him and Sir Arthur Mainwaring:"

I confess and declare, that this cause being a cause for inheritance of good value, was ended by my arbitrament, and consent of parties, and so a decree passed of course; and some months after the cause was ended, the 100 l. mentioned in the said article, was delivered to me by my servant Hunt.

To the fourteenth article of the charge, namely, "He received of Sir Ralph Hansbye, having a cause depending before him, 500 l."

I confess and declare, that there were two decrees, one as I remember for the inheritance, and the other for the goods and chattels, but all upon one bill; and some good time after the first decree, and before the second, the said 500 l. was delivered unto me by Mr. Toby Matthew; so as I cannot deny but it was, upon the matter, *pendente lite*.

To the fifteenth article of the charge, namely, "William Compton being to have an extent for a debt of 1200 l. the lord Chancellor stayed it, and wrote his letter, upon which, part of the debt was paid presently, and part at a future day: the lord Chancellor hereupon sends to borrow 500 l. and because Compton was to pay 400 l. to one Huxley, his lordship requires Huxley to forbear six months; and thereupon obtains the money from Compton: the money being unpaid, suit grows between Huxley and Compton in chancery, where

“ where his lordship desires Compton to pay Huxley the debt with damage and
“ costs, when it was in his own hands:”

I do declare, that in my conscience the stay of the extent was just, being an extremity against a nobleman, by whom Compton could be no loser; the money was plainly borrowed of Compton upon bond with interest, and the message to Huxley was only to intreat him to give Compton a longer day, and in no sort to make me debtor or responsible to Huxley; and therefore, though I was not ready to pay Compton his money, as I would have been glad to have done, I have only 100*l.* which is paid, I could not deny justice to Huxley in as ample manner as if nothing had been between Compton and I; but if Compton hath been damnified in my respect, I am to consider it to Compton.

To the sixteenth article of the charge, namely, “ In the cause between Sir William
“ Bronker and Awbrey, the lord Chancellor received from Awbrey 100*l.*”

I do confess and declare, that the money was given and received, but the manner of it I leave to the witnesses.

To the seventeenth article of the charge, namely, “ In the lord Montague’s
“ cause, he received from the lord Montague 600 or 700*l.* and more was to be
“ paid at the ending of the cause:”

I confess and declare there was money given, and, as I remember, to Mr. Bevis Thelwall, to the sum mentioned in the article, after the cause was decreed; but I cannot say it was ended: for there have been many orders since, caused by Sir Francis Inglesfield’s contempts; and I do remember, that when Thelwall brought the money, he said that my lord would be yet farther thankful if he could once get his quiet; to which speech I gave little regard.

To the eighteenth article of the charge, namely, “ In the cause of Mr. Dunch,
“ he received from Mr. Dunch 200*l.*”

I confess and declare, that it was delivered by Mr. Thelwall to Hatcher my servant for me, as I think, some time after the decree; but I cannot precisely inform myself of the time.

To the nineteenth article of the charge, namely, “ In the cause between Reynell
“ and Peacocke, he received from Reynell 200*l.* and a diamond ring worth 500
“ or 600*l.*”

I confess and declare, that at my first coming to the seal, when I was at Whitehall, my servant Hunt delivered me 200*l.* from Sir George Reynell, my near ally, to be bestowed upon furniture of my house; adding farther, that he had received divers former favours from me; and this was, as I verily think, before any suit begun: the ring was certainly received *pendente lite*; and though it were at new year’s tide, it was too great a value for a new year’s gift; though, as I take it, nothing near the value mentioned in the article.

To the twentieth article of the charge, namely, “ That he took of Peacocke
“ 100*l.* without interest, security, or time of payment.”

I confess and declare, that I received of Mr. Peacocke 100*l.* at Dorset-house, at my first coming to the seal, as a present; at which time no suit was begun; and at the summer after, I sent my then servant Lister to Mr. Rolfe, my good friend and neighbour at St. Albans, to use his means with Mr. Peacocke, who was accounted a moneyed man, for the borrowing of 500*l.* and after by my servant Hatcher for borrowing of 500*l.* more, which Mr. Rolfe procured; and told

told me at both times, it should be without interest, script or note, and that I should take my own time for payment of it.

