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A General Abridgment of LAW and EQUITY

Alphabetically digested under proper TITLES

WITH

NOTES and REFERENCES to the WHOLE.

By CHARLES VINER, Esq;

Favente Deo.

ALDERSHOT in Hampshire near Farnham in Surry:
PRINTED for the Author, by Agreement with the Law-Patentees.
TO THE RIGHT HONOURABLE

Sir THOMAS PARKER, Knight,

Lord Chief Baron of the Court of EXCHEQUER.

My LORD,

Since I am prevented addressing this Part of my Work (as I intended) to your Lordship's Predecessor, the late Lord Chief Baron Probyn, as a Testimony of my Gratitude for the many Obligations I was under to him, and of which I shall always bear a Grateful Remembrance; It is with the greatest Pleasure, that I embrace this Opportunity of returning my Thanks to Your Lordship for the many Honours and Favours myself and my Work have received likewise from Your Lordship.

No Part thereof would probably have ever made its Appearance in Publick, had it not been for the great Encouragement Your Lordship gave me.

This
DEDICATION.

This, my Lord, has made me presume to address to Your Lordship this Part of that Work, so highly Honour'd by Your Lordship's Approbation, and since by the Approbation of every Bench of Justice both in England and Ireland, (the greatest Honour that can be done to any Author, and the best Recommendation any Work of Law is capable of) that I might testify to the World in the most Publick Manner, that I am, with the greatest Veneration and Respect,

My LORD,

Your Lordship's

Most Oblig'd,

And Most Obedient Servant,

Charles Viner.
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(M. a) * LEAGUE and TRUCE.

1. It is a Breach of a Truce for one Realm to banish the Com-

modities of the other Realm, there being a Truce between

them.

Confusion from War for a certain Time, but a League is an absolute Striking of Peace. 4 Inf. 153. — A

Truce is an Agreement, whereby, that the War continues, yet all Hostilities do for a Whole calender, for

between War and Peace there is no Medium. It is but a bare Suspension of the Acts of War. 4 Mol-

ley 153. cap. 9. S. 1.

A League may be broken by levying of War, or by Ambassadors or Herald. 2 Inf. 152. cap. 26.

And says, that Brian held Opinion in 19 E. 4. 6. b. That if a the Subjects of England would make War

with a King in League with the King of England, without his Assent, that such a War is no Breach of the

League. And in the Duke of Norfolk's Case, Hill. 12 Eliz. the Queenel was, Whether the Lord

Willist, and other subjects of the King of Scots, that without his Affent, had wallied and burnt divers

Towns in England, and proclaimed Enemies, were Enemies in Law, within the Statute of 25 E. 3. the

League being between the King and the Scots; and resolved that they were Enemies 4 Inf. 152.

patch. 36 Eliz. Curly in War and other Forfeiture imported divers Manufactures, as Cloth of

Taffet, Cloth, Tape, etc. Wherefore Deemfhun and other good Merchants of London, exhibited divi-

ers Informations against the Statute 10 H. 1. * which prohibited the same Of whom the Forefeitures complained as

the Council Table. And it was resolved by the Lord Treasurer Burghley and the whole Council, That it

was no Breach of the League between this Kingdom and France; for that in the Articles of the League

the Laws of either Kingdom are excepted; and therefore to Tomfiiin the Subject being a French Mer-

chant, should trade into France, he must observe the Laws and Customs of France. 4 Inf. 153.

2. 27 H. 6. cap. 1. 28 H. 6. cap. 1. 4 E. 4. cap. 5. between the

Duke of Burgundy and the King of England.

3. 1 Eliz. cap. 13. recites. That where by divers Statutes before

it had been enacted, that no Subjects of the King of England should

export or import any Merchandizes but in Ships of the King's

Subjects &c. Since the making of which Statute other Foreign

Princes finding themselves aggrieved with the said forrates Acts, as

thinking that the same were made to the Hurt and Prejudice of their

Country and Nation, have made like Penal Laws against such as

should ship out of their Countries in any other Vessells than of their

several Countries and Dominions; by Reason whereof, there hath

not only grown great Supplication between the Foreign Princes and

the Kings of this Realme, but also the Merchants have been for

grieved; for Remedy thereof be it enacted, That the Act of 5 K. 2.

cap. 5. and 4 H. 7. cap. 9. shall be hold 26.

4. Rot. Parl. 8. H. 5. P. 5. Where before Accords was made be-

tween the Kings of England and Flanders, that no Wools but of

England should be sold in Flanders, and that no Cloths of England

should be sold in Flanders, upon Pain of Foriture of them, which

Orderance of Cloths holds yet in Flanders, and yet there are

brought the Wools of Scotland, Aragon and Cataluna, and

Spain, the Commons pray Remedy. Ansuer. It shall be read in

the Treasury of the King, and in other Places, if any such Al-

iance can be found.

5. Rot. Parl. 9 H. 5. P. 5. Pray the Commons, that where

very great Plenty of Wools of Scotland, Cataluna and Spain is

brought into Flanders, and there trade more customably than

usual, by which the Price of English Wools is lowered; please the

King to make such Treaty and Request to the Duke of Burgundy,

that the said Wools to be not there trade, or otherwise that the

Cloths made in England may be sold in Flanders as they are

in Brabant, Holland, and other Countries adiacenc. Ansuer,

That he will speak that the Cloths of England may be sold

there.

A 6. 2 D.
Prerogative of the King.

By this Statute, the King, 6. 2 H. 5. cap. 6. The Breach of Truce and Leagues made against the Subjects of the Realm, and breaking of Truces and Safe-Conducts by any of the King's Liege People and Subjects within England, Ireland and Wales, or upon the Main Sea, was adjudged and determined to be High Treason. But this Breach concerning High Treason is repealed by Statute 29 H. 6. cap. 2. enlarged.


8. Speedy Remedy given to Strangers upon the Violation of Truce and Safe-Conduct. 31 H. 6. cap. 4. 14 E. 4. cap. 4. Where it is said that Offences against the Amities and Leagues are to the great Slander of the King, and the universal Damage of all the Realm.

9. All Leagues or Safe-Conducts ought to be of Record, viz. enrolled in Chancery, to the End the Subject may know who are in Amity with the King, and who not. 4 Inf. 152.

10. In all Treaties, the Power of the one Party and the other ought to be equal. 4 Inf. 152.

11. There are four Kinds of Leagues, viz. 1. Foedsus Pacis. And a Christian Prince may have this with an Infidel. 2dly. Foedus Congratulatioinis mercuries free Commercio; and this may likewise be with an Infidel. 3dly. Foedus Communionis mercium free Commercio; and this may likewise be with an Infidel. 4thly. Foedus Mutui Amicitia; but this cannot be with an Infidel or Idolater. And as concerning these four Leagues, the Laws of England are grounded upon the Laws of God. 4 Inf. 155.

12. A League made between two Kings without naming of Successors, does not extend to Successors, tho' by our Law Rex non interimitter. 4 Inf. 158. (d) cites 9 E. 4. 2. a.

13. One, who came with Merchandizes from the Brithish, did not pay Custom there, but promised to touch at Lisbon and to pay it there, which he did not do, but came here into England, and offered to sell the Merchandizes; whereupon the Portugal Ambassador here complained to the King's Council, who for this and his refusing still to pay the Custom, committed him. Upon a Motion to bail him, the King's Council opposed it, because it would seem as a countenancing him in his Obligation against the King of Portugal, which might occasion a Breach between the two Crowns. But the Court thought he should be bailed, and that if they could prove any such Matter against him, they might indite him for it; but upon praying to inspect the Return before it be filed, he was remanded. Sid. 143. pl. 23. Patch. 15 Cap. 2. The King v. Indicalmois.

14. Tho' there be no actual War, yet if there be no Leagues, they may take up Arms and fight one another, for they are in Statu Belli. Arg. 2 Show. 369. in Case of East-India Company v. Sands.

15. If a League be broken, let the Subject's Right be what it will, it is gone; for on Breach of the League they become as Enemies. Arg. 2 Show. 370.

(N. a) Letters of Marque and Reprisal.

1. In the Register, vol. 129, there is a Writ to the Earl of Flanders to do Right to J. and upon Default of Right, a Writ for an Arrest here of the Goods and Body of him who did the Wrong, by taking or spoiling of the Goods of the English. J. N. 114. B.

2. 1 E. 1. Rot. Fin. Memb. 6. Rex Ballisius usus Novi Caltri super T. Salut. ex. Because the Burgesses of the said Flandes have received great Damage in Flanders, and because he would do Justice, he commands them quod bona & mercimonia Flandes de ceteris in Portu Viliae veltræ predicta inventa arretrari faciatis igitur quod, the Burgesses shall have the third Part of the said Goods for their Damage, and the other two Parts they shall keep done all a Nobis recepientis in Mandat.

3. 28 E. 1. Rot. Pat. B. 13. Bernardus Civis Baion. deponat. de Boni ad Valenç. 7000 l. in Portugal habuit Licent. per Jo. de Britania Lieutenant de Aquitania quod ipsi Gentes de Regno Portugal, a cetera bona ibitque infra Vallat. nostrum contrite recipiendum Legem Mercatoram magnificam reiherre & appropriate politic quoque idem Restituto facia iterum, which Letters to Marque the King confirmed.

Places of any King or Potentate, to whom Letters of Reprisal are transmitted, and no Satisfaction shall be made to him in the matter injured, there is no Computation to refer to the ordinary Prosecution, but Letters of Reprisal shall be killed. But where Misfortunes happen to Persons or their Goods, residing in a foreign Country in Time of War, Reprisals are not to be granted; in this Case they must be contented to sit down under the Loa for they are at their Liberty to relinquish The Place on the Approach of the Enemy, when they foresee the Country is subject to Spoliation and Desolation; and if they continue, they must partake of the Common Calamity. Gen. Treat. of Trade 215. 214.


8. 14 E. 2. lb. Pat. 91. Some Ships of Calais arrested here for Robbery done to the English, and delivered upon the Letter of the King of France to have it replied; and upon Motion to the King by the English Merchants, it is answered, That the Letters shall be seen, and the Answer of the King to them; and if the Sum of Reprieve be paid, then let the Chancellor do to the Merchants that which Reason and Law will.

Letters of Request were granted long before.  

Let us now see the Prerogative of the King and how it was exercised before.  

According to the Common Law and the Statute of Trade, the Keeper of the Privy Seal was to make the Party required to make Letters of Request under the Privy Seal in a due Form; and if after such Request made, the Party required do not make * within a convenient Time due Restitution and Satisfaction to the Party griev'd, then the Chancellor shall grant Letters of Marque to him in a due Form. And if any be so griev'd by those of Scotland, the Wardens of the East and West Marches shall have Power to make Letters of Request to him who does the Deceiving, or to the Wardens of the Marches, or Conservator of the Truce of Scotland, if he can well do it; or otherwise to make Proclamation in open Places upon the Marches, that the Wrong-doer shall make Restitution to the Party griev'd; and if they do not do it in a convenient Time, the Party griev'd shall have Letters of Marque in due Form.  

12. Rot. Parl. 2. H. 5. 1 Part. N. 34. Letters of Marque against the Merchants of * Jeane continued, and how the Prizes brought in shall be ordered.  

13. Rot. Parl. 3. H. 5. 1 Part. N. 27. An Impollition put up on Cloths by the City of Ban'ton; and for this prays Remedy by Reprizal here to the double upon theirs, [to be] taken here, if they do not reform it. But it is not enacted. Vide accordingly 3 H. 5. 2. Part of the last Petition.  

Expri.  

14. A Merchant of England shall not have any Writ of Reprizal for Debt due to him by Merchants Stranger upon Contract made beyond Sea, if the Merchant Stranger comes into England, or his Goods. F. N. 114. 6. Tenth quiet.  

Expri.  

15. 10 H. 6. cap. 3. It was complained that the Goods of divers of the Subjects of England were taken by the King of Denmark and his Lieges, being in Amity of the King, whereas they have not any Remedy of the said Liege nor any other, in as much as none of them come to England, or have nothing there; and therefore it is enacted that the Keeper of the Privy- Seal for the Time being, shall have Power to make to the Party griev'd, Letters of Request under the Privy Seal, without any other Jurisdiction made to any for Restitution to be had of the Goods so taken and to be taken; And if Restitution be not made by such Letters, the King, by the Advice of his Council, shall provide to the Party griev'd his Covenable Remedy according as the Case requireth.  

Expri.  

Prerogative of the King.

17. In the Prosecution of Letters of Marque and Reprisal, there
be 1st, The Oath of the Party injured, or other sufficient Proof touching
the pretended Injury, and of the certain Loss and Damage thereby
sustained. 2dly, A Proof of the due Prosecution for the obtaining of Satisfaction
in a legal Way. 3dly, A Delaying or Denial of Justice. 4thly, A Complaint
made to his own Prince or State. 5thly, Requisition of Justice by him or them,
made to the Supreme Head or State, where Justice in the ordinary Course
was denied. 6thly, Persecution still in the Denial of Justice. All which be-
ing done, Letters of Reprizal under such Cautions, Restrictions and
Limitations as are consonant to Law, and as the special Case may re-
quire, may issue not only by the Us Gentium & Civile, but by the

ought to fall as a Common Debt on his Country. 2 Gen. Trea. of Com.

18. Reprizals granted by the Laws of England are of two Sorts, Ordi-
nary and Extraordinary. The Ordinary are either within the Realm or without,
and are always granted where any English Merchants or their
 Goods are spoiled or taken from them in Parts beyond the Sea by Mer-
chant Strangers, and cannot upon Suit or the King's demanding Justice
for him, obtain the same; he shall have, upon Testimony of such Pro-
secution, a Writ out of the Chancery to arrest the Merchant Strangers
of that Nation, or their Goods here in England; which is grant-
able to the Subject oppress'd, of Common Right, by the Chancellor
or Keeper of England, who always in such Case hath the Approbation
of the King or Council, or both, for his so doing. The other, which is
for Satisfaction out of the Realm, is always under the Great Seal.
Molloy 28: cap. 2. S. 7.

19. The Extraordinary are by Letters of Marque for Reparation at
Sea, or any Place out of the Realm, grantable by the Secretaries
of State, with the like Approbation of the King or Council, or both;
but they are only during the King's Pleasure, and to weaken the
Enemy during the Time of War, and may at any Time be revoked.
Molloy 31. cap. 2. S. 10.

20. A had Letters of Reprizal granted to him by the King for a
* Pryme's great Sum of Money, and therein was a Clause, That in Treaty of Peace Cott. Rec.
should prejudice them. The King by several Treaties of Peace with the
Dutch, had expressly articular, That they should not be prejudiced by
these Letters Patents. Lord Chancellor refused to let the Point be
argued, and said that nothing could be said for it, and that the Case
was very proper in Chancery for the repeating the same Letters Patents; for
the Bar was not so well appriz'd of it, the Chancery had Admiral
Jurisdiction by the Statute 31 H. 6. N. 46. or 68. which was never
Marque and printed. And in Proof that a Treaty of Peace may revoke and ammorse Privy Seal of
Letters of Reprizal, his Lordship said that the Sum may be done by a Truce,
or by Letters of Safe Conduct; and as to this last Point cited * 11 H. 4.
receiving this, 66. and a Judgment of the like Nature given in the Parliament Safe-Con-
of France, and the like in the Parliament of England † 2 H. 5. N. 34. and for Authority that a Truce had like Effect upon Letter of Re-
prizal, he cited the Roll of Parliament 10 H. 6. N. 34. where the
Danes, after a Truce made with them, had seized English Ships by Co-
llour of Letters of Reprizal, there being no Provision made against
them in the Truce, and the Parliament there petitioned the King for
Letters of Marque against the Danes. Vern. 34. Patch. 1692. The
King v. Carew.

Answer was, That upon his Suit to the King, he shall have such Letters requisitary as are needful; and
if the French refuse to do him Right, the King will then shew his Right.
* Pryme's Cott. Rec. Abr. 541. N. 54. † Page Biretine and others of London pray, That the Let-
ters of Marque or Reprizal granted by the King, or the Goods of the Merchants of France may be con-

S. P. And
then the
Prince of
that Coun-

Prerogative of the King.

21. Some Englishmen having fitted out a Privateer got a Commission by Letter of Marque from the Duke of Surrey, and took a French Ship in which there were several Turks and Tripolins. It was sentenced in the Admiralty, that the Capture was not good in respect of such Commission, and also because the Tripolins being in Peace with England, their Goods were not to be seised by English Ships or Men. 2 Vern. 592. Mich. 1707. Walton v. Hanbury.

22. By the Admiralty Law, the Property of a Ship taken without Letters of Marque vests in the King upon the taking; and this upon the High Sea. Resolved per tot. Cur. 12 Mod. 135. Trin. 9 W. 3. B. R. in Cafe of the King v. Brown.

(O. a) Contempts.

1. I Aquisition apud Lancastrense 6 E. 1. In the Exchequer. A qui exquiritur pro Rege sanct, quod Dominus Ric ratum Regis dignitatis Coronae habeat Privilege quod Nullus in regno suo de aliquo qui sit de Regno Anglie alius Homagium live fidelitatem aliqui facere debet vel aliquis hujusmodi Homagium, vel Fidel. ab aliquo recipere debet nisi facta mentione de Fidel. Domino Regi debita eadem Domino Regi Fidelit, observanda. Episcopus Eron has done Contrarium se. In Contemptum se. And the Bishop put to answer; and refuted; and upon this was condemned se.

2. Et idem Comites Cornubiæ. complains of the Bishop of Eron for communicating of the Men of the Vill of Eche for taking his Duty due for the Passage over the River of Eche of the Passengers, which he has had Time out of Hand se.

3. Rot. Parl. 17 E. 3. No. 26. Richard Helcon late of London Merchant, being a Lige-man of our King, and born in England, sued John Walden Mayor of the Staple of Calais and other Merchants of the Staple, and caused them to be arrested in Flanders in the Court of the Duke of Burgundy held in Bruges, for certain Injuries imposed by him to be done within the Jurisdiction of the King of England at Calais; and after the * Defendants appealed to the Parliament of Paris, where they were dismissed by Sentence Judicial, because the Suits were grounded upon Matters imposed to be done in Places within the Jurisdiction of the King of England, and the Parties Plaintiffs and Defendants were Subjects to the same King of England, and after the same Plaintiff sues them again in a Foreign Court; and therefore upon all these Matter thein, it is enacted that a Writ of Proclamation shall issue, commanding him to forseal his said Actions, and that if he hereafter sues the said Defendants out of the Realm of England, for any Matter determinable under the Obedience of the King of England, or where he has Jurisdiction, then he shall be put out of the King's Protection, and shall forfeit all his Lands and Tenements, Goods and Chattels, and that no Pardon shall be available to him.

4. The Refusing to be examined before a Committee of Council is a great Contempt. 12 Rep. 94. The Countess of Shrewsbury's Case.

5. As to this Head of Contempts, so far as it concerns this Title of Prerogative, Mr. Serjeant Hawkins divides it into four Parts. 1. Contempts against his Palace or Courts of Justice. 2. ly. Against his Prerogative.
Prerogative of the King.

gative. 3dly. Against his Person or Government. 4thly. Contempts Striking, in
against [His Title]. Hawk. Pl. C. 56. cap. 21.

C. 49. cap. 22. divides this into three Parts, viz. 1. Refusing to affect the King for the Publick Gain.
2dly. Pretending the Interest of a Foreign Prince to be of their own only. Distinguishing the King's
lawful Commands or Prohibitions.
+ Ibid. 60. cap. 25. All Contemplations against the King's Person or Government are very highly Criminal,
and punishable with Fine and Imprisonment, and sometimes with the Pillory, by the Discretion of
the Judges, upon Consideration of all the Circumstances of the Case; but in such as it is generally
obvious to Common Sense, in what Cases, and to what Degree a Man is guilty of this Offence, and it
would be endless to enumerate all the Particulars, the Serjeant says he shall content himself with glanc-
ing at some of the most general Heads; which the Reader may see for himself.
+ The Serjeant divides this into two Kinds, viz. 1. Denying his Title. 2dly. Refusing to take the Oaths
required by Law for the Support of his Government. Hawk. Pl. C. 61. cap. 24. In which said several Chap-
ters the Reader may see the said several Matters more fully treated of and explained.

(P. a) 8 Premunire at the Common Law.

Wis diversis Clerici suis dimorabitus apud Romanum qui
quamplurima teneat lud. In Decracionum Coronae Regis pra-
piendi quod vili literas eiusmod immediate sentiment in Angeliam & il pre-
tentent il coram Concilio Regis repromunt, as ea que ex parte Regis
obiecerint &c. And Boger holler, for not coming according to
the Command, committeretur Mariavial, and after to the Tower of
London, & quod omnia bona quam Spiritualia tam Temporalia in ma-
nus Regis captantur &c. Postea pardonatura. (It seems this was a
Premunire, for he had not any Lands).

and against the Utters upon them, as by diverse Acts of Parliament appears. But in Truth it is in prac-
ticed from a Word in the Act; for the Words of the Act be, Premunire factus praefatum A. B. &c. fixed
more to Ceram nobis &c. where Premunire is used for Premunire, and to do diverse Interpreters of the
Civil and Canon Law take it; for they are Premunire that are Premunire. Co. Litt. 129. b.

Premunire for excommunicating all, qui in Locis, Parcis, Chaceis &
Varaeus suis apud Malvern & alibi in Dioecesi sua iugaverunt & strax
de Bosco suis ac Lepores, Conciles & Philosophios de Warin. suis
receptis, generaliter per totem Dioecesam iugaverunt contra
Regem ac. &c. found guilty by Jury, but abdicated of the judg-
ment. (It seems that this Indictment was not upon any Statute,
for it seems 27 E. 3. does not extend to it, not being done to
the King, nor after Judgment at the Common Law.

And the Serjeant argues against the Peace; and that the Execution of the Peace from the Secular Jurisdiction
is not founded upon the Law of God: The Promoter and Abettors of the Suit incur a Premunire, and so do the Judges of the
Spiritual Court who retain the Cause; by all the Judges of England. Jenk. 193 pl. 10. cites
H. 8.

3. Rot. Parl. 20. E. 3. 41. 42. The Commons pray that if
and bring the Bull or Letter of the Pope, touching the Bishops of
Alien Bishops, Abbots &c. that he be out of the Law. Answer, Be
forbid, that none bring Letters of Aliens from over the Sea into
the Realm, if he does not shew them to the Chancellor or the War-
den of the Ports, upon Pain of 500 l. Forfeiture to the King.

He who brings the Bull or Letter of the Pope, touching the Bishops of
England in the Time of E. 4. abjured the Realm, and the King would have had them drawn and bound, but the Chancellor and Treasurer fell upon their
Knees for him before the King, by which he forejudged the Realm only. And to fix the Punishment
thereof before any Statute of Premunire; quod nota bene. In Premunire, pl. 10. cites 50 &c. 17.

4. At the Common Law before the Statute 5 Eliz. cap. 1. it was no
Freyly to kill a Man attainted of Premunire; for he was out of the King's
Prerogative of the King.

Protection, and every Man might do with him as with an Enemy of the King. Jenk. 199. pl. 17. cites 24 H. 8.

(P. a. 2) Premunire by Statute.

1. A Tractment upon a Prohibition was brought by the King and the Incumbent, for that the King had presented the Incumbent to a Benefice, and the other Defendant brought Bulls from Rome in Disturbance thereof, contra formam Statuti &c. And the Defendant confess'd it; by which the Court awarded that the Defendant shall go to perpetual Prison, and that the Plaintiff recover his Damages, as he has counted; and the Court would not tax the Damages in this Cafe. And so it seems that this Action was brought by the Incumbent quia tunc pro Domino Regis quam pro scito iequitur. Br. Premunire, pl. 7. cites 21 E. 3. 40.

2. 27 E. 3. Stat. 1. cap. 1. Whereas divers People are drawn out of the Realm to answer Things, the Cognizance whereof belongeth to the King's Court, and the Judgments given in the King's Court are impeached in another Court, in Prejudice and Disturbance of the King, his Crown and People, and to the Destruction of the Common Law of this Realm, it is affected and accorded by the King, the great Men and Commons, that whosoever shall draw any out of the Realm in P suo whereof the Cognizance belongeth to the King's Court, or in Matters where Judgment hath been given in the King's Court, And whosoever shall sue in any * other Court, to defeat or impeach the Judgments given in the King's Court, shall be summoned to appear before the King and his & Council, or in his Chancery &c. to answer such Contempt within two Months, and if they shall not appear in Person at the Day, to be at the Law, they shall be put || out of the King's Protection, with their & Procurements, Attorneys, Executors, Notaries and Maintainers, and their ** Lands, Goods and Chattels forfeited to the King, and their ↑↑/■Bothes be imprisoned and ransomed at the King's Will, and if they cannot be found, they shall be outlawed.

Preamble, Arg. Mod. 649. — Wherefore the making of this Statute there were three great Mischiefs. 1. That the King's Subjects have been drawn out of the Realm to answer Things whereof the Cognizance belonged to the King's Court. 2. Of Things whereof Judgments have been given in the King's Courts, That after Judgments given in the King’s Courts of Common Law, of Matters determinable by the Common Law, Suits are commenced in other Courts without this Realm, to defeat or impeach those Judgments. And these three Mischiefs had three unutterable Effects. 1. The Prejudice and Disturbation of the King and of his Crown. 2. The Disturbance of all his Subjects. And 3. The Undoing and Destruction of the Common Law of this Realm. All which appears in the Preamble of this Act. 3 Indt. 125.

* They are called (other Court) either because they proceed by the Rules of other Laws, as by the Canon or Civil Law &c. or by other Trials than the Common Law doth warrant; for the Trial warranted by the Law of England, for Matters of Fact, is by Verdict of twelve Men before the Judges of the Common Law, of Matters pertaining to the Common Law, and not upon Examination of Witnesses in any Court of Equity; so as Alta Curia is either that which is governed per Alam Legem, or which derives the Party Ad aliud Examen; For if the Freehold and Inheritances, Goods and Chattels, Debt and Duties wherein the King or Subject hath Right or Property by Common Law, should be judged per Alam Legem, or be drawn Ad aliud Examen, the three Mischiefs aforesaid, expressed in the Preamble and in this Act, shall follow, viz. Disturbance of the King and his Crown, the Disturbance of all his People, and the Undoing and Destruction of the Common Law at all Times used. By which Words of the Act it appears, that all these Mischiefs were against the ancient Common Laws at all Times used. 3 Indt. 129.

† Here Council cannot be taken, as most commonly it is, for his Judges of his Courts of Justice, who are told to be of his Council for Proceedings in Course of Justice, because the Courts of Justice are hereafter in this Act named; neither doth it intend the King's Privy Councils, but the King and the Lords of Parliament in Parliament, which is a Court of Justice. 5 Indt. 23.

‡ Premunire against an Abbot who was a Lord of Parliament; and therefore he prayed to be by Attorney, and could not, because the Statute is contrary; but by special Writ out of Chancery he may. By Attorney, pl. 45. cites 14 H. 7. 9. ——So of the Praying to be received, this may be by Special Writ out of the Chancery. Ibid.

|| By their Words the Persons answer'd in a Writ of Premunire are disabled to have any Action or Remedy by the King's Laws, or the King's Writs; for the Law and the King's Writs are the Things whereby a Man is proceeded and aided, to make...
Provided, that if they come in before they be Outlawed, and yield themselves to Prison to be justified by the Law, and submit to the judgment of the Court, they shall be received.

3. If a Man leaves his Vicarage for Life rendering Rent, and sues in the Ecclesiastical Court for the Rent, Premunrie lies; by which he tendered other Issue; for now the Rent referred is a Lay Thing. Br. Premunrie, pl. 5. cites 44 El. 3. 36.

4. 16 R. 2. cap. 5. Enacts that * if any purchase or profecte, or cause to be purchased or profected in the ☐ Court of Rome or elsewhere, ☐ any Thing which touches the King, against him, his Crown and his Regality, or his Persons of Realm, they, their ☐ Notaries, Procureurs, Mainteners, Attorrs, Factors and Counsellors, shall be put out of the King's Protection &c.

* Those Words extend to all Courts of what Jurisdiction soever, and whether holden by Right or Wrong. 5 Inlt. 126. — It is intended in the Bishop's Court; and therefore if a Man be Excommunicated for a Thing which belongs to the Common Law, Premunrie lies. Br. Premunrie, pl. 12 cites 5 El. 4. 6. — It has been said that Suits in the Admiralty or Ecclesiastical Courts within the Realm are within this Statute by Force of the Words (Or elsewhere) if they concern Matters of the Conscience wherein belong to the Common Law; As where a Bishop deprives an Incumbent of a Donative, or communicates a Man for Hunting in his Parks &c. or where Commissioners of Severs impriion a Man for not relieving a Judgment at Law. Hawk. Pl. C. 51. cap. 19. S. 18. — But it seems that a Suit in those Courts for a Matter which appears not by the Libel itself, but only by the Defendant's Plea, or other Matter subsequent, to be of Temporal Consequence, (as where a Plaintiff sues for Tithes, and the Defendant pleads that they were seized from the nine Parts, by which they became a Lay Fee) it is not within the statute, because it appears not that either the Plaintiff or the Judge knew that they were fested. Hawk. Pl. C. 51. cap. 19. S. 19. — See (P. a. 7).

The Words extend to all Things whatsoever, and are as general as can be. 5 Inlt. 126.

II. This Act extends not only to Procureurs, Attorrs, Mainteners, Counsellors &c. which are known Words in Law, but to Procureurs (Factories) which Word was largely extended in the Time of H. 8. whereby it is to be observed how dangerous it is to bring new Words into an Act of Parliament, especially into such as be fœ pendii; for there it appears that Clif, being a Person of a Church, granted to the Cardinal an Annuity so long as he should be Legate, Ut decemius & sabbatum feceret in Authoritatem sua Legatam, which the Cardinal had by Bull, and paid to him 10 Marks in Name of Salicin; and he was adjudged a Factor. 5 Inlt. 126. cites Mich. 21 H. 8. Clif's Cafe.

5. The refusing to cleft or condescer the Person nominated by the King to a Bishoprick is made a Premunrie by 25 H. 8. cap. 28. Hawk. Pl. C. 52. cap. 19. S. 22.


7. 5 Eliz. cap. 1. Enacts that if any Subject of this Realm, after the 1st of April 1563. fitted by Writing, Copying, Preaching or Teaching, Dised or Act, advisedly and wittingly hold, or stand with to extoll, set forth, maintain or defend the Authority, Jurisdiction or Power claimed or usurped by the Bishop or See of Rome within this Realm, or wittingly attribute any such Jurisdiction, Authority or Prebemence to the said Bishop or See of Rome, such Offenders, their Attorrs, Procureurs and Counsellors, Aiders, Abettors and Confaters, being indicted or profected withing one Year after such Offence, and convicted or attainted at any Time after, shall incur a Premunrie.

12 Rep. 38. The Cafe of Premunrie. The Statues 25. E. 2. 1. 16 R. 2. 5. Sec of Premunrie are set in Force, and all such Proceedings by Colour of Ecclesiastical Law, before any Ecclesiastical Judges

9. 16 R. 2. cap. 2. Notaries, Procureurs, Mainteners, Attorrs, Factors and Counsellors, shall be put out of the King's Protection &c.
Prerogative of the King.

who were in Danger of Premunire before this Act of 1 Eliz. are now in Case of Premunire after the said Act, but before Commissioners by Force of High Commission, or before Bishops or other Ecclesiastical Judges; for the said Acts of Premunire are not repealed by this Act. Resolved. 12 Rep. 37. Case of Premunire.

8. The 5 Eliz. cap. 1. Prohibits Books to be published or printed, or uttered within the Kingdom, which maintain the Supremacy of the Pope within the King's Dominions. The Approvers of such Books are within the said Statute, and the Danger of it, viz. Premunire. By all the Judges of England. Jenk. 235. pl. 12. cites 11 Eliz. Dyer 292.

9. A. was indicted upon the Statute of 1 Eliz. cap. 1. for aiding B. knowing him to be a principal Maintainer of the Authority of the See of Rome, (the Offender in such Case is liable by the said Statute to the Forfeiture of Premunire. There are other Offences mentioned in the said Statute, with other Penalties;) this Offence in the said Statute has the Words, (Upon Purpose and to the Intent to exalt the Power of that See;) these Words were omitted in the said Indictment, for which Cause the said Indictment was judged insufficient by all the Judges of England; for these Words make the Offence as to the Forfeiture of Premunire. Jenk. 243. pl. 27. cites 20 Eliz. D. 363.


11. 16 Car. 1. cap. 21. Enacts, that if any Person shall put in Execution any Letters Patents, Proclamation &c. whereby the Importation of Gunpowder, Saltpetre, Brimstone, or other Materials for the making of Gunpowder, shall be any ways prohibited or restrained, he shall incur a Premunire.

12. Green and others were indicted for refusing the Oath of Allegiance contained in the Act 3 Jac. cap. 4. and being convicted, Judgment of Premunire was given against them according to the Directions of the said Statute. Raym. 212. Mich. 23 Car. 2. B. R. Green's Case.

(P. a. 3) Premunire. Notes. And for whom it lies.

S. P. Hawk. I. Premunire is but a Contempt; and a Pardon of all Contempts pardons it. 12 Rep. 92. Patch. 10 Jac. in Lord Vaux's Case.

2. The King shall have Premunire, and the Party grieved by the Suit of the Provision may have Action. Per Littleton. Quere what Action he shall have; it seems Action upon the Case; but none can have Premunire but the King, as it seems. Quere. Br. Premunire, pl. 13. cites 7 E. 4. 2.

3. The Bishop of Durham has Jura Regalia there, and therefore may hold Plea of Premunire; quere, for it is given by Statute, and there was no such Suit at Common Law. Br. Premunire, pl. 15. cites 14 H. 4. 14. and 9 E. 4. 2.

4. A Man attainted in a Premunire is disfabled to bring any Action; for he is extra Legem politus, and is accounted in Law Civiliter morrus. Co. Litt. 130. a.

5. Upon
Prerogative of the King.

5. Upon an Indictment of Premunire, a Peer of the Realm shall not be tried by his Peers. 12 Rep. 92. Lord Vaux's Case.

(P. a. 4) Premunire. In what Cases it lies, or a Prohibition.

1. SOME hold that a Benefice donative by the Patron only is a Lay; and in this Thing, and the Bishop shall not assist, and therefore shall not deprive; and then if he caddles in it, he is in the Case of Premunire. Br. Barke, Preaiunire, pl. 21. cites 8 Ant. 29.

2. Provision lies always where Premunire does not lie; as of Tithes But where of great Fees, or for Tithes of the seventh Part of Prohibition lies, and not Premunire; for the Nature of the Allotment belongs to the Spiritual Court; but not the Canyé in this Form. Br. Premunire, pl. 16. cites 24 H. 8. which never belonged to the Spiritual Court, Premunire lies thereof; as of Dea against Excilosure upon a Single Cause, or for Breach of Faith upon a Promise to pay 10 l. by such a Day. Br. Premunire, pl. 16. cites 24 H. 8. and Doct. & Stud. lib 2. cap. 24.

3. Saint Germin in his Book of Doctor and Student, who wrote after 26 H. 8. holdeth, That if a Man makes a Promise for a temporal Thing, and favors to perform it, and does it not, if he be sued for Perjury in the Spiritual Court, a Prohibition or a Premunire lies in that Case. Also he says, if a Man be comminuated in the Spiritual Court for Trepass, or such other Thing as belongs to the King's Crown and his Royal Dignity &c. the Party, if he will, may have a Premunire fac against him. 3 Inft. 122.

4. In all Cases, when the Cause originally belongs to the Cognizance of the Ecclesiastical Court, and the Suit is prosecuted there in the same Nature, Cause may as the Cognizance belongs to them (ibid) in Truth the Cause, all Circumstances being disclosed, belongs to the Court of the King, and to be determined by the Common Law) yet no Premunire lies in that Cause, but neither a Prohibition; as if Tithes severed from the nine Parts, are carried away, yet if the Parton sues for the Satisfaction of these Tithes in the Spiritual Court, this is not in the Case of Premunire; for it may be that the Plaintiff did not know of the Severance, nor that they were carried away, nor may the Ecclesiastical Judge know it; and tho' the Defendant pleads this, yet the Ecclesiastical Court may proceed to try the Truth of it without Danger. And so in Charle of Sylvius Cudius, the Wood perhaps may be above 20 Years Growth. 12 Rep. 39. the Cause of Premunire.

Livered to the Parson, and after the Party continues it, if the Parson files for this as a Mortuary to him delivered and carried away, (and of Tithes severed) he is in Cause of Premunire, But after the Rebutal, if he sues for it as a Mortuary not executed in Nature of a Suit which belongs to the Ecclesiastical Court, upon the Truth of the Cause there is Crown of Prohibition, and no Premunire lies: So if he sues for Tithes of Wood above 20 Years Growth, to that it appears by the Label that the Cause does not belong to the Ecclesiastical Court, the Premunire lies; But if the Suit be for Sylvius Cudius &c. to that as the Suit is framed, the Cognizance belongs to the Ecclesiastical Court, tho' the Truth be otherwise, a Prohibition lies, and no Premunire. 12 Rep. 39. Case of Premunire.—— For when the Cause originally belongs to the Ecclesiastical Court, it shuns Pleas of any Incident to it, which belongs to the Common Law, a Prohibition lies, and not a Premunire. 12 Rep. 39. 40. Case of Premunire.

5. When
Prerogative

5. When the Cause originally belongs to the Cognizance of the Common Law and not to the Ecclesiastical Court, there, tho' they libel for it according to the Cause of the Ecclesiastical Law, yet the Premunire lies, because it draws the Cause Ad aliud Examen, and to deprives the Subject of the Benefit of the Common Law, which is his Birth-right. 12 Recp. 49. 

6. Action upon the Statute 27 E. 3. of Premunire, and declared that Patch. 18 Car. 2. he recovered 200 l. Debt against the Defendant in B. R. and that after the Defendant exhibited his Bill in Chancery, and obtained a Decree for the Vacation of the Judgment. The Defendant demurred. This Cause depended from Trin. 29 to Trin. 22 Car. 2. when Hale Ch. J. held, that this Cause was not within the Statute, and so he said it appeared by the Petition upon which the Statute was founded. And no more was done thereupon. Lev. 24 to 243. Trin. 20 & 22 Car. 2. B. R. King v. Standish.

(P. a. 5) Premunire. Proceedings, Pleadings and Judgment.

1. In Premunire, the Defendant appeared by * Attorney, and because he did not come in Person, he was condemned, and the Sheriff returned the Writ, prout Breve exigit &c.; and did not make Mention that he was warned him by two Months according to the Statutes, and yet well; quod nota. Br. Premunire, pl. 18. cites 39 E. 3. 7.

If the Defendant come not at the Day &c. by the express Letter E. 3. 6.

2. In Premunire the Defendant was reasonably warned according to the Statute, and did not come; by which it was adjudged that he shall be put out of Protection &c. Br. Premunire, pl. 3. cites 43.

3. Premunire against divers, some as Principal and some as Accessaries; and at the Day of Return the Principal did not come, by which they were out of the Protection of the King, and their Lands and Chattels forfeited; and the Plaintiff prayed that the Accessaries who appeared should answer: But per Fencote, they shall not answer till the Principal be out of the King's Protection; nor is an Attaintee; for Thorp Ch. J. said it is only a Pain given by the Statute, that if they do not come the first Day they shall be out of the Protection of the King, and their Lands and Chattels forfeited: But this is no Attaintee, for Capias shall issue against them; and if they do not appear at the Capias, Exigent shall issue; and so the Statute proves that they have Answer; for otherwise it shall be in vain to award Proceeds; quod nota. Ibid.

4. And several admitted there, that there may be Principal and Accessory in Premunire; but Candish said that if he who is called Principal dies, yet the other shall answer: Contra in Felony; but Finch said that it is more like to Trepsafs than to Felony; for in Trepsafs he who first comes shall answer, and if he be convicted of Damages, and after another comes and pleads, and is convicted, he shall be charged of the first Damages:
Prerogative of the King.

Damages; and if he be acquitted, yet the first shall be charged; and the Writ was that such Manutentores & Abettatores ipsum expulserunt: And after Finch awarded, that the Defendants who appeared should answer; and so it seems that all are Principals. Br. Premunire, pl. 4. cites 44 E. 3. 7.

5. Premunire by an Abbot against two; the one made Default, and was put out of Protection of the King, and his Goods and Chattels forfeited; and this at the first Day as it seems, Rolle defended the Tort and Force, and demanded Judgment it the Court would take Consonance for he said that the Abbot Plaintiff was deposed at C. in the County of Chester, where this Court has no Jurisdiction. Chauntrell said, this goes to the Action. Per Strange, At least it goes to the Writ, but if you agree to the Issue, it shall be tried where the Writ is brought, by the Statute &c. of 9 E. 3. cap. 4, as it seems. And after Rolle pass'd over, and pleaded Excommunication. Brooke makes a Quere, if the foreign Plea above shall be tried where the Writ is brought, where it goes to the Writ; for the Statute mentions where it is pleaded in Bar. Br. Premunire, pl. 8. cites 8 H. 6. 3.

6. Bill of Premunire for the King was brought against J. N. in B. R. and he pleaded to the Bill, because the Statute is that such Suit shall be by Bill before the King and his Council, or by Premunire, which Bill before the King and his Council, is intended before him and his Lords, and not before him in his Bench; and Premunire is intended by Writ Original, and not by Bill in B. R. wherefore Plaintiff made Bill of Premunire against him in Custody of the Marshal, and then he was committed to answer. Br. Premunire, pl. 1. cites 27 H. 6. 5.

Premunire in B. R. who were not in Custody of the Marshal; quod non. IbId.

7. Premunire against three, one as Precursor, another as Councilor, and the third as Attorney; the Damages shall be sever'd. For three justices. Br. Premunire, pl. 17. cites 36 H. 6. 29.

all Principals, or the one Principal and the others Accessories; but the Damages shall be severally indu'd. 5 Inst. 125.

8. Premunire against four; two appeared and two not; and the Writ was abated for Default therein; and therefore no Judgment was given against the two who made Default, inasmuch as the Writ was ill and abated. Br. Premunire, pl. 11. cites 5 E. 4. 6.


Cafe. Br. Attorney, pl. 82.——S. P. Br. Attorney, pl. 104. cites 39 E. 5. 7.——Defendant cannot appear by Attorney, but in Person in this Suit, that he be a Lord of Parliament, unless by special Writ of the Chancery. Br. Premunire, pl. 15. cites 14 H. 7. 9.——S. P. And this by the Statute 38 E. 3. cap. 2. 3 Inst. 123.——S. P. Whether the Defendant be a Peer or Commons. It is Evid indeed in Rolle's Reports, That Sir Anthony Mildmay was suffer'd to plead a Pardon to a Premunire by Attorney, and no Mention is made of any such Writ or Grant; but Sergeant Hawkins says he presumes there was a Clause to this Effect in the Pardon. 2 Hawk. Pl. C. 275. cap. 26. S. 53.

10. In Premunire a Man may have Proceeds by Proclamation only, and may have Exequat if he will. Br. Procefs, pl. 80. cites 9 E. 4. 2.

11. A Man brought * Bill against J. N. in Custody of the Marshal, and counted upon the Premunire, that he had sued the Plaintiff in the Nicholas for Goods of J. S. and had appealed to Rome; and it lies well by Bill without Original, for this is to give him Day in Court, and when he is in Custody of the Marshal it is always in Court; quod nona per Cur. 10

But
Prerogative of the King.

But where the Statute gives the Process or Form of the Original, there shall be only observed, upon which the Defendant laid that he sued in the Spiritual Court as Executor of J. S. to have the Will proved, where the Plaintiff claimed also to be Executor by another Will, and had Citation thereof, abique hoc that he is guilty in other Manner. And per Hulsey and Fairfax, This is no Plea, and therefore nothing shall be entered but Not Guilty; for the Plea does not answer any Thing to the Suit of the Goods. And to see that Not Guilty is a good Plea in this Action, and that Executors cannot sue for the Goods of the Tenant in the Spiritual Court, but at Common Law. Ir. Premunire, pl. 12. cites 2 R. 3. 17.

S. P. If the be in Privy, but if the Defendant be condoned it is shown that he in not appearing, whether at the Suit of the Party, the same Judgment shall be given to the being out of the King's Protection, but instead of the Clause that the Body shall remain in Prison, there shall be an Award of a Capiatum. 2 Hawk. Pl. C. 449. cap. 48. S. 9.

12. The Judgment in Premunire is, That the Defendant shall be from theenceforth out of the King's Protection, and his Lands and Tenements, Goods and Chattels forfeited to the King, and that his Body shall remain in Prison at the King's Pleasure. Co. Litt. 131. b.

13. The Attorney-General prosecuted a Premunire for the Queen and P. against Doctor M. and others, because they procured the said P. to be cited in the City of Oxford before the Commissary there in an Action of Trespass by Libel according to the Ecclesiastical Law, in which Suit P. pleaded Son Franktenement, and so to the Jurisdiction of the Court, and yet they proceeded, and P. was condemned and imprisoned. And after that Suit depended, the Queen's Attorney withdrew the Suit for the Queen; and it was moved it, notwithstanding that, the Party might proceed. But it was held by the whole Court, That if the King's Attorney will not further prosecute, the Party must be maintained in this Suit; for the principal Matter in the Premunire is the Conviction, and the putting of the Party out of the Protection of the King, and the Damages are but accessory, and then the Principal being released the Damages are gone. Le. 292. pl. 399. Mich. 26 & 27 Eliz. B. R. The Queen v. The Dean of Christchurch.

14. The King brought a Prohibition against the Prior of W. that where the King had recovered in Squar Impedita, the Defendant sent his Fere to Rome with an Appeal, and filed there to avoid the Judgment, according to the Statute of Premunire. And upon Not Guilty pleaded, all this was found against the Defendant; and Judgment was prayed for the King upon the Statute of 27 E. 3. c. 11. in Cafe of Premunire; and it was adjudged that he shall not have it, because the judgment ought to be conformable to the Original, and this Suit was not taken according to the Statute, but by a Writ of Prohibition at the Common Law. 9 Rep. 74. a. Trin. 9 Jac. in Doctor Hulsey's Case, cited as 30 E. 3. 11. b. The King v. the Prior of Woburne.

The Reporter adds,

Nora. for the fame Faults, such a Judgment in Premunire against one
Prerogative of the King.

Vic. Com. Somers, pred. quod Venire faciant &c. where it ought to be
Present, and to be Preceptum solvendi, in the Present, and not in
the Record of the Court of an Act done by the Court in Precept, to
which it is rather a History of a Matter which was after the Bill joined
to the Record of the Court of an Act done by the Court in Precept,
which always ought to be recorded in the Premise, and for this
Error the Judgment was reversed, and the Party restored. 2 Smth.

16. The Defendants were indicted for refusing the Oaths of Obedience
enjoined by 3 Jac. cap. 4. And the Indictment was, That at the Assizes
and General Gaol-Delivery held before Sir R. A. &c. and Z. B. Gent. vides
R. A. & T. L. baec vice Assessor, per Sacramentum suum &c. præsentat,
exhibitis modo sequen. viz. jur. presentant quoq. at the General Quarter-
Sessions for the County of Hereford 14. January Anno 30. the Judges of
Peace did tender the said Oath to the Defendants, and they refused; and
afterwards at Assizes, pro Com. Hereford præsid. apud Hereford præsid.
in Com. Hereford præsid. 31 Martii 31 Car. 2. Coram Roberto Atkins Militis
Balnei in Judic. diuí Dominini Regis de Bengo, & Z. B. Gent. vides R. A.
Hereford præsid. capiteu. assisi. per formam Statut. the said Judges A.
and Z. B. again tendered the said Oath, and they refused to take the
same. And upon Not Guilty pleaded, the Defendants Religion Verficati
confess the Judgment; and Judgment was given against them: And upon
a Writ of Error, the Error assign’d was, that the second Tender of the
Oath was by the Judges of Assises only; whereas the Statute 3 Jac. says it
must be by Judges of Assises and Gaol-Delivery; and this seemed not to
be allowed by Dolben, but by the other two it was not spoke to; but
Raymond conceived ‘twas Error, and that the Judges of Assises
cannot by Virtue of that Commission bare tender the said Oath
for the Statute says, that in Case they refuse to take the said Oath tender’d
them by the Judges of Peace, then the said Judges shall and may commit
the same Persons to the Common Gaol, there to remain without Bail or
Mainprize until the next Assises, where the said Oath shall be again in the
said open Assises required of them by the said Judges of Assises and Gaol-Del-
ivery in their open Assises; and every Person to refusing shall incur the
Danger and Penality of a Premunire, by which it appears that they
are being committed to Gaol by Judgment of the Judges of Peace, none
can deliver them but they who have Power to deliver the Gaol; and
the Statute de Finibus 27 E. 1. gives Judges of Assises Power to
deliver the Gaol, that is intended only of Felons, as appears by
Statut. Pl. Cor. 57 & 58. But the Judgment was reversed for an in-
curable Error, which was the misreciting of the Oath contained in the Act.

(P. a. 6) Premunire. Forfeiture of what, and by whom.

1. Premunire against several upon the Statute 27 E. 3. cap 1. They
were found Guilty, the one as Principal and the others as Accesories,
and the Damages were severed; And per Hals, there may be Princi-
pal and Accesory in Premunire, and he would have severed the Da-
gages; but Galcwayne saw the Record, which imposed that they were
Coadjutors, Procurators and Abettors to him who made the Bull, by
which it was awarded that they recover Damages in common; and the
Attorney of the King prayed that they may forfeit their Land and
Chattels, because they were attainted as above. Galcwayne said the
Statute does not will that he shall forget his Land &c. rules for Continu-
ance for making Default at the Day of the Premunire returned and fixed, by
Prerogative of the King.

1. Br. Forfeiture de Terres, pl. 12, cites S. C. 4. * But see, that there are other Statutes in the Time of R. 2. that they shall forfeit Lands and Chattels, if they are attainted, but not by the Statute 27 Eliz. 3. quod nota. Br. Premunire, pl. 6. cites 8 H. 4. 6.

2. Richard Fermor of London was attainted in a Premunire in the Time of H. 8. and his Lands were forfeited in Fee, and not only for Term of Life; quod nota. Br. Forfeiture de Terres, pl. 101. cites 34 H. 8.

only a Forfeiture for Term of Life, as in an Attainder; for the one is by Statute, and the other is by Common Law — But if Tenant in Tail is attainted in a Premunire, he shall forfeit the Land during his Life; for albeit the Statute of 16 H. 2. cap. 5. enacted, That their Lands and Tenements, Goods and Chattels shall be forfeit to the King, that must be understood of such an Estate as he may lawfully forfeit, and that is during his own Life. And the general words do not take away the Force of the Statute de Peace Conditionalibus; but he shall forfeit all his Fee-simple Lands, Estates for Life, Goods and Chattels. And so it was resolved in * Eustis's Case. Co. Litt. 150. a. s. P. But the 26 H. 8. has the Words, All Manner of Inheritance to be forfeited: The Office is greater within the 26 H. 8. and the Words more peremptory than in the other. Jonk. 28. in pl. 21. — * S. C. cited, as resolved by all the Judges of England. Pach. 21 Eliz. 11 Rep. 63. &. In Dr. Folier's Case. — Inf. 126. cites S. C. — Sergeant Hawkins says it is agreed, That the Statutes of Premunire, which give a general Forfeiture of all the Lands and Tenements of the Offender, extend not to Lands in Tail. 2 Hawk. Pl. C. 454. cap. 49. S. 29.

3. He, that procures one to sue in the Court Christian, shall forfeit as much as he that sueth, and is Principal as well as the other, and is in equal Degree of Premunire; but if they both be indicted, the one of the Att and the other of the Procurement, and he that is charged with the Procurement is found Guilty, and the other by another Indictment is found Not Guilty, Judgment shall never be given against him who was indicted of the Procurement, because he cannot be an Officer but in Respect of the Office of the other. 3 Inf. 125. 126.

4. One Truage was seised in Fee of Lands, and so seised was indicted of Premunire, and before his Trial he gave them in Tail; and afterwards he was attainted of Premunire, and an Office under the Seal of the Exchequer found it; and Queen Elizabeth under the Great Seal granted them to G. C. and this Grant by the Queen was within the Time of the Purview of the Statute of 18 Eliz. for Confirmation of Grants of the King: and the Question was, Whether the Attender in the Premunire shall award a Grant made by the Party, in Suit between the Indictment and the Trial, and Judgment thereupon. And this was argued several Times; but it being a great Point of Doubt and Consequence, the Justices did not give any Opinion or Resolution. But it was resolved that the Grant was not good at the Common Law; because upon the Attender the Estate of Franktenement was not divested, and vested in the Queen till an Office thereof found, and the Office ought to be an Office to intitle, and not to inform the Queen of the Particulars of the Land; and therefore inasmuch as it was by Commission under the Seal of the Exchequer, and not the Great Seal, therefore the said Office was insufficient to intitle the Queen, as it is resolved in Page's Case. 5 Co. Jo. 217. Mich 5 Car. B. R. Griffie v. Gayne.

(P. a. 7) Premunire. Suing in other Courts. What shall be said to be Other Courts.

1. After Judgment given before Roger Loveday and Walter Winborn, Justices of Oyer and Terminer, against Walter B——.
Prerogative of the King.

fllop of Exeter and his Tenants, the said Bishop procured the Bishop of Land-
dai in the Parish Churches of Cornwall and Devonshire, to pronounce a Sentence of Excommunication by Sentence of the Archbishops of Canterbury, (which Sentence was had by the Procurement of the said Bishop of Exeter) against all Persons of what Estate, Degree or Dignity soever, that dealt in the Proceedings &c. against the Bishop and his Tenants before the said Judges. And in this Part of the Record, being in French, it is said, La Corone & la Dignity notre Sceignour le Roy ne doit per autre cire Justice ne guyne &c. Et les choses que font paties en la court per judgment, ou en aueter maner ne devient citre en autri court reme-
ceedes &c. Out of this Record Lord Coke says we may observe three Things. 1st. What the Ancient Law of this Realm was before the making the Act 27 E. 3. 2dly. That (En autri court) which are the Words of this Act, was taken to be another Court within the Realm. 3dly. That the Chief before this Act was for Suits in other Courts within this Realm after Judgment given in the King's Courts. 3 Inf. 123. cites 6 E. 1. The Earl of Cornwall's Case.

2. J. W. exhibited a Bill of Premunire against W. P. upon the Sta-
tute of 16 R. 2, for suing in the Admiral Court before John Earl of Hun-
ingdon, Admiral of England, for a Cave that belonged to the Common Lawes, whereunto the Defendant pleaded Not Guilty. 3 Inf. 121. cites Mich. 9 H. 7. coram Rege.

cause they fined J. C. before Henry Duke of Exeter Admiral of England, for taking away a Crown of Gold, and other Goods, opposing the same to be taken upon alterius Mare, where in Truth they were taken at Stafford in the County of Ely, and the Statute of 16 R 2 was rected, That none should sue in Curia Ro-
mansa feu Alibi &c. and that the Constate of this Plea belonged to the Common Law, and not to the Court of the Admiral. And it is for the Commonwealth and Majesty, if they hold Plea of a Matter determin-
able by the Common Law. 3 Inf. 121. cites 58 H. 6. coram Rege.

3. A Suit in the Ecclesiastical Court within the Realm for a Temporal Cause was a Caue of Premunire. 3 Inf. 120. cites it as adjudged by the whole Court, Mich. 11 H. 7.

4. In Raif. pl. 429. b. and 430. there is a Precedent of a Premunire for suing in the Ecclesiastical Court for Debt. 3 Inf. 121.

5. It was resolved, That he that sued in the Ecclesiastical Court for the Forgery of a lost Will and Testament, incurred the Danger of a Pre-

Premunire; because the Party grieved might have his Remedy by the Common Law. 3 Inf. 121. cites 17 H. 7.

6. And in the same Year of 17 H. 7. Justice Spilman also reports, that one Turbervile, as well for the King as himself, sued a Premunire against a Parson, for suing for Titles in the Ecclesiastical Court, al-

ledging the same to be severed from the nine Parts; and Judgment given against the Defendant. 3 Inf. 121.

The Bishop of Bangor was attainted in a Premu-

nire for hold-

ing Plea of an

error, and of Titles courted from the nine Parts. 3 Inf. 122. cites Trin. 36 H. 8. coram Rege. Rot. 9. The Bishop of Bangor's Case.

7. And the Reason of all these Cases is, because they draw Matters tryable by the Common Law ad aliud examen, and to be decided per aliun Legem. 3 Inf. 121.

8. But some have made a Question, whether, since the Ecclesiastical Jurisdiction was acknowledged to be in the Crown, an Ecclesiastical Judge holding Plea of temporal Matter belonging to the Common Law in-
curs the Danger of a Premunire? The hereof there is no Question at all, yet let any Man might be led into an Error in a Case of danger-
ous, we will clear this Point by Reason, Precedent and Authority; the Reason holdeth thus, to draw the Matter ad aliud examen &e, and the like Question might be made for the Admiral Court, which is and ever was the King's Court, but governed per aliun Legem; and to likewise of the Court of the Contable and Marital. 3 Inf. 121.

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9: The
9. The Bishop of Norwich was attainted in a Premunire at the King's Suit, and his Case was this. Within the Town of Thetford there then was a Custom, That all Ecclesiastical Causes arising within the said Town should be determined before the Dean there, having a peculiar Ecclesiastical Jurisdiction, and that no Inhabitant of the same Town should be drawn before any other Ecclesiastical Judge, and that every Person suing contrary to that Custom, the said being presented before the Mayor of Thetford, should forfeit 6 s. 8 d. and that an Inhabitant of Thetford, for an Ecclesiastical Cause arising in Thetford, sued another before the Bishop of Norwich within his Contillery Court at Norwich; and this was presented before the Mayor of Thetford, according to the Custom, whereby he forfeited 6 s. 8 d. The said Bishop cited the said Mayor for taking the said Prefentment, Pro salute anime, to appear before him at his House at Hoxton in Suffolk, where the Mayor appeared, and the Bishop pro tenus injoin'd, upon Pain of Excommunication, to annul the said Prefentment before a Day. And for this Offence he was attainted in a Premunire, upon his Confession before Fitzjames Ch. J. and the Court of King's Bench, upon the Statute of 16 R. 2, the Record whereof Lord Coke says he has seen. By which Judgment two Points are cleared.

1. That the Statute of Premunire extends to Ecclesiastical Courts within the Realm. 2dly. That after the King was in Possession of his Supremacy the Bishops incur'd the Danger of Premunire. 3 Init. 121. cites 25 H. 8. coron Rege, the Bishop of Norwich's Case.


11. T. S. Parson of N. brought a Writ of Premunire against R. T. upon the Statute of 27 E. 3. for suing in the Court of Audience of the Archbishops of Canterbury, to impeach a Judgment given in a Squar Impedit before the Justices of Assize in the County of Suffolk &c. The Defendant pleaded Not Guilty &c. 3 Init. 122. cites Trin. 29 Eliz. C. B. Thomas Stoughton's Case.

12. An Information upon the Statute 27 E. 3. against Sir Anthony Mildmay, for that he and other Commissioners of Sewers did impeach a Judgment in the King's Bench. He purchased a Pardon from the King, and pleaded it. 3 Init. 125. cites Hill. 12 Jac. coron Rege.

(P. a. 8) * Pardon. The several Kinds of Pardons, and the Difference.

1. All Pardons are either General or Special, and are either by Act of Parliament, (whereof the Court in some Cases shall take Notice) or by Charter of the King (which must always be pleaded). And these again are either absolute, or under Condition, Exception or Qualification; for some of those Pardons last mentioned the Party may have a † Writ of Allowance, or take an Averment in certain Cases; in others the Party may be aided by Averment only, where no Writ of Allowance doth lie. 3 Init. 233.

2. A Special Pardon shall be taken for the Advantage of the King, because it comes at the Suit of the Party; but a General Pardon shall be taken

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taken more for the Benefit of the Party, because this proceeds from the King himself, and of his Special Grace, & ex mero motu. Adjudged. Latch. 22. in Bolton's Case.

3. Per Jones and Dodderidge Justices, A Coronation Pardon is but in Nature of a Particular Pardon, and differs from a General Pardon in that, where no certain Time is specified as to the Offences, it shall not discharge any previous Offences for which Judgment has been given, but a general Pardon shall. Latch. 141. Davy's Case.

4. A Coronation Pardon is no Pardon till sued out, and is not like a General Pardon. Per Doderidge J. Latch. 141. Davy's Case.

(P. a. 9) Pardon. In what Cases not necessary; and in what grantable of Course.

1. Stat. Gloucester, E NACTS that in Case it be found by the Country, that a Person tried for the Death of a Man, did it in his Defence, or by Mistfortune, then by the Report of the Justices to the King, the King shall take him to his Grace if it please him.

Where a Man is indicted of the Death of a Man, and it be found upon the Arraignment that it was done so Defendendo, upon a Certificate of this Indictment and Arraignment found as aforesaid, the Chancellor in this Case shall grant a Pardon to the Party for his Life, without applying to the King. By all Judges of England. Jenk. 178. p. 82. cites 19 H. 7. — S. P. Hawk. Pl. C. 76. cap. 29. S. 25 — S' P. Br. Charter de Pardon. pl. 65. cites 4 H. 7. 2.

Sergeant Hawkins says, By this Statute it is Slight it seems to be Implied, that it is left to the Discretion of the King, whether he will grant a Pardon in such Case, or not. And agreeable here-to it is said in four several Notes in Fitzherbert's Abridgment of Cases in the Time of E. 3, That a Person found Guilty of Homicide so Defendendo, is to be remitted to Prifon, in order to attend the King's Grace. And yet in two other Notes in the very same Year, it is said, That in such Case, if the Prisoner cause the Record to come into Chancery, the Chancellor will make him a Charter of Pardon without speaking to the King; and this seems to be settled at this Day, and agreeable to the ancient Common Law, which shall not without express Words be restrained by a Statute which seems to be made in Affirmance of it. And therefore these Words in the Statute, (if it shall please the King,) shall be taken to be spoken only out of Revenge to him, and not as intended to make the Right of the Subject to such a Pardon precarious. And the Cases above cited, which seem to the contrary, may be reconciled with the others, by intending them to mean only the Grant of the King's Pardon to a Person represented to him as Guilty of Homicide so Defendendo, without any Certificate of the Verdict upon Record; for none of those Cases make any Mention of such Certificate, as the others do; and if there be no such Certificate, it seems plain that the Grant of a Pardon is a mere Matter of Favour. And it has been adjudged, that such a Pardon is as necessary for one who is indicted only of Homicide so Defendendo, and confesses it, as for one who is found Guilty of Homicide so Defendendo, on an Indictment of Murder. 2 Hawk. Pl. C. 58. cap. 32. S. 2 — — S. P. 2 Ind. 516. 517.

2. Where special Fault, amounting to Justifiable Homicide, is found by H.P.C. 58. the Jury, the Party is to be dismissed without being obliged to purchase any Pardon &c. Hawk. Pl. C. 70. cap. 28. S. 3.

(Q. a) What Thing shall pass by a Pardon.

1. If A. be bound to B. in an Obligation of 10 l and after B. is attaint of Felony, and after the King by his Letters Patents pardons him, by their Words, feliciter, Pardonnat, remitit & relaxat predicat. B. fectanque pecis sua que ad ipsum Dominum Regem veriis ipsum pertinent de eo quod fecit fit felix Felicitas, & Omnia que ad Dominum Regem pro Felonia praud. veriis ipsum Regem tunc pertine, vel pertinente potuit &c. firmamque Pacem edem B. inde concettet: This does not restore B. to the said Obligation; for it has in the actual Possession of the King by the Attainder before Office found.
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found, and here are not any Words of Grant or Restitution, but only of Pardon. Trin. 23 Car. 2. R. between Drew and Chap- ped, adjudged upon a Demurrer. Innsuite Hill. 11 Car. Rot. 921.

2. A. was bound to the King in a Recognizance of 1000 l. and was attainted of Treason; the King pardoned him, and restored to him all his Goods and Chattels which he forfeited by the Attainer: This Debt to the King remains; for it was only fulped by the Delin-


3. In Debt on Bond Defendant pleads, that after the making it the Plaintiff was attainted for Coining, which the Plaintiff contented, and says that afterwards the Queen did by Pardon restore unto him omne Bo-

næ & Catalla sina; and on Demurrer the Question was, Whether Debts by Specialty were included in those Words? Goldsby. 114. Adams v. Ogles thorpe.

Lev. S. S. C. S. P. Hawk Pl. C. 68. cap. 27. 8. 9.—But in Scire Facias, by an Ad-

ministrator, the Defend-

pent pleaded that the In-

itiation in the Year 1648. afterwards by the Act of General Pardon all Felonies were pardoned, excepting Murder; and then upon an Inquisition it was returned, that A. had a Term for Years of the yearly Value of 100 l. It was adjudged that this was pardoned by the General Pardon; for nothing is vested in the King till Inquisition found; and no Inquisition was found till after the General Pardon, and so the Term for Years was gone before the Inqui-

dition found. Sid. 150. 15 Car. 2. The King v. Warde.

4. A. became Felo de fe in the Year 1648. afterwards by the Act of General Pardon all Felonies were pardoned, excepting Murder; and then upon an Inquisition it was returned, that A. had a Term for Years of the yearly Value of 100 l. It was adjudged that this was pardoned by the General Pardon; for nothing is vested in the King till Inquisition found; and no Inquisition was found till after the General Pardon, and so the Term for Years was gone before the Inqui-

dition found. Sid. 150. 15 Car. 2. The King v. Warde.

5. 12 Car. 2: pardoned all Debts, Judgments &c. An Inquisition found one Felo de fe, who had a Debt due by Judgment to him. This is pardoned by the said General Pardon. Sid. 264. Trin. 17 Car. 2. B. R. Lock v. Etherington.

6. The Word (Pardon) includes in it self the Word (Release) and fo are 1 H. 7. 10. 11 H. 7. 11. For all, that is not within the Exception, is by the general Words pardon’d and gone; and the Cafe of Sir George Binton of late Time in the Exchequer, does not oppose it; for there Sir G. B. being indebted to the King, and J. S. being indebted to him, Proceeds out of the Exchequer Chamber litigated against J. S. and his Goods seised for the King, and then came the Act of Oblivion; and adjudged that the Debt of J. S. remained, because he was Debtor to Sir G. B. and not to the King; but if he had been an immediate Debtor to the King, the Debt should be gone, per Twifden and Keeling J. against Windham J. upon Conference with the Barons of the Exchequer and other Justices. Sid. 265. Trin. 17 Car. 2. B. R. in Case of Lock v. Etherington.

7. The King prefented to a Benefice which had become void by a Si-

moniacal Agreement, and afterwards by a General Pardon restores all Goods and Chattels forfeited by Reason of any Offence done. Per Cur. The King’s Prefentence has a good Title notwithstanding the Pardon; for here was an Interest vested in the King, which the Pardon cannot di-

vise; and the Prefainment shall not pass by the Words (Goods and Chattels) which are Things of a lower Nature, and all in the Perfonality, as was said. Arg. 2 Mod. 52. Trin. 27 Car. 2. The King v. Turvil.

8. A Pardon of all Forfeitures will not dispose an Interest vested in the King. Per Cur. 3 Mod. 100. Pauch. 2 Jac. 2. B. R. The King v. Saloway.

(Q. a. 2)
(Q. a. 2) Pardon of one, in what Cases it shall be a See (Q. a. 2) Pardon of another.

1. PARDON of the King granted to an Approver shall discharge the Contra of Appellee. Br. Charters de Pardon, pl. 62. cites 47 E. 3. 5. there he may be arraigned upon the Approvement. Ibid.

2. If Twenty are indicted of Felony, and after the King pardons the one, without making Mention of the others, this is good; for Felony is federal, and not joint, and it is as several Indictments against every one by himself, and not joint. Br. Charters de Pardon, pl. 45. cites 6 E. 4. 5.

3. If two are Joint-Delictors to the King, and he pardons the one, this S. P. For it shall not serve the other; quare. Br. Patents, pl. 99. cites 2 R. 3. 4. of a Sole Debt due by him only, as it was said; therefore quare. Br. Charters de Pardon, pl. 57. cites S. C.—& where two are bound to the King, and both in totis, and the King releases to the one, the other shall not take Advantage. Br. Charters de Pardon, pl. 4. cites 54 H. 6. 5 & 50. 35 H. 6. 1. 25—S. P. Br. Ibid. pl. 56. cites 1 H. 7. 10.—Contra, it seems, of Joint Bond by two, and he releases to the one. Per Aethne; but per Parby and Prior, it shall serve both, where they are bound both in totis. Brooke makes a Quare. Br. Charters de Pardon, pl. 4. cites 54 H. 6. 5 & 50. 35 H. 6. 1. 25—For it was said there that in the Exchequer, if two are Accountants, and the King releases to one, yet those of the Exchequer will have the whole Account of the other. Ibid.

4. If a Man and his Sureties are bound to pay Fine to the King, or 20 l. by a certain Day, and do not pay at the Day, and the King pardons the Principal, this shall discharge the Sureties. Br. Charters de Pardon, pl. 36. cites 1 H. 7. 10.

5. Contra of Sureties of the Peace; for there nothing is due till the Bond is forfeited; for there if the King pardons the Principal after Forfeiture, the Sureties are discharged. Contra of Pardon before the Forfeiture. Ibid.

6. And where a Man is bound, that A. Sheriff of N. shall pay his Prefere such a Day, Release of the King to the Sheriff after the Day does not acquit the Surety of the Breach. Contra of Pardon before the Default. Yer Townsend. Br. Charters de Pardon, pl. 36. cites 1 H. 7. 10. and discharges of the Surety also. But it seems to have been held as a general Rule, That where a Man is bound as Surety for another, for the Performance of a future Act, the Discharge of the Principal before the Time of Performance, will not discharge the Surety, because nothing was due to the King at the Time of such Discharge. But it seems extremely nice; neither do the Cases brought for the Proof of it seem any Way to come up to it; for as to the first of them, viz. That of the King’s Release of a Recognizance of the Peace to the Principal before it is forfeited, which shall not discharge the Sureties, it may be answered, That it will not so much as discharge the Principal, and as to another Case cited for this Purpose, viz. That of the King’s pardoning J. N. the Building of such a House, for his Building whereof J. S. is bound to the King, which shall be no Discharge to J. S. it may be answered, That as this Case is put, J. N. doth not seem to be bound at all, but only J. S. who therefore does not seem to come under the Notion of a Surety, but of a Principal. 2 Hawk. Pl. C. 587. cap. 37. 8. 5.

7. An Alienation without Licence to A. Tenant for Life, Remainder But where to B. in Fee; a Pardon of Alienation to A. will not serve B. Jenk. Alienation is to two Joint-tenants in Fee, a Pardon of all Alienations to one will serve the other; for they make but one Tenant. Jenk. 222. pl. 77. cites 14 H. 6. 26.—This was as the Law stood before the 12 Car. 2. cap. 24. which took away Fines for Alienations.
1. A was indicted as Accessory to a Burglary committed by one who had been tried and attainted, but procured his Pardon, which had been allowed; and now A. prayed that the might be discharged: But resolved that the must plead to the Indictment; for tho' he, the Principal have either his Clergy, or be acquitted, or obtain his Pardon before Judgment, the Accessory shall not be questioned; yet, if the Principal be attainted the Accessory must answer, tho' the Principal be pardoned. Raym. 477. Mich. 34 Car. 2. Anon.

2. It seems generally agreed, That notwithstanding all Felonies are several, and consequently a Pardon of one Man cannot be a direct Discharge of another, yet in some Cases the Felony of one Man may be so far dependent upon that of another, that the Pardon of one will by a necessary Consequence enure to the Benefit of the other: As where the Principal pleaded his Pardon, and was allowed it at Common Law before his Attender, or where he pleads, and is allowed it at this Day before his Conviction; in which Case it seems that the Accessory may by a necessary Consequence take Benefit of it, because he cannot be arraigned till after the Principal is convicted. 2 Hawk. Pl. C. 387. cap. 37. S. 22.

(R. a) The Pardon of what Things Inclusive, shall be Pardon of others.

1. D. 8 Eliz. 249. 83. Breerton. Manor held in Capite, being in the Lease for Years, and Rents reserved descended to the heir; who entered and took the Rents, and before Office found, General Pardon of 5 Cl. came and discharged all Infruptions and Entries, and by the Court of Bards Sawnders and Diet, consequently Meine Infruptions and Liveryes are discharged, and a Precedent cited accordingly, by the Opinion of 5 in the same Case; but the Land was not in Leafe. But by 2 The Queen may have Action of Account against Breerton as her Bailiff or Receiver, and also an Action of Debt against the Letters, who both are excepted out the Pardon.

2. 3 D. 7. 3b. Hussey seemed to be Contra; for he said that if Pardon be made to the Heir of an Intruder, or the Intrusion, Office found after shall leave the King for all the Profits before [but] not to [any] other * Intent.

3. 16 Eliz. 4. 1. cited in St. Prerogative 40. b. the Pardon ought to be as well of the Profits as of the Entry, or otherwise after Office found, the King shall be answer'd of the Profits.

4. St. Prerogative 40. b. After Death of the Assesser the heir enters, the king pardons him all Entries with the Profits before Office found; this pardons Livery, and is special Livery.

5. If the King pardons Outlawry, which is proclaimed upon Indictment of Brejurers at the Suit of the King, and whatsoever belongs to the King, yet be null make Fine and Ransom; for Fine and Ransom are not pardoned under by special Words. Br. Charters de Pardon, pl. 30. cites to 22 Att. 47.

6. Felony is said to be included in High Treason, and consequently a Pardon of Felony discharges an Indictment of High Treason, if it want the Word Pardonne. Hawk. Pl. C. 65. cap. 25. S. 2.

(S. a) What
Prerogative of the King.

(8. a) What shall be [said to be] pardoned [by a General Pardon.]

1. If a Man upon a Suit in the Ecclesiastical Court be condemned in Costs to the Party, and thereupon is Excommunicated, and after comes the General Pardon of 21 Jac. and after a Signification is made, and he taken upon a Capias de Excommunicatio capiendo, and this returned in B. R. he may come into B. R. without any Scire facias against the Party at whose Suit he was taken, and plead the Pardon in Discharge of the Contempt; and it shall be allowed; for the Contempt of the Excommunicatio was pardoned, the not the Costs, and the Party ought to begin again to compel him to pay the Costs. D. 17. Car. B. R. between Cudington and Redmon, adjudged per Curiam, and there cited Punches's Case in 3 B. R. Mich. 2 Car. 1I. adjudged.

was Excommunicado; to which the Plaintiff in Error pleas the General Pardon. And the Court (as it seems) held, that by it the Excommunicatio was discharged, for they awarded a Respondeat Under 3 Rep. 68 a Mich. 6 Jac. Trollop's Case. — It was doubted by the 2 Ch. Justices whether an Excommunicatio might be discharged by the King's Pardon, and the Plaintiff referred to his Suit, without Abolition and Reconciliation to the Church. Cro. J. 512. Trollop v. Richardson — The Imprisonment upon the Contempt is discharged, but not the Taxation of Costs (being for the Plaintiff's Benefit;) and by Consequence the Excommunicatio is not discharged; for that depends upon the Principal: Wherefore he was remanded. Cro J. 159. Banning v. Fryer.

2. If a Man be attainted of Felony by Outlax or Verdix, and the King S.P.Hawk pardons him all Felonies, this shall not serve. Per Strange; for it shall be intended that the King had not Confinement, and was deceived in his S. P. Grant. Br. Parents, pl. 15. cites 8 H. 6. 19.