To the twenty first article of the charge, namely, "In the cause between Smithwicke and Wiche, he received from Smithwicke 200l. which was repaid:"

I confes and declare, that my servant Hunt did, upon his account, being my receiver of the fines upon original writs, charge himself with 200l. formerly received of Smithwicke; which, after that I had understood the nature of it, I ordered him to repay, and to defalke it out of his accounts.

To the two and twentieth article of the charge, namely, "In the cause of Sir Henry Rufwell, he received money from Rufwell, but it is not certain how much:"

I confes and declare, that I received money from my servant Hunt, as from Mr. Rufwell, in a purse; and whereas the sum in the article being indefinite, I confes [it] to be 300 or 400l. and it was about some month after the cause was decreed; in which decree I was assisted by two of the judges.

To the twenty third article of the charge, namely, "In the cause of Mr. Barker, the lord Chancellor received from Barker 700l."

I confes and declare, that the sum mentioned in the article was received from Mr. Barker some time after the decree past.

To the twenty fourth, twenty fifth, twenty sixth articles of the charge, namely, The twenty fourth, "There being a reference from his Majesty to his lordship of a business between the grocers and the apothecaries, the lord Chancellor received of the grocers 200l." The twenty fifth article, "In the same cause, he received of the apothecaries, that stood with the grocers, a taster of gold worth between 400 and 500l. and a present of ambergrease." And the twenty sixth article, "He received of a new company of apothecaries, that stood against the grocers, 100l."

To these I confes and declare, that the several sums from the three parties were received; and for that it was no judicial business, but a concord of composition between the parties, and that as I thought all had received good, and they were all three common purses, I thought it the less matter to receive that which they voluntarily presented; for if I had taken it in the nature of a corrupt bribe, I knew it could not be concealed, because it must needs be put to account to the three several companies.

To the twenty seventh article of the charge, namely, "He took of the French merchants 1000l. to constrain the vintners of London to take from them 1500 tuns of wine; to accomplish which, he used very indirect means, by colour of his office and authority, without bill or suit depending, terrifying the vintners by threats, and by imprisonments of their persons, to buy wines whereof they had no need, nor use, at higher rates than they were vendible."

I do confes and declare, that Sir Thomas Smith did deal with me in behalf of the French company; informing me, that the vintners by combination would not take off their wines at any reasonable prices; that it would destroy their trade, and stay their voyage for that year; and that it was a fair business, and concerned the state; and he doubted not but I should receive thanks from the King, and honour by it; and that they would gratify me with a thousand pounds for my travail in it: whereupon I treated between them by way of persuasion; and to prevent

I prevent any compulsory suit, propounding such a price as the vintners might be gainers 6l. in a tun, as it was then maintained unto me. And after the merchants petitioning to the King, and his Majesty recommending this business unto me, as a business that concerns his customs and the navy, I dealt more earnestly and peremptorily in it; and, as I think, restrained in the messengers hand for a day or two some that were the most stiff; and afterwards the merchants presented me with 1000l. out of their common purse, and acknowledging themselves that I had kept them from a kind of ruin, and still maintaining to me, that the vintners, if they were not insatiably minded, had a very competent gain: this is the merits of the cause, as it there appears to me.

To the twenty eighth article of the charge, namely, "The lord Chancellor hath given way to great exactions by his servants, both in respect of private seals, and otherwise for sealing of injunctions:"

I confess it was a great fault of neglect in me that I looked no better to my servants.

THIS declaration I have made to your lordships, with a sincere mind, humbly craving that if there should be any mistake, your lordships would impute it to want of memory, and not to any desire of mine to obscure truth, or palliate any thing; for I do now again confess, that in the points charged upon me, though they should be taken, as myself declared them, there is a great deal of corruption and neglect, for which I am heartily sorry, and submit myself to the judgment, grace, and mercy of the court.