S. P. But the particular Crime for which he is convicted ought to be particularly mentioned. 2 L. P. R. 270. Tit. Pardon.—So a General Pardon of all Robberies is not good, where there is a Confinement by Verdict of one in particular. Bd. 470. Mich. 21 Car 2 B. R. The King v. Mardock. — A General Pardon of all Felonies does not extend to Piracy. Hawk P. C. 539. cap. 57. 8. 4. and therefore the King may keep the Contempt, by it the Pardon was good; for a Pardon by a General Pardon of all Felonies with out Confinement, or deeming any one in particular, may, even at this Day (if the Party be neither attainted nor indicted) be pleaded in Bar of any Felony whatsoever, coming within the General Limitations thereof, except Murder or Rape; and the Reason why it cannot also be pleaded to Murder or Rape is, because the Statute of 13 El. I. Explores Abolition of the Contempt by Pardon. But the Sergeant says he finds this Point no where tolemoned debated, neither does it seem easy to reconcile it with the General Rules concerning Pardons, agreed to be good in other Cases; for if a Felony cannot be well pardoned where it may be reasonably intended that the King had the Contempt, it is not well pardoned and kept, it is not well pardoned, and it is not kept, it is not kept, it is not kept, it is not kept, it is not kept, it is not kept, it is not kept, it is not kept, it is not kept, it is not kept, it is not kept, it is not kept. The Mening of the General Pardon is that the King may by Consequence pardon the greatest Number of the most heinous Crimes. And for their Reasons he supposes General Pardons are commonly made by Act of Parliament. As to the Precedents of such General Pardons in Rattif's Entries, it may be answered, That their Authority seems to be of less Weight, when compared with those many Precedents of Pardons in the Regifter, every one of which particularly describes the Offence which is pardoned, and even those which relate to Homicide by Lunatics or Infants, or in Self-défense &c. except only one which pardons Escapes, but expressly excepts all voluntary ones. And therefore the Books speak of Pardons of all Felonies in general as good, perhaps it may be reasonable for the most Part to intend that they either speak of a Pardon by Parliament, or that they suppose that the particular Crime is mentioned in the Pardon, that they do not expect. 2 Hawk P. C. 539. cap. 57. 8. 9.

3. A Pardon granted at the Suit of the Party, shall be taken more strongly for the King, and more strongly against the Party; but a General Pardon, as pl. 22. cites a Pardon granted ex mora Movi, shall be taken more strongly against the Party, and more strongly for the King.
24. Prerogative of the King.

Lot. 22. S. P. adjudged in Rutton's Case;


4. If it be found by Office, that the Tenant of the King died seized, and that his Heir intruded, and after Intrusions are pardoned by Parliament, yet the Heir shall render the Melfie Profits, but shall not be punished for the Intrusion, for this is pardoned, but not the Profits; and the Executive shall be charged of the Profits where the Office is recorded. Br. Intrusion, pl. 21. cites 33 H. 8.

If there be an Intrusion, and an Office found of it, a Pardon after the said Office ought to pardon the Intrusion and the

5. A. Tenant by Knight Service in Capite dies, his Heir of full Age, he enters and takes the Profits before any Office found. 5 Eliz. an Act of Parliament pardons all Entries and Intrusions: This discharges the Melfie Illuses taken, and justifies the Entry, and amounts to a Livery. The Entry before the Office being pardoned, all the Consequences of it are pardoned; Livery is made to the Heir to justify his Entry; and an Office found afterwards comes too late. By the Court of Wards, and all the Judges Assistants there. Jenk. 234. pl. 9. cites 3 Eliz. D. 249.

So a General Pardon of the King saved Jurors, who had et at the Plaintiff's


6. Jurors eat and drink at their own Cost before Verdict, and after their Departure from the Bar; and this was certified upon the Pleading: And it was held that the Jurors were finable; but it was held clearly, that it was pardoned by the General Pardon. Mo. 599. pl. 825. Hill. 37 Eliz. Hall v. Vaughan.

7. If one pleads a false Plea, for which he is finable, and after before the Judgment, there comes a General Pardon, the Judgment shall be that he is not in Mifericordia quia Pardonatur. Mo. 599. pl. 825. Hill. 37 Eliz. Hall v. Vaughan.

8. A Writ of Entry was brought, and before Judgment came the General Pardon Anno 37 Eliz. by which all Fines, Amerciaments, Contempts &c. were pardoned; after which there was Judgment for the Plaintiff, but the Entry was, Sed non Mifericordia quia pardonatur. Upon Error brought, it was a good Judgment, and that by the Pardon of the original Tort the Amerciament was dischorded; for the Caufe of the Amerciament was the Tort and Contempt of the Tenant, in not rendring the Land to the Tenant, according to the King's Writ; and tho' the Judgment and Amerciament were subsequent to the Pardon, yet the original Caufe of Action being pardoned, of Conquence the Amerciament is pardoned likewise. Adjudged. 5 Rep. 49. Mich. 39 & 40 Eliz. B. R. Vaughan's Cafe.

9. Sheriffs cannot collect Fines or Illuses after a General Pardon; and for so doing an Under-Sheriff was punished in the Star-Chamber. Godbl. 178. Marriot's Cafe.

10. Troop's was brought the 25th September 1 Jac. with a Continuance to the 27th of November after: Upon Not Guilty pleaded by the Defen-
Prerogative of the King.

dant, the Plaintiff had Judgment: The Judgment was not, Quod Capia-
tur; for a General Pardon pardoned all Offences until 24 September 1 Jac.
and upon this, the Force, which gives a Fine to the King, was pardoned.
Judge and affirmed in Error. Jenk. 393. pl. 76. cites P. 6 Jac. Strick-
land v. Thorp.

The Trespass was pardoned, viz. from 21st June to 25th September, but that the Trespass from the 26th to the 6th November, is not pardoned, and therefore as to that there ought to have been a Capias; but the Court held the Judgment well enter'd; for the first Entry in a Trespass being only Vi & Arms, the Pardon of this is a Pardon of all depending upon it; for the first Entry only made the Trespass; besides, it appears by the Declaration, that the Continuance of the Trespass is not laid in the Entry, but only quaid Deparlhationem & Condemnationem Herbe, which is added only to increase Damages to the Party, but not the Fine to the King. Yell 125. S. C. —— Cro.

A, was indicted upon the Statute of Forceable Entry, and Restitution
was awarded. A, travers'd it, and a Venire facias was awarded, and
Discharges with the Nisi Prius; after which came a General Pardon, which
pardon'd the Force: The laid Trial was stay'd, by the Opinion of all
the Judges of England; for the King will not proceed against his Pardon. Jenk. 312. pl. 98. cites 1 Cro. 144.

A, exhibited a Hecchous Bill against B, in the Star-Chamber; after
which came the General Pardon of the 21st Jac. and then for Want of
Cause being flown, it was taken off the File, and the Plaintiff fined 100 l. to the King, and 100 l. to B. and it was resolved that the Fine and Coits are discharged, upon the Authority of Hutt 79. Beverley's Cafe, which did not at all differ from the present, tho' a Day was here given to know Cause; for the Plaintiff hath not any Means to plead
the Pardon. Cro. Car. 68. Patch. 3 Car. by all the Judges at Ser-
jeant's-Inn.

If Cofts in the Ecclesiastical Court are not taxed, a General Par.

before the Pardon, but not tax'd till after the Pardon, they are not discharged. Cro. Car. 9. Dr. Brick-
den's Cafe. —— Coits were taxed upon an Attachment against an Attorney for Male-practice, by
Way of Annuity to the Party grived, and then came out a General Pardon, which discharged the Con
tempt. The Court inclined that the Coits were discharged, for they are not Coits upon a Judicial Pre-
ceeding, but a Kind of Compositio with the Officer, and did not like Coits tax'd in the Ecclesiastical Court pro Rerum Finales. 2 Vent. 194. Anon. cites 2 Rep. 51. Hall's Cafe. —— 2 Hawk. Pl. C.
394. cap. 57. S. 45. —— A, was sentenced for Detention in Court Christian, and appeal'd to the
Arches, but, upon the Act of General Pardon of 21 Jac. 1. coming out, quitted his Appeal; upon which the Court of Arches taxed Coits against him. The Court held clearly, and it was admitted on both Sides, that after the Pardon they had no Power to tax Coits; and that the Defendant did well in dropping his Appeal, because the Sentence on which it was founded was vacated by the Pardon of the Offence. Lat. 155. Lewis v. Whittow. —— For a Contempt in a Court of Equity, if Coits are taxed to the Party grived before the Pardon, they are not discharged, because it is in a Court of Equity, where Coits are at the Pleasure of the Judge. See 2 Vent. 194. says, it was held per Atkins Ch. B and Vent J. in the Dutchy Court, that the Coits were not discharged. —— 2 Hawk. Pl. C. 394. cap. 57. S. 45. cites S. C. —— No Coits for a Contempt discharged by the General Pardon. Toth. 108. cites 2. Eliz. Fullwood v. Fulwood.

14. The Corner returned, that A, was killed with a Gun by Misad-
centure. The Court held this not within the General Pardon; for that it was Manslaughter, being occasion'd by an unnecessary Act; and the De-
endant must purchase a Pardon. (So that it seems the Act does not par-

15. General Pardon does not pardon Simony, tho' it concludes with 2 L. P. R.
luch general Words, viz. And all other Offences which the King can par-
don. It is true he cannot be punished for this Simony upon the Statute,
yet he shall be deprived; for in Truth it makes the Church void, tho' the
King pardons it by express Words. Sid. 170. Mich. 15 Car. 2. C.B.
Philips's Cafe, cites Hob. 167.

Malum in fe: Sid. 222. Stow v. Phillips. And says it was so adjudged by the Delegates. S. C. —— But Sergeant Hawkins says this seems to be no good Reason; for Barterry, and the injurious linking of another, and generally all Offences at Common Law, are also Mala in fe; and yet it seems clear, that unless they be Capital, they may be pardoned by such a Pardon. 2 Hawk. Pl. C. 388. cap. 37. S. 26.
26. Prerogative of the King.


16. A judgment for Rent Arrears, which was discharged by the Act of Obligation 1666. was decreed to be reversed. Chan. Cases 55. Trin. 16 Car. 2. Boton v. Arne.

17. Money not actually paid, but retained, was not discharged by the Act of Indemnity, as Lord Ch. J. Bridgman conceived; but it was referred to make a Case. Chan. Cases 59. Mich. 16 Car. 2. Dickenson v. Knowell.

18. A. was indicted to B. and afterwards during the Usurpation, his Estate was sold by the Sequestrators to B. who deducted out of the Purchase-money his Debt. After the Restoration and General Act of Pardon passed, A.'s Heir brought a Bill in Equity against B.'s Executor, praying an Account of the Profits. The Court would not compel an Account; for that all Monies received by the Profits, are pardoned by the Act; but upon B.'s Executor consenting to account, on paying back the Purchase-money, and B.'s Debt, it was decreed accordingly. Chan. Cases 172. Trin. 22 Car. 2. in Canc. Stowell v. Long.

19. The Defendant was fined in the Spiritual Court for Dilapidations, and pleaded the General Pardon, by which all Offences, Contempt, Penalties &c. were pardoned; and for this Reason he prayed a Prohibition; but it was denied, because the Statute never intended to pardon any Satisfaction for Damages, but only to take away temporal Punishments. 3 Mod. 56. Hill. 36 Car. 2. B. R. Pool v. Trumbull.

20. A. was convicted of Barretty, and produced a Pardon, which was of all treasons, murders, felonies, and all Penalties, forfeitures and Offences. The Court said the Words (all Offences) will pardon all that is not Capital. 1 Mod. 102. Mich. 25 Car. 2. B. R. Angell's Cafe.

21. By the Act of General Pardon 13 Car. 2. S. 5. All Debts and Sums of Money due to the Crown are discharged, tho' they do not relate to the Wars. But Acts and Actions of Subjects are not discharged, unless they are such as concern the Wars. Resolved per Cur. 3 Lev. 134. in Cafe of Travell v. Carteret.

22. A Question was, Whether after Verdict for the King, a Pardon shall excuse the Forfeiture? But adjourned. See the Arguments on both Sides, 3 Mod. 241. to 243. Mich. 4 Jac. 2. B. R. The King v. Johnson.

Serjeant Hawkins says, it seems to be a settled Rule, that Pardon by the King, without express Words of Restitution, shall not excuse either from the King or Subject an Interest, either in Lands or Goods, vested in them by an Attaint or Conviction precedent; yet it seems agreed, that a Pardon prior to a Conviction, shall prevent any Forfeiture either of Lands or Goods. 2 Hawk. Pl. C. 396. cap. 57. S. 34.

23. A. was indicted for keeping a Glass-house, being a nuisance, and thereof convicted and fined; afterwards came the General Pardon; The Court held upon Consideration, that he was discharged thereby only as to the Fine, and not as to the Abatement of the Nuisance: for that is not a Punishment to the Party, but a Removal of that which is a Grievance to other People, and which any common Person may abate. Salk. 458. Hill. 1 W. & M. B. R. The King and Queen v. Wilcox.

24. A. was convicted of Deer-fleeting in the Sum of 20 l. The Question was, Whether this was within the General Act of Pardon? Pengelly Serjeant argued that this was not pardoned, being a final judgment on which a Writ of Error lies; and that it was not such an Offence as could be pardoned, because the Forfeiture to the Party graved, which is Part of the Judgment, so that he has an Interest in the Penalty, and because the Punishment is by Way of Satisfaction to the Party, and not for Example. Arg. Salk. 383. M. 9 Ann. B. R. The Queen v. Barret.

25. A General Pardon pardons Publick Offences done to the Commonwealth, but not private Injuries done to particular Persons; for if it should, this would be to mix Mercy and Injustice together; to be pitiful to one, and cruel to another, in one and the same Act. 2 L. P. R. 271. Tit. Pardon.
Prerogative of the King.

26. Serjeant Hawkins says, 1t has been questioned whether a General Pardon of all Trepassers extends to Chancery or Confederacy. 2 Hawk. Pl. C. 399. cap. 37. S. 27.

(S. a. 2) What shall be said within the Exception of a General Pardon.

1. A was indicted for Piracy; and for *Standing mute*, was condemned to suffer the Penalty of Peron fort & dare. Before it was put in Execution came a General Pardon of all *Pains, Contempt and Executions*, excepting Piracy: And it was held by the major Part of the Justices, that the Party might be indicted again for the Piracy, the Judgment (which was pardoned) being only for the *Offence in Standing mute*. Dy. 398. Pach. 14 Eliz. B. R. Cobham's Case.

2. To an Information on the 5th Eliz. for converting arable Land into pasture, and for continuing the same three Years, the Defendant pleaded Not Guilty as to the Conversion, and to the Continuance the General Pardon of the 15th Eliz. and on Demurrer it was argued on one Side, that the Act by excepting only this Conversion, did not extend to the Continuance, (they being distinct and several Things) and on the Continuance was pardoned: And on the other Side it was inferred, That the Conversion being excepted, that includes the whole Offence, and extends therefore to the Continuance. Adjournatur. Le. 274. Mich. 26 Eliz. in Scacc. Cleypole's Case.

3. The General Pardon of the 28th Eliz. is of all Felonies, excepting Burglary &c. The Question was, Whether an *Attainder of Burglary* be within this Exception? It was resolved by all the Justices of England, that it was excepted, for it such an Exception would include and adds, Burglary before it was tried, tho' it does not then appear to be so in the Eye of the Law, and hinds a Doubt left at the Trial, whether Burglary or not, a Portiari ought it to be excepted when the Burglary appears of Record by Judgment at Law; and since the Burglary, which is the Foundation, is excepted, therefore every Thing consequent thereupon, is excepted likewise. 6 Rep. 13. a. Cales of Pardons.

Neither does it follow, That because a Pardon of a Felony whereof a Person is attained, and is good, without mentioning the Attainder, therefore such a general Exception of all Felonies, shall not extend to those wherein there hath been an Attainder; for the Case of such a Pardon depends on this Special Reason, that the King ought to be fully apprized of the Proceedings against the Party before he pardons him. — S. P. Jenk. 269. pl. 83. — S. Inf. 224. cites Hilt. 29 Eliz. S. C. — S. P. 3 Inf. 253.

4. A was bound in a Recognizance to appear before the High Commissioners, and not to depart without Licence, to which A pleaded the General Act of Pardon, which excepts all Recognizances &c. except Recognizances for Appearance. Adjudged by all the Barons of the Exchequer, that the Departure without Licence was not pardoned, but within the Exception for the not departing without Licence was only mentioned in the Recognizance, in order to continue her Appearance; and tho' not mentioned in the Exception, yet it is not a collateral Thing, but within the Sense of it. 2 Le. 179. Trin. 31 Eliz. Ralphall's Case.

5. A.
A Bill was
brought in
the Star-
Chamber,
and then
pas'd the
General
Pardon; and
afterwards
the Cause
was tried,
and a Fine
set on the
Defendant
for Part of
the Matter
charged in
the Bill, and
for other
Matter
charged therein, the Plaintiff was fined to the King and the Party grieved, it being fraudulent, and not
examiable by the Court. The Question was, whether this Fine and Damages set upon the Plaintiff were
within the Exception of the Pardon, which is of all Offences &c. whereby, or for which any Bill within
7 Years before was, and is now depending. Adjudged that it was pardoned; for this Bill shall not be laid to be
a Bill depending (according to the Exception) on the Part of the Plaintiff to charge him with the Offence;
for his Bill can never be laid a Bill depending against Himself, on which the Plaintiff is to be fined;
but it was only intended to except Bills depending, with Regard to the Defendants, and this Con-
tempt was accidental and collateral to the Bill, which being pardoned, by Consequence the Fine is par-
doned likewise. By all the Judges at Serjeants-Inn in Fleet-Street, except one. Hut. 79. Hill 1 Car.
Beverly v. Powell —— Jo. 89. S. C.

6. In the General Pardon of the 35 Eliz. there was an Exception of all Offences for which any Suit at any Time within four Years before, or upon the last Day of this present Parliament, and is, or shall be now, on the last Day of the Sessions, depending in the Star-Chamber. And in this Case a Bill was exhibited in the Term before the Parliament, and Proceses awarded returnable the Term after the Sessions ended. Adjudged that this was a Suit depending before the Return or serving of the Subpoena, and so within the Exception, this being a Processe issuing out of, and returnable into the same Court where the Bill is exhibited, (viz. the Star-Chamber;) and there is a great Diversity between this and an Original issuing out of Chancery, and returnable in B. R. or C. B. for there the Original comes out of another Court, and there is no Record in B. R. or C. B. before the Return of it. Adjudged. 5 Rep. 47. Hill 39 Eliz. G. Littleton's Cafe.

7. A. was outlawed on a Recognizance in Nature of a Statute Staple, and after came the General Pardon of the 39th Eliz. excepting all Debts due to the Queen by Recognizance &c. or otherwise, and except all Debts already forfeited by Reason of any Outlawry. It was resolved, that by the last Exception it appears to be the Queen's Intent not to include any Debts which accrued due by Outlawry within the first Exception; for as to these there is a special Saving, and in a special Manner; and being a General Pardon, it is to be taken most beneficially for the Subject, and most strongly against the Crown. 5 Rep. 49. b. 50. a. Hill 41 Eliz. in Scaccario. Wyrall's Cafe.

8. The General Pardon of the 21 Jac. was with an Exception of all Titles, and Actions of Quare Impedit, other than such which the King may have by Reaon of any Lapie incur'd Ultra three Years last past for any Benefice whereof any Incumbent then was, or the last Day of the Parliament should be, in Possession by Presentation or Coltission. In this Case the Church became void by the Incumbent's taking another Benefice, and continuing so two Years, the King made Title to present by Lapie. Adjudged that the Pardon extended not to this Case; for that it was never the Intent of it to dispense with Fiduciaries, and the Defendant is not an Incumbent within the Proviso of the Exception, for he is an In-

5. A. brought his Bill in the Star-Chamber for Rors and Routes &c. which was five Years before the General Pardon, in the Reign of Q. Elizabeth, wherein were excepted all Penalties &c. incurred for any Offence &c. for which any Bill had been exhibited within 8 Years before, and now depending, and also except all Offences, Contempt &c. for which any Bill was exhibited within four Years before, and now depending. The Question was referred by the Court of Star-Chamber to Coke Solicitor-General, who certified that the Fine to the Queen was not pardoned, but excepted; but the Imprisonment and Corporal Punishment were pardoned: But if the Bill had been exhibited within the four Years, then the Offence itself being excepted, by Consequence all Incidents or Dependents upon it, whether Corporal or Pecuniary, are excepted; and therefore in that Case nothing is pardoned. And this Certificate has been often confirmed by the Opinion of the Court of Star-Chamber. 5 Rep. 46. b. Mich. 35 & 36 Eliz. Franklin's Cafe.
Prerogative of the King.


9. A being indebted to B. the King's Receiver, gave him a Bond, upon which his Lands and Goods were extended; and afterwards upon Security given to abide the Order of the Court, the Goods of A. were restored, and for so doing A. and B. enter into a Recognizance; and upon Breach thereof Judgment was had, and a Writ of Error brought, in which there was a Nonuit after the General Act of Pardon; and then, a Seize Faits being brought, the Defendant pleaded the Pardon thereto, in which were excepted all Recognizances, Obligations &c. entered into by any Receiver since the 25th March, 1646; and in another Claude all Bonds taken in his late Majesty's Name before May 1642, for securing the proper Debt of any Receiver of the Revenue, were likewise excepted. This Recognizance was held to be included within the Exception under the Word Obligation; for tho' an Obligation is not a Recognizance in Pleading, it may well be so within the Meaning of an Act of Parliament, and this was given in lieu of the Obligation entered into before, and is a Bond of Record, and so being both Obligatory, it is in this Case the same Thing. Hard. 366. Mich. 10 Car. 2. in Seque. The Attorney General v. Ward.

10. A Bill was filed by A. in the Exchequer against B. for Wages due to him, as an Officer under him in the Mint, B. having been made Master of the Mint by the Keepers of the Liberties of England, and thereupon entered into Articles with them for Payment of the said Wages. Upon the Restoration all Publick Debts and Securities were vested in the King, but became discharged by the Act of Oblivion, excepting the Accounts of Persons who have received any of the Rents &c. of any Hereditaments of the Crown, and all Securities entered into by any Receiver or other Accountant in the Court of Exchequer, and excepting any the Goods, Money &c. of the late King, Queen, or Prince. The Defendant pleaded the Pardon; and adjudged that this was a Case within, an not taken out of it by any of the Exceptions; for the Exception of the late King and Queen's Goods extends only to such as they were actually poyfjed of; and as to the Word (Accountants) that relates only to common Accountants in the Exchequer, but this is the Case of a particular Accountant in a Collateral Way; nor is this an Account of the Rents &c. of any Hereditaments of the Crown, properly speaking, tho' it may be in a large Sense so called, but the Produce of the Office, or Trade of the Mint. Per Car. Hard. 371. Mich. 16 Car. 2. in Seque. The Attorney-General v. Guerdon.

11. One G. in the Year 1659. was attainted of Murder, and executed; and it was found by Inquisition, that the said G. had lent 50 l. to the Defendant, and that the Defendant was indebted to the said G. for it. Whereupon a Seize Faits was entered against the Defendant, who pleaded that the said G. was not indebted to the said G. at the Time of the Act of General Pardon except the Officer, and the Forfeiture, but that he was pardoned. Hard. 421. Trin. 17 Car. 2. in Seque. The King v. Margery Bernard.

12. Upon an Information against A. as Heir and Tertenent of the Lands of B. the King's Collector, for Monies received by the King's Use, the Defendant pleaded the Act of General Pardon 12 Car. 2. in which were excepted all Fines &c. and other publick Duties received by any Sheriff &c. or other Officer for the late King's Use, and not accounted for and discharged, and excepting all Quences in Detaining, Intruding, or Purchasing any Goods, Monies or Chattels of the late King, Queen, or Prince. Adjudged that this Account was pardoned, and not within any of the Exceptions; for the detaining the late King's Goods and Monies, relates only to Goods that were own in his official Position, and then taken

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from him; and otherwise the whole Pardon might be defeated by this Exception, nor is it within the other Exception; for a Coffersor is a Person of higher Rank than any that are named in the Act, and a Superior shall not be included where an Inferior is first named; and so the Plea was allowed per Curiam. Hard. 441. Patch. 19 Car. 2. The Attorney General v. Palmer.

13. If a General Pardon be with an Exception of Murder, yet it does not except a Felo de se, especially where no Inquisition was found till after the General Pardon. Sid. 156. Trin. 15 Car. 2. B.R. The King v. Warde.

A Suit was commenced after the Day in the Spiritual Court, and a Prohibition was moved to stay the Suit, which was by the Successor against the Executor of the former Incumbent; but the whole Court, upon hearing Counsel, and Consideration of the Matter, conceived that the Parliament never intended to take away the Successor's Remedy for Dilapidations, for that was to ease the Executor of the Wrong-doer, and translate the Charge to the Successor. But they would intend this Exception of such Suits as might be in the Ecclesiastical Court against the Dilapidator himself, to signify it as a Crime against the Ecclesiastical Law, and to pardon it, unless there was Prosecution before the Day aforesaid. And to the Prohibition was denied. 2 Vent. 216. Anon.

14. Suits for Dilapidations were excepted out of the Act of General Pardon of 2 W. & M. Sess. 1. cap. 10. unless commenced and depending such a Day.

15. Information in Nature of a Quo Warranto, and Judgment per Nihil dicit, and a Capiatur pro Fine: The Question was, Whether this was pardoned by the late Act? Holt Chief Justice delivered his Opinion, That an Interlocutory Judgment is not within the Exception of the Act; for by a Judgment is meant a final Judgment, it being coupled with Sentence and Decree, and a Capiatur pro Fine is only to bring them in to receive the Judgment of the Court; but this being a Matter of Right, viz. in a Quo Warranto, tho' the Fine be pardoned, yet the Continuance of the Crime is not. And he said he remembered a Case upon the Act of Parliament, in King William's Time, where the Fine for the Nuance was pardoned, but not the Continuance of the Nuance. He said likewise, that where Writs of Error lay, Sir Judicium inde reddirum fit, it extends only to final Judgments, and so does the Exception in the Act of Parliament. And Powel, Powis and Gould were of the same Opinion; whereas Judgment was given, that the Defendant should be out of his Office for committing the Offence, but that the Fine is pardoned. 11 Mod. 235. Trin. 8 Ann. B. R. The Queen v. Tyth and Barber.

16. Marrying an Infant Ward committed by Order of Obsequy, and that without the Permiss of the Committee, is a Contempt of the Court; but a General Act of Pardon coming afterwards, th' with an Exception of all Contempts and Offences, for which any Prosecution was then depending, and which had been prosecuted as the Charge of any private Person or Persons, was held by Lord Ch. Parker to be pardoned, this Offence or Contempt ending only in the Punishment of the Party offending, and not in relieving or redressing the Prosecuter. Wins's Rep. 696. Patch. 1721. Phipps v. Earl of Anglesey.
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17. It has been held, that a Forfeiture due to the King by Force of a Conviction upon the Statutes 29 Eliz. 6 Parl. 5. and 3 Jac. 1. 4. Parl. 7. shall not be taken to be within the Exception of a General Pardon, which excepts all Forfeitures &c. converted to a Debt by Judgment. Hawk. Pl. C. 16. cap. 10. S. 23.

18. It has been adjudged, That where a General Act of Pardon expressly pardons all Petit Treasons, but excepts Murder, it cannot be avoided by inditing one for Murder only, without the Word Proditiorie &c. who has been Guilty of Petit Treason; * for the les Offence being included, and consequently drowned in the greater, cannot but be pardoned by a Pardon of it; and therefore the Exception of Murder in such a Pardon must be understood of such Murder only as is specially so called, and doth not amount to Petit Treason. 2 Hawk. Pl. C. 386. cap. 37. S. 19.

* (U. a) Charter of Pardon. What Thing shall be pardoned by Pardon of other [Thing.]

1. If a Man be outlawed in Trespass, and the King pardons the Outlawry, yet the Fine remains, for this shall not pass by any general Word. 7 H. 4. 17. b. 22 Ann. 47. adjudged.

2. But Pardon of Trespass before Outlawry will bar the Fine. 7 S. P. For the Fine shall not be, but where he is outlawed, or otherwise attainted. Br. Charters de Pardon, pl. 12. cites S.C. —— Br. Charters of Pardon, pl. 32. cites S.C.

3. If a Man outlawed at the Suit of the Party be pardoned of S. P. For the Outlawry, yet he is not restored to his Goods thereby. 7 H. 4. 5. Pardon shall not give Restitution of Goods, but only a Restitution to the Law. Br. Charters de Pardon, pl. 11. cites H. 4. 4. 5.

4. If a Man outlawed of Felony purchase a Pardon of the Outlawry, yet his Goods and Lande shall be forsooth. * 7 H. 4. 17. b. Upon Indictment of Murder, * was assigned for Error, that at the Captis the King pardoned the all that in him, all Chattels and Possessions; and prayed that the Outlawry be restored, and that he may have his Chattels; and the Judgment was reversed; but he did not re-secure his Goods, because it did not appear by Record here, which was against the Opinion of Hank. Quere; for it seems that it could be by Words of Restitution, and not by Words of Pardon. Br. Charters de Pardon, pl. 32. cites H. 4. 14. 15. ——* Br. Charters de Pardon, pl. 12. cites S.C.

5. If a Man bound in a Recognizance for Surety of the Peace kills a Man, and is pardoned of the Felony, yet he shall not be discharged of the Recognizance. 7 H. 4. 35. b.

6. If a Man be indicted of Felony, and also of Treason, and after he is Br Corone, outlawed of Felony, and then the King pardons the Felony, he shall not be pl 146. cites arranged the Treason for he cannot be dead but once. Per Catesby S. C. per but Brooke says the contrary is held for Law. Br. Charters de Pardon, pl. 44. cites H. 4. 4.

7. If three bring several Appeals of Robbery against W. N. and he is found Guilty at the Suit of the one, he shall not be arraigned at the Suit of the others. Per Sulland; but Markham contra; quare. Br. Corone, pl. 146. cites E. 4. 4.

8. A Man alledged the Realm for the Death of a Man, and was taken 146. 248. afterwards, and pleaded the King's Pardon of all Felonies; and was disallowed; for it did not make Mention of Abjuring. Br. Charters de Pardon, pl. 23. cites H. 4. 25.
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9. Once void for Trepass, and after the Defendant is pardoned; the Fine shall not be damaged; because the Pardon has no Relation to any certain Time. Ex. 114. Davy's Case.

10. If the King has a Verdict against A. for Debt or Damages, and before the Sentence, the King grants the Debt and Damages to A., the King shall have Judgment: so it is between common Persons; but because neither a Seile nor a Verdict is granted against the King for A., if he be in Execution, nor an Audita Querela, if he be not in Execution; this Pardon and Release shall be void, as before the Foundation. En. 154. Non. 3. 15.


1. Debt in the King upon Obligation; the Defendant pleaded Non ex Filiato, which stood against him by Nil Pridis, and before the Day to Bank the King grants him a Pardon, which discharges the Debt; but not the Fine, which accrued by the Judgment after the Pardon, to the Damage of his own Debt, and to no Relation of the Fine to the Action; for this is only by the denying, which was before the Pardon, and the Judgment is by Restitution of it. Br. Relation, pl. 22. cites 34 H. 6. 3. and 35 H. 6. 1. 55.

2. Patent granted by the King or Pardon, and other Matters of Record, shall have Relation to the Def. or Debt, of 15, and Matter in Fact to the Time of the Delivery only. Br. Patents, pl. 24. cites 37 H. 6. 21.


4. If a Man be accused of Murder or Felony by Oath, or otherwise, and the King pardons him in Felonies, and exterminates them, and Extinctions thereto, and Extinctions, and Writings, and half of Pews, and pardons and releases all Foritures of Laws and Tenements, and of Goods and Chattels, this shall serve only for the Life and for the Land, if no Office be thereof and, but it shall not serve for the Goods without Relation or Gift; for the King is invited to them by the Oath, and is not invited to the Land till Office be rend, and if Office be found afterwards, yet the Pardon shall serve; for this shall have Relation to the Judgment, and then the Pardon the Office must serve well. Contrary where Office is found before the Pardon granted; then the King is served by the Office, and there a Pardon or Pardon cannot give it. But there is given to a Gift or Grant; note the Diversity. Br. Charters de Parchs, pl. 52. cites 29 H.S.

5. A being indicted for Murder, pleaded a Pardon of all Felonies, and Extinctions, except the Office and the 15th. Br. Pardons, it not being Equivocal to the Time of the giving of the Wound, but on the 15th. Br. Pardon's Death. It was prejudged that the Murder was proved on the Wound given by the Prikater was the Reason, and to the 15th, and was
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was the Offence and Misdemeanor against the Queen, which is pardoned by the Statutes, and for that Reason every Thing consequent thereupon. Pl. C. 491, Mich. 13 Eliz. Colly's Case.

6. Where a Minister was deprived for an Offence Tempore Parliamenti, and the Offence was afterwards pardoned by Parliament; and then the Parliament ended. The Deprivation was utterly over; for the Pardon relates to the first Day, and the Party need not lose to reverse the Deprivation. Cro. E. 44. Trin. 27 Eliz. C. B. Fox's Case.


7. Upon an Appeal to the Arches Court, there was a Sentence given for delinquency Words, and 12 d. Costs; and then came the General Pardon, and the Defendant appealed to the Delegates, who affirmed the last Sentence, with greater Costs, not allowing the Defendant's Plea of the said Pardon. Adjudged that these Costs given by the Delegates were not taken away by the Pardon, being for the Visitation (which was subsequent thereto) into the Original Offence was pardoned. Winch. 125. Hill. 22. Jace. C. B. Davis v. Hawkins.

Time precedent to the Award of the Costs, and after such Pardon the Appellant deliver his Appeal, and the Scepral Court award Costs against him; in Respect of such Decision, it seems that he may have a Probable Ground. The Pardon might be against the Costs in such Suit, as well as the Offence, made the Appeal to be to no Purpose. 2 Hawk. Pl. C. 594 cap. 4. S. 39.

S. A. was libelled, and sentenced by the Ecclesiastical Commissioners, for aiding and abetting a. Delinquency Words, and B. in Comity in this Case, and for said Offence was fined to the King, and imposed to be a Punishment in the Church &c. On which A. prayed a Pardon, and it was granted; for that by the General Pardon (which came before the Sentence existed) the Offence was discharged, and consequently the Sentence and Fine, which came after were void, and it was held by Hutton J. That if some of the Offences charged on the Defendant were committed after the Pardon, yet the Sentence and Fine in this Case being more, the Pardon shall be a Discharge thereof. Cro. Can. 113. Trin. 4 Car. C. B. Peel's Case.

9. A General Pardon by Act of Parliament, that made the last Day of the Sessions, shall, like other Acts, relate to the last Day of Sessions. But if it be otherwise a Pardon of Grains, and a Special Pardon, which shall relate only to the said Day and Fine: is Adjudged per Cur. Lat. 22. in Buckley's Case.

and then a Sentence or Information on the Statute of Ultra is given, and then a General Pardon comes; this Pardon, by its Extension to the 1st Day of the Sessions, shall pardon the said Sentence or Information; Ordered to be, if other Information for the subsequent Conformity, a Special Pardon is produced. Per Cur. Lat. 20. in Colly's Case, since p. 56, 2d.

10. The Defendant was indicted, and convicted on the Statutes of Ultra; and on a Certiorari pleaded the Coronation Pardon, which was general, of all such Punishments and Convictions, without Exception to any particular Time; for this Reason it shall not discharge the Pardon, which was given before the Pardon, but when the Pardon is of all Offences committed before such a Day, then, to a Punishment consequently, it shall be discharged by the Pardon. Per Cur. Lat. 15. Davy's Case, since p. 56, 2d.

11. Information for interfering with the former Sent. R. 4. cap. 4. The Case was, That the Gloves were imported before the 29th of March, to which Time the General Pardon expired, by which all unimported. Importations were pardoned; and in April following the said Gloves were found in the Hands of the Defendant to be sold. The Question was, Whether this Importation was within the General Pardon interfering with the Information, and not being done to be sold? But the Barons were divided; Turner Ch. B. held, that the Fowllures was not gone by
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the Pardon; for he said the Importation was not unlawful, and by it there is no Offence against the Statute, but it is the Selling or Design to Sell which gives the Forfeiture; but the other Barons seemed to be of the contrary Opinion, inasmuch as the Selling is not the principal Offence, but it is Evidentia Lieth that the Importation was to that Intent, and the Importation being pardoned, the Goods should not be forfeited. And Thurland compared it to the Case where a Man is struck, and dies in a Week after, the Death shall have Relation to the Stroke. And Sawyer put the Case, Supposing these Goods had been setted, and then the King had restored them, or supposing the King had referred to the Party, there they should never be forfeited by any After-Sale again, notwithstanding the Statute faith as often, and every Time they may be found &c. Freem. Rep. 325. 326. Pach. 1674. in Scacc. Harling v. Cannon.

(U. a. 3) Private Pardon. To what the Words shall extend.

Br. Patents, pl. 102. cites 3. C.

1. If the King pardons to the Alien of his Tenant, who holds in chief, All Alienations, by this the Tenant cannot alien, but by this the Fine for Alienation is pardoned, notwithstanding that he did not pardon the Fine but the Alienation. Br. Charters de Pardon, pl. 26. cites 14. H. 6. 26. 2. Sheriff made a False Return, and the King Ex mero motu, speciali Gratia & certa Scientia, pardoned all Misprisions, Offences and Contempts, after this Pardon was obtained, the Judges of B. R. fined him 100 l. for this false Return; the Fine was eltreated into the Exchequer, and the Sheriff was taken in Execution, and committed to the Fleet; he sued a special Writ upon this Pardon in the Nature of an Audita Querela, comprising all this Matter, and returnable in the King's Bench. Resolved that the Patent by the said general Words pardoned the said Offence, and that because the Pardon preceded the setting of the Fine, therefore the Fine may be [18] discharged. After Judgment, and before or after Execution, the King's Pardon discharges the Debt or Offence, and Execution of it, and is pleadable against the King. Jenk. 109. pl. 10. cites 36. H. 6. 24. Quartermain's Cafe.

3. Information in the Exchequer for Shipping of Woof to other Place than Calais, against the Statute &c. the Defendant pleaded Pardon of the King de fæcia Pacis, which per Choke, is only Surety of the Peace, and all Actions which are Contra Pacem, and this Action is not Contra Pacem. Br. Charters de Pardon, pl. 24. cites 37. H. 6. 4. And this is good. Ibid.

Br. Prerogative, pl. 62. cites S. C.

4. If the King pardons Omnimoda Demanda, yet Inheritance is not pardoned, quia Rex; and yet in the Cafe of a common Person, Rent, Right of Entry, and every Thing which is implied in it is determined; contra in Cafe of the King. Br. Releaves, pl. 44. cites 6. H. 7. 15.

5. The King's Pardon of all Offences and Misdeeds, contra formain qværumcumque Statutorum, extends to the Offence of Indolures against the Statute of 7 H. 8. but it does not extend to the Continuance of the Indolure after the said Pardon, as of a Nuance. Jenk. 198. pl. 13. cites 10. H. 8.

S. P. Jenk. 6. If the Heir of the King's Tenant within Age, enters and takes the Profits, and the King pardons him all Intrusions; this shall serve him for
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for Intrusions and Mesne Profits until Office found; but not for the Illites Keilw. 193. afterwards, neither does it discharge him of Livery; but if he were of full Age when he so intruded, and obtains a Pardon of all Intrusions before Office found, this discharges him of Intrusion, Mesne Rates, and Livery. Jenk. 198. pl. 13. cites io H. 8.

Time that he occupies after his full Age, he is chargeable to the King; but where Heir is of full Age at the Time of the Pardon, he shall go quit, because the King has no Title to intermeddle with the Land after the Pardon, and so a Diversity where the Heirs is of full Age, and where within Age at the Time of the Pardon &c. good nota. But the Reporter makes a Quire; for it seems that the Pardon made to the Heir, to whole lands the King had once Court of Wardship, shall discharge the Heir as well where he is of full Age, as where he is within Age at the Time of the Pardon; and that this Pardon counteracts a Special Livery, and the Effect of a Special Livery is no other in Effect but Liencenc ingredienti &c.

7. A. purchased Land to him and Wife, and to his right Heirs; the Lands were held of the King in Capite; A. had no Licence; the King by a Coronation Pardon pardoned A. Omnes Alienationes, Transfigressiones & Offenias pro qualibet Alienatione siti fact. This Pardon pardons this Alienation; for the Word Alienation properly goes to the Fee, and a Coronation Pardon ought to have a favourable Construction. By all the Judges of England. Jenk. 222. pl. 67. cites 3 Eliz. D. 196. Sir Robert Carlin's Cafe.

8. M. was attainted in a Premunire, and the King pardon'd him Omnes & singulas Transfigressiones, Offensas & Contemptus. And the Question was, Whether by this Pardon the Judgment in Premunire was releas'd? And the Court, after giving M. some Advice to be more careful for the future, and to take heed of running into such high Offences, allowed the Pardon. 2 Bullit. 299. Mich. 12 Jac. The King v. Sir Anthony Mildmay.

9. A. became bound to B. in a Statute of 10000 l. and after was found in Arrear to the Crown 22500 l. as Collector of the new Impost: Upon A.'s Death his Lands were extended for the King's Debt, which were afterwards granted by the King to J. S. in Trust for C. A.'s Heir; then comes the Act of General Pardon 13 Car. 2. wherein all Accounts of Receivers, Collectors &c. are excepted; but it is provided, that the Heirs of Executors &c. of Accountants shall not be charged, except for sums remaining on Accounts already stated. C. conveys to D. and afterwards in the Exchequer pleads the Pardon in Discharge of the Crown's Debt, which is confec'd by the Attorney General, and Judgment given accordingly: Upon an Ejection against the Executor of B. who had extended the Lands upon the Statute for the 10000 l. it was adjudged that the Words (Accounts) in the Exception of the Act of Pardon extended to Sums due on new Impost, Accounts stated, as appears by the subsequent Provifo, in Favour of the Heirs &c. of the Accountants, tho' properly a Sum due on an Account is not an Account, as was adjudged on the Statute of Limitations on the Words (Merchants Accounts.) 3 Lev. 135. Travell v. Carteret.

(1. a. 4)
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1. A MAN was convolit of Robbery at the Suit of the Party, which Party released him the Execution, and the King reciting the Attainder, pardoned him the Execution; and because he did not pardon the Felony by express Words, the Charter was disallowed. And so it seems that the Party by the Pardon of the Plaintiff shall not go quit, without Pardon of the King; quod vide. Br. Corone, pl. 24. cites 8 H. 4. 22.

2. If a Man kills another, and the King pardons all Felonies, this shall not serve; for it shall be intended, that the King was deceived in his Grant, and did not know the Heinoufiefs; per Martin. Br. Charters de Pardon, pl. 19. cites 5 H. 6. 20.

3. And per Strange, if a Man be attainted of Felony by Outlawry or Verdict, and the King pardons him all Felonies, this is not good for the Reason aforesaid; and therefore it is usual to mention all judgments, Executions, Pains and Penalties of the fame. Br. Charters de Pardon, pl. 19. be adjudged, cites 8 H. 6. 20.

But if it had been Perdonavit et pro puellaris R. W, &c. per alios &c. this is not good, because it cannot be written in the Chancery: But Brooke says he has heard that the Book is misprinted, and contrary to the Record; for the first Pardon was good, by Reafon of the Words (Vel alius &c. inter alios &c. in the subsequent; quod nota. Br. Charters de Pardon, pl. 51. cites 22 E. 4. 7.

5. A Man commits Treason or Felony; the King's Pardon of all Offences does not pardon Treason or Felony; The Law requires, in the Pardon of Capital Offences, a particular Mention of the Nature of the Crime, Ne Maleficia remanent impunita, and the King be deceived. A General Pardon of all Felonies is good for any Felony, but not for Treason. Where a Felon is attainted, a Pardon of the Felony will not free him without a pardon of the Attainder also. Jenk. 197. pl. 5. cites 2 H. 8.
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6. If the King pardons A. a Felony whereof he stands indicted, or indicted and attainted &c. and in Truth be is not indicted nor attainted &c. this is Expresio falsi, and makes the Pardon void 3 Init. 248.

7. D. was indicted of Felony and Murder, and prayed to have his Pardon allowed. Per Withens and Holloway, Feloniac interfectio is well enough, tho' Murder be omitted ; but the Ch. J. contra. Manlaughter is Feloniac interfectio, but at another Day (the Ch. J. being absent) it was allowed. Comb. 39. Mich. 2 Jac. 2. B. R. The King v. Davies.

8. One outlawed in an Appeal of Felony, prayed his Clergy, which was counterpleaded on Account of Bigamy &c. and afterwards purchased a Pardon, and sued Scire Facias against the Appellant &c. it is said, that the Pardon was not allowed, because it made no Mention of the Bigamy. 2 Hawk. Pl. C. 353. cap. 37. S. 8.

On the Debate of this Case it seems to be admitted, that the Pardon was not good, because it made no Mention of the Bigamy; and yet it is said, upon the Non-appearance of any one to maintain the Appeal, the Pardon was allowed; Ergo quere. 2 Hawk. Pl. C. 353. cap. 37. S. S. Marg. cites 11 H. 4. 11. pl. 24 & 48. pl. 25.

(U. a. 5) Pardon. Good. In respect of the Words.

In Cases not Criminal.

1. IN Attaint the Defendant pleaded Omissoxy in the Plaintiff, Judgment if he shall be answered. The Plaintiff swore a Pardon, which was, Ita good fut retitus in Curia; by which Finch said that therefore this is Conditional, and said that where the Defendant recovered against the Plaintiff in the first Action, because he has not made Good to him, there the Pardon shall not serve. Finch said the Pardon is not to be repealed by any, unless by you, and by our Suit we are to set aside all the first Record; and therefore did not allow the Saying of the Defendant, but the Charter of the Plaintiff was allowed. Br. Charters de Pardon, pl. 34. cites 30 Aff. 20.

2. A Man was bound in a Recognizance to keep the Peace, and the Defendant in Scire facias upon the Recognizance pleaded Pardon of the King of all Debts, Accounts and Recognisances, and the Pardon bore Date after the Recognizance, and before the Forfeiture; and the Opinion of the Court was, that the Pardon is good; as Release of an Obligation before the Day of Payment is good. Br. Charters de Pardon, pl. 17. cites 11 H. 4.

43.—Contra per Prifon. 37 H. 6. 4.

3. The King pardoned A. B. omnino Debita &c. ex vero Motu &c. certa Scientia; and after Debt was demanded against him in the Exchequer, as Sheriff of C. and he pleaded this Pardon, with Suggestion that he was Sheriff &c. And by some Justices the Pardon is not good; for it is not de Communi Gratia, nor General Pardon; and per Brian, Capit Debet juxta intentionem Regis, & non ad deceptionem Regis; and here he is not named Sheriff in the Pardon, and therefore shall be intended his proper Debt, and not as Sheriff; But per Hutley Ch. J. and several other Justices, the Pardon shall serve the Debees as Sheriff in the first Case, because it is ex certo de Scientia &c. ex vero Motu &c. It was allowed without being named as Sheriff. Br. Charters de Pardon, pl. 36. cites 1 H. 7. 10.

Pardon, pl. 58. cites 2 R. 3. 7.—But if J. N. be indebted to the King by two Offices, and makes Executories, and dies, and the King pardons the Executors by their proper Names, Omnia Debita &c. and does not so Executors &c. this shall not serve them as Executors; per Brian. Ibid. Br. Charters de Pardon, pl. 56. cites 1 H. 7. 10.

4. If the King grants to the Merchants to transport Wool without paying Custom, this is a good Pardon of the Custom, per Juvthiciarios; contra if K the
Prerogative of the King.

the King licences the Merchants to export Wool, and retain the Custom, yet the Custom shall be charged; for this is no Pardon in itself; nor doth it extend inde bene. Br. Charters de Pardon, pl. 68. cites 1 H. 7. 34.

5. It was doubted if Pardon of the King of all Manner of Demands, be good or not. Br. Charters de Pardon, pl. 75. cites 11 H. 7. 15.

D. 586. pl. 42. Trin. 11. Eliz. cites S. C.

6. The Tenant of the King dies seised, and an Office is found accordingly, and the Heir had entered and taken the Profits before the Office found, and afterwards the King pardons all Injuries; this is not good without the Words, Issues and Profits &c. Kentw. 88. b. Hill. 22 H. 7.

7. B. was indicted for Stricking in Westminster-Hall near the Side of the Bar of C. B. fitting the Courts, and obtained his Pardon; and the Question was, if it should be allowed, because it varied from the Indictment; for the Indictment was, Verberavit vulneravit & persecutis, and the Pardon omitted Perceusf; and yet good per Cur. for it is in the Recital, and if no Recital had been, yet it should have been good, and Vulner. is larger than Perceusf; but if it was not, there are general Words, viz. Omnia Malefic. in Indictamento predict. contin. Sid. 211. Trin. 16 Car. 2. B. R. The King v. Bockman.


1. A Pardon made by E. 4. before he was officially King, was void even after he came to the Crown. Hawk. Pl. C. 36. cap. 17. S. 13.

2. If the Tenant of the King dies seised, and dies, his Heir within Age, and enters, and the King pardons me all Entries upon him, and after Office is found for him, yet the Pardon is good; but Pardon after Office found is void: for he ought to traverse, or make Petition or Monitrus de Droit, Per Choke J. But Per Markham, the Pardon is not good but after the Office nor after, which Brooke lays does not seem to be Law; for it seems that it is a good Pardon. Br. Charters de Pardon, pl. 43. cites 5 E. 4. 4.

3. Tenant of the King dies seised, and his Heir enters without Livery; Per Philpot, if the King pardons him before Office found of the Injuries, then the Infruption and the Entries are pardoned. Br. Charters de Pardon, pl. 48. cites 16 E. 4. 1.

4. The Heir before Office found may distrain the Tenants, and Pardon made to him before Office of Infruption found is good, but Office may be found after, notwithstanding the Pardon; but this shall not serve the King but for the Profits before the Office, per Hufsey. Br. Charters de Pardon, pl. 39. cites 3 H. 7. 3.

Br. Patents, pl. 51. cites S. C.

5. The King may pardon Things which are in Pecuniam provident before the Act done; contra of voluntary Efcapes, Felony &c. Br. Charters de Pardon, pl. 41. cites 3 H. 7. 15.

(U. a. 7)
Prerogative of the King.

(U. a. 7) **What the King may pardon.**

1. *2 Ed. 3. 2.* Charter of Pardon for Man slaughters, Robberies, Felonies, and other Trepasses, shall not be granted but where the King may do it serving his Oath, viz. where one Man killeth another in his own Defence, or by a Mistake.

This Statute is confirmed by *4 Ed. 5.*

2. *2 Ed. 12.* The King may pardon Murder, tho' he cannot dispence with it; per Hales Arg. March 213. Trin. 18 Car. 2 Ricke-bie's Case. — Holt Ch. 1. said there was as good Reason why the King should pardon an Indictment of Murder, which is his Suit, as why the Subject should discharge an Appeal, which is the Suit of the Subject; and that the King was by his Coronation Oath to shew Mercy as well as do Justice. And he said that this Statute of 2 *Ed. 5.* cap. 2, meant only that the King should be fully informed before he pardoned any Felony; and that the Reason of that and other restrictive Statutes was, that after the Statute of Gloucester, cap. 9, upon a Murder done, it was usual to apply to the Lord Chancellor, and obtain a Pardon by undue Means and false Suggestors, with general Words in it; and this was the Occasion of those restrictive Statutes, that Application be made to the King in Person, to the Intent the King himself might be apprised of the Matter. *2 Salk. 499. Hill, 3 W. & M. B. R. The King v. Par- dons.* — *S.P. 4 Mod. 65.* Mich. 3 W. & M. B. R. in Case of the King's Anonymous.

Serjeant Hawkins, after reciting this Statute, and adding that it is confirmed by several subsequent Statutes, says, That there being no Precedent in the Register of a Pardon of any other Homicide, but such as is done either in Self-Defence, or by Misadventure, or by Infants or Madmen, some have gone so far as to hold, that the King's Pardon of any other Homicide is not good, unless it be confirmed by Parliament, or at least have a Non obstante. But the Serjeant says this seems contrary not only to the general Tenor of the Books, which clearly admit the King's Power to pardon any Homicide in general, but also to the express Purport of 15 *R. i.* which by shewing in what Form the King shall make a Pardon of Murder, plainly allows that he has a Power to make it: Besides, the same Reason holds as strongly against the King's Power to pardon Manslaughter as Murder, which yet he says he never knew disputed. However, it seems reasonable, that thus much at least be allowed to follow from the Arguments above mentioned, that too great Caution cannot well be taken in the Grant of Pardons of any Homicide, where there be some such favourable Circumstances in Extermination of it, as may bring it some Way within the Equity of the Cases in the Register, and their old Statutes. *2 Hawk. Pl. C. 385. cap. 57; S. 14.*

2. In Appeal by the Party of the Death of his Father, the King cannot pardon the Execution; quod nota. *Br. Appeal,* pl. 150. cites *14 E. 3.*

pardon the Defendant; for the Appeal is the Suit of the Party to have Revenge by Death, and whether the Defendant be attainted by Judgment &c. or by Outlawry, the Pardon of the King shall not discharge the Defendant. *3 Inf. 22.*

Serjeant Hawkins says, A Pardon of the King will not be any *Bari to an Appeal,* except only where it is carried on at the Suit of the King after the Non suit of the Party, in which Case it may be bar'd by a Pardon, in the same Manner as an Indictment. *2 Hawk. Pl. C. 392. cap. 57; S. 35.*

3. In *Attend* by A. against the Party and the Petit Jury; against the *S.P. 2 Salk.* Party to have Restitution; this the King cannot pardon; against the Petit *299. Petich. Jury* by the Common Law, that they should lose Liberam Legem &c. The King v. this the King may pardon, because it is a Punishment exemplary to deter other others, and tendeth not to the Restitution or Satisfaction of the Plaintiff. *3 Inf. 237. cites 13 E. 4, 5.*

In Appeal to the Party of the Death of his Father, the King cannot pardon the *Duty of the Party.* *Br. Charters* de *Br. Action* Pardon, pl. 24. cites 37 *H. 6, 4.*

Wherever an Act of Parliament gives a particular Interest, or Right of Action to the Party griev'd by the Breach of it, as the Statutes of Mortmain, which give an Entry to the next immediate Lord for an Alienation to a Corporation, the Statutes against Maintenance, Forcible Entries, Carrying Distress out of the Hundred, Suffering one in Execution to escape &c. which give an Action to the Party griev'd by the Offence prohibited, it seems to have been always agreed, that no Charter by the King can be of any Force to bar the Right of the Party grounded upon such Statute, because it is a settled Rule, that the King cannot prejudice the Interests of the Party. *2 Hawk. Pl. C. 392. cap. 57; S. 29.*

5. And where the King grants to me all Fines and Amencements in *Th'o* the King has granted Fines to a Corporation, he may however pardon the *Offense:* *Replied per Car. Skin. 6* *6* *Hill S. W, 7.*

B. R. The King v. Bowrbanck.

6. Before
6. Before Popular Action brought, the King may pardon all the Forti-
cures and Pains; but after Information or Action brought, the King
cannot pardon but only his own Part, and not the Part of the Party. Br.
Action Popular, pl. 3. cites 37 H. 6. 4.

7. If a Man be bound in a Recognizance to keep the Peace, and the King
be after the pardon his, or releases before the Peace broken, this is not good. Br.
Prerogative, S.C., 37. and viz. was. He is Precedent 2 S.
tit'cd i". of
Eliz. Br. was cites Inll. cites was the For
the his If cites Ecjorc Where 7. after 4.
per
Hawk.

8. Where a Tenth is granted to the King, and he assigns Fidellies to his
Creditors, and they swear to the Collectors now the King is disharged,
and the Collectors are charged to the Creditors; and therefore after this the
King cannot pardon the Collectors, nor those of the Clergy who
granted the Tenth; for it is compared there to a Grant of a Rent over
with Attornment; quod nota. Br. Charters de Pardon, pl. 137. cites
1 H. 7. 8.

9. Malum Prohibitum is all that which is prohibited by Statute, which
was lawful before, as Shipping of Wool beyond Sea &c. and Malum in je
is that which is ill and unlawful, and which the King cannot grant Li-
ence to do, and yet may pardon it afterwards; as for killing a Man or
making a Nuisance &c. the Licence is not good, and yet after it is
done, the King may pardon it; but with Malum Prohibitum the King
may dispense, as of Alienation in Mortmain, Shipping of Merchandize

10. The King may pardon a Clerk Convict remaining in the Bishop's
Prison without making Purgation, for this is all Temporal; per Fineux
Ch. J. quod nemo negavit. Br. Charters de Pardon, pl. 21. cites 15
H. 7. 9.

D. 201. b. S. P. Dubi-
tator. To such a
Cafe, the
Defendant
pleaded the
Queen's
Pardon, and
prayed to
have it al-
lowed; and a Precedent was shewn, Patch. 8 Eliz. Rot. 53. Mufgrave's Cafe, where the Defendant
pleaded the Queen's Pardon in this Cafe, and it was allowed; altho' in Eliz. Dyer 261, there
was a Quare thereof; but Papum said it was a strong Precedent, for it is hard that the Queen should
pardon that which is the Suit of the Party; and there is no Question if it had been an Appeal of Honi-
clidean, as it well might, the Queen could not have pardoned it, whereas Coke the Queen's Attorney
of Counsel with the Defendant agreed; for it is meerly the Suit of the Party. Cro. E. 457. Thir. 38
it is said that Mufgrave's Cafe was there cited, and the Record viewed, and no Judgment were
in.—but 5 Rep. 60. Thir. 51 Eliz. Biggins's Cafe, in Appeal, it is said that it was resolved, upon Con-
ference with diverse other Judges, that the King may pardon the Burning in the Hand; for that it ap-
pears
Prerogative of the King.

ears by the Statute of the 4 H. 7. 15; that Burning in the Hand was only to notify to the Judge hereafter, whether the Defendant has had his Clergy before, or not, and to no Part of the Judgment; for if it were, the King could not pardon it, because it 

24. 41

and the Judge, he thereby pardons the Impersonation by Consequence, for the 18th Eliz. provides, that after the Allowance of the Clergy and Burning of the Hand, the Plaintiff shall immediately be let to hold; and, by discharging the Burning of the Hand, shall prevent the intent of this Statute, and occasion a new Impersonation; and thereupon the Defendant was discharged.—3 Iust. 257. cites Trin. 41 Eliz. S. C. Name of Shugborough v. Biggin, where Lord Coke says, It was reloved by the Justices, upon Conference between them, that the Queen might pardon the Burning of the Hand, for that it is no Part of the Judgment at the Suit of the Party Plaintiff in the Appeal, but is a collateral and exemplary Punishment inflicted by the Statute 4 H. 7, cap. 17.—But note, that this Case is reported Cro. E. 62. Trin. 41 Eliz. C. B. by the Name of Shugborough v. Biggin, where it appears that no Judgment was given therein, but that the Court was equally divided, and that the Case at last ended by Compromise.—And in Mo. 57. S. C. by Name of Stroborough v. Biggin, it is said to be agreed that the 

be prevented by an Act of Grace. 

this is held by great Authorities, that if a Person be convicted of Manu Laughter upon an Appeal of Death, the King may pardon the Burning in the Hand; for which this Reason is given by Sir Edward Coke, That it is * no Part of the Judgment at the Suit of the Party, but a Collateral and exemplary Punishment inflicted by the Statute of 4 H. 7. 15. But this is made a Quære by others; and the principal Case wherein it is said to have been resolved, is very differently reported, and was never adjudged; and the Ground laid down that the King may pardon it, because it is no Part of the Judgment at the Suit of the Party, (by which it seems to be admitted, that if it were Part of the Judgment it would be unpardonable) seems rather to make against it than for it; for there are Precedents of express Judgments Quod cadaturiatur in manu sibi leva. And it is admitted, That where a Defendant is to have a certain Impersonation &c. at the Suit of the Party upon a Statute, the King cannot dispence with it, except in some Special Cases, wherein it may be reasonably intended that such Impersonation was given by Way of Satisfaction to the Publick Justice, in which Case it seems agreed, that the King may dispense with it, as it is said he may with finding; of Sarches by one convicted on the Statute against Trespasses in Parks. But it seems doubtful whether the Statute of 4 H. 7. 15, which appoints the Burning of the Hand, well admit of such a Confravation, for the Words are, Whereas upon Tring of the Privilege of the Church, divers have been more bold to commit Murder, because they have been admitted to those Clergy as if they have offended; for avoiding of such presumptuous Enthuse it is enacted, That every Person not being in Orders, who hath once been admitted to his Clergy, he be again admitted thereto; and that every such Person convicted &c. shall be mark’d &c. From whence it seems plain, that the Statute expresses the King’s Mind, as a Disavowal of the Olensce, and it seems difficult to give a Reason why it should be construed to mean it only as a collateral, and not as a direct Punishment, unless it does it seem a plain Reason, That because the Statute intended it as an exemplary Punishment, the King may dispense with it; for rarely the Execution of an Appellee attainted of Murder, and the perpetual Imprisonment of a Clerk delivered to the Ordinary upon a Conviction on an Appeal, who could not make his Purgation, were also exemplary Punishments; and yet it is generally agreed, that the King never could dispense with them: And therefore upon the whole, this seems to be a Point that deserves to be further considered. 2 Hawk. Pl. C. 590. cap. 57. S. 19. Lord Hobart, fol. 294. Says, That it is no Part of the Judgment, so much as in Nature of Punishment, but only a Mark to notify that the Party may have his Clergy but once. Ibid in Marg.

12. J. T. being a Copyholder to the Lord Cromwel of his Manor of 3 Iust. 417. N. forged a Copyright of the said Manor; and it was proved to be done wittingly, fraudulently and maliciously, and to the Intent &c. and this was Cro. E. 62. held to be Forged within the Statute 5 Eliz. and Judgment was given, 41 Eliz. accordingly in the Star-Chamber; and after this Judgment the Queen Eliz. in Case pardoned the Execution of the Corporal Punishment. And it was held by Trin. 41 Eliz. to thecopies of Buncy. Wray Ch. J. Saunders Ch. B. Harper and Manwood J. prater Barham Biggin, whereby and Gerrard Attorney, that the Queen may pardon the Corporal Penance Popham, which trenches in common Example &c. But Dyer, Southcote and Mounfon e contra. D. 522. b. 323. a. Mich. 15 Eliz in the Star-Chamber. Taverner’s Café.

Chamber are by Information, which is properly the Suit of the Queen, and not of the Party; and therefore the Queen may pardon it, but not when he is convicted in an Action at the Party’s Suit; and so
Prerogative of the King.

In that was the Opinion of divers Justices with whom he had confered — But if one be attainted of Forgery in an Action upon the Statute of Forgery, the Queen cannot pardon the Punishment. Per Populam. 2 H. 6. 62. Trin. 41. Eliz. C. B. S. C.

S. P. Hawk. pl C. 294.

1. In all Cases depending between Party and Party in Court Christian, where the Suit is only pro fiance animæ et reformationis effectu, as for De- limination, or laying violent Hands upon a Clerk, or the like, there the Pardon of the King, is a Bar of the Suit; For the Suit is not to recover any Damages, or any other Thing, but only to infilt Punishment upon the Offender pro fini sui animæ, which Punishment the King may pardon as well before as after the Suit commenced; for in Truth such Suits are only for the King, tho' they are prosecuted by the Party. Resolved 5 Rep. 51. a. b. Trin. 4. Jac. C. B. in Hall's Café.

J. C. in Case of Cuddington v. Wilkins — 1 So of Suits in the Star Chamber prefer'd by any Subject against another, the King may pardon them; for tho' a Subject prefereth them, yet the Suits are for the King, and to punish the Defendants for their Offences by Imprisonment and Fine &c. to the King. Resolved 5 Rep. 51. in Hall's Café. — S. P. 2 Hawk. Pl. C. 594. cap. 57. S. 41. — 5 Inf. 238. cites S. C. — S. P. 1. Ob. 28. Trin. 43. Jac. in Case of Cuddington v. Wilkins — 1 So all Proceedings in the Ecclesiastical Court or Office, are for the King; therefore whatsoever the Suit is there the King may pardon it, for they are only to correct or punish the Party for the Offence, which the King may pardon, and not for the particular Suits; — S. P. 2 Hawk. Pl. C. 594. cap. 57. S. 41. — But if one libell for Trespass, or Contravention of Martyrdom, or for Legacy, or the like, where the Plaintiff has Interest and Property in the Thing in Demand, and Sentence be given for him for the Thing for which he libells, there the King cannot pardon this neither before nor after the Suit commenced. Resolved 5 Rep. 51. 2. in Hall's Café. — S. P. 2 Hawk. Pl. C. 594. cap. 57. S. 42.

2 L. P. R. 270. Trin. Pardon, cites S. C. — S. P. 2 Hawk. Pl. C. 594. cap. 57. S. 41. 42. — So of Suits in the Star-Chamber after Sentence given and Costs taxed for the Party, the Pardon shall not discharge them; but if the Pardon have been obtained before Sentence, there the Pardon discharg'd all; for then the Court could not have proceeded to any Sentence of the Principal, and by Consequence not of Costs, which only are Accisary. 5 Rep. 51. a. b. Hall's Café. — It was also resolved, that tho' the Defendant was appeald from, and before the said Feall R. H. obtained a Pardon of the King, and thereupon obtained a Prohibition out of C. B. And it was resolved that tho' the Suit be for the King, and which the King may pardon, yet when Sentence is given, and Costs taxed for the Plaintiff, now the Plaintiff has a particular Interest in them by the Sentence, which the King cannot pardon, tho' Day be given for the Payment of them, as above. 5 Rep. 51. a. b. Trin. 2. Jac. C. B. Hall's Café.

14. Alice C. libelled against R. H. in the Court Christian for De- limination, for calling her Whore, and had Sentence, and Costs were taxed. Et decretum suis quod predictus R. H. foret movendus & citandus at volvend, expen. citra tale feftum. Which Sentence the Defendant appeald from, and before the said Feall R. H. obtained a Pardon of the King, and thereupon obtained a Prohibition out of C. B. And it was resolved that tho' the Suit be for the King, and which the King may pardon, yet when Sentence is given, and Costs taxed for the Plaintiff, now the Plaintiff has a particular Interest in them by the Sentence, which the King cannot pardon, tho' Day be given for the Payment of them, as above. 5 Rep. 51. a. b. Trin. 2. Jac. C. B. Hall's Café.

Vaugh. 552. — 15. The King cannot pardon the net repairing a Bridge or Highway, S. P. Br. Nofance, pl 15. cites 57. S. P. 2 Hawk. Pl. C. 594. cap. 57. S. 41. 42. — So of Nofances in the Highway, they cannot be pardoned till recovered, tho' they are only Mala Prohibita. But the Fine or Punishment imposed for the Doing may be pardoned. So of a Water-course diverted; per Vaughan Ch. J. Vaugh. 552.

Sergeant Hawkins says, That while a Publick Nofance continues unremov'd, it seems agreed that the King cannot wholly pardon it, because such Pardon would take away the only Means of compelling a Redress of it. But it has been held by some, that a Pardon of such Offence will save the Party from any Fine for the Time precedent to the Pardon. 2 Hawk. Pl. C. 591. cap. 57. S. 52.

16. Both the Damages and Imprisonment in Trespasses upon the Statute Right 1. cap. 20. concern the Plaintiff's, and therefore the King's Pardon cannot
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cannot dispense with them; but the Ratiola, the finding Sedit, and the Forbearing of the Realm, are Punishments exemplary, and concern the King; and therefore he may pardon them. 2 Inf. 290.

17. M. was impeached by the House of Commons, and by Judgment in the House of Lords, was disabled to hold any Spiritual Preferment. The King afterwards, under the Broad Seal, pardoned him all Treasons, Felonies, Disabilities &c., but without any Recital therein of the Judgment in Parliament against him. He was afterwards made Bishop of St. Asaph. It was argued, whether or no this Disability is pardonable by the King? This Point was not adjudged; but see the Arguments Pro & Con. Hard. 154. to 157. Patch. 1659. Thorowgood v. Herbert.

18. P. being convicted of Murder, obtained his Pardon, and being brought to the Bar, pleaded it, and produced his Writ of Allowance, and the Pardon had in it the Word Murdrum. And it was held by the whole Court, that this Pardon was good, and ought to be allowed; for that the King might at the Common Law have pardoned Murder, and that appears by those very Statutes which limit his Power in that very Particular; and the Drift of those Statutes are no more than that the King should not be surprized by pardoning it by general Words; and therefore since the making of those Statutes, a Pardon of Felonies &c. would not extend to pardon Murder without a Non Obstante; but if the King would recite the particular Fault, as he had done here, the Pardon would be good without a Non Obstante: Therefore it seems a Pardon in general Words was good, without reciting the Fact and Proceedings particularly, as in this Case the Indictment, Conviction and Arraignment were all recited. Freeman. Rep. 501. 502. Mich. 1691. Parson's Case.

19. Holt Ch. J. took this Difference, Where the Disability is only the Consequence of the Judgment, the King may pardon it, but where the Disability is Part of the Judgment itself, the King's Pardon will not take it away; therefore * if a Man be convicted of Perjury on the Statute, the King's Pardon will not restore him, for it is not a Consequence, but Part of the Judgment, viz. Quod imposuerint non facit rei Pie collat; but a Pardon by Act of Parliament will restore him in that Case; quod nota. Quere of a Perjury at the Common Law; and if the Law be not the same for there the Disability is only by Consequence, and not Part of the Judgment. 2 Salk. 689. Patch. 7 W. 3. B. R. *The King v. Crosby.


* If a Man be convicted of Perjury at the Common Law, the King may pardon him, but if it be upon the Statute he cannot; per Holt Ch. J. Girtch. 432. in Case of the King B. R. 8 C.

20. Where Beheading is Part of the Judgment, as in Case of High Treason, the King may pardon all the rest, and consequent in such Case the Judgment may be well executed by Beheading only. 2 Hawk. Pl. C. 463. cap. 51. S. 5.


1. Pardon was pleaded, that the King for his Service done in Gascoigne pardoned him; and it was allowed; but he was detained till it was certified whether he did such Service there, or not. And to see that the Confirmation upon which the Pardon is obtained is material. Br. Charters de Terres, pl. 74. cites Ivin. Canc. 6 E. 2. 7.

2. 27 E. 3. Stat. 1. cap. 2. Pardons which have not in them the Suggestion whereupon they are granted, and also the Suggestion Names, shall be void; so are those likewise which are granted upon false Suggestion.
3. 5 H. 4. 2. If an Approver commit Felony after he is pardoned, he that procured his Pardon, shall forfeit 100 l. whose Name shall also for that Purpose be infixed in the Pardon.

4. It a Man be arraigned of Murder, and it be found that he killed the Party De Defendo, he ought to sue a Certiorari to remove the Record into the Chancery; and upon the Removal thereof to have his Pardon. F. N. B. [247] (F.)

5. And if a Man be attained in Affid of Novel Diffelein, before the Justices of Affid, of a Diffelein with Force, and be afterwards outlawed for the King’s Fine, if he will have a Pardon of the Outlawry, he ought to have a Certiorari directed to the Justices of Affid, to certify the King in his Chancery the Tenor of the Record of the Affid, and also another Writ to the Justices, to certify the King in his Chancery whether the Defendant in the Affid hath yielded Himself to Prison, and hath satisfied the Party his Damages. And if the same be so certified in the Chancery, then upon that Certificate he shall have his Pardon of the Outlawry. F. N. B. [247] (G.)

6. And if a Man be condemned in C. B. in Debt, and outlawed upon the fame, then before he shall have his Pardon, he ought to yield himself to the Prison of the Fleet, and satisfy the Party; and the Record of his Condemnation, and of the Satisfaction, ought to be certified by Certiorari unto the King in his Chancery, and thereupon he shall have his Pardon; and that is by the Statute 5 E. 3. cap. 12. F. N. B. [247] (G.)

7. And if a Man be outlawed severally, at the Suit of three several Persons in several Actions in which he was condemned, he ought to sue a Certiorari to remove the Tenor of those Records and Proceedings into the Chancery, and also to have a Certiorari to the Justices of the Common Pleas, if the Suit be there, to certify the King in Chancery whether he hath yielded himself to the Prison of the Fleet, and hath satisfied the Parties; and when the Chief Justice hath certified the same into Chancery, then he shall have his Pardon for the Outlawries, and not before. F. N. B. [247] (G.)


But where the Baron is Outlaw’d, and the Feme goes without Day, and the Baron purchaseth Pardon and Seire Pacias thereupon, he shall not have it allowed without bringing in his Feme. Per Thorp. Br. Charters de Pardon, pl. 6. cites 40 E. 3. 34.

WHERE the Baron is Outlaw’d, and the Feme goes without Day, and the Baron purchaseth Pardon and Seire Pacias thereupon, he shall not have it allowed without bringing in his Feme, without such speci-
Praerogative of the King.

2. In Formedon the Tenant pleaded Outlawry in the Demandant, and he impa't'd, and the next Day brought Charter of Pardon, bearing Date after his Imparlance, and the Tenant said that the Charter is upon Condition that he sue against C. D. at whole Suit he was outlawed, which he has not done, Judgment &c. and yet because the Demandant is now at the Law, the Opinion of the Court was against the Tenant, by which he vouch'd. Br. Charter de Pardon, pl. 7. cites 44 E. 3. 27.

3. 13 R. 2. 1. In a Pardon the Offence committed shall be specified, otherwise it shall not be allowed.

If the Offence pardoned be afterwards found Wifful Murder; the Pardon shall not be allowed.

Murers, Robberies, Felonies &c. Non obliante the Statute of 13; R. 2. or any other Statute. And the Court inclined that this Pardon should not be allowed, for after the said Statute a general Non obliante would not serve, without Recital of the Effect of the Indictment upon which he is convicted, to the Intent that the King might be apprized of the Offence. And tho' it was the Opinion in Rutland's Cafe, that the King could not pardon Murder, yet it has never been doubted either before or after, but that the King could pardon it, with a special Recital of the Fact and Non obliante, but without such Recital the Pardon is not good. And they directed that it should be argued for the Prisoner, if he would; but he recurred the Opinion of the Court, and the Pardon with special Words. Sid. 566. Trin. 20 Car. 2. B. R. The King v. Dudley — A general Non obliante, without a particular Recital of the Crime for which the Party is convicted, is not good since the making of the Statute of R. 2. but at the Common Law, both before and since that Statute, the King may pardon Murder, with special Recital of the Fact, Non obliante that or any other Statute. Per Cur. 4 Mod. 63. Mich. 5 W. & M. B. R. The King v. Anonymous.

4. A Man was attainted at the Suit of the Party of Robbery, and the Par- 2 Hawk. Platy pardoned him the Execution, and the King, by Charter which recited the Attainer, pardoned the Execution; and because no Mention was express'd of the Felony, therefore it was disallow'd; quod nota. And so it seems But the ser- that he shall not escape by Pardon of the Party only; and often where the Party will not prosecute the Suit, the Party shall be arraigned upon the Declaration for the King. Br. Charter de Pardon, pl. 13. cites 8 H. 4. 22.

Purpofe it was attempted to be made Use of, nor how far, or in what Respect it was disallow'd; and therefore the' some looks seems to hold generally upon the Authority of this Cafe, that such a Pardon is no Way good; yet the Serjeant says he does not well know of any more can be proved from it than this, That it shall neither amount to a Pardon of the Felony if it fell, nor of any other Consequence of the Attainer, besides the Execution. But it says it seems difficult to give a Reason why it should not well pardon the Execution, since the King does not appear to be any Ways deceived; and it has been clearly adjudged that the King may, if he think fit, pardon the Execution, and no more.

5. Scire facias shall not be granted for the Defendant against the Plain- tiff in Appeal upon the Pleading of the Pardon of the King after Conviction and Judgment, if he does not plea Release, or such like; per Huls; quod non negatur. Br. Scire facias, pl. 73. cites 11 H. 4. 16.