For extenuation I will use none concerning the matters themselves; only it may please your lordships, out of your nobleness, to cast your eyes of compassion upon my person and estate. I was never noted for any avaricious man; and the apostle saith, that *covetousness is the root of all evil*. I hope also that your lordships do rather find me in the state of grace, for that in all these particulars there are few or none that are not almost two years old; whereas those that have an habit of corruption do commonly wax worse: so that it hath pleased God to prepare me by precedent degrees of amendment to my present penitency; and for my estate, it is so mean and poor, as my care is now chiefly to satisfy my debts.

And so fearing I have troubled your lordships too long, I shall conclude with an humble suit unto you, that if your lordships proceed to sentence, your sentence may not be heavy to my ruin, but gracious and mixt with mercy; and not only so, but that you would be noble intercessors for me to his Majesty likewise for his grace and favour.

Your lordships humble servant and petitioner,

FR. ST. ALBAN, C.

THE lords having heard this confession and submission read, these lords under-named, namely, the earl of Pembroke, lord Chamberlain; the earl of Arundel, the earl of Southampton, the bishop of Durham, the bishop of Winchester, the bishop of Coventry and Litchfield, the lord Wentworth, the lord Cromwell, the lord Sheffield, the lord North, the lord Chandos, the lord Hunfdon, were sent

to him the said lord Chancellor, and shewed him the said confession, and told him, that the lords do conceive it to be an ingenuous and full confession; and demanded of him, whether it be his own hand that is subscribed to the same, and whether he will stand to it or no; unto which the said lord Chancellor answered, namely,

“ My lords, it is my act, my hand, my heart: I beseech your lordships to be “ merciful to a broken reed.”

The which answer being reported to the house, it was agreed by the house, to move his Majesty to sequester the seal; and the lords intreated the Prince's Highness, that he would be pleased to move the King: whereunto his Highness condescended; and the same lords, which went to take the acknowledgement of the lord Chancellor's hand, were appointed to attend the Prince to the King, with some other lords added: and his Majesty did not only sequester the seal, but awarded a new commission unto the lord Chief Justice to execute the place of the Chancellor or lord Keeper.

PARLIAMENT. dat. *primo Maii*, and on Wednesday the second of May the said commission being read, their lordships agreed to proceed to sentence the lord Chancellor to-morrow morning; wherefore the gentleman usher, and serjeant at arms, attendants on the upper house, were commanded to go and summon him the said lord Chancellor to appear in person before their lordships to-morrow morning by nine of the clock; and the said serjeant was commanded to take his mace with him, and to shew it unto his lordship at the said summons: but they found him sick in bed; and being summoned, he answered, that he was sick, and protested that he feigned not this for any excuse; for if he had been well he would willingly have come.

The lords resolved to proceed notwithstanding against the said lord Chancellor; and therefore, on Thursday the third day of May, their lordships sent their message unto the commons to this purpose, namely, That the lords are ready to give judgment against the lord viscount St. Alban, lord Chancellor, if they with their Speaker will come to demand it. And the commons being come, the Speaker came to the bar, and making three low obeisances, said:

THE knights, citizens, and burgessees, of the commons house of parliament, have made complaints unto your lordships of many exorbitant offences of bribery and corruption committed by the lord Chancellor; we understand that your lordships are ready to give judgment upon him for the same; wherefore I their Speaker, in their name, do humbly demand, and pray judgment against him the lord Chancellor, as the nature of his offence and demerits do require.

The lord Chief Justice answered,

Mr. SPEAKER,

Upon complaint of the commons against the viscount St. Alban, lord Chancellor, this high court hath hereby, and by his own confession, found him guilty of the crimes and corruptions complained of by the commons, and of sundry other crimes and corruptions of like nature.

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And

And therefore this high court, having first summoned him to attend, and having his excuse of not attending by reason of infirmity and sickness, which, he protested, was not feigned, or else he would most willingly have attended; doth nevertheless think fit to proceed to judgment: and therefore this high court doth adjudge,

- I. That the lord viscount St. Alban, lord Chancellor of England, shall undergo fine and ransom of forty thousand pounds.
- II. That he shall be imprisoned in the Tower during the King's pleasure.
- III. That he shall for ever be incapable of any office, place, or employment, in the state or commonwealth.
- IV. That he shall never sit in parliament, nor come within the verge of the court.

This is the judgment and resolution of this high court.

The END of the SECOND VOLUME.