Br. Corone, pl. 50. cites S. C. — Where Felon are pardoned by Act of Parliament, there the Justices ought to take Notice thereof, because it is a general Act; to that it a Prisoner will plead Not Guilty, yet they ought to forsake to arraign him, and allow the Pardon; quod nota. Br. Charter de Pardon, pl. 1. cites 26 H. 7. 7. Br. Parliament, pl. 1. cites S. C. — Serjeant Hawkins says he be to far from pleading it, or prays the Benefit of it, that he does all he can to waive it. 2 Hawk. Pl. C. 397. cap. 27. S. 63. — Serjeant Hawkins says he takes it to be agreed, That a General Pardon by Parliament cannot be waived, because no one by his Admission can give a Court a Power to proceed against him, when it appears there is no Law to punish him. 2 Hawk. Pl. C. 396. cap. 57. S. 92.
Prerogative of the King.

7. If Appeal be without Day by Denial of the King, there, if the King pardons the Defendant, and the Plaintiff does not bring his Re-attachment within the Year to revive the Appeal, the Pardon shall be allowed. Br. Charters de Pardon, pl. 69. cites 2 H. 7. 10.

8. H. was convicted of Manslaughter, and bad his Clergy, and pleaded his Pardon, whereby the Burning in the Hand for the Man-Murder, and all other Felonies by him committed, et alia Maleficia before the 5th July last were pardoned; and there was a special Clause that he should not find Sainety for his Good Behaviour; and the Pardon bore Date 31st October last; and tho' there were divers Misdemeanors committed by him after the said 5th July, for which he was to be bound to the Good Behaviour, yet he had his Pardon allowed, and was discharged from finding Suresties &c. Cro. C. 596. Mich. 16 Car. B. R. Sir Matthew Mint’s Cafe.

9. H. and others were indicted of Murder, and found Guilty, and Judgment was given, but Execution was suspended. And after they were brought to the Bar, and demanded what they could say why Execution should not be done; and they pleaded Pardon of the King’s Maj. Sigillo; and the Court refused to allow it, because there ought to have been a Writ de Allocanda perdonatione directed to the Justices; And Mallet J. said, ‘The Reason why such Writ ought to be directed was, because it was the Warrant which remained in Court for the Justices to allow the Pardon. And after at another Day the Pardon was read to the Court, and H. had brought a Writ directed to the Justices to allow it; and upon reading the Pardon, the Court said they would be advised; and they said that the Suggestion in it were false, and therefore they would stop the Allowance. And Twifden J. said, that in the Time of Hide Ch. J. an Allowance of a Pardon was stopp’d, because there was a Non Obstante that the Party should not find Sainety of the Peace. Sid. 41. Pach. 13 Car. 2. B. R. Howard’s Cafe.


N. G. was indicted of the Death of R. Anno 13, E. 2. and he showed by Record that R. was dead Anno 9, E. 2. and showed Pardon of his Death test’d 12, E. 3. and because it might have been that two R’s were killed, therefore Broope awarded Inquest of Office to inquire if there was found any R. Anno 13, after the Pardon; and it was found Quod non, by which he went quit, and the Pardon allowed; quod nota; notwithstanding great Variance; quod mirum mihi. Br. Charters de Pardon, pl 29. cites 3 Aff. 15.

2. Charter of Pardon was granted to a Man who was outlawed at the Suit of the Party upon the Action de Muliere abduenda cum bonis Viro, because the Plaintiff came and confessed of his own Free-will; but in B. R. when they came there, they were in Doubt to allow it, because the Party came into Chancery to confess of his own Free-will, without Scire facias or Day in Court, and therefore they doubted if they should award Scire facias now in B. R. for it does not appear if be the same Person, or not; and yet at last they allowed the Charter, and the Accisessory had not thereof Advantage; quod nota: The Reason seems to be inasmuch as all are Principals in this Action. Br. Charters de Pardon, pl. 35. cites 42 Aff. 16.
Prerogative of the King.

3. He who is outlawed, and has Charter of Pardon, shall not compell the Br. Scire facias. Plaintiff to come against him, tho' be ready at the Bar; because he has cites pl. 207. not Day in Court, and therefore was compell'd to sue Scire facias. Br. Charter de Pardon, pl. 8. cites 46 E. 3. 15.

4. Several were outlawed in Appeal by Feme, of the Death of her Husband, But Ibid. pl. and one came with Charter of Pardon of the King, and had Scire facias against the Plaintiff, and was returned warned, and did not come, by which he went quit; and after another came with such a Pardon, and went cordingly, quit by the first Default of the Feme; for in this Case they are attainted by the Outlawry, and shall not plead upon the Original, and nothing remains but to be put to Execution. Br. Charters de Pardon, pl. 14. cites 9 H. 4. 1.

whole Suit they were outlawed, and one said Charter of Pardon, and had Scire facias against the Feme, which was returned served, and she did not come, by which she went quit; and another said Charter of Pardon, and he was compell'd to have another Scire facias per Cur; and now. — And agreeable hereunto is Sergeant Hawkins, who says, that the second shall take no Advantage of the Appellant's Default on the first Scire facias, but must sue out his Scire facias Sec. in the same Manner as if there had been no such Default. 2 Hawk. Pl. C. 593. cap. 77. S. 35. cites in Marg 1 H. 4. 1. pl. 2. Fizh. Scire facias 62; but says that Br. Charter de Pardon, pl. 14. in the Abrigement of the same Case holds the contrary.

5. But contra in Trepass ; for the second shall have Scire facias upon his Charter, because they may plead upon the Original. Br. Charters de Pardon, pl. 14. cites 9 H. 4. 1.

6. It was said, that if Writ of Allowance of a Charter of Pardon of Felony be shown to the Justices, and not the Pardon itself, this shall not serve. Br. Charters de Pardon, pl. 42. cites 5 E. 4. 132.

7. Debt by the King upon an Obligation, the Defendant pleaded Not his Deed, and found against him by Nisi Prius, and before the Day in Bank, and the King pardoned him; he cannot plead this by Attorney; for by the Judgment the Warrant of Attorney of the Defendant is expired; and therefore he appeared in Person, and pleaded it in Person, and he pleaded it to the Execution without Day in Court; for if it was against a common Person, he might have Scire facias ad cognoscendum Factum, or Audita Querela, and make him give Day in Court, and then to plead his Release; but such Actions, nor any others, do not lie against the King. Br. Charters de Pardon, pl. 4. cites 34 H. 6. 3 & 50. and 35 H. 6. 1. 25.

8. Appeal of Robbery; the Defendant was outlawed, and yet Charter of And if the Pardon and Scire facias against the Plaintiff in the Appeal returnable &c. without forcing Release of the Plaintiff; and well; for it is usual without shewing Release. Br. Charters de Pardon, pl. 59. cites 2 R. 3. 8. the Pardon shall be allowed. Ibid. — And in this Scire facias the Plaintiff shall not make Attorney against him who is outlawed. Ibid. — Contr: upon Issue of Eigality. Ibid.

9. Note, by the Opinion of all the Justices, where a Clerk convict has Charter of Pardon, he ought to have special Writ, rehearing all the Matter, and the Pardon directed to the Ordinary, to make him come before the Justices to have his Pardon allowed; quod nota: and Clerk convict or attaint shall be enabled by Pardon, per Feme; querue of Clerk attaint. Br. Charters de Pardon, pl. 27. cites 21 H. 7. 31.

10. If one have a Charter of Pardon for Felony committed by him, the Court ought to allow it upon the Prayer of the Party that hath it; but he must produce it at the Bar, and pray upon his Knees that it may be allowed. 13th November 1650. B. S. for if he produces it not, the Court cannot take Notice of it, and if he pray not the Allowance of it, the Court cannot tell whether the Party do accept of the Benefit of it: and he does it on his Knees to express his Thankfulness for the Mercy afforded him by the Pardon. 2 L. P. R. 271. Tit. Pardon.

11. If
Prerogative of the King.

11. A Pardon of Felony with a Clause of Transportation was allowed, and the Party discharged without finding Sureties; but per Atray, the usual Course is to infert the Clause for finding Sureties to transport himself within such a Time; but per Cur. he ought to transport himself within the Time at his Peril; and therefore it was allowed &c. Comb. 15. Pach. 2 Jac. 2. B. R. Anon.

12. 5 & 6 W. & M. 13. The Act of * 10 Ed. 3. 2. for finding six Mainperners or Substantial Persons to be bound for the Good Behaviour of a Person who is pardoned for Felony, is hereby repealed: And it is enacted, that if a Pardon be pleased for Felony, the Court may, at their Discretion, remand or commit the Person to Prison, there to remain till he enters into a Recognizance with two sufficient Sureties for his Good Behaviour for any Time not exceeding 7 Years.

Provided, that if such Pardon be pleased by a Feme Covert or Infant, such Feme Covert or Infant may find two Sureties to enter into a Recognizance for them.

13. If one who appears to be attainted of Felony, whether by Outlawry or otherwise, on an Appeal carried on at the Suit of the Party, get a Pardon from the King, he must sue a Scire facias against the Appellant, before the Pardon shall be allowed, unlefs the Appellant appear gratis, and confess that he will sue no farther &c. 2 Hawk. Pl. C. 392. cap. 37. S. 35.

(U. a. 11) Pardon, Allowed at what Time.

1. UPON the first Nihil returned upon Scire facias upon Charter of Pardon of Outlawry, the Plaintiff shall not be received to Count; contrary upon the second Nihil. Br. Scire facias, pl. 45. cites 48 E. 3. 1.

General Pardon was pleased to discharge an Outlawry after Judgment; and not allowed till the Parties were agreed. Toth. 156. cites Tr. 1590. Weekes v. Newbrow.

2. A Charter of Pardon of Felony being shewed to the Court, shall be allowed after Judgment upon an Indictment, and Execution shall not be done. De Vita Hominis nulla eft cunctatio longa. Jenk. 137. pl. 82. cites 21 E. 4. 72.

3. The Court refused to allow a Pardon till the Prisoner had paid his Fees, fell. Gloves to the Judges, and also to the Officers, according to Sir John Bell's Cafe, 4 E. 4. 10. b. And the Clerk said that the Fees were ready, upon which the Pardon was read. Sid. 452. Pach. 22 Car. 2. B. R. The King v. Webster.

4. 2 W. & M. Seff. 1. cap. 10. No Proofs of Outlawry at the Suit of any Person Plaintiff, shall be laid, unlefs the Defendant appear and put in Bail where the Law requires it, and take out a Scire facias; nor shall this Pardon discharge any Outlawry after Judgment, till Satisfaction or Agreement with the Party.

Before that the Defendant in Misdemeanor Proceeds can have the Benefit of this Pardon, he must pay Costs of the Outlawry to the Plaintiff, tho' there is no Mention of any Thing but his appearance and putting in Bail. 2 Vent. 210. And Polleson Ch. I. said, that the Practice had been so upon the General Act of Pardon 25 Car. 2. 4. And yet in that Statute the Clause concerning Outlawries is to the same Purpofe, and no Mention made of the Costs of the Party. Ibid.

5. A
Prerogative of the King.

5 A Pardon for Treason cannot be pleaded until the Prisoner be charged with the Indictment for the Offence committed; for before he is charged by the Indictment, it doth not appear to the Court that he is the Person that is pardoned by the Pardon. 2 L. P. R. 279. Tit. Pardon.

6. Where a Pardon of the felonious Killing of J. S. has been pleaded to an Indictment of Manslaughter by the Coroner’s Inquest, the Court in Prudence has refused to allow it till the Fact has been found; Manslaughter only by a Jury directed by a higher Court. 2 Hawk. Pl. C. 396. cap. 37. S. 18.


1. In Account, the Defendant was outlawed, and got Pardon, and had Scire facias against the Plaintiff, who was returned Nihil, and the Pardon was allowed upon a Nihil returned, and he went quit. Br. Retorn de Brieis, pl. 109. cites 21 E. 3.

2. Treasons by three, the Defendant was outlawed, and fixed Charter of Pardon and Scire facias against the Plaintiff, the Sheriff returned one warned, and the other Nihil; and the Defendant prayed Allowance; & non allocatur; for two are not warned, nor is there more than one Nihil returned, but he shall have Scire facias alias, and there, if the Sheriff returns Nihil again, the Charter shall be allowed, for he who was warned did not come; Note, that two Nichils counterveil Scire faci. Br. Scire facias, pl. 14. cites 40 E. 5. 1. —— And in the next Case there, it was agreed, that if upon the Scire facias the Sheriff returns the Plaintiff dead, the Defendant shall go quit; quod nota. Ibid.

3. Two were outlawed in Debt at the Suit of two, and one of the Outlaws fixed Charter of Pardon, and had Scire facias against the Plaintiffs, and the one was returned warned, and did not come, and the other Nihil, by which the Defendant would have gone quit, because the Default of the one Plaintiff in Debt shall be a Nonuit of both, & non allocatur; but he was compelled to sue the other, who was returned Nihil, and Iden dies to the other; and if he should be returned Nihil again, then the Charter should be allowed; quod nota. Br. Scire facias, pl. 46. cites 48 E. 3. 3.

4. Where Scire facias upon Charter of Pardon upon Outlawry at the Suit of Executors was returned served at the Alias against the one, and not served against the other, yet the Plaintiff was compelled to count against him; otherwise in Debt brought by other Persons. Br. Scire facias, pl. 37. cites 3 H. 4. 10.

Br. Execut. ——
Brooke says the Reason seems to be, it’s enough as Executors may be summoned and served, and he who comes first by Diffrent shall answer.

4. Treasons against three, who are returned Outlawed upon erroneous Br. Scire Preeis, and the one had Charter of Pardon, and Scire Facias against the facias, pl. 65. Plain. cites S. C.
Prerogative of the King.

Plaintiff, who is returned dead; the Charter shall be allowed, and when the other has Charter of Pardon, he shall have it allowed without suing Scire Facias; for it appears to the Court that the Plaintiff is dead. Br. Charters de Pardon, pl. 61. cites 7 H. 4. 30. and 9 H. 4. 7.


6. Scire facias against the Plaintiff an Abbot; upon Obtaining and Charter of Pardon granted to the Defendant, who was outlawed at the Suit of the Plaintiff, the Sheriff returned, That the Plaintiff was deposed before the coming of the Writ, and the Defendant went quit Sine Die; quod nota at the first Scire facias, and yet it is not returned served. Br. Scire facias, pl. 145. cites 1 H. 6. 2.

7. Debt by J. Abbot o W. against D. till the Defendant is outlawed, and sued Charter of Pardon against the Abbot, the Sheriff returned that before the Test of the Sae. sa. the said J. Abbot was, and yet he is deposed, and another elected per quod ipsius Scire facias non passit per homin. J. Abbot praece Exigit; and a good Return, and the Charter allowed; for it amounts to as much as Mortuus ei, for it is a civil Death. Contra upon such Scire facias against Baron and Feme, and the Sheriff returns that they are divorced; for Persons divorced may be married; contra of dead Persons. Br. Charters de Pardon, pl. 2. cites 2 H. 6. 5.

8. Debt by a Dean and Chapter, the Defendants was outlawed, and sued Scire facias upon Charter of Pardon, which was returned served, and the Plaintiff did not come, and the Defendant affirmed that the Dean is dead after the last Continuance; and because the Plaintiff's Attorney could not deny it, the Charter was allowed. Br. Charters de Pardon, pl. 56. cites 11 H. 6. 1.

9. In Appeal of Death, the Defendant was outlawed, and got Pardon of the King, and had Scire facias against the Appellant without having Release, or other Thing; and yet divers Books are, that he shall not have Scire facias, without having Writing or other Thing, which will bar the Plaintiff of Execution. Huffey agreed, that the Scire facias lay well, without having any Thing; and the Sheriff returned upon the Scire facias, that the Appellant is dead; and therefore per Judicium, the Pardon was allowed without suing Scire facias against the Heir; for the Suit is given to him who is Heir to the deceased, who has no Feme, add if this Heir dies, his Heir, kill. the Heir of the Heir shall not have Appeal nor Execution; for it is an Action which dies with the Person. Br. Scire facias, pl. 166. cites 9 H. 7. 5.


1. No particular Pardon, be it at the Coronation or any other, of any Offences whatsoever, that is absolute without any Condition &c. need any Writ of Allowance; but when the Pardon is conditional by Force of the Act of 10 E. 3. cap. 2. there a Writ of Allowance out of Chancery, teetifying that the Condition is performed, viz. Surety found according to that Act, may be had, or the Party may plead the finding of Surety &c. and vouch the Record. 2 Inst. 234. cites Hill. 26 E. 3. coram Rege. Rot. 21.

2. H was indicted of Treason, and produced the Queen's Pardon, without any Writ of Allowance thereof; and Pope, Second Clerk of...
Prerogative of the King.

the Crown, informed the Court, that the Precedents were, that in Case of Treason, it was usual to allow the Pardon without any Writ of Allowance, but not in Felony. Whereupon the Pardon was allowed. Cro. E. 814. Parch. 43 Eliz. B. R. Sir Henry Linley's Case.

3. A Pardon was pleaded without a Writ of Allowance; and the Court said, that if there had been a Non obstante in the Pardon, in this Case they would have allowed it without such Writ. Sid. 41. Parch. 13 Car. 2. B. R. Howard's Case.

4. C. was outlawed for Murder, and brought a Writ of Error to reverse it, which being done, he was forthwith arraigned, and pleaded his Pardon under the Great Seal, in which there was a Non obstante for his not finding Sureties for his Good Behaviour. Per Holt Ch. J. the Pardon ought not to be allowed, without a Writ of Allowance directed to the Judges of this Court, out of Chancery, reviving that he has found Sureties before the Coroner and Sheriff &c. according to the Statute. But by the other Judges, the Pardon ought now to be allowed without any Writ of Allowance, because the Party hath three Months given by the Statute after the Pardon to find Sureties, under the Penalty that his Pardon shall be void, if he does not do it. Noto. That afterwards in the same Term the Writ of Allowance was brought into Court, and upon Prayer &c. it was recorded under the Pardon. Carth. 120. Parch. 2 W. & M. B. R. Cooke's Case.

5. Pardon of Murder is conditional, viz. The finding Sureties, and there must be a Writ of Allowance, signifying the Performance of that Condition; and 'tis not meery at the Peril of the Party; for we ought not to give a final Judgment upon Ignorance of its Performance. Per Holt Ch. J. Show. 283. Mich. 3 W. & M. The King v. Parfons. Writ of Allowance, because that is absolute. Freem. Rep. 652. Mich. 1691. S. C. by Name of Parfons's Case.—While the Statute of 10 E. 3. 2. flood in Force, Pardon of Felony could not be allowed without a Writ out of Chancery; commonly called a Writ of Allowance, reviving that the Party had found Sureties &c. according to that Statute, unless it were dispensed with by a Clause of Non obstante; but the Necessity thereof is taken away by 5 & 6 W. & M. 13. which has repealed the said Statute of 10 E. 3. 2 Hawk. Pl. C. 598. cap 57. S. 70.

6. M. pleaded his Pardon, and being ask'd for his Writ of Allowance, it was answer'd, that it had been allowed in the Old Bailey; and after some Debate it was allowed here, without a new Writ. Comb. 230. Mich. 5 Ann. B. R. Sir Richard Manvel's Case.

(U. a. 14) Pardon. Advantage thereof taken by whom, when, and how:

1. A Man struck a J uror, by which it was awarded that his Hand be cut off, and the King granted his Land to another, and after the King pardoned him the Amputation of his Hand and Impronishment, and requited to him belonged, and then the Offender died, and the Heir brought Seile facias against the Patenree, and re-had his Land. Br. Charters de Pardon, pl. 70. cites 41 E. 3. 25.

2. A Man was bound in an Obligation by Name of R. T. and in another Br. Mifno- by Name of J. S. and was outlawed upon both, where his Name was R. T. mer. pl. 4. cites S. C. and final Charter of Pardon thereof by Name of J. S. only; and it was allowed, and he went quit of the other, for it cannot be intended the same Person. Br. Charters de Pardon, pl. 3. cites 1 H. 6. 25.

3. Where two are appeal'd, and are outlawed, and the several Charters of Pardon, they shall have several Seile facias's. Br. Seile facias, pl. 177. cites 1 L. 4. 13.

4. High.
Prerogative of the King.

4. If a Delinquent in the Star-Chamber pleads Not Guilty, he shall not have Benefit of the General Pardon at the Hearing; for he ought to plead the Pardon, and to aver in Fact that he is not any of the Persons excepted, or otherwise the Court is not to allow him the Pardon. By the Opinion of both the Ch. Justices, to which the Lord Keeper agreed. Mo. 619. Mich. 42 & 43 Eliz. in Case of Blake v. Allen.

5. A. was outlawed after Judgment, before the General Pardon of the 43 Eliz. and after the Pardon died. Upon which his Executors make Satisfaction, which is confesse'd of Record, and plead the General Pardon, with an Avenment that they are none of the Perons excepted therein. It was resolved that the Executors may take Benefit of it; for the Act is, That all the King's Subjects, their Heirs, Successors, Executors and Administrators shall be acquitted &c. which is to be expounded beneficially for the Subject. And tho' the Proviso is, that the Act shall not extend to any Person outlawed on any Writ of Ca. Sa. till Satisfaction or Agreement made with the Party; yet the Act veils such an Interest in the Peron outlawed, that tho' he dies, yet his Executors may make Satisfaction, and have Benefit of the Pardon. Per Car. 6 Rep. 79. b. Trin. 5 Jac. C. B. Sir Edward Phitton's Case.

6. Bill was exhibited in the Star-Chamber against C. and seven or Eight-score Dutchmen, for Buying and Transporting of fundry great Sums of Money. The Defendants pleaded in Bar Not Guilty, and afterwards in their Rejoinder pleaded the Pardon by Parliament 7 Jac. which extended to Buying of Money, but not to Transporting. And upon this a Question arose, Whether so many of the Defendants at were neither Naturaliz'd nor Indenizen'd were capable of the Pardon. And it was argued, that the General Pardon in the Premble, and in all Parts, except the Words of Loving and obedient Subjects; whereupon the Ch. J. did in a Manner expressly hold them out of Relief. But Lord Hobart says he avoided that Question, as being not necessary; for he says they all agreed that it did no Good in the Rejoinder. But he says he told the Attorney-General, that he held the Dutch living here within the King's Protection, being of a Friend Country, to be also truly under his Subjection, and therefore capable of the Title of his loving and obedient Subjects, but not of the distinct Title of Natural Subjects, which is usual in Statutes, set in Opposition against Denizens and Strangers. And besides, the General Pardon hath Respect of Retribution for the Subsidy, wherein Strangers pay more than we, and in some Sort may be called Grantors; for by living here they tacitly submit to our Laws, and to their Grant and Consent is involved in the Contention of Parliament. And he thought no Judge would doubt but that such a Stranger should have the Benefit of such a Pardon against common Penal Laws, and other common Offences. But if the Stranger were not in the Kingdom at the Time of the Pardon, then he were not within the Benefit; for he is no otherwise a Subject than by his Residance here, Hob. 270. Courtenay's Case.

7. None shall be obliged to lay the Stress of his Case on any particular Words or Clause in a particular Pardon, but may take Advantage of the whole. 2 Hawk. Pl. C. 398. cap. 37. S. 63.

8. He that will take the Benefit of a General Pardon, ought to plead the Statute by which the General Pardon was granted. 21 Car. B. R. 8 Ed. 4. 7. 4 H. 7. 8. That the Court may judge whether his Offence be pardoned or not, which they cannot do, except the Pardon be pleaded, and that the Party must be in comprised in the Pardon, and not excepted out of it. 2 L. P. R. 263. Tit. Pardon.

(U. a 15)
(U. a. 15) The Effects and Consequences of a Pardon.

1. For breaking of the Prison of the King, the Appellee shall be put ed of Battal; but if he can shew the King's Pardon for the Breaking it, he shall have the Battal; for the Breaking is to the King, by the Opinion of the Court. Br. Battal, pl. 3. cites 1 Att. 3. by the Ch. J. Hob. 82. Jus. in Case of Cudding of tidings, who said that the Reason of the Presumption of the Guilt must be the same after the Pardon as before; but that the Reason of the Case is, that the King's Pardon not only clears the Offence itself, but all the Dependencies, Penalties and Disadvantages incident unto it, and that against the Appellant, for that the Appellant has an Interest in the original Fact, which the King would not discharge as against him, yet in the Breaking of the Prison he had none but oblique.

2. If the Heir of the Tenant of the King enters after the Death of his Father, and the King pardons him all Manner of Entries made upon his Possession, yet he has no Frank-Tenement, inasmuch as the Statute is Quod nulla accrescat et Librum Tenementum. Br. Charters de Pardon, pl. 43. cites 5 E. 4. 4. per Danby.

3. Appeal of Robbery; the Plaintiff has Judgment against the Defendant, and the King pardons him, yet he shall suffer Execution, unless the Plaintiff upon Scire facias would confine that he would not sue further. Br. Appeal, pl. 128. cites 11 H. 4. 16.

4. Attorney had made Capias, of which there was no Original; by which Attachment, he, against him, and he was taken and examined, and confes'd it, and was committed to the Fleet, and was there for a Month, and then was put to his Fine, and was sworn that he should not meddle any more in the Laws in any Court, and his Name struck out of the Roll of Attorneys; quod nota. Per Newton, Hereafter you may have Charter of Pardon of the King, and come back; for the Bishop may affoil you of this Oath. Br. Attorney, pl. 7. cites 29 H. 6. 37.

5. If Alienation without Licence be pardoned by Act of Parliament, the Party may enter without Outier le main, or Amovens manum, but contrary by other Pardon by Letters Patents; note the Divercity. Br. Charters de Pardon, pl. 53. cites 29 H. 8.

6. If the King pardons a Man attainted of Treason or Felony, and after he purc'hases Lands in Fee, and takes Feme, and has Hiliae, and dies, the King shall inherit; for by the Pardon he was well restored to his Blood; because he is thereby enabled to purchase, and need not to this Purp0se have Reittitution, and this Reittitution for his Inheritance, and this Reittitution for his Blood; the Attorney and Pardon. Dal. 14. pl. 3. 1 Mar. 1 Anon. per Bromley and Portman.

7. If the King pardon a Man deprived for Adultery, and then came a S. C. cited General Pardon of Offences, inter alia, of Adultery. Resolved that.
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By Virtue thereof he was now become Parson again, without any Sentence to avoid the said Deprivation; for by the Pardon the Adultery, which was the Cause and Foundation of the Sentence of Deprivation, is discharged, and by Consequence all that depends upon it. 6 Rep. 13. b. cites D. 135. Burton's Case.

Lat. 22. Burton's Case, tho' the Report there supposes it to be in another Time.——This Case was denied to be Law by Windham J. who said that tho' Lord Coke cites it out of Dyer, yet no such Case is to be found there; and that it has been often denied: And without doubt it is not Law, that a Pardon shall be re-rolled by the Relation of the Pardon, without other Act. 1 Sid. 164. Mich. 15 Car. 2. B R. in Case of the King v. Wainwright and Jethredes—And again denied. Sid. 163. in the Case of Toombes v. Etherington.——And again denied per tot. Car. Sid. 222.

8. In Case for Words, the Defendant justifies, because the Plaintiff had false Sheep; and the Plaintiff replies a General Pardon. The Court held upon Demurrer, that by the Pardon both the Punishment and Fault were taken away, for that the Wrong was done to the King by the Common Law; and the King being Supreme Head, if he pardons, the Party is cleared of the Wrong. Brownl. 10. Trin. 12. Jac. Coddington v. Wilkin.

9. A. was Chancellor of a Diocese, but was deprived and fined &c. by the Star-Chamber for certain Misdemeanors: B. obtained his Office. A. was afterwards pardoned. It was held by all the Judges at Sergeant's-Inn, that the Pardon had avoided the whole Sentence, except as to the Fine to the King, and that the Sentence could not take away the Office, being a Freehold; and for A. was allowed to profess his Affire for the Office. Cro. C. 55. Mich. 11 Car. B. R. Bennet v. Eafedale.

10. T. the Patron presented A. by Simony, and then A. died, and then he presented B. and then the King prepaid; and then came the Act of General Pardon in the 25th of Car. 2. wherein there is a Clause of Restitution of Forfeiture &c. And the Question was, whether or no this had restored the Party to his Right of Prefenting. Per North Ch. J. Tho' the King does pardon the Simony, yet the Disability remains still upon the Person, and renders him incapable of the Benefice, as was resolved in the Case of Phillips and Dritte lately. But the Court was divided in Opinion, and that which made the Difficulty of the Case was, because the King had prepaid here before the Act of Pardon; and altho' the King may revoke his Presentation by express Words, yet whether or no the general Words of Restitution contained in the Pardon shall amount to a Revoking of the Presentation, and of restoring the Party to his Right of Prefenting, is the Great Question. Et adjournatur. Freem. Rep. 198. Trin. 1075. C. B. The King v. Turvill and the Bishop of Lincoln.

11. The King pardoned inner alia, all Judgments and Convictions for not coming to Church. And it was agreed, that this Pardon did not only pardon the Conviction of Recusancy, but also restored the Party to his Ability, notwithstanding he had not conformed. 3 Lev. 333. Trin. 5 W. & M. C. B. Lord Petre v. the University of Cambridge.

12. A. was indicted and tried at Bar for High Treason; and it was objected to the Evidence of B. that he had stood in the Pillory upon a Judgment in an Information for Perjury; and it was held by Holt Ch. J. that he was restored by the General Pardon of a W. & M. which operated by Way of Restitution, and made him a new Creature. And
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It was inducted, that the Infamy and Disability in this Case flowed from the Judgment, and not from the Crime, which might be pardoned even by the King alone, tho' where it flows from the Crime, it can't be pardoned but by Act of Parliament. Salk. 689. Patch. 7 W. 3. B. R. The King v. Crosby.

13. A. was convicted of Bartrury; and upon this his Evidence being objected to, the Record was produced, and the Judgment was to pay 500 Marks, but was not to stand in the Pillory. This being held to be a good Objection (because the Disability arises from the Infamy of the Crime, whether the Punishment be infamous or not) it was then infinited to be within the late General Pardon. It seems to have been held per Holt Ch. J. that the Conviction was pardoned, and the Party referred to his Credit by the Act of Parliament, but that the King's special Pardon could not have restored his Credit, the Disability in this Case being incur'd by the Infamy of the Crime, and not of the Punishment. Salk. 692. Mich. 12 W. 3. B. R. The King v. Ford.

14. A. having been attained and pardoned, and permitted to go beyond Sea, his Creditors moved to charge him in Causolos: but Holt Ch. J. refused it, for this would defeat the Queen's Pardon, by disabbling him from going beyond Sea, which was the Condition of the Pardon; and there is no Reason that the Pardon should enure for the Benefit of the Creditors, to the Prejudice of the Party, and put them in a better Condition than before; for it the Attainder had continued he would have been hanged. Salk. 565. Hill. 1 Ann. B. R. Foxworthy's Case.

15. The Crime being pardoned clears the Party from the Guilt. Per Raymond Ch. J. Gibb. 158. and says it was expressly adjudged to per Holt Ch. J. in the Case of Aaron Smith. 2 Salk. 689.

16. If an Indictment on the Statutes of Feloncible Entry be removed into B. R. and the Defendant, having been turned out of Possession by the Grant of Restitution to the Protector by the Judges of Peace, traverses the Force in the King's Bench, and then the Offence is pardoned by a General Pardon, the Court cannot proceed on the Trial, notwithstanding the Defendant would waive the Benefit of the Pardon, because it appears judicially, that the King can have no Benefit of a Fine from the Defendant, if a Verdict pats against him. Hawk. Pl. C. 154. cap. 64. S. 63.

17. Sergeant Hawkins says, It seems to have been always agreed, That the Forfeiture of Goods by Homicide or defendants may be fayed by a Pardon (which in this particular Case seems to purge the Offence ab initio.) 2 Hawk. Pl. C. 381. cap. 37. S. 3.

18. It seems agreed, That notwithstanding the King's Pardon to a Sinner coming into a Church, contrary to the Purport of 31 Eliz. 6. or to an Officer coming into an Office by a corrupt Bargain, contrary to the Purport of S & 6 E. 16. may have such Clerk or Officer from any Criminal Profession in Respect of the corrupt Bargain, yet it shall not enable the Clerk to hold the Church, nor the Officer to retain the Office, because they are absolutely disabled by Statute. 2 Hawk. Pl. C. 396. cap. 37. S. 56.

19. Pardon of Treason or Felony, even after a Conviction or At- tender, does fo far clear the Party from the Infamy, and all other Consequences of his Crime, that he may not only have an Action for a King's Pardon, in calling his Treason or Felony, after the Time of the Pardon, but may also be a good witness, notwithstanding the Attainder or Conviction; because the Pardon makes him, as it were, a new Man, and

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has the same Effect as to this Purpofe as the Burning would have had, which is agreed to reflect the Party to his Credit 2 Hawk. Pl. C. 395. cap. 37. S. 49.—But it has been adjudged, That a Pardon is of no Manner of Force as to this Purpofe, till it has pass'd the Great Seal. 2 Hawk. Pl. C. 395. cap. 57. S. 50.


1. If a Man be outlawed in Treprafs at the Suit of the King, and has Pardon, yet he shall not plead Not Guilty after; quod nota. Br. Charters de Pardon, pl. 30. cites 22 Aff. 47.

2. A Pardon was produced for Felony, which was variant from the Indictment and from the Name; and yet because it appeared, that it was the Will of the King that he should be pardoned, he was remitted to Ward, and repitted. Br. Charters de Pardon, pl. 32. cites 26 Aff. 46.

3. A Man indicted of Treprafs came without Proceeds, and pleaded Pardon of the King of all Treprafs, and of this vouch'd Record, and had two Days to have his Record. Br. Charters de Pardon, pl. 33. cites 27 Aff. 58.

4. If a Man is indicted of the Death of a Man, and arraigned, and pleads Pardon, and is discharged, and after Appeal is brought against him, and the Plaintiff is non-suited, and the Defendant arraigned upon the Declaration for the King, and pleads the Charter again, there he ought to plead it, notwithstanding it was allowed of Record before. Br. Charters de Pardon, pl. 15. cites 11 H. 4. 41.

5. He who pleads Not Guilty cannot plead Pardon after, unless it be of later Date, and the Charter was allowed, notwithstanding that it varied in Names, and Day of the Indictment and the Appeal; but it does not appear what Variance; the Reason seems inauthentic as it was of Appeal of Death, and a Man cannot be twice killed; contra of Robbery. Br. Charters de Pardon, pl. 15. cites 11 H. 4. 41.

6. If a Felon has Pardon to plead, and pleads Not Guilty, he shall lose the Advantage of his Pardon, and shall not plead it after. Br. Corone, pl. 199. cites 35 H. 6. 1. & concordat 19 H. 8. and in H. 4. 41. per Cheynie; but contra M. 3 M. 1.

7. B. Sheriff of the County of O. returned an Exigent Quarto warrants in B. R., and tended to aver that the Defendant is arraigned, upon which
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Hawk. Pl. C. 593. cap. 57. 8. 60.

certify.

B. and

H. 6. 24.—And says, that 37 H. 6. 21. it appears that the Sheriff brought Special Writ out of Chancery in Nature of an Audita Querela, by Force of his Charter, directed to the Justices of B. R. that they do Right to him, by which he had the Habeas Corpus. And the Opinion of all the Justices was, that the Pardon shall serve the Sheriff; for those Words Miliprition and Olibence shall serve him, for it is Miliprition and it is Olibence; and tho' the Pardon be before the Amicement, yet the Pardon is good; for the Falsé Return was the Olibence, which was before the Pardon, and then when it is pardoned no Amicement ought to be alleis'd, because it is pardoned; and if the Justices had Conufance thereof, they would not have alleis'd the Amicement; and the Party has not furrfeased his Time to plead it; for he had not Day to plead it, nor Caufe till the Amicement was alleis'd and eflIeared, and Procefs made for it. And this Case was argued in the Exchequer Chamber by all the Justices; & per to. Cur. A Pardon granted at the Suit of the Party shall be taken more strong for the King, and more strong against the Party; but a General Pardon, or Pardon granted ex nemo Motu, shall be taken more strong against the King, and of the Benefit of the Party; for it is intended there that the King is appriffed of the Matter; Contra where it comes by Suit of the Party, or by Surnifte: And it was said, that where the Sheriff returns Quarto exactus, and the Coroners above certify that the Defendant is outlawed, it Shall be intended that the Certificate of the Coroners is true, because they are Judges of it, and the Return of the Sheriff is false.

Quaternain's Cafe.

8. Where a Man pleads Pardon granted by Parliament, he ought to shew that he is not any of them who are excepted, and that he was not Adherent to M. who was excepted. Br. Charters de Pardon, pl. 46. cites 8 S. C. 4. 7.


Where Debating Exceptions are in the Body of an Act of General Pardon, there the Party ought to show that he is not within the Exceptions, but not to shew where the Exceptions are only in the Preamble of the Act; per Tividen, which the Court agreed. Keb. 27. Patch. 15. Car. 2. Whitwick v. Osborn. — S. C. argued 1 Lev. 26. but no Revolution; — Holt Ch. J. agreed, that there were many Authoritics, that he that pleads an Act of Pardon should shew that he was not within the Exception of the Act, and cited 3 Infi. 242. Yet he could not think it necessary to do it. If the Act excepts, it is not to be qualified and qualified; for if there be full General Word of Pardon, and after comes a Proviso or Exception, the natural Way is to plead the Pardon generally, and then the King's Attorney, upon View of the Pardon to enter upon Record in the Plea, is to shew that the Party is within the Exception. 2 Mod. 615. Hill 15 W. 3. in Cafe of Ingram v. Foot.

P. 12 Mod. 615. Hill 15 W. 3. in Cafe of Ingram v. Foot.
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Sergeant Hawkins says, If the Body of a Statute be general as to all Persons whatsoever, and afterwards some are excepted in the Provisions, perhaps it may be sufficient to plead such Pardon without any Averment, That he who pleads it is not of the Persons so excepted, it being a general Rule, that where a Man is within the general Words of the Body of a Record or Deed, which is qualified by subsequent Provisions, it is sufficient for him to bring his Case within such general Words, and that the Exceptions in such Provisions ought to be shown of the other Side. 2 Hawk. Pl.C. 397. cap. 37. S. 60.

If a Person who would take Advantage of a Pardon be of the same Name with one of the Persons excepted by Name, it is said that it will not be sufficient for him to aver that he was none of the Persons excepted, without adding that he is a different Person from the other of the same Name. But Sergeant Hawkins says, How it can be tried, unless it appear by some Addition to the Name in the Statute, may deceive to be considered. 2 Hawk. Pl.C. 397. cap. 37. S. 60.

10. And that if f. S. be excepted, and there are three of the Name, and the other pleads the Pardon, he ought to plead it. Br. Charters de Pardon, pl. 46. cites 8 E. 4. 7.

11. And where it is pleaded in Pais, where the Attorney of the King is not present to confess the Averment, they shall make Proclamation; and per Markham, the Court may rejoin for the King. Br. Charters de Pardon, pl. 46. cites 8 E. 4. 7.

12. If a Man be brought into Court by Capias Ultrajation upon Appeal, and he pleads the Pardon of the King against the King, he shall have Seire facias against the Appellant, without showing Matter of Discharge against him. 21 E. 4. 73. b. Per Hulffy Ch. J. who shewed thereof Precedents.

13. If Recognizance of Debt passeth for the King upon Issue tried, and after the King pardons it, this shall not be pleaded between Vr. deff and Judgment, but after Judgment. Br. Charters de Pardon, pl. 75. cites 11 H. 7. 12.

14. If Guodei deffo be brought, and a wrongful Entry is found, and a General Pardon in Parliament pardons all Offences, if the Tenant, when Judgment is given against him, does not figg to the Court, that neither be nor his Offence are excepted, if Judgment be entered Guodei Capturam, it is not Error; for there are many Exceptions in a Pardon; and in a Civil Matter the Court is not bound ex Officio to regard it, but they may if they will; and therefore if Judgment be given Sed non in Miscordia quin pardonat, it is good; for the Judges may, if they will, take Conuance of a Pardon, tho' it be not pleaded. Jenk. 258. pl. 54.

S. P. per all the Jujices in Can


S. 94. cites S. C. and 75 H. 6. 1 accordingly.

S. P. Lane

17. Bentley v. Leigh.—Vaghan ask'd Ellis whether, supposing there was a General Pardon, and the Party did not plead, nor the Judges did not take Notice thereof, whether the Party might have Remedies by Way of Error? And Ellis said No; because they would allege nothing for Error but what did appear in the Record; to which Vaghan assented. Prem. Rep. S. 4. Patc. 1673.; in Case of Phillips v. Cratly.

Sergeant Hawkins says, It seems agreed, that if any Persons are excepted out of a General Pardon, the Court is not bound, and some have held that it has no Power, in Discretion to give any Person the Benefits of it, unless it be pleaded. 2 Hawk. Pl.C. 536. cap. 37. S. 60. — But when a Pardon is general, without Exception of any Person or Cause, in such Case the Judges shall take Notice of it; per Doderidge. 2 Roll R. 597. Hancock's Case. —— The Party need not to aver that his Offence is not excepted in a General Pardon, because the Jujices have Notice sufficient of Offences excepted by the Words of the Pardon, but not of Persons; but this rells upon the Averment; by the Opinion of both the Chief Jujices, to which the Lord Keeper agreed. No. 619. Mich. 42 & 43 Eliz. in Case of Blake v. Allen. —— Where a General Act of Parliament excepts certain Kinds of Crimes, there is no Need to aver that the Crime whereof the Person is indicted, is not one of such excepted Crimes; but the Court ought judicilally to take Notice whether it be excepted, or not. 2 Hawk. Pl.C. 537. cap. 37. S. 62. —— Also where such a Statute excepts only one particular Person, it has been said that there is no Need of an Averment, that a Person is indicted not such Person; but that the Court is to take Notice whether he be, or not. 2 Hawk. Pl.C. 537. cap. 37. S. 65.

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and also that he brought Scire facias, and H. was returned dead, by which he was adjudged to go sine Die; upon which Plea the Defendant demurred in Law, because it was not averred that he is not any of the Person's excepted out of the Pardon, as 7 E. 4. 7. 4 H. 7. 8. Com. 103. But it seemed to the Court, that the Pardon is allowed enough to make any Man answer to the Action of the Plaintiff, but not against the Queen; for she is not bound by the Allowance. Mo. 393. Hill 54 Edw. Athley v. Harris. 16. A. was out lawed after Judgment before the General Pardon, and died after the Pardon. His Executors make Satisfaction, and without any Process plead the Pardon. Adjudged, that as in this Case no Scire Facias, nor Capias Utraga tum, nor other Process lies against the Executors, they may (after Satisfaction made) come in gratis without Process for the Necessity of the Case, and plead the General Pardon, with an Answer that they are not any of the Persons excepted. Adjudged per Cur. 6 Rep. 79. Trin. 5 Jac. Sir Edward Pittton's Case. 17. A. was indicted of stealing some Plate from King James, whereas it was in Truth Queen Anne's, and stolen from her, for which he was pardoned; and being again indicted, there was a General Pardon, excepting Goods pardon'd from the King; the Court doubting whether A. was within the Exception of this Pardon, advised him to plead. Cro. C. 4. 49. Hill. 11 Car. B. R. Bell's Case. 18. In Case for Words, the Defendant avails that the Plaintiff devoted as a Soldier against the King; Plaintiff demurs, by Reason of the General Pardon. But it was adjudged for the Defendant; for that the Plaintiff ought to have known that he was not one of the Persons therein excepted. Raym. 23. Mich 13 Car. 2. B. R. Harris's Case. 19. In a Scire facias brought upon an Inquisition against A who owed 30l. to f. s. who had been attainted for Murder; and executed, A. pleads that he was not indebted Mosto & formate. Hale Ch. B. held, that upon this Issue the Act of General Pardon could not be given in Evidence, but ought to have been pleaded; this not being a General Issue within the Intent of the Act, it would have been a good Bar. Hard. 421. Trin. 17 Car. 2. The King v. Barnard. 20. The Earl of S. was by the Convention, which was afterwards turn'd into a Parliament, Anno 1 W. & M. impeached by the Commons for High Treason, for being reconciled to the Church of Rome contrary to the Statute; and thereupon he was committed to the Tower by the House of Peers, and there continued till the Parliament was dissolved; and a new one called, and now (after a long Sessions) adjourned for two Months. And now the Earl was brought to the Bar by a Habens return'd from Corpus, and his Counsel moved that he might be discharged upon the new the Habens Act of Oliehman, which pats'd in the last Sessions of Parliament, where, in neither his Crime nor his Pardon were excepted, but clearly within the Act of Pardon. But per Cur. Notice cannot be taken of this Act, unless it be pleaded with the Averments; because there are several Exceptions in it, both as to Crimes and Pardons, therefore it is necessary that the Party, who would have the Benefit thereof, should aver himself by Plea capable of such Benefit, and not excepted therein, as 'tis ruled in Powden, and other Books; and here the Lord at the Bar cannot plead this Pardon, because there is nothing before the Court upon which to ground such Plea. Carr. 131. 132. Patch. 2 W. & M. B. R. The Earl of Salisbury's Case. 21. 12 H. 3. 2. No Pardon shall be pleaded in any Impeachment by the Commons in Parliament. 22. It seems plain, that Pardons of Manslaughter, or any other Felony except Murder or Rape, remain as they were at Common Law; from whence it follows, that the Pardon of the Felonious Killing of J. S. may be well pleaded to an Indictment of Manslaughter for killing him. 2 Hawk. P. C. 556. cap. 37. S. 18. 23. He
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23. He who pleads a particular Pardon, ought to produce it Sub Pedis Sigilli, tho' it be a Plea in Bar; because it is presumed to be in his Custody, and the Property of it belongs to him; yet if a Man pleads such Pardon, without producing it, the Court may in Diferent indulge him a farther Day to put in a better Plea; and that at such Day he may perfect his Plea by producing the Charter. 2 Hawk. Pl. C. 397. cap. 37. S. 65.

(X. a.) Charter of the King. Non Obstante. [The Original thereof.]

1. In Time of H. 3. about the Year 1252. the Clause of Non Obstante was used first in England by the King, in his Grants and other Writtings. Matthew Paris calls it an odious and detestable Clause. And Roger de Thurlsey then Jusliciary, fetching a deep Sting at the Slight thereof in the King's Grant, cried out of both the Time and it, laying it was a Stream derived from the sulphurous Fountain of the Clergy. Sched. 530.

(Y. a.) Non Obstante. Licences upon Penal Statutes.

1. When an Act of Parliament generally prohibits a Thing upon a Penalty which is Popular, or only given to the King, because it may be inconvenient to divers particular Persons, in Respect of Person, Place and Time &c. the Law has given Power to the King to dispence with particular Persons. Co. 11. Monopolies 88.

2. But when the Parliament has made an Act to restrain * pro Bono Publico the Importation of several foreign Manufactures, to the Intent that the Subjects of the King may apply themselves to the making of the said Manufactures, there the King cannot for a private Gain grant the sole Importation of them to one or diverse (without any Limitation) Non Obstante the Act. Co. 11. Monopolies 88.

3. As the King cannot licence a Man to import foreign Cards, notwithstanding the Act of 3 E. 4. for the Reason aforesaid. Co. 11. Monopolies 88.

4. Where a Statute concerns the Benefit of the King only, he may dispence with it by a Non Obstante. H. 7. Ta. 23. Per Coke.

* S. P. Per the Ch. J. S Mod. 18 Mich. 2 Geo. in Sir Hans Sloane's Cafe. To say that the King cannot dispence with a Law that is made pro Bono Publico, is to say that he can dispence with no Law at all, for all Laws are supposed to be pro Bono Publico, when they are first made; per Herbert Ch. J. Green. Rep. 495. Patch. 1692. in Sir Edward Hale's Cafe.

There is not any Difference when
5. But where a Statute concerns the Benefit of the Subject, there
the King cannot dispense with it by a Non Obstante. D. 7 PA. 26.

Per Curtail.

The Law differs, but the true Difference is, when the Law gives any particular Person an Interest, and when it concerns no one Person or than another; for there, in the first Case, the King cannot dispense, but in the last he may, because he alone is injured; for though such a Law be pro

Roso Subtinorum, yet it is not Singularisms, but Populi Complicati; and no One can have an Action, for as well every one may have an Action. Per Vaughan Ch. J. Freer. Rep. 128. Hill. 105. Thomas v. Sorell.

The King cannot dispense with any Thing that is forbid by the Statute de Pobitoribus, nor with the Statute against Mixing of Wine, for there is a particular Wrong to the Eater. Ibid. 159.

In Case of a Common Informer, after Action commenced, the King cannot dispense, because the Beginning of the Action doth attach an Interest in the Party, though the King might pardon it before Action brought. Ibid.

In some Cases the King cannot dispense where no particular Interest or Action was given, as in Case of Simony, or Buying of Offices &c. but that is because the Perons there are under an absolute Diffi-

bility, as if they were dead; per Vaughan Ch. J. Ibid. 159.

It was resolved that the King could not dispense with the Diffability upon the Statute of 3t Eliz. 6. of Simony, by a Non Obstante; for even an All of Parliament is made, to dispense any Person, or make any Thing void or a Statute for the Good of Church or Commonwealth, in this Law all the King's Sub-

jects have an Interest: and therefore the King cannot dispense therewith, any more than with the Common Law. 3 Inf. 144. cites Mich. 15. Jac.—But where a Statute prohibits any Thing upon a Penalty, and gives the Penalty to the King, or to the King and the Informer, the King may dispense with the Penalty; and this Diversity is warranted by our Books. 3 Inf. 154.

6. As where the Statute of 15 R. 2. cap. provides in the Nega-

tive, That the Admiral shall not hold Pleas of any Things but of those which were done super Alumn Mare, the King cannot by his Charter dispense with it by a Non Obstante, and give Power to the Ad-

miral to hold Pleas a potius Prouerius utique ad Mare, because this Statute was made for the Benefit of the Subject. D. 7 PA. 26.

Hicmen's Case. Per Curtail.

7. It was ordained by the Statute Staple of 27 E. 3. that Merchants

Aliens might bring over the Sea Merchandizes of the Staple, but not Merchants Denizens; and after, by the Act of the King and his Council, for certain Reasons Damage was granted of the said Merchandizes of Denizens; and therefore upon Proclamation made and sent to the Customers, to take them to pass till a certain Time, paying the Customes as Aliens. And because that the said Merchants Denizens doubteth them to be impeached in Time to come for their Merchandise which they have so palp'd, by Virtue of such Grant and Proclamation, forasmuch as they were made out of the Parliament, the King willing to provide for their Safety in this Behal, hath ratified and confirmed in this Parliament the same &c. 34 E. 3. cap. 21.


Statutes for Violence of Aliens out of the Realm be laid and ex-

cuted; to which the King agrees, Saying his Prerogative, that he may dispense with such as he pleases; and thereupon the Commons answered, that their Intention was no other, not ever shall be, by the Act of God.

9. Rec. Parl. 1. D. 5. N. 22. The Statutes of Providers confirmed, and that the King shall not give any Protection or Grant against the Execution of them, fixing the King's Prerogative; to which the King

agreed.

10. Where a Statute is, That none shall ship Wool, unless to Calais, the D. 5: Mar...

King may dispense with it by Letter; and this before Sessors, and Action taken by the Party &c. and this with Clause of Non Obstante. Br. Pre-

rogative, p. 122. cites 2 R. 3. 11.

11. Where a Statute is, That none shall ship Wool, unless to Calais, the D. 5: Mar...

King may dispense with it; thus as Lumley, and this before Sessors, and Action taken by the Party &c. and this with Clause of Non Obstante. Br. Pre-

rogative, p. 122. cites 2 R. 3. 11.
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11. The King licensed one to transport Bell-mettal, Non Obliante any Statute made, or to be made; afterwards an Act was made, prohibiting the Exportation of Bell-mettal, upon a Penalty. It seemed to Baldwin and Shelly, that by this Act, to which every Man is Party, the Licence was revoked, and that the King cannot dispense with a new Law to be made, before it is made, as he may in Things to come, in which he hath an Inheritance; as he may grant to one to be discharget of Taxes, and Subsidies to be granted, and it is good. Quere. Dy. 52. pl. 1. 2. Hill. 33. H. 8.

12. The Act 4 H. 7. cap. 9. prohibits the Importation of Galloigne Wine, but only in English Ships, and the Master and Mariners being English, under Pain of Fortiture &c. afterwards the King by Letters Patent licensed one to import 600 Tun of that Wine in any Ship, Non Obliante the Statute, without saying any Thing of the Mariners &c. And by the Statute of 32 H. 8. cap. 14. it is enacted that the said Statute shall stand in full Force, so that from henceforth no Peron shall attempt to do any Thing contrary thereto, upon the Pain limited in the said Statute. And upon Information brought in the Exchequer against the Alliance of the Patencce, for importing contrary to the 4 H. 7. 9. he pleaded the King's Grant, without a Prolert hic in Curia of the Letters Patents. And the better Opinion was, that for that Reaon the Plea was ill; but as to the Matter in Law, whether the Grant was good or not, they seemed not fo; quere. And by the Report of Baron Fortescue, the Judgment was given for the King the same Term, for the Insufficiency of the Plea, but not for the Matter in Law. Ideo inde quære. D. 54. pl. 17. Mich. 34 H. 8. Richard's Cafe.

13. No All can bind the King from any Prerogative which is sole and infeprable to his Person, but that be any dispence with it by a Non Obliante; and this Royal Power cannot be restrained by any Act of Parliament, neither in Their nor in Hypotheli, but that the King by his Royal Prerogative may dispence with it. 12 Rep. 14. b. Hill. 24 Eliz. Anon.

14. Where a Statute expires, and is revived, it seems as if Non Obliante to the expired Statute will not reach the new revived one. See D. 202. b. 70. Marg.

15. It was resolved by the Lord Ch. J. and Lord Chancellor Egerton, upon mature Deliberation, and hearing Counsel, that the King could not dispence with the Disability upon the Statute 5 E. 6. cap. 16. of Buying Officers. 3 Infr. 154. cites 12 Jac. Sir Arthur Ingram's Cafe, alias Sir Robert Vernon's Cafe.

16. J. H. and N. H. his Son, having a Joint-patent of Clerks of the Court of Wards, with an express Provision, that if one of them should die, the other should enjoy the whole Non Obliante the Statute. J. H. being dead, Sir S. L. moved the King that he might be joined by Patent to N. H. the Survivor, upon Opinion that by Words of the Statute 32 H. 8. (viz. that there should be two Clerks to be named by his Highness to be Clerks of the said Court.) This was referred by his Majesty to Vifcount Wallingford, Lord Hobart, and Sir James Lea Attorney of the Court; and they certified the King (having heard Counsel, and seen the former Grants ever since the Erection of the said Court) that the King
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King was not bound to the Number, but * might with a Non Obstante because if this Officer is minislerial. Jenk. 202. pl. 54. 5. C.

17. The Statute 3 Jac. 1. cap. 4. which gives forfeitures for Recusancy says, S. 11. That the King may refuse the Penalty of 50 l. a Month, and take Two-third Parts of his Lands and Leases which shall be or come to such Offenders, till be or they shall conform, in Lieu of the 20 l. Monthly; and S. 12. is, That the King shall not leave the said two Parts to the Recusant, or to any other for a Recusant's Use. The Lord Brudnel was a Recusant Convict. The Earl of W. took a Leafe of the King of two Parts of his Estate, in Trust for the Recusant, and with a Non Obstante of the Act above mentioned; but because the Trust did not appear by any Matter of Record, the Court would not take Notice of it by any Matter Dehors; but their Opinion was, That the King in this Case could not dispose, because he was disabled by the Act to grant &c. Hard. 110. Patch. 1658. in the Exchequer. The Attorney General v. Earl of Westmoreland.

18. In Debt upon the Statute 12 Car. 2. cap. 25. which enacts, That no Person shall Sell Wine by Retail, unless enabled according to this Statute, under the Penalty of 5 l. for every Offence. Upon * Nil Debet pleaded the Jury to find the Statute 7 E. 6. cap. 5. That none sell Wines without Licence, according to the said Act. Then they find the Patent of 9 Jac. incorporating the Vintners of London, and such as should be free of their Company might sell Wine by Retail, or in Grogs, within three Miles of London &c. in their Houses or elsewhere, Non Obstante the said Statute 7 E. 6. or any other Statute made or to be made. They likewise find the Statute of 12 Car. 2. 25. and a Provost therein not to prejudice the Vintners Company, but that they may a Ke and enjoy such Liberties as they have heretofore lawfully used. It was argued, That the Patent was void in its Creation. 1st. In respect of the Persons to whom it was made, &c. a Corporation, which never was subject to an Ufe, and therefore not capable of such a Trust as to make them plead Free of their Company, or exempt them from the Law, and in Effect to delegate to them a Power to exempt whom they please from the Law, and thereby delegate an Exception to every one who should be Free of their Company. 2dly: Because it was for ever, and so not good in Point of Time. 3dly. That it was void, in respect of the Places extending to great Part of the Realm, whereas Dispenfato e provida Relatatio fuis pro Necessitate penuit. Thurland, Windham, Ellis, and Turner Ch. Baron held, that the Patent was never good; and grounded themselves much upon the Reasons before alleged: But the 8 others held it good in its Creation. Lev. 217. Trin. 19 Car. Thomas v. Sorrel.

Prerogative, are very minutely treated of. — Hard. 443. to 451. seems to be S. C. by Name of Thomas v. Waters — S. P. ibid. 464. Thomas v. Boys. — * Turner Ch. B. took Exception to this Plea; for the Defendant ought to have pleaded the Special Matter; because when an Information or Action is brought upon any Statute, if the Defendant be discharged by any Proviso therein, he may give it in Evidence; but if it be any Foreign Matter, even tho' it be a Licence pursuant to a Proviso of that Nature, he must plead it. And Hale said, that a Licence pursuant to a Proviso, is all one as a Proviso, and is might be given in Evidence. Freem. Rep. 129. Mich 1652. Thomas v. Salmauth, but seems to be S. C. And says that this Exception was not taken Notice of by Council or Judges till Turner argued, and who was the 8th Judge that argued.

* Many Precedents of Licences to Corporations, Non Obstante Statutes, are mentioned Vaugh. 232 to 254.

19. But it was agreed, That this Non Obstante in the Patent of King James could not dis pense with the Statute of Car. 2. made after, notwithstanding the Words (Or any other Statute made or to be made.) Ibid. 218.

20. And it was agreed by all (except Thurland) That the Prov iso in the Statute of 12 Car. 2. exempts the Vintners of London out of this Statute,
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(1) Non Obstante. Good. In what Cases the King may dispence.

T.H. E King granted the SCripture of the County of N. to the Earl of N. for Term of Life, with all Profits thereunto appertaining, rendering 100 l. per Annum, abique alique [also] reddendo: And it was agreed, that it may be granted for Term of Life, or in Fee; and there was a Clause of Non Obstante to dispence with the Statutes of 29 E. 3. cap. 7. and 43 E. 3. cap. 9. which will, that none shall be Sheriff above a Year. Br. Patents, pl. 109. cites 2 H. 7. 6.

2. And per Ratcliff, The King by his Prerogative may by the Clause of Non Obstante dispence with the Certainty and Value of the Land granted by Patent, and of the Shipping of Wool, or of Charters of Murder being void for not finding Sureties. Br. Patents, pl. 109. cites 2 H. 7. 6.

...
3. The King cannot dispense with any to do a Nulcece in the High-
way; and if he does, such Dispensation is void. Dav. Rep. 75. a. Patch.

4. Tho' the King may dispense with a Statute, which prohibits an in-
different Thing to be done, yet he cannot change the Common Law by his
Where a Statute is made only in Cafe of the King,
and not to abridge his Prerogative, it was adjudged that the King may dispense with it.
2 Mod. 263. 75. 2, in the Exchequer, Arris v. Stukely.—But the King cannot dispense with the Common Law with a Non Obstante. Dav. Rep. 75. b. Patch. 9 Jac. C. B. in the Cafe of Condems; cites 4 Coke 53. Boizoun's Cafe.

5. The Office of the Almager was by several Statutes prohibited to be
granted without a Bill sealed by the Lord Treasurer, and lent by him to the
Court of Chancery, as had been accustomed, or otherwise it should be void. Queen Mary granted the said Office de Gratia speciali, certa
Scientia, & mero Motu, to one Ward for 21 Years, without any such Warrant. Adjudged by the Juftices de Banco, that the Grant was
void, tho' a Clause of Non Obstante to any Statute is contained there-
in; and that by Reafon of its not being thrown to the Court that fuch
Claufe was in the Grant. Dyer 303. pl. 48. Mich. 13 & 14 Eliz. 
Ward's Cafe.

6. When the Words of a Grant are not sufficient ex 51. Termini to post S. C. Godb. the Thing granted, but the Grant is utterly void, there any Non ob-
flante cannot make the Grant good; but in Cafe of Grant of Land which is in Life for Life, or for Years, there, by the Grant of the Land the Words are ex Vi termini sufficient to make the Resumption post, but the Law requires that the King be not deceived in the Thing granted, and therefore this is supplied by a Non Obstante. 4 Rep. 35. b. 36. a.

7. When the King by the Common Law cannot in any Manner make a S. C. cited Grant, there a Non Obstante of the Common Law will not, against the 
Reason of the Common Law, make the Grant good. But when he may 
lawfully by the Common Law make the Grant, but the Common Law 
requires, that he be so instructed that he be not deceived, there a Non Obstante supplying it stands with the Reason of the Common Law, and 
shall make the Grant good. Resolved 4 Rep. 35. b. Mich. 26 & 27 
Eliz. B. R. Boizoun's Cafe.

8. If the King grants a Proteaion in Quane Impedit, or Affete, with S. C Godb. Non Obstante of any Law to the contrary, this Grant is void; for by the 
Common Law Protection does not lie in any of those Cafes for the Loss which may accrue to the Plaintiff by such great Delay; and therefore the Non Obstante cannot avail, when by the Common Law the King cannot grant it. Resolved 4 Rep. 35. b. Mich. 26 & 27 
Eliz. B. R. in Boizoun's Cafe.

9. A pleaded his Pardon for the Murder of B, wherein the King 2 S. P. ; Moi pardoned Feloniam & Feloniam Interpellationem Non Obstante the 13 Rich. 2, before which Statute Murder was pardonable by the Name of Felony, which was adjudged good; but it had been without a Non Obstante, it would have been void, because by that Statute the Pardon of Murder is prohibited. Mo. 72. pl. 1033. Hill. 1 Jac. Lucas's Cafe.

held good by the whole Court; and Jeffries Ch. J. Ead, that he had propofed this Cafe to the whole Judges of England, and they were all of the fame Opinion; and that he remember'd Dutley's Cafe, where a Pardon in general Words was allowed.
Sergeant Hawkins says, It so fully appears from the express Words of 15 R. 2. That the King's Prerogative but if Pardon of Murder, Rape or Treason cannot be good without a Chance of Non Obstante, that he says he does not know that it has ever been disavowed. But it has been often formerly repudiated, That a Murder might be well pardoned under the general Declaration of a Pardon, and that the Charter had the Chance of Non Obstante of this Statute; which Contradiction seems to a great Measure to excuse so excellent a Law, by barely changing the Form of the Charter; but it seems difficult to give a good Reason why this Statute should to cally be evaded, which was made for the Prevention of such great Mischiefs, and no way tend to abolish the King's Prerogative, but only to put such a Restraint upon the Abuse of it, that every one must own it to be reasonable. But if such Opinions were founded upon the King's Power of dispensing with Statutes, they seem to have been of little Force since the Statute of 11 H. 8 M. 2. by which it is declared and enacted, That from and after that Sefion no Dispensation by Non Obstante of, or to any Statute, or any Part thereof, shall be allowed. &c. 2 Hawk. Pl. C. 380. cap. 57. S. 17.

10. The King may dispense with Malum Prohibito before the Office is committed, and pardon it after it is committed; but he cannot dispense with Malum in se before it is committed, but he may pardon it afterwards. By all the judges of England. Jenk. 307. pl. 83. cites Hill. 2 Jac. 7 Co. 36. b. &c. The Cae of Dispenfations.

Malum in se, was of little Use, if not rightly understood; for every Action in it fell is good, and the End of it is, that it is prohibited by some Law; for Sin is the Transgression of a Law. But he said, That what we call Malum in se, is either that which the very Term implies to be Unlawful, as Murder is Unlawful Killing. Adultery is Unlawful Seduction; and these can by no Law be made Lawful: and much less can the King dispense with them; for such Laws would certainly be void, because there is a Contradiction in the very Term; for it is impossible that Murder, which is the Unlawful Killing of Man, should be Lawful, tho' a Law might be made that it should be Lawful for such and such Causes to take away the Life of a Man, which to do, as the Law stands now, would be Murder. And a Law might be made, that the that is the Wife of A. should be the Wife of B. and then it would be to Adultery for B. to lie with her. 2d. Another Sort of Malum in se are such as the Law of the Land doth admit to be prohibited Ius Deiæ; for these can, by no Human Law, be dispensed withal; for whenever may be made Lawful by any Human Law, is not Malum in se. The true Difference where the King may dispense, and where he may not, is not when it is Malum in se, and when it is Malum Prohibita; for there are some Malum Prohibita by Statute, that the King may dispense with, and others that he cannot. Frem. Rep. 131. 135. Hill. 1673. in C. B. Thomas v. Sorrell.

Neither doth it make any Difference, when the Law dispensed with is Capital, or when it is leis Pardon; for there are some Capital Laws that he may dispense with, as 5 Init. 74. Frem. Rep. 133. Thomas v. Sorrell.


12. Upon a Purview in the Statute of Westm. 2. cap. 10. there was great Question whether the King might dispense with that Law, and give a former Day than is thereby prescrib'd; and in the End it was resolved that he might for the Advancement and Furtherance of Justice. 2 Init. 377.

13. The Statutes of 2 E. 3. 10 E. 3. 14 E. 3. 13 R. 2. ordain that the King's Pardon of Notorious Felonies, Rapes, Murders, should not be granted or allowed, altho' it hath the Words of Non Obstante any Statute; yet Patents of Pardons of such Offences were allowed with a Non Obstante any Statute, and notwithstanding any Caution to defeat the Non Obstante. Mr. Jenkins says, In his Time no such Pardon was pass'd and allowed (that he ever heard of) without the Judges Certificate, before such Pardon was granted. If any such Pardon be pleaded before any Judge, he ought not to be Tum traïtis adiectus Animæ, to allow it immediately; if he does so, he is not worthy to be a Judge; he ought to reprove the Prifoner, and signify the Circumstance of the Offence to his Majesty: And upon this Right shall be done with Regard to the Publick Good. Jenk. 398. pl. 84.


15. The King cannot dispense with the Laws of Maintenance, Forcible Entries, carrying Diffideos out of the Hundred &c. the Reason is not because they are Malum in se, but because the Party that is grieved hath by the Law an Action given him; for it is not Malum in se to maintain a lawful Suit, nor to enter forcibly where a Man hath Right &c.
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10. There are some Cafes wherein the King cannot dispence. 11. Mala in se, such Things which by the Law of God or Nature are evil, antecedently to any Human Law; nay, the King cannot dispence with a Law made for the Punishment of any such Offence, as a Rape is Felony by the Law, the King's Dispensation will not make it none, and that answers the Cases of " Simony. 2dly. Where the Subject hath a particular Interest or Damage; and therefore the King cannot dispence with a Nulitance, and the Statute of Ultra. 3. Where there is a Precedent Dispensation, and therefore where a Man buys any Office within the Statute of E 6. the King's Dispensation will not avail him, because by the Contract a Disability is created in him. Per Herbert Ch. J. But if he got the Dispensation before, and contract afterwards, it seemed to him that it was good. And he said he knew no Cae that did not come under one of these Heads, but that the King could dispence with it. Freem. Rep. 403. Patch. 1682. in Sir Edward Hale's Cae.

17. H. 8. granted the Manor of S. with the Appurtenances, and then followed these Words, viz. All which are of such a yearly Value, as is expressed in such a particular, with a Non Obstante of any Misdemeanor of the true Value, or that they were of greater Value. The Value was not truly expressed in the Particular; but Hale Ch. B. held the Grant good; he said that the Reason why a Misake in the Consideration, or in the King's Title, or the Non-recital of an Estate or Lease in Being, shall vitiate the King's Patent is, because by his Prerogative he ought to be truly informed of his Cae; but it is otherwise in the Cae of a common Person, whose Grant is to be taken most strongly against himself; and that here the Non Obstante aids those Defects; and it is the proper Office of a Non Obstante to do so, as appears in § Rep. Bottom's Cae; and that without Doubt, if there had been such a Non Obstante in the Patent in Arthur Legate's Cae after the Clause, Quæ quidem omnia sunt concepita, Non Obstante that they are not concealed, all would have pass'd which was comprized in the Patent; to which all the Court agreed. Hard. 231. Trin. 14 Car. 2. in the Exchequer. The Attorney General v. Hungate.

18. 1 R. 2. enacted, That no Customer or Comptroller should have any Office in the Customs for Life, but only during the King's Pleasure. In 12 Car. 2. the King granted the Office of Comptroller of the Customs in the Port of Exeter to R. S. and T. S. Durante hereplacito. R. S. died. Two Years after the Death of R. S. the King granted the Office to A. [for Life, as it seems, tho' it does not appear in the Cae], with a general Non Obstante of all Statutes, but without any Mention of this Statute in particular; and it was insisted that this Statute being made for the Publick Good, the King cannot by any Non Obstante dispence with it. But afterwards the Court gave Judgment for the Plaintiff, and held that the King might dispence with this Statute for the Subject had no Interest, nor was he any ways concerned in the Prohibition; that it was made only for the Cae of the King, and not to abridge his Prerogative; and that the General Clause of Non Obstante aequo alto Statuio was sufficient. 2 Mod. 260. 263. Trin. 29 Car. 2. in the Exchequer. Arris v. Stukely.

19. And by the like Reason he might dispence with the Statute of 4 H. 4. 24. That a Man shall hold the Office of Almager without a Bill from the Treasurer. Ibid.

20. And with the Statute of 31 H. 6. 5. That no Customer or Comptroller shall have any Estate certain in his Office. Per Cur. for the Reasons above. Ibid. in the Cae of Arris v. Stukely.

21. In many Cases the Dispensation of the King by a Non Obstante is good; As where a Statute prefers the Form of the King's Grant, where it doth not directly prohibit a Thing, but only under Pain of a

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Forfeiture; but if it be direft & pro Bono Publico, there a Non Obstante is not good; he can't difpence with the Statute of 31 Eliz. againft Simony; for the Party being disabled by an Act of Parliament, can't be enabled by a Non Obstante. He can't difpence with the Statute of Leafe of Ecclelitical Perfon's, nor with the Jurifdiction of the Admiralty encroaching on the Common Law; for the Foundation of a Non Obstante is in the King's Prerogative, and is current in his Grants; but in thole Statutes the Subject has an Intereft. Arg. 2 Mod. 261. Trin. 29 Car. 2. in Exchequer. in Cafe of Arris v. Stukely.

(Z. a.) Officers of the King. What Things they may do Ex Officio.

See (F. b.) pl. 1. & 9. and (G. b.) pl. 1. Mo. 476.

They cannot without the King's own Warrant. 11 Rep. 92. Earl of Devonshire's Cafe.

(A. b.) Seals. The Antiquity of the Seals.

1. MITCH. 14 Jac. B. R. upon Evidence at the Bar in a Case between Sir Carew Reynell and Whitesturn, where White was, Whether the Abbot of Westminster, before the Dissolution, held Plea of all Actions personal under 30s. (which Court, after the Dissolution was granted to the Dean and Chapter of Westminster) there was shown in Evidence an Indictment by R. 2. of the Patent of King Edward the Confessor, by which he granted to the Abbot of Westminster Socam & Sakam (hœc eì, Conuance of Plea) and at the same Time a Patent of King William the Conqueror was shewn, Ann. 10. of his Reign, well wrote, and sealed with a fair Seal of Wax, which had an Inscription; and upon the one Part of the Seal is the Image of a Man having an Ear of Corn in one Hand, and a Cross in the other Hand; and upon the other Part of the Seal is the Image of a Man riding upon a Horse; and by this Patent he confirms the Privileges, granted by the said Patent of Edward de Scot & Sakam, and those Privileges were confirmed by diverse Popes, as was written upon the Back of this Patent, selicet, By Innocent the 2d. by Eugenius the 3d. by Adrian, Alexander and Clement. Nota by those Patents the Antiquity of the Law of Patents with Seals. Mr. Floyer of Devon has a Grant of Land by Rivers Earl of Devon under his Seal of War fare and laced, in Time of King Stephen, and a Confirmation of it by another of the Earls, in Time of King John.

2. Vide Speed. 415. 418. b. says, that William the Conqueror used to seal his Charters, which was circumscribed of one Part, that he was Normannorum Patronum, and of the other Part, that he fuit Rex Anglie.

3. William the Conqueror granted to the City of London their ancient Liberties, by a Charter sealed with green Wax. Speed. 424. b.

4. And another Charter of his is there cited, the Wax whereof was bitten with his Tooth in Token of Sooth.

5. The Saxons were wont to seal with guilled Crosses, and such like Marks. Speed. 424.
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6. R. 1. Sealed his Charters with a Seal of Arms, and he was the first who sealed with a Seal of Arms. *Speed* 479.

7. R. 1. upon his Return from Jerusalem changed his Seal; for where before it was 2 Lions Rampant Combating, now he changed it into three Lions Pallant. *Speed* 479.

8. There is in the Study of Sir Robert Cotton a Patent (which he had seen) of King William the Conqueror, under such Seal as is above said, to be put to the Grant to the Dean and Chapter of Westminster, which was made to the Abbot of Bath, and which was the Charter of their Foundation. And there is another Charter of King William Rufus under his Seal to the same Abbot. *Pike Francis Angler* 67, 68, of the Antiquity of Seals of War or Relations Scolen.

9. On the 11th Day of June 43 E. 3. the King's Great Seal was safely laid up, and another Seal, engraved with the Stile of France, was taken and used, and sundry Patents, Charters and Writs therewith sealed; and the same Day were all other the King's Seals in like sort chang'd. *Prynne's Cotton Rec. Ald. 108.*

(B. b.) The Diversity of Seals, and what.

1. There is Mention made in ancient Books and Records of Writs under the Targe, and without the Targe. *17 E. 3.* 59. b. A Man had Writ of Scire facias without the Targe.

2. It seems that by Writs under the Targe is intended Writs sealed with a Part of the Great Seal of England, &c., that Part which has the Scripture of the Targe, and is so called from the Picture of the Targe, which is made upon the War of the Writ by the said Part of the Seal.

3. There is Mention made of Writs sub pede Sigilli, as of Others.

4. It seems by this is intended, when the Writ has the Print of the Foot of the Great Seal.

5. There is Mention made sometimes of Writs under the Half Seal, *36 E. 1.* cap. 5. where it is enacted, That all Sentences given in a Marine Cause upon Appeal to the Queen in Chancery by such Commissioners or Delegates, which shall be nominated by the Queen and her Successors, by Commission under the Half Seal, as it hath been heretofore used in such Causes, shall be final &c.

6. There is a Seal for the County Palatine of Lancaster, and another for the Dutchy (i. e.) such Lands as lie out of the County Palatine, and yet are Part of the Dutchy; for such there are, and the Dukes of Lancaster held them, but not as County Palatine, for they had not Jurisdiction over them. It is for this Reason that the King may make a Corporation by the Seal of the County Palatine, within the County Palatine; but he cannot grant or make a Corporation by the Dutchy Seal within the Dutchy Lands. *3 Salk. 111. Hill. 2 W. 3. B. R. in Case of Cotton v. Johnlin.*

S (C. b.)
Prerogative of the King.

(C. b) King. Grant. Seal. 
What Things ought to be granted under the Great Seal.

BY the Common Law no Grant of the King is available or pleadable but under the Great Seal of England. Co. 2. Lane's Case, 16. b. per Curiam resolved.

2. 28 E. 1. cap. 6. Henceforth no Writ concerning the Common Law shall be awarded under the Petit Seal.

This Act says not. That all Writs which concern the Common Law shall pass under the Great Seal, but no Writs shall pass under the Petit Seal which touch the Common Law; for it is to be known, that the Court of the King's Bench, and the Common Pleas had, at the making this Statute, several Seals, whereby they sealed Judicial Writs. As the Seal belonging to the Court of King's Bench is in the Custody of the Ch J and likewise the Seal belonging to the Court of Common Pleas is in the Custody of the Ch. J. of that Court, and the Seal belonging to the Court of Exchequer is in the Custody of the Chancellor of that Court. Ad Cancellarius Scaccarum pertinet Cofiidius sigilli Regis. *Officium Cancelliarii e sigilli Regis Cuftodiae, fumum cum contrarietutus ftatis pro proteanis Regnis, and their Seals are fubftratible to the fad Courts for the sealing of all Judicial Writs &c, which, for Administration of Justice distributive to all Men, are respectively under the fad Seals, and without which the Courts cannot administer Justice; and therefore the Profits coming of them have been letten and demifed of ancient and later Times, but the Seals themselves were never demifed, or letten, nor could be, nor any other Keeper appointed to be Keeper of them, than has been Time out of Mind. 2 Inf. 552. cap. 6. * Fleta 2 lib. cap. 12. § 1.

This Act says not. That all Writs which concern the Common Law shall pass under the Great Seal, but no Writs shall pass under the Petit Seal which touch the Common Law; for it is to be known, that the Court of the King's Bench, and the Common Pleas had, at the making this Statute, several Seals, whereby they sealed Judicial Writs. As the Seal belonging to the Court of King's Bench is in the Custody of the Ch J and likewise the Seal belonging to the Court of Common Pleas is in the Custody of the Ch. J. of that Court, and the Seal belonging to the Court of Exchequer is in the Custody of the Chancellor of that Court. Ad Cancellarius Scaccarum pertinet Cofiidius sigilli Regis. *Officium Cancelliarii e sigilli Regis Cuftodiae, fumum cum contrarietutus ftatis pro proteanis Regnis, and their Seals are fubftratible to the fad Courts for the sealing of all Judicial Writs &c, which, for Administration of Justice distributive to all Men, are respectively under the fad Seals, and without which the Courts cannot administer Justice; and therefore the Profits coming of them have been letten and demifed of ancient and later Times, but the Seals themselves were never demifed, or letten, nor could be, nor any other Keeper appointed to be Keeper of them, than has been Time out of Mind. 2 Inf. 552. cap. 6. * Fleta 2 lib. cap. 29.

So of Warrant of Execution of Sentences Regis. Ibid.

4. 4 H. 7. cap. 14. All Grants and Writings of Lands, and other Things pertaining to the Earlom of March, shall be under the Great Seal, and not under the Special Seal.

5. The Statute of 27 H. 8. of Establishment of the Court of Augmentation enacted. That all Patents to be made for Life or Years, of any Office concerning the Lands of the Court, shall be vested with the Great Seal of that Court &c. The Honour of Petworth in Sufex was by Act of Parliament within the Survey of that Court. The King granted the Office of Steward, and divers other Offices of the fad Honor, to the Earl of Southampton for Life by Bill affigned, which passed under the Great Seal in Chancery. And whether this Grant under that Seal was good or not was much doubted, by reason of the above Clause. Diverse Serjeants thought it the surest Way to have it under the Seal of Augmentation, because of the Word (shall) which is a Word obligatory, and, as it were, compulsory; but some thought the Grant under the Seal of the Chancery.
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Chancery good in Law; For Bromley said, That if it be enacted by Parliament, that the youngest Son shall have Appeal of the Death of his Father, this does not exclude the eldest Son of his Suits, because there are not any Words of Reference. D. 50. pl. 1. Mich. 23. H. 8. Lord Southampton's Case.

by such Lands] Ral. Stat. 128. Paragraph 2. — S. P. Arg. and resolved, that in the principal Case in D. 50. a Deed made under the Great Seal of Lands within the Survey of the Court of Abstract; by the Authority of the same Book is not void. 11 Rep. 64. b. Mich. 12 Jac. in Dr. Fother's Case.

6. Great Seal shall be always credited, and where the Certificate under it is not strictly true, there is no Remedy but an Act of Parliament, or by Authority of the Chancellor of England, to cause the Parties to bring the said Exemplification with them into Chancery, there to be cancelled, or remain with &c. as was said in the Duke of Norfolk's Case. But in Exemplification under the Seal of C. B. or R. or Esquire, it is otherwise; For they have not such Force in themselves, nor import such Truth; per omnes Just. Dal. 19. pl. 4. 3 & 4 P. & M. Anon.

7. H. 8. seified of a Manor as Parcel of his Dutchy of Lancaster, grants to the Fraternity of Walden two Mills &c. as Parcel of the said Manor in Fee, refering a yearly Rent of 10 l. and then grants the Manor and Rent to Ld. Audley in Fee. Ed. 6. upon the Dissolution of the said Corporation, grants the said Mills to the Corporation of the Vill of Walden, refering a Rent of 10 l. Nobis Hæredibus & Succéssoribus vel tali Capitali Domino ad quem &c. de jure pertinebit &c. It was held, that the Manor and Rent were not pulled together by the Grant to Ld. Audley, but severed. For the Manor, with its Rights, Members, and Appurtencies, was granted under the Dutchy Seal, by which the Rent could not have passed, and the Rent was granted under the Great Seal, which otherwise could not have passed at all; and for this Reason it was adjudged, That the Corporation of the Vill of Walden should pay a Rent of 10 l. to the Crown; over and above the Rent referred to Ld. Audley, which was not due to him as Capitallis Dominus, by Reason of the Severance in the original Grant. Adjudged. Mo. 167. Mich. 26 & 27 Eliz, the Case of Salford Walden.

8. The granting of Reprisals extraordinary is always under the Great Seal. 1 Molloy 28. cap. 2. S. 8.

(D. b) What Things may be granted under the Great Seal.

1. A Presentation to a Church, the Advowson of which belongs to the Dutchy of Lancaster, may be granted under the Great Seal; For it is a Flower fallen from the Tree, and not within the Statute of 3 H. 5. 29. 10 Ja. 25. between the King (Dominus) and the Bishop of Lancar and King Defendents, per Curtium. Trin. 11 Ja. 25. adjudged same Case.

Ordinary, and does not concern the Inheritance; and it was held such Presentation might be even by Parol. Moor 82. Mich. 11 Jac. — But such a Grant of a Word of the Dutchy is not good, as has been adjudged. Mo. 84. cites Trin. 8 Jac. Rot. 181. — S. C. cited 2 Lutw. 125. in Case of Atill v. Clark. — If the King has an Advowson in right of the Dutchy, he may present therein in right of the Crown. Cro. J. 24, 25. per Coke J. Trin. 8 Jac. C. B. in Case of the King v. . . . (Which seems to prove the same Point, that a Presentation to a Church, Parcel of the Dutchy, may be under the Great Seal.)
2. But a Grant of the next Avoidance of such Augmentation cannot be under the Great Seal, but ought to be under the Duchy Seal. V. 10. 7a. B. per Curiam.

A Petition was made under the Great Seal to a Church, which the King had in Right of a Ward, and held good; for that he may make such Petition either under the Seal of the Court of Wards or the Great Seal. Cro. C. 70. Mich. 3 Car. C. B. Stephens v. Potter.

(E. b.) What Things done under the Exchequer Seal shall be good.

1. The King may make a Man his Bailiff of his Manor by Patent under the Exchequer Seal, and it shall be good. P. 5. 7a. B. between Tomlinson and Besson, per Curiam.

2. If A. makes a Leaf referring Rent, and after is outlawed, and this found by Inquisition, the King may grant over the Benefit of the Outlawry to a common Person under the Exchequer Seal, and thereby he may have Account for the Rent incurred after against the Leifie. Mich. 10. Car. B. R. between Coplepper and Coventry, per Curiam, upon a special Verdict, and the Court then said, That this was the common Course of the Exchequer. Intracate. Trin. 7 Car. Rot. 385.

3. A Lease for Years of Land made by the King under the Exchequer Seal by the Custome of the Court of the Exchequer is good, and shall bind the King; For it has been to Time out of Mind st. Cro. 2. Lane's Case. Adjudged. 16 b.

4. 8 D. 6. 34. b. Br. Leases, 71. Nace, that the Order of the Exchequer is to make their Leases by the Word Committimus such Land's Habendum &c. Redendo such Fermi [Rent] this is a good Lease by the ancient Usage there.

Cro C. 513. S. C. —Rennolds Ch. B. doubted this Case, and that from the general Tenor of the Books the Usuall there was much referre to the Manner of granting, and taking it so, he knows of no Authority to support such Grant; But if an Office for Life had been found to be an ancient Office, and to have been_usually granted under the Exchequer Seal, it might be good; and the whole Court inclined, that an Office for Life granted must be under the Great Seal; but this being on the first Argument, i.e. not to do, it is his final Opinion Gibb. 294 in the Exchequer, Trin. 5 Geo. 2. Mills v. Keyes.

6. Ca. 10. Prid. e Nap. 12. upon the Statute of 35 El. cap. 3. the Ways (Confirmation of Letters under any Seal) are interpreted under the Exchequer or Augmentation Seal.

7. In an Information of Intrusion upon Demurrer the Case was, that the Husband desuyled to his Wife, who was an Alien Born, and by a Commission under the Exchequer Seal, the said was found to be 153, by reason whereof the King was intituled to the Land; but adjudged, that the Inquisition
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Inquisition was void; because this is Office of Intitling, which should be send on Non-payment of Rent, and be under the Great Seal, but an Office of Information or Information may be under the Exchequer Seal. 5 Rep. 52. Mich. 29 & 30 Eliz. in Sevice. Page’s Case.

The Exchequer Seal, it was found, that the Rent was not paid, and thereupon the Queen makes a new Lease. Upon a special Verdict in Trespass, the Plaintiff had Judgment for this Reason (among others,) That the Commission under the Exchequer Seal was not sufficient to find a Condition broken upon a Lease for Life, though upon a Lease for Years it might be found and in any County being an Office only to inform the Queen. Cro. E. 843. Trin. 42 Eliz. Rot. 641. B. R. Parlow v. Corn.—Hos. Patch. 2; Eliz. Knight v. Beech.

So a special Verdict in Ejectment found, that the Defendant, being inditled on a Statute 13 Eliz. for a Premontre, made a Gift in Tail of his Lands, and was afterwards found Guilty; and then by a Commission under the Exchequer Seal, it was found, that he was setled in Fee at the Time of the Offence committed, and that the Queen had granted the Lands to one under whom the Plaintiff claimed, and that the Defendant claimed under the Tenant in Tail; adjudged, that to sell the Lands in the King there must be an Office found by Inquisition under the Great Seal, without which the Freehold could not be divorced from the Party, and that the Inquisition under the Exchequer Seal is only an Information to the King and his Officers to put the Lands in Ouse. Cro. C. 172. Hill, v. Car. Rot. 828. Groffe v. Gayer.—Jo. 247. Mich. 5 Car. B. R. S. C. by Name of Groffe v. Gayne.

8. If any Manor or Land, of whatsoever Value, comes to the King by Sea Leafe for Attainder or otherwise, the Chiefly thereof may be granted over under the Exchequer Seal by the Authority of the Lord Treasurer and Chancellor there without special Warrant; for it is but a dissipating of the Privileges of the Province, because the King himself cannot manure it; and it is by Attainder, always revocable, Si quis plus dare voluerit. Cro. J. 109. pl. 6. Hill, 3 Jac. B. R. per Popham, to which the other Justices agreed. Preedyman v. Wodry.

Therefore is grantable under the Exchequer Seal; for it is a Sale; and therefore the Grant is good. Cro. J. 109. Preedyman v. Wodry.

(E. b. 2) Dutchy Seal.

1. In Quare Impedit it was agreed, that there was a Statute H. 5. that no Lands nor Tenements of the Dutchy of Lancaster might pass from the King but under the Seal of the Dutchy of Lancaster; and therefore per Danby, If the King grants an Advowson of the Dutchy under the Seal of the Dutchy, and after confirms it by the Great Seal, this is a void Confirmation. Quere. Br. Patents, pl. 88. cites 32 H. 6. 22.

2. Where Leave are made of Lands which are newly annexed to the Dutchy of Lancaster, and lying within that County Palatine; if they are sealed with the Seal of the Dutchy-Court at Wiltminter they are void, because by the Statute 37 H. 8. cap. 49. such Lands and Possessions must pass under the Seal of the County Palatine, and not under any other Seal, as it seems by the Intendment of the Act, though it be not fully so expressed. Dy. 232. pl. 7. Mich. 6 & 7 Eliz.

3. It was laid by the Court, that a Grant of an Office of keeping the Courts of the Dutchy Land by Privy Seal is not good, but it ought to be by Dutchy Seal. Nov. 53. Ld. Willoughby v. Kempe.

4. A Question was, Whether the Grant of a Fair under the Great Seal was good, where the Queen was seized in Right of her Dutchy of Lancaster? Or in other Words, Whether the Grant of this Fair shal be taken as part of the Possessions of the Dutchy, and so not pass but under the Seal of the County Palatine? And adjudged, that a Grant under the Great Seal was good, because it was a Franchise created de Novo by Virtue of the Prerogative Royal, and cannot properly be called
Prerogative of the King.

called a Poiflion of the Dutchy. And though by the 3 H. 5. it is
enacted, that no Grants of the Poiflions of the said Dutchy flall be
made but under the Dutchy Seal, this is to be intended of Things na-
turally arising from the Lands as Rents, Ways, Mills &c. which fa-
voir of the Land, and such Franchifes were thereby preferred which
were then in being; but this Grant of a Fair is a royal Franchise, and
created de novo, and fo not within that Act, and cannot pass by the
Clarke.

5. Whereupon Treby Ch. J. observed, That there was a Difference be-
tween Poiflions and Prerogatives; and that Poiflions ought to pass un-
der the Dutchy Seal, as above, but Royal Franchifes (as a Fair &c. out
of the County Palatine, and within the Dutchy) ought to pass by the Great
Seal. 2 Lutw. 1237. Astill v. Clerk.

6. All Corporations made within the Dutchy of Lancaster, and out of
the County Palatine, by the Dutchy Seal are without Warrant; For to
make a Corporation is jus Regalis, and cannot pass by the Dutchy
Seal; But within the County Palatine, the King, by the Dutchy Seal,
may make a Corporation, because the Duke of Lancaster had Jura Re-
galia; per Treby Ch. J. in delivering the Opinion of the Court. 2
Lutw. 1237. in Cafe of Astill v. Clerk.

(F. b) King, Warrant. Seals, Privy. By what Warrant
the King may do Things. 2 [Privy Seal.]

1. *The Warrant which is sufficient in Law to affue the King's
Treafure ought to be under the Great Seal or Privy Seal. Co:
11. Cafe of Devon. 52.

* There are 4

Cafes of the
Privy Seal, who give
their Attendance on the
Id Privy Seal: The principal Office and Charge of the Lord Privy Seal, and of his Clerks, is about
such Things as pass by Bill signed, and are to go by the Great Seal; Of this you may read in the Statute
2 H 8. cap. 11. & Lib. 8. fol. 18 in Caii Principles. 2 Init. 355. cap. 6.

* Charters seal, and Inheritance must pass by Grants under the Great Seal; but Personal Things, as
Difpolal of Money, Horles, Armour &c. may pass by Caflem by the Privy Seal. Arg. by Coke At-
orney General. No. 496. p. 681. in Cafe of the Queen b. Dodington. And he vouches a Prece-
dent i E. 4. Rot. 14. Inter Brevit collam Baromibus where the Sheriffs of London would have exeufed them-
fofen at 141. difpol'd of by Command of the King under Il Signet, and could not, but were forced to ob-
tain the Privy Seal.

The Privy Seal is not sufficient Authority to difpole of the Queen's Money by the Lord Treasurer, un-
less where it is due; and he that receives Money out of the Exchequer by such Authority is ac-
countable for it, and if he dies, his Executor shall answer for it as a Debt from the Treasurer. Cro.
F. 545. Dodington's Cafe.

Money was never issued on the Great or Privy Seal; and anciently there were no Writs of Libe-
rature for the Payment of Money on any Debt due from the Crown, or any Grants made by any Sum,
but afterwards they were wont to grant Patents or Privy Seals to the Treasurer, giving him Author-
ity to affue Warrants for the Money. Gib. Hift. of Excheq. 143. —— The Writs were anciently
directed to the Treasurer and Chancellor, and therefore the Warrants are at present signed by the Treas-
urer and Chancellor, and mention the Authority of the Broad Seal by which he issues them. Ibid.

S. C. cited 2
Rep. 17 b
Mich. 28 &
29 Eliz. in
Kant's
Cafe, and saies, That with this agrees 37 H. 6. 27. b.

2. The King may grant by his Letters Patents under his Privy
Seal, to any to make a general Attorney in all Pecus. F. N. 26. b.
Regal.

3. The King may grant an Obligation under his Privy Seal, be-
cause it is but a Chattel. P. 12 In. 25. R. between Camb and Sher-
man, per Coke.
Prerogative of the King.

hine Officium cancellarii Regis in Hibernia by Writ de Privato Sig-

gilo.]

5. Artic. super Chartas cap. 6, under the Petit Seale, shall not issue S. C. cited 2-

from henceforth any Writ which touches Common Law.

6. The King may discharge a Recognizance forfeited by his Privy Seale. S. C. cited 2

Seal. Both. 11, Car. 2. R. Whither's Case, where it was com-

manded by the King, under his Privy Seale, to discharge the Rec-

ognizance and to stay Process, and yet the same was sufficient to

discharge the Process. But they were divided in this Sentence whether it be sufficient to dischar-\n
g the Recognizance. But it was said, that it was usual in the Erchseque to enter an Exoneretor upon such Privy Seale.

7. The King may command under his Privy Seale, that one shall not go over the Sea out of his Realm. S. C. cited 2

Rep. 17, b.

Mich. 28 & c.

9 Eliz. in Lane's Case.

8. A Protecwtion or Warrant of an Emissary is not good under the

Privy Seale. 35. D. 6. Co. 2. Lane 17, b. A Discharge of a Debt

due to the King under his Privy Seale is sufficient Discharge in Law.


by the King under his Privy Seale, or Protection granted under the Privy Seale, but both of them under the Great Seale; because they tend to the great Delay of Justice, if they be not duly observed; and therefore the Law doth require the Great Seale in these Cases. But a Warrant of the King under the Privy Seale to give an Annuity out of his Exchequer is sufficient; because it concerneth but a Chancell in Pognition. And in Matters of small Moment, and which can work no Delay to the Subject, the Privy Seale is sufficient; as to grant a Sheriffs of a Process in the King's own Cafe, or to grant a New Prise where the King is Party, or to allow a Plea against the King, to cancel a Recognizance made to the King, to discharge a Debt, of the like. 2 Inl. 555, cap. 6.

9. The Warrant of the King by Parol is not sufficient to issue upon the

Treasure. Co. 11. Car. 2. Devon. 92.

Account in the Exchequer of B. Fulham, the King's Butler, he demanded Allowance of certain Parcels of Wines given by the King to certain Persons, by word of Mouth, without Writ, and it was disallowed by the Rule of the Court. 4 Inl. 115. — So upon the Account in the Exchequer of Richard Berry, Keeper of the Wardrobe, he demanded Allowance for certain Vehicles of Gold and Silver, and certain Jewels given by the King Orentius to Habel, Queen of England; and others to Philip, Queen of England, Consort of the King, as non Alloccur by the like rule of the Court: For the Gifts by Word in both these Cases are void, which is a good Example for the Legality in a Cafe wherein there hath been Variety of Opinions in our Books. 4 Inl. 115.

10. If the King presents B. and upon Refusal of him brings Quare

Seis (O b.), Impedir, and pending this, C. procureth the King a Prefention of

himself, without mention of the first Prefention, and after the King

notices to the Justices where this depends, by his Letters signed, that he had forgot the first Prefention, and base, That his Pleasure is that

the first Prefention shall stand firm. Though this Notification was not under the Great Seale, yet it is good. But there they added themselves also because the Decret was controled by the Denunciators.

D. 17. Cl. 359. 47.

(Procurers) which seems to be only an Overflight in the Printing)

11. Ralph Everden, Knt. brought a Writ out of Chancery, and also a Exempli-

Writ of Privy Seale to the Judges reciting, that he was a Baron, and com-

manding them to discharge him to be of Justices &c. And by good Advice

he was entirely discharged. 6 Rep. 53. in the Councils of Rutland's Cafe, cites 49 E. 3. 30, b.

12. 13 R.
Prerogative of the King.

12. 13 R. 2. 1. No Pardon of Treason or Felony shall pass without Warrant of the Privy Seal.

13. The King by Privy Seal licensed the Master of the Ordnance to take all un Trevoraleeble Iron Ordnance &c. upon a Suggestion, that those Things had been actually taken as Fees &c. belonging to his Office: Resolved, that because the Office itself was but newly erected, and the Privy Seal was obtained upon a false Suggestion, the King was deceived, and by Consequence the Privy Seal was void. 11 Rep. 89. Hill. 4 Jac. Earl of Devonshire’s Cafe.

14. The Forfeitures of the Sums on several Recognizances, for not appearing at the Sittings, was granted to T. S. by a Privy Seal; and the Question was, Whether the Court of Exchequer could compound those Forfeitures by Virtue of a Privy Seal granted to them before that to T. S. or whether the latter Privy Seal was not a Revocation of the former? But it was held clearly by the Court, that they might, upon good Matter in Equity, discharge those Debts, by Virtue of the Statute 33 H. 8. cap. 39. Hard. 334. Alich. 15 Car. 2. in the Exchequer. Mrs. Alze’s Cafe.

See (F. b.)

(G. b.) King’s Seals. Signet.

1. The Warrant of the King, under his Privy Signet, is not sufficient to enlue his Treasure. Co. 11. Earl of Devon. 92.

2. The Privy Signet is sufficient to inhibit any Man to go over the Sea. F. N. 85. a.

3. A Discharge of a Debt due to the King under the Privy Signet is not sufficient. 1 E. 4. Er parte Rememb. Dominuce Regime Rot.

4. 11 R. 2. cap. 10. The King’s Signet, or Privy Seal, shall not be inu in Prejudice of the Realm, or Dishance of the Law.

If Letters Patents pass by Bill sign’d without Privy Seal, the Patent is unenforceable. If it be presented, and then the Bill is sign’d, remains with the Chancellor for his Warrant, and when it is sign’d, then the Privy Seal remains with the Lord Chancellor, and the Bill sign’d remains with the Clerks of the Signet, and the Lord Privy Seal has an Extract thereof for him to make the Privy Seal
Prerogative of the King.

Seal by, and then the Letters Patents are subscribed Per breve de privato signis; and if the Words, viz. (Authoritye Parliament) be added, then it passes according to the Act of 27 H. 8. cap. 11. And when the King signs the Patent himself in the upper Part, and the Signature and the Grand Seal go together, then it is subscribed Per ipsum Regem et ipsum Comitum in Parliament; and when it is made by Authority and Content of Parliament, then it is subscribed Per ipsum Regem et ipsum Comitum in Parliament, or to both Effect. S. Rep. 18. b 19. a. Hill. 7 Jac. in a Note of the Reporter, in the Prince's Cafe.

6. At the making of the Statute of 23 E. 1. cap. 6. the King had another Seal, and that is called Signetum, his Signet. This Seal is ever in the Custody of the Principal Secretary. And there be four Clerks of the Signet, called Clerici Signettt attending on him. The Reason wherefore it is in the Secretary's Custody, is, for that the King's private Letters are signed therewith. Also the Duty of the Clerk of the Signet is to write out such Grants or Letters Patents as pass by Bill signed (that is, a Bill superscribed with the Signature, or Sign Manual, or Royal Hand of the King) to the Privy Seal, which Bill being transcribed and sealed with the Signet is a Warrant to the Privy Seal, and the Privy Seal is a Warrant to the Great Seal. Such was the Wildom of prudent Antiquity, that whatsoever should pass the Great Seal should come through so many Hands, to the end, that nothing should pass that Great Seal, that is so highly esteemed and accounted of in Law, that was against Law, or inconvenient; or that any thing should pass from the King any ways, which he intended not, by undue or suprænatural Means. 2 Int. 555. 556. cap. 6.

7. An Accountant, who might have taken the Benefit of a general Pardon, had, within the Time limited by the Act, and before Notice of the Act, accounted for 700 l. and given Bond to pay it. He, by English Bill pray'd Relief, his Account being pardoned by the Act of Indemnity. Afterwards he obtained a Warrant from the King under the Privy Signet for a Decree by Confession; but the Court would not allow of it unless it were under the Privy Seal &c. Hard. 224 Mich. 13 Car. 2. in the Exchequer. Savory v. the Attorney-General.

8. In an Information against B. for Extortion, an Illive was joined; and the Day that the Jury were returned, the King sent a Writing under his Sign Manual to Sir Tho. Fanlowl, Clerk of the Crown, to enter a Warrant of Prosecution. And Palmer, Attorney General affirmed, That the King might lay Proceedings; yet notwithstanding, the Court proceeded to swear the Jury, and said, They were not to delay for the great or Little Seal; whereupon the Attorney entered a Non prosequi. Vent. 33. Trin. 21 Car. 2. B. R. The King v. Benfon.

9. King Ch. 1. granted to P. an Office Ducatus beneficito. King Ch. 2. sends his Privy Signet to the Lord-Treasurer to confirm P. in this Office. It was agreed on all Hands, that the King's Privy Signet does but only intimate the King's mind, but cannot transfer no Interest. Freeman, Rep. 71 Hill 1672. in Case. King v. Poifer.

10. The Attorney General said, That he never saw any Signe Almost but what was counter-signed by the Secretary of State, or the Lords of the Treasury; but that he had seen several not sealed with the Signet or Privy Seal, and that he had observed this Difference, viz. That where the the Sign Manual was only a Direction or Committion to do a further Act, as to make out Letters Patents, there it is only counter-signed, and not sealed. But where it is to be the Principal Act itself, there it is to be both sealed and counter-signed. 9 Mod. 54. Trin. 9 Geo. in Case of Vernon v. Benfon.
Prerogative of the King.

(G. b. 2.) Grants of the King. Good or void. In what cases in general.

1. The question being upon a Grant of the King: It was insisted that the King's Grant shall be void in these following cases, viz.
Where he is misinformed in his Grant, as 1 Rep. 52. 2dly, Misrecital shall avoid it. As Mo. 318. Hob. 224. 243. 3dly, If the King be deceived in Matter of Fact or Matter of Law, it is void. As 10 Rep. 112. 1 Rep. 46. 4thly, Want of Form will avoid the King's Grant. As Hob. 243. 323. 1 Rep. 59. D. 124.
5thly, When the Thing is in him, or comes to him in another Manner than he supposed. As 4 Rep. 34. 1 Roll. 192. Mo. 888.
Hob. 170. 1 Rep. 49. 2 Rep. 33. 11 Rep. 90. 2 Roll. 186. Hob. 323. On the other hand it was argued, that the King's Grant shall be good, 1stly, If there be an Original Certainty, altho' there be a Mistake after. As 2 Cro. 34. 48. Yelv. 42. 3 Le. 152. 1 And. 148. 29 E. 3. 7. D. 83. Godb. 423. 10 Rep. 110. 10 H. 4. 2. 2dly, There is a Difference when the Mistake relates to the Title of the King, and when it is but a Denomination of the Thing. As 9 H. 6. 28. 8 H. 7. 3. 10 Rep. 110. 21 E. 4. 49. 3 H. 7. 6. 38 H. 6. 31. 9 E. 4. 11. 12. 3dly, The King's Grant shall be confirmed literally for his Honour. As Statute 18. E. 1. 6 Rep. 6. 1 Rep. 43. Freem. Rep. 172. Trim. 1674. C. B. in the Case of the King v. Clarke.
2. A Grant to an Alien by the King, or to a Men nothered, or to a Vill which is not incorporated, are void. And the same Law to a Body which is not incorporated. Br. Patents. pl. 44. cites 22 H. 7. 13 per Keble.

(G. b. 3.) Good. In respect of the Matter or Manner.

1. 11 R. 2. 8. Enacts, That all Annuitis, and other Things given or granted by the King, his Father or Grandfather, with this Clause, Quoniam pro statuto jussi altera duckervinio ordinandum, shall be void, if other Things have been afterwards accepted by the Grantees thereof.

2. 18 H. 6. cap. 1. Enacts that every Warrant hereafter sent by the King, or his Heirs to the Chancellor of England for the Time being, the Day of the Delivery of the same to the Chancellor shall be entered of Record in the Chancery. (3) And the Chancellor do cause Letters Patents to be made upon the same Warrants, bearing Date the Day of the said Delivery in the Chancery, and not before in any wise. (4) And if any Letters Patents be from henceforth made contrary, they shall be held as void, frustrate, and none.

3. If the King grants Conuance of Pleas to one N. and does not say before whom it shall be held, the Grant is void; for the Grantee cannot make
Prerogative of the King.

make a Judge; But if it be had Court before, there the Grant is good. Br. Patents, pl. 44, cites 2 H. 7. 13. per Keele.

4. If the King grants Ward during the Nonage, and after special Livery is fined, this is void, and the Grant good. Contriv, where the Grant is, As long as it shall happen to be in our Hands, there a special Livery made within Age, shall avoid the Grant. Br. Patents Pl. 47. cites 3 H. 7. 3. & 8 H. 4. Accordingly.

5. If the King gives Land to A. and his Heirs Males, this Patent is void; for if A. has only a Daughter, and dies, and this Daughter has a Son, the Fee should be in Abeyance; for the Daughter is the Heir; and if the Daughter dies, her Son should have the Fee: But the Law will not allow such ceasing and reviving of a Freehold. The Parliament may create such an Estate, but it can be done no otherwise. By all the Judges of England. Jenk. 199. Pl. 16. cites 18 H. 8.

the Fee Simple. Jenk. 25; Pl. 14. Where the King’s Patent creates a new Estate, of which the Law does not take Conspic, as where the King gives Land to A. and his Heirs Males, or gives Land to his eldest Son, & after & heredom and any Resin. Anglia plus primogeniti in regna Anglie hereditario poarcum. Thefe Patents are void. Jenk. 324. cites 19 H. 9.

6. Letters Patents are good in the following Cases, that is to say, Where no Warrant is made; And where Warrant is made and delivered, and no Day of the Detevey entered; And where Day is entered, and the Letters Patents bear Dute after the Day entered. Resolved. Pl. C. 492. Mich. 18 & 19 Eliz. in the Cafle of Ludford v. Gretton.

7. The King may grant a Right of Entry and a Real Action; but fuch Grant must be conceived in special Words, fetting forth how the Right of Entry is. Le. 21. Trin. 25 Eliz. in the Duke of Northumberlands, alias Doughty’s Cafe.

8. The King, feized of a Manor in Right of his Crown, did by his Steward grant Conyhold Lands, Parcel of the faid Manor in Fee, and afterwards made a Lease of the fame Lands under the Exchequer Seal for twenty-one Years &c. adjudged, that tho’ no Grants of the King are available but under the Great Seal yet this Lease, under the Exchequer Seal, was good by the common Ufage of that Court, though not particularly alleged; for the Court of every Court is a Law, of which the Common Law takes notice, without alleging it in Pleadings. 2 Rep. 16. Mich. 28 & 29 Eliz. C. B. Lane’s Cafe.

9. 25 Eliz. 3. Enacts, That all Letters Patents made by H. 8. since the 4th of the twenty-fifth Year of his Reign for the Foundation of any Dean or Chapter, or College, shall be adjudged Good.

The Right of all others, (except of Priors, Abbots &c. is fiared.) All Grants made by the Queen to others since the faid Time, as also all others that should be made (by Force of a Commission then on Foot) before the End of this Session, or within One Year after that shall be Good. This Act shall not extend to Letters Patents of Offices, nor of Concealments, except fuch Concealments only as are fold by Commissioners.

Neither shall this Act extend to make good Letters Patents berefore adjudged void by any Court of Record at Westminster, or by Act of Parliament; neither yet those of Monopolies for Toleration of any Offence prohibited by any penal Law, nor of Lands where there is an Eftate-tail in the Queen, unless fuch Eftate be duly revoc’d.

Here also the Right of others is fiared.

10. King Edward 2. having granted the Manor and Castle of Skipton Lane 59. upon Craven to Robert Clifford in Tail, H. 6. granted to Thomas Lord S. C. Clifford (who was Heir of the Body of the faid Robert) Recefsionem Caftri & Maneri praed. &c. Nee non Caftri & Maneri predition. It was held, that admitting the Grant in Tail should be void, yet the Castle and Manor should pass to Thomas Lord Clifford in Fee in Possession,
Prerogative of the King.

The Words (will and de clar) are sufficient to amount to a Grant; and such Words are always used in Patents and Franchises, being Tingly contingent, & de futuro: adjudged 8 Rep. 73. b. in the Lord Stafford's Cafe.

12. The King's Patent may be without Date; for he may refer to the Inrolment and Privy Seal, and so help it; but in such Cafe, if he furmife a false Date, the fame makes the Patent void. Arg. Godb. 416. Trin. 21 Jac. in Cafe of Lord Zouch v. Moor, cites 21 E. 4. 43. and 20 H. 7. 7. 8.

13. A Grant of a Rent-charge out of the King's Manor, with a Clause of Diffrets, is a void Grant; for the King cannot be sued, nor can a Diffret be taken upon Land in his Possession. Jenk. 112. pl. 13.

14. If the King grants an Annuity, without saying by whose Hands it shall be received, it is void. Jenk. 208. pl. 41.

16. A Grant of a Wardship Quaund in Manibus Nostris &c. is good. So of the Lands of Fugitives. So of the Profits of Lands of a Person outlawed in Trespass, or any personal Action. So of Lands which a Felon at-tainted has in Right of his Wife; for these are only Chattels in the King. Jenk. 246. pl. 35.

17. A Patent of Lands in general, with a Restriction to a Tenure, or Occupation, or Possession, which is false, is a void Patent; otherwise of a Patent of the Manor of Dale, or any certain Thing, a false Addition does not vitiate the Patent in this Cafe; for the Addition is Suppliague. Jenk. 364. pl. 77.

(G. b. 4) Grant. Good in Part, and void in Part.

1. If the King has two Manors, one for Life, the ether in Fee, and the King grants these two Manors to A. for Life, and dies, the Grant remains good, as to the Manor in Fee. Jenk. 269. pl. 41.

2. A Patent may be repealed in Part, but this shall be only in Clauses independent. Per Hale Ch. B. Raym. 177. Patch. 21 Car. 2. B. R. in Sackvill College's Cafe, cites Fitzh. Petition 19.

3. The King leased a Manor and Mines, and withal grants that the Vendee shall have the sole vending of Allom, referring out of the Premises 1600. l. a Year to himself, and 1640. l. a Year to the Lord Mulgrave. The Question was, Whether this Grant, being void for Part, (viz. for the sole vending of Allom) shall be void for the Rent? It was held, that had it been in the Cafe of a common Person, it might be good for Part, and void for Part, aloth' the Reservation was intire. But it was urged here, that the King is deceived, it being plain that he intended to grant the sole Vending of Allom, which he could not do. In answer wherefo to a Difference was taken, where the King is mistaken in Matter of Fact, there his Grant shall be void, but not where he mistake the Law; and cited 6 Rep. 55. Lord Chandois's Cafe. But the Court seemed to incline, that the Grant was void, it appearing upon the Face thereof that the King was deceived in the very Substance thereof, and the Rent being reserved.
Prerogative of the King.


(H. b.) Office. Grant. In what Cases a Grant shall be

good before Office. 18 H. 6. cap. 6. See (L. c.) pl. 9.

1. If the King leaves Land for Years referring Rent to be paid at the

Receipt of the Exchequer, or to the Band of the Receiver, if the

Leafe does not pay the Rent at the Day, the * Leafe shall be void, by

which his Estate is determined. This it does not appear of Record

that the Estate is determined, because it may be that he has paid the

Rent to the Receiver in the Country, yet the King may grant the

Land over before any Office found against. 53. 32. 33. El. 3. B. R.


2. If the King leaves Land for Years, referring Rent payable at the Receipt of the Exchequer, wish such Provisoes, and when it is payable to the Receiver or his Deputy; for in the first Case the Payment or Non-payment, appears by Record. And therefore to prove the Non-payment, there needs no Office; but in the last Case the Payment is to be made to the Receiver or his Deputy; and that appears not of Record; and therefore the Leafe not void by the Non-payment without Office. Agree’d Cro. Car. 100. Mich. 3 Car. Stephen v. Potter.

3. If a Man be convicted a Papist, yet before the Commission is

returned, the King is not sufficiently notified to the Land or Goods
to grant them. Patch. 2 H. 12.

4. If the King grants an Office of a Receivership to J.S. and makes

an Ordinance in the Letters Patent, that the Receiver should enter

into his Account, and finish it before Hillary Term annually, and to

pay the last Money of his Debt rated by the Auditor before the 20th Day of March then next ensuing, upon Pain of Forfeiture and Loss of Office.

his Office; and after the Receiver is cast in Arrest in his Account before the Auditor, and does not pay the Money before the 20th Day, according to the Ordinance; and this Arrest appears by Record in the Exchequer. By this Nonpayment the Office is forfeited, and the King may grant it over before any Scire facias brought (or Office, as it seems, or other Record of the Forfeiture;) and yet if this Grant be made to another, he ought not to be removed without a Scire facias.
Prerogative of the King.

5. If a Man be attainted of Treason, and his Land settled in the actual Possession of the King, either by a special Statute, or by 33 H. 6. cap. 6.


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As to Office, the same thing may grant them over before any Office thereof found. D. 3. 4. 86. 145. 67.

6. If Villain of the King purchases Goods, the Property is in the King without Seilure; contra of Lands. The Goods may be wafted, and therefore it seems, that Grant of the King of Goods, as here, is good without Office. Br. Patents, pl. 83. cites 35 E. 3.

* See pl. S. below.

7. Where the King is intitled to Land by Ward, he may grant it over before Office, and before Seilin, and he may feile before Office; Per Gafcoign, Thirvit, and Huls, Justices. The Reason seems to be, because the King has only a Chatte in it; but fee now the Statute * 18 H. 6. 6. 6. that the Patent before Office is void of Land. Br. Patents, pl. 49.

cites 10 H. 4. 3.

* A Man purchased Land of the King and Queen, which was Part of the Estates of the Duke of Suffolk attainted of High Treasons, of which Land purchased no Office was found. And the Question was, Whether the Patent was void by reaftion of this Statute? And it seemed to several, that the Patent above was good by the Words (if the King's Title &c.) in as much as the Act of Attainder is found in the Chancery and Exchequer of Record. The Reporter adds, Et colligo that the Intendment of this Statute is to reform Grants and Leafe to Farm made by the Chancellor, Treasurer, or other Officers of the King of Tenements of Subjects found by Office to be the Title of the King, and leift to the Hands of the King meane between the Finding of Offices and the Return of the same, and not to any Grants or Gifts in Fee simple or Tail. D. 145. 8. pl. 66. Passch. 3 & 4 P. & M. Anon.

Rhodes, Pyryam, and Anderfon J. held, That this Statute did not extend to the Grant of any Land but those which come to the King by new Title, as Wardship, Mortmain, Attainder, and the like, in which Cases the Militia was at the Common Law in this, that those who had Right could not transfer the Office, and have the Land in Farm, but were prevented by Grants made before the Office returned by which the King had disabled himself to grant the Land in Farm to him who tendered Transferve, and no Man could tender Transferve before the Office returned. Mo. 209. Passch. 27 Eliz. Knight's Cafe.

S.P. Br. Patents, pl. 53.

9. Grant of the King of the Body of a Ward, or of Goods, is good without any Office thereof found; Contra of Land by the Statute of 18 H. 6. Br Patents, pl. 70. cites 20 E. 4. 11.

10. The King granted to a Bishop Bona felonum de fe within a certain Precinct. The Bishop was attaintred of Treason. A Lefage for Years of the Bishop within this Precinct before the Indictment or Attainder became felo de fe ; the King had before this granted to B, his Almoner omnia bona felonum de fe after the said Treason committed, and before any Indictment; After this Grant to B, the Bishop is intitled and attained. The King shall have this Lease; For the King's Grant to B, before the Attainder of the Bishop was void; For the King granted that which he had not. This is a remote Possibility in the King which cannot be granted of C. B. Brook Ch. Baron of the Exchequer, Portman, Brown, Whiddon Justices, Baron Saxby, and Griffin Attorney General, that the Almoner shall not have the Lefae, but it shall be in Order and Distribution of the Exchequer under Paymentes Archepiscopatus, because as the Power to grant it was not in the Queen at the time of the Grant, in as much as they were in the Archbishops. But Bromley Ch. J. Saunders, Stanford Justices, Baron Brown, James Dyer, and Cordel the Solicitor contra; For the King may grant a Thing which is not in him at the time of the Grant, but which may come afterwards, As the Cullody and Marriage of the Heir of his Tenant, Or the Temporalties of a Bishop cum acti-
accident. But of Elchest Cun acceditur negatur penitus per Baker, tamen quærere inde. The Regener addy. N.ota It had been clear if the Archbishops had been attainted of the Traitor at the Time of the Grant, the Grant of the Queen had been good. D. 108. a. pl. 29. the Bishop of Chichester v. Webb.

(I. b) What Things shall pass by General Words with Reference to other Person or * Thing.

1. If the King purchases a Manor to which Franchises Real are regardant, and after gives the Manor Simul cum Liberat. ad illud distinction espectant. and does not say, Simul cum Liberat. ad illud spectat. at the time that the Manor was in the Hands of the Feoffor of the King, the Franchises do not pass by this General Grant, because the Franchises of common Right were annex'd to the Crown. ¶ 43 Act. 10. per Thorpe. 43 C. 3. 20. b.

2. But otherwise it had been if special Mention had been made as is aforesaid in the Charter. ¶ 43 Act. 10. 43 C. 3. 20. b.

† Br. Extinction, pl. 32. cites S. C. For they were extinct before, as it seems, and by those Words they pass as Appendant; per Thorpe. —— Br. Incident, pl. 12. cites S. C.

3. If A. be sold of a Manor, to which the Franchises of Waife There is a Strat, or such like, are appendant, and the King purchases the Manor with the Appurtenances, Now the Franchises are re-united to the Crown, and not appendant to the Manor; but it be grant the Manor in so large and ample Manner as A. had it, the Franchises will pass as appurtenant to the Manor. Co. Litt. 121. b.

which are not, as Catellia feclum &c. If such come again to the King they are merg'd in the Crown; but it is otherwise in Case of a Lett. Park, Warren, Fell &c. which were first created by the King. 2 Mod. 144. Hill. 28 & 29 Car. 2. C. B. in Case of James v. Johnston.

4. If J. S. has certain Liberties appertaining to a Manor, and after the Liberties are resumed, and afterwards the King grants the Manor to J. D. with general Words, that he shall have the said Liberty &c. ad Liberrites &c. as J. S. had it. This shall not pass the Liberties which J. S. had before the Resumption. P. 11 Car. B. R. said by Justice Jones to be so adjudged.

5. If the King grants all Lands, Tenements, and Advowsons of Church- See of all these which were the Prior of N's, this is a good Grant. Br. Patents, pl. 87. cites 32 H. 6. 20. 21. per Cur.

— So if he be sold of a Ward, and grants all Lands and Tenements, Advowsons and Knights Fees which were J. N's, Father of the Ward. Ibid —— So of all Lands and Tenements &c. which were J. P.'s, attainted of Felony. Ibid

6. The King, for a great Sum of Money, Bargains and Sells to A. the Manor of Stepney, and the Marsh of Stepney in Feo, and the King moreover grants, that the said Patente shall have the said Manor and Marth as amply as it came into the King's Hands by the Grant and Surrender of the Bishop of London, and in Truth the King had not the Marth by such Grant and Surrender, but only the Manor, and had the Marsh from others. Resolved by all the Judges of England, that the Manor and Marth pass well by this Patent. The said Reference in the said Patent to the Bisho of London's Surrender is in the King's Covenant, and not in the Body of the Grant; And therefore it does not vitiate the Patent, the first Certainty in the King's Patent is sufficient, where the King is not deceived in his Grant. Jenk. 261. pl. 60. cites Trim. 31 Eliz. Hare's Cafe.
7. If the King grants over certain Lands which had come to his Hands before, and grants further to the Grantee the Liberties and Privileges as he, who was left seized of the Lands had, whereas the King did not know the Certainty of the Liberties and Privileges, yet the Grant is good enough, and the Patentee may inquire what Liberties and Privileges the other had before; and in as much as this Uncertainty may be reduced to a Certainty by Inquiry or other Circumstance the Grant is good. To Rep. 65. a. Hill. 10 Jac. in Whittler's Café.—Cites Pl. C. 12. b. in Fogaila's Café.

(K. b) Grants of the King.

Words of Reference.

1. If the Abbot of D. had Deodands by Grant of the King in a certain Vill, and after the Abby comes to the King with the Pleasments by the Statutes of Disolutions, and the King grants the Land and Vill & Bona & Catalla Felonum by express Words, and after makes a Grant with general Words of tot, talia, eadem & hujusmodi &c. which the Abbot had in the said Land and Vill. The Patentee shall have, by those general Words, Deodands which shall happen there, in as much as it has Reference to the Liberties which the Abbots had. P. II Car. 3 R. between the King and the Inhabitants of St. Edmund's Bury in Suffolk. Adjus ted in a Zuo Warranto and Plea made thereon.

Bend. 252. pl. 270. S. C. with the Pleasments, as judged and cited to Rep. 65. b. Hill. 10 Jac. in Whittler's Café. 2. Mod. 1. Hill. 26 H. 2. Car. 2. the King v. the Bishop of Rocheller.

2. If the Rectory improper of W. to which an Advowson of a Vicarage is appendant, comes to the King by Escheat by Artainder of J. S. and the King ex certa Scientia & meruor grants to B. in Fee all the Pleasments of the Glebe and Tithe of the Rectory by special and particular Names, and generally Omnia Hereditamenta sua quaeque parcel. spec. vel quae a dicta Rectoria de W. (But no express Denton is made of the Rectory, or of the Advovson &c.) adeo plene & in tam amplis Modo & Forina Qualitate & Condiione prout dicta J. S. ea habuit & prout ad manus ipsius Regis devenire debuerunt. In this Case, by this Grant and the said General Words, the Advowson of the Vicarage shall pass, and by the said Words Adeo plene &c. Prout &c. & Ex Gracia special, certa Scientia &c. The Parsonage shall pass also. D. 18. El. 350. 351. 21. 22. Adjus ted; For the Queen by Ignorance is not de ceived.

3. If the King has a Manor by Escheat or by Purchase, and grants the Manor as entirely as J. N. held it, or as it came to his Hands by Escheat, an Advowson Appendant passes without the other Words; for it shall be intended, that the King is appriz'd of his Right; per Thorp quod Curia Concefsit. Br. Patents. Pl. 6. cites 43 E. 3. 22.
L. b.) What Things shall pass by general Words with
Reference to other Things.

1. WHEN the Charter of the King in general Terms refers to The Cause
a Certainty, this contains as express Mention as [as] the
Certainty had been expressed in the Charter, tho' the Certainty to
which the Reference is be not of Record, but lies in Averment by Mat-
ter en Pass or in Fact. Ca. 10. Whistler. 64. Resolved.

2. The Prior of Christchurch, in the County of Southampton,
was feiz'd of the Manor of Christchurch, and of a free Fishing in Grots
in the River of Avon in Christchurch; and all this came by the Dis-
olution of Monasteries in 31 D. 8. to the King; and the King
grants the Manor of Christchurch, and the Seize of the said Priory, and all
Lands, Tenements, and Hereditaments in Christchurch abobe,
at any Time appertaining to the said Priory; and all Liberties, Privileges,
free Warrens, free Fisheings, &c. belonging to the said Manor. The
said Fishery which the Prior had in Grots shall pass by this Grant:
for it will pass by the general Words of (All Lands, Tenements, and
Hereditaments at any Time belonging to the said Priory) this being
an Hereditament belonging to the Priory; and the last Words, in
which the said Fishery is expressly granted with a Restriction (ap-
parent to the said Manor) will not retain the last general Words,
but the Fishery in grots shall pass by it; for the last Words were
only in Magnae Castracliam. Sic. ii Car. 8. R. between Lord
Arundel, of Warder, and Aberman Ten, per Curtam. Resolved
and Ruled accordingly upon Evidence at the Bar.

3. King Ed. 6 was feiz'd in Fee of the Manor of C. of which a
Wood, containing 300 Acres, was parcel; he granted the said Wood in
Fee, and after the said Wood reverted to him as Fisham for Creation,
awards Queen Mary granted the said Wood in Fee, the Grantee re-
granting it to Queen Elizabeth; and afterwards Queen Elizabeth grant-
ed the Manor & omnes Bovces vel parae cognit. vel reput. ut
pars membrum vel parcell' ejusdem Manerii to the Earl of Leicester in
Fee. In this Case, by those Words the Woods shall pass; for the
Word Antehac in case of the King may well have Reference to the
Time of Ed. 6, but not ultra if the Word Unquam be not adjourned to
it. But in case of a Subject, the Word (Antehac) without the Word
Unquam precedent shall be construed quocumque tempore precetito.
D. 20. Cl. 362. And same Case reported with the Reading, Ed. 5.
Prerogative of the King.

Ent. 384. adjudged. Et ibidem 383, 384, the Reasons shewn of the Judgment.

4. If the King grants the Manor of D. with the Appurtenances, and all other Lands, Pastures, Woods, etc. Hereditamenta, Ante- hae cognita, ultitata, accepta del Reputata ut Membrum vel parcella Maneri pròbitur. A Wood which is not parcel of the Manor truly, and in Right, either, in tacho et Jure, shall not pass, though it be avouched, that the said Wood antime ante fut reputat: a parcel Maneri pròbit; without proving, that it had been reputed Parcel Time out of Mind. For Matter of Inheritance cannot take any good Foundation without coupling and annexing Time of Precedent. Mich. 21, 22. S.C. adjudged, quod vide in the new Entries 380, where the Reasons of the Judgment are entred upon Record; this was upon a Demurrer between the King and Inber and Wilkin Defendants.

5. And in the said Cause if it had been avouched, that the Wood was reputed Parcel of the Manor Time out of Mind &c. in Case of a common Person, Proofs of such Issue might be by vulgar and diffused Reputation of People of the same Vill, or of our or of other Manor and Manors, or Hills adjoining &c. or of the Body of the County &c. yet in Case of the King in such Issues (as to) the Word (Reput.) the Evidence, or Proof shall not be by such vulgar and diffused Reputation of the People; but the Proofs ought to be by some Matter of Record or Writing, as by the express Declaration of it between the Prince and the Subject, in the Particulars of the Purchase, or in the Surveys and Books of Accounts of the Auditors and Receivers, Bailiffs, and such Officers and Ministers always entered and answered in the Rolls and Books as Parcel of the Manor; otherwise, it is not any Proof of the Reputation in cause of the King. In the said Cause of 21 and 22. El. between the Queen, Plaintiff, and Inber and Wilkin, Defendants. Resolved per Curiam, as it is entered upon the Record in the said New Entries. 380.

6. If there were two Rectories and two Rectors in one Church, and so two several Subsidies, and afterwards they are severally appropriated to one Religious Hospital as several Rectories, and at several Times, and the Rectories of them appropriated 33 E. 3. but always after enjoyed by the Hospital as one Rectory appropriate; and so reputed to be one Rectory * till the Dissolution of the Hospital, which came to 15 H. 8, by the Statute of 32 H. 8. and afterwards it is granted by Queen Elizabeth by the Name be tota illa Rectoria noftra &c. where in truth they were at the Commencement several Rectories, yet it shall be a good Grant, by reason of the Reputation that it was one Rectory so long Time. Mich. 15 Car. 2, R. between Goodive and Borloe, per Curiam. Resolved upon Evidence upon a Trial at the Bar, which concerned Mr. Strangfor, the Patentee, for the Rectory of Moreton, which was Parish of the Possessions of the Hospital of St. Ihn's in Warwick.

7. King John granted to the Corporation of Waterford Custom to call the Murage de Omnibus velus Vendibus infra dictam Civitatem emptionis feu Venditis adae Plent et integre tant Burgenses Villis de Britol habent &c. And it was resolved, that by those Words no Custom or Subsidy is granted to them, for this Reason, (among others) That the Reference to the Vill of Britol is uncertain and void, because there is no such Vill or Borough called Britol in this Kingdom of Ireland; and the Vill of Britol intended in the Charter being in England, the Averment that the Burgesses of Britol had Murage at the Time of this Grant cannot be try'd here. Dav. Rep. 13. a.b. Mich. 5 Jac. B. R. in the Case of Cutfoms.
Prerogative of the King.

(M. b.) Grant of the King. Prerogatives. [or other see (M. b.)]

Things.] What Things he may grant over.


7. The King cannot grant the next Lapse of the Church of D. which shall happen, before it happens. Hob. R. 258.

8. If a Lapse happens to the King, he cannot grant it over; for it is a Truth in himself. Hob. R. 208.

9. The King cannot grant to another Officium Pincerna, called the Butler of London, and the Butlerage and Prifage of Wine Habend. for 24 Years; for it is not grantable over, it being but Prurisance for Wine for the King's House. H. 49. 41. Ed. II. Rot Thomas Vaux's Cafe. Dub. 5. Querc.

10. The King cannot grant over to another the Sole Making of S. P. Refold Gunpowder for to dig in the Soil of other Men; for it is Prurisance to dig in another's Soil, and is a Prerogative not grantable over. H. 10. 42. Rot Robert Johnson's Cafe; per Curiam.

11. Trin. 2. 3, B. B. Rot. The King granted to the Abbot of Reading, inter alia, Nec faciat Milites nisi in Sacra vete Christi 165, in qua parvulos saltipere modele caveat, maturos autem fe dicretos tam Clericos quam Layos provide saltipere &c.

12. Rot. Pat. 25 E. 3. 2, Part 2. N. 11. All the Profits of Fines, Pryme's Ameercements of the Labourers, Sellers of Vittuals against the Statute, Cat. Rec. granted to the Commons for Cafe of the Poor, in Payment of Centts during this Payment.

13. If A. leaces Land, referring Rent, and after is outlawed, and an Inquisition thereon found, and a Seilure of it made, and the King grants over the Benefit of the Outlawry quam diu in Manibus hus it shall continue, the Patenter shall have the Rent reserved upon the Leafe, which shall become due during the Outlawry, so long as it continues in the Hands of the King. Bich. 10 Car. B. R. between Calpepper and Cavenay. Per Curiam. Resolved upon a Special Petition. Intratur Dr. 7 Car. Rot. 835.

14. The


15. The King shall have all Titles which are in Places that are out of any Parishes, as in Inglewood Forest &c. and may grant them over by his Letters Patents. Br. Patents, pl. 33. cites 22 All. 75.


Br. Patents, pl. 41. cites S. C.

As if he has an Annuity out of the Priory of St. Mary, or any other place, and the Grantee shall have Writ of Annuity. Ibid. — Br. Prerogative, pl. 11. cites S. C. — So where a Man has received the King's Ward, he may grant over his Action thereof. Br. Patents, pl. 55. cites 5 E. 2. He may grant over his Action and his Crown. Br. Prerogative, pl. 6. cites 2 H. 5. 8. — The King may grant Action after that he has Cause of Action; as of Debt, and Things certain, but not of Contests and Things uncertain. D. 1. b. pl. 7. — S. P. Br. Chose in Action, pl. 11. cites 5 E. 4. 8. — Br. Patents, pl. 55. cites S. C.

It was said for Law, that the King may grant a Chose in Action, which is Personall, As Debts and Damoses &c. or a Chose Mist, As the Ward of the Body, but not a Chose Real, As Action of Land &c. As Rights, Entries, Actions &c. which Abbors may have, and that the King shall have those by the Statute of Difillation of Abbey 51 H. 8. Those Choses in Action the King cannot grant. But see if there are no Words in this Statute to put the King in Possession, it's the Abbots must put to his Action. Br. Patents, pl. 93. cites 22 H. 8.


16. Note, that the King by Charter by express Words, may grant to a Commonalty or Corporation, to make another Commonalty or Corporation.

Br. Prerogative, pl. 53. cites 49 All. 8.

Br. Contempts, pl. 4. cites S. C.

So of Pottage of every one passing a Halpepenny, per Gaitcoign. Br. Contempts, pl. 4. cites S. C. — But the King by his Letters Patents cannot grant M rampage &c. to take such Sum &c. because it is in Charge of his People, which cannot be by Parliament. Ibid.

The King may grant Toll to be taken in Fair or Market, but not to take for Passage in the Highway, viz. Through-toll; for this cannot be taken but by Prescription. Br. Prerogative, pl. 112. cites 50 E. 3. — He may grant Toll, Fair, Market &c. but not to have Affairs of False Price, nor Toll Travellers, nor Toll-Travellers; for those are by Cutton, which cannot commence at this Day by Grant; for the King cannot make a Law by his Grant. Br. Patents, pl. 100. cites 37 H. 8.

It is agreed, that the King cannot grant Toll to be taken in the Highway, which is free; but Passage and Mramage may be granted, because there is qnd pro quo; but then the Payment thereof shall be no more made than the Bridge continues for the Use, or the Wall continues for the Defence of the Subject. Noy 176. Darcy v. Allen.

Br. Prerogative, pl. 18. cites S. C. —


Hol Ch. J. Encl. He did not know any Reason for a Difference between the ancient Lands of the-inheritance of the Crown, and other Estates which the King has, which are of an higther Nature, and called the Flowers of the Crown, as Wells, Strays, &c. as in 9 Rep. The Abbot of Stratford Parisella's Case; also Hundreds might be alien'd in Fee, till for several Inconveniences it was restrained by the Statute of E. 3. and the King might erect a County Palatine, and separate it from the immediate Government of the King, with a Power to pardon r felonies, Felonies &c. till the Statute of 27 H. S. cap 22, which reunites the Liberties and Privileges to the Crown. Skin. 624. Mich. W. 3. in Cam. Sece. in the Banker's Case.

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21. The King cannot dispose of his Crown by Testament, tho' it be under the Great Seal; Nor of the *Parts of the Kingdom; Nor of the Jews of the Crown; Nor of Power to pardon Treason or Felony within this King- dom; Nor of Power to make Judges, Justices of the Peace, or Sheriffs; Nor of such which concern Government in a high Degree; Of these the King can neither make a Grant nor a Testament. He may grant the || Lands which he has in Jure Coronae, by his Letters Patent, or by his Will under the Great Seal. By all the Judges. Jenk. 79. pl. 55. cites 1 H. 5. Fitzh. Executors 108.

and such Grants are expressly against 9 Eliz. 5. 1. Godd. 254. Pach. 12. Jac. in the Case of Chalworth, of Liswich. — Rol. R. 5. in S. C. 3 P — Jenk. 304. pl. 77. —

† A Grant to pardon Treason is void; but in Scotland and Ireland, such Grant to be executed in the Name of the King is good. And so to make Knights there. The Difference of Place and世人, and the King's Audience make the Difference. By all the Judges of England. Jenk. 131. pl. 56. cites 1 H. 7. 16. 

‡ The King cannot grant to a Man to make an Officer of Record to force the King's Court, nor to make a Judge; Quere; For Cities and Burghes have such Liberty. Br. Patents. pl. 45. cites 2 H. 7. 6. The King cannot make a Grant to any to make Justices of Oyer and Terminer; but he ought to constitute such Judges himself, for 2 H. 11. High Prerog.v cite Jenk. 131. pl. 56. cites 1 H. 7. 16.

Grant of the King made to the Abbot of St. Alban's to make Judges, is not good; for is a Thing annexed to the Crown, and cannot be sever'd, as Grant to make Deputies, or to pardon Felons is not good, contrary to Steward in Lett. or Justice where Conunence of Pleas; for there are the Stewards or Justices of the King; but the Grant above to the Abbot, to make Judiciallifians is [is not good] and such cannot arise from a Feoff, nor the Ordinary is not bound to obey him. Br. Patents. pl. 111. cites 20 H. 7. 6. S. F. I. E. Justice. 

The King has Power to alien or charge the Estate, which he has in Jure Coronae. Per Holt Ch. J. Mich. 7. W. 3 Skin. 602. 625. in the Banker's Cafe.

22. If the King grants to a Man to do a Fair and Toll in B, this is a good Grant.

per Hunt. Br. Patents. pl. 16. cites 19 H. 6. 62. The King cannot grant to divide Land Testament; Nor that the youngest Son shall inherit; nor that Land shall be Alienated Deotive, or the like, and will Prefcription and Custom lies of them. Br. Patents. pl. 25. cites 37. H. 6. 27.

23. Precip in Capite, the King cannot grant to devise Land Testament; Nor that the youngest Son shall inherit; nor that Land shall be Alienated Deotive, or the like; and yet Prescription and Custom lies of them. Br. Patents. pl. 25. cites 37. H. 6. 27.

24. The King is able to align Part of the Tenuts granted to him by the Br. Choè in Clergy to certain of his Creditors, and by this the Clergy became Debtors to them, and the Collectors charged, and the King oulted it. Br. Grants. pl. 113. cites 1 H. 7. 8.


26. The King may be Founder, and have no Corody, as where the King And if he grants at the Commencement, that neither be nor his Heirs shall have the Corody, and he may release it after; for the Name of Founder remains. Br. Patents. pl. 57. cites 3 H. 7. 12.

Tenure remains. Ibid. — But he cannot release all the Tenure; for all Land shall be held Med. L. I. or Med. L. E. 

27. The Queen has Right to certain Land by the Attainder of J. S. who was a Diff. In this Cafe, if such a naked Right may be granted at all, it ought to be granted with special Recital of express and special Words, per Cur. 3 Rep. 4. b. Trin. 35. Eliz. in the Marquis of Winchester's Cafe, — cites 3 Eliz. Corner's Cafe, alias Cromer's Cafe.

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28. A. obtained a Licence from the King to go beyond Sea for a certain Time, and after the Time expired, A. is commanded under the Privy Seal, upon his Allegiance, to return to England, and does not obey. It was resolved by all the Judges of England, that if A. in this Case has a Manor where there are Copyholds, the King may grant the Copyholds. Jenk. 246. pl. 35. cites 23 Eliz. D. 275. 177.

29. King H. 6 granted to the Corporation of Dyers within London, Power to search &c. and if they found any Cloth dyed with Logwood, that the Cloth should be forfeit; and it was adjudged, that this Charter concerning the Forfeiture was against the Law of the Land, and 9 H. 3. 29. For no Forfeiture can grow by Letters Patent. 2 Infr. 47.

30. It was resolved, That the King may grant wild Swans unmark'd, and their Cignets, as in Rot. Par. An. 30 E. 3. Part. 2. Num. 20. the King granted to C. W. all wild Cignets unmark'd between Oxford and London for seven Years. And in eodem Rot. An. 16. R. 2. Part. 1. Num. 39. such a Grant of wild Cignets in the County of Cambridge to B. Beford Knight. And in eodem Rot. An. 1 H. 4. Part. 6. Num. 14. a Grant w. s. made to John Fen, to survey and keep all wild Cignets unmark'd, irreçgu'd de proficio respondent ad Scaccarium, by which it appears, that the King may grant wild Swans unmark'd. 7 Rep. 18. a. Trin. 34. Eliz. in the Case of Swans.

31. If Penalties are given by Acts of Parliament for Relief of the Poor, the King cannot dispose of them otherwise. Jenk. 307. pl. 83. cites Hill. 2 Jac. 7 Co. 36. b.

32. King cannot grant Reverendam Offici; For he has no Reversion, but Inheritance grantable in Reverson. 8 Rep. 57. a. Mich. 6 Jac. in the Earl of Rutland's Case.

33. The King may grant a Rent out of a Fair, or a Thing not manua'l, as out of a Bailiwick, Tithes &c. Jenk. 14. pl. 21.

34. The King by his Grant cannot exclude himself from prosecuting any Plato of the Crown; for it concerns the publick Government, and cannot be separated from his Perfon. Jenk. 190. pl 93.

S. C. Freeman. Rep. 531. in the Exchequer, Hill, 1691. And it was agreed by Atkins, Tarton, and Powell, but Letchmere contro, That the Grant was

good to charge the Succeeder. It was admitted, That the King may grant an Annuity, or charge his Revenue, and cited many Books to that Purpose; but it must be said of whole Hands to be received, or else it is not good; for he cannot charge his Person; and that it is good, notwithstanding it is out of an Incorporeal Inheritance. And though it was objected that this is but an Authority, and to void by the King's Death, because revocable; yet they held it an Interest; and a Licence coupled with an Interest is irrevocable. Upon the Petition of Hornbee, Williamson, Smith, and Stone.

35. King Ch. 2. being indebted to divers Persons in 41,600 l. 8 s. 2 d. for the Payment of the Interest of that Sum, grants for him, his Heirs and Succeedors 25,000 l. per Annum to be paid out of his Revenue of the Hereditary Exacts. And tho' it was objected, That this Revenue was given by Act of Parliament and that it arises out of the Purse of the People, and that they are not alienable, because they come in the Place of an Inheritance, which the King could not have aliened as Tenures in Capite, Purveyance &c. yet adjudged that the Grant was good. Skin. 691. &c. Mich. 7 W. 3. in Cam. Scacc. The Banker's Case.

36. Whether the King may grant the Inheritance of a Visitation may be a Question; for it may be said to be privy to his Perfon; but without doubt he may grant, to whom he pleases, to be Visitor for a Time. Per Holt Ch. J. 12. Mod. 233. Mich. 10 W. 3. Anon.

37. An Appeal lies to the King in Council from a Decree made in the Isle of Man by the Lord Derby, tho' the Grant was made of the Island of Man without any Reservation of the Subject's Right of Appeal to the Crown. Per Ld. Ch. J. Parker; For that otherwise there would be a Failure of Justice; And the Lords of the Council proceeded in the Appeal, and determined in favour of the Appellant, and the Lord Derby submitted and consented to the Examination. Wms. Rep. 329. Mich. 1716. Griffian v Coreen.

(M. b. 2)
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(M. b. 2) Grants of the King. What Things he may grant. Dispenfations, or Forfeitures on Penal Statutes.

1. **The King cannot grant to any one a Power to dispence with any Penal Statute.** Justice and Mercy are inseparably annexed to the Crown and cannot be transferred; By all the Judges of England. Jenk. Case of Dispenfations, 307 pl. 83. cites Hill. 2 Jac. 7 Co. 36. b. &c. the Case of Dispenfations. Rich. v. Bar.

S. P. Hob. 155. Mich. 10 Jac. in Case of Colb, and Glover v. the Bishop of Coventry. — The King cannot grant to any Subject Power to dispence with as many Offenders as he pleases; By all the Judges of England. Mo. 764. Mich 3 Jac. Richard's Case.

2. Queen Eliz. under the Great Seal, granted the Penalty and Benefit of a Penal Statute, with Power to dispence with the said Statute, and to make Warrant to the Ld. Chancellor, or Keeper, to make as many Dispenfations and to whom he pleases. Upon a Reference of this Grant, it was resolved by all the Justices of England, that the said Grant was utterly against Law; And also, That when a Statute is made by Parliament Pro Bono Publico, the King cannot give the Penalty, Benefit, and Dispenfation of such Act to any Subject, nor impower any Subject to dispence with it, or make Warrant to the Great Seal to grant Licences in such a Cafe; For in such Cafe the King, who is the Fountain of Justice and Mercy, is trusted with it Pro Bono Publico, and this Confidence is inseparably annexed to the Person of the King in so high a Point of Sovereignty, that he cannot transfer it to the Disposition or Power of any private Person, or to any private Ufe; For it is committed to the King by all his Subjects for the Publick Good. And if he may grant the Penalty of one Act, he may do so in Infinitum; Nor was such Grant known to have been made before: Tho' true it is, that the King, upon Reasons moving him thereto, in respect of Time, Place, or Perfon &c. may make a Non-Obstante, and dispence with any particular Perfon that he shall not incur the Penalty of a Statute, and with this the Books agree. 7 Rep. 39. Hill. 2 Jac.

The Case of Penal Statutes.

3. The King cannot grant over the Penalties of Penal Statutes; Per all the Justices of England. Mo. 764. Mich 3 Jac. Richard's Case. It is enacted, that all Commissions, Grants, Licences, Charters, and Letters Patents, heretofore granted or made to any Person or Persons, Bodies Politick or Corporate, of any Power, Liberty, or Facility, to dispence with any others, * or to give Licence or Toleration to do his, or exercise any thing against the Tenure or Purport of any Law or Statute, or to give or make any Warrant for any such Dispenfation, Licence, or Toleration to be bad, or made, or to agree, or compound with any others for any Penalty or Forfeitures limited by any Estate, or of any Grant or Promise of the Benefit, Profit, or Commodity of any Forfeiture, Penalty, or Sum of Money, that is or shall be due by any Statute before Judgment thereupon had, and all Proclamations, Inhibitions, Restraints, Warrants of Affiance, and all other Matters and Things whatsoever any way tending to the infringing, encreasing, strengthening, furthering, or countenancing of the same, or any of them, are altogether contrary to the Laws of this Realm, in no wise to be put in Execution.

of the Articles whereupon the Officers in the Reign of E. 2 were sentenced, that they procured the King to make many Dispenfations, and so by their ill Council defeating that which the King had granted by Parliament by good Advice in so E 2; Richard Long, a Merchant of London, and the Lord Latimer were severally sentenced in Parliament for procuring of Licences and Dispenfations to transport Woods &c. 3. Inf. 186. cap 86.

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The great inconvenience hereof appeared in the Proceedings of Empron and Dudley in the Reign of H. 7. who had the Office of Matters of the Forcitures, and by Colour of their Commission and Office did most intolerably and unlawfully oppress, burden, and debase the Subjects. The like Oppression was used by certain Commissioners for Comptrollers to be made for Offences committed against Penal Statutes in the Reign of Queen Mary. 3 Int. 187; cap. 86.

And shall be for ever hereafter examined, heard, tried, and determined by and according to the Common Laws of this Realm, and not otherwise &c.

Provided also, that this Act shall not extend to any Warrant or Privy Seal made or directed, or to be made or directed by his Majesty, his Heirs or Successors, to the Justices of the Court of King's Bench, Common Pleas, Barons of the Exchequer &c. and other Justices for the Time being, having Power to hear and determine the same, who are presumed to be indifferent between the King and the Subject may by Warrant or Privy Seal &c. compound &c. for the King only, after Plea pleaded by the Defendant. 3 Int. 187.

1. W. & M. Sess. 2. c. 2. S. 1. Grants and Promises made of Fines and Forfeitures before any Conviction or Judgment against the Person upon whom the same were to be levied, are utterly and directly contrary to the known Laws and Statutes and Freedom of this Realm.

(M. b. 3) Grant. What the King may grant. Things not in Effe.

The King granted the Office of Measurer of Cloths in London to J. M. and Witt awarded to the Sheriff to put him in Pileshon, and the Mayor returned that there is no such Office, the King cannot make such Office in Charge of his People by his Grant without Parliament, and the Return awarded good. Br. Retorn de Briefs, pl. 40. cites 12 H. 4.

2. It was agreed, that the King may grant Fines and Assignments arising in his ordinary Courts whereof he is inheritable; quod not; and yet they are not in Effe at the time &c. Br. Patents, pl. 16. cites 19 H. 6. 62.

3. If the King grants to his Tenant that his Heir may enter without suing Libervy this is good, and yet it is not in the King at the time &c. Br. Yelverton, quod Markham concelebr. Br. Patents, pl. 16. cites 19 H. 6. 62.

4. If the King grants to me, that if I alien the Manor of B. which I hold of him that it shall be discharged of the Fine, by this I shall be discharged when I alien; Per Hody. Br. Patents, pl. 16. cites 19 H. 6. 62.

5. The Queen feiled of a Reffory appropriate granted Advocationem Eclesiae &c. Manwood Ch. Baron held, That the Advozdon did not pass, but remained appropriate as before, and that by the Appropriation the Advozdon was gone, and not in Effe, and consequently cannot be granted; And this Grant is not helped by the Statute 4 & 5 Mar. of Confirmation of the King's Grants; for that helps only Miscreatio, Misnaming, or Misfacing &c. but here is no such Thing in Renum Natura as is pretended to pass by this Grant. 2 Leon. 80. pl. 166. Trin. 26 Eliz. in the Exchequer. The Queen v. Lord Lumley.

6. In an Information in the Exchequer, by English Bill, for Derelict Lands, the Cafe was, King James granted certain Marle-Lands bordering on the Sea to T. S. and Ex uberiori Gratia, he granted all the Soil, Ground, Land, Sand, and Marle-Land Contine adjacent Pramifhes, which are now overflowed and covered with Sea-Water, & que ad cliued Tempus.
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in posterius recuperat' forens per Relationem Maris &c. Non Obstante non nominando valore, quantitatem vel qualitatem; After this Grant, 100 Acres more became derelict and adjoining to the said Marsh-Lands; and the Question was, Who should have those Lands, the King or the Patentee? It was inferred, That the King should have them, because those Lands were Derelict since the Grant, and therefore should not pass by it; For the King cannot grant that which he had not; and that Lands which he had by his Prerogative will not pass by those general Words in the Grant; but it was answered, That the King may grant what is not actually in him at the time, and that there is as much Certainty as the Thing will admit; for it could not appear how many Acres there would be; but admitting it to be uncertain, it is made good by the Non Obslante, which helps all Defaults for want of Information in the King; but it was held per Cur. (with the Advice of the two Ch. Justices) that the Grant was void as to the 100 Acres, and that nothing pulled by those general Words. 2 Lev. 171. Trin. 25 Car. 2. in Bacc. Attorney General v. Sir Edward Farren.

(M. b. 4) What the King may grant during Nonage.

1. 7 Ed. 6. 3. G

2. Leases made by the King of Lands of the Duchy of Lancaster are not voidable by the Nonage of the King, in as much as they pass from his Person as King, and not as Duke; for per Nomem Regis Non Age, but non Rprocessionem. D. 299. Patents: D. 299. Duchy of Lancaster or within; and the Law is all one where the Lease is made of the Land of the Duchy, which is not in Lease, to commence immediately, and where it is of a Lease of Land of the Duchy to commence after another Lease before made, the one nor the other is not voidable by the Nonage of the King; per all the Justices, Serjeants, and Counsel (except Rufwel) Pl C. 251. b. 4 Eliz. the Case of the Duchy of Lancaster.

(M. b. 5) What Things the King may grant, notwithstanding a former Grant; and in what Cases such a second Grant shall be a Repeal of the first Grant.

1. The King granted to W. T. a Ward, so long as it shall happen to be in our Hands from Heir to Heir &c. Afterwards the Heir came to full Age, and died before Livery paid, or Homage done; and after the King granted the Ward of this Heir to H. And the Opinion of the Court was, that the second Grant is good, by Reason that the first did not die in Ward, because he was of full Age, notwithstanding that he did not file his Livery, nor do Homage; and therefore these Words (from Heir to Heir) are determined. Br. Patents, pl. 63. cites 14 E. 4. 7.

2. The King was Founder of an Abbey, and granted a Coronet to a Man who was thereof possessor; and after the King granted the same Coronet to the Abbot and his Successors, and that they shall be quit of him and his Heirs: And some said, that the Grant was not good, because the King had not Coronet at the Time of the Grant, As of an Office; for the Grantee is thereof possessor, and the King has no Reversion in it; for the King...
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himself cannot have the Corody, nor be Officer; and also Corody is incident to the King as Founder, and he cannot release it any more than a Tenure; and the J uffices contra. But in the Cause of the Corody the first Grant was recited; and therefore the King is not deceived, and consequently good; and this shall come by Way of Extinguishment. Br. Patents, pl. 57. cites 8 H. 7. 12.

Sec (M. b. 4) (M. b. 6) Leafes and Grants of the King, as to the Dutchy of Lancaster, Cornwall &c.

Br. Feoffments, pl. 51. cites S. C.

1. L AND of the Dutchy of Lancaster shall pass from the King by Letters Patents only, if it lies in the County Palatine; but if it lies out, then Livery of and Seisin ought to be made of them; for he has them as Duke, and not as King. Br. Prerogative, pl. 72. cites 21 E. 4. 62.

S. C. cited 2
Lutw. 1283.
in Cae of
Adoll v.
Clark.

2. Grant of the Reverson of Dutchy Lands without Attornment, under the Dutchy Seal, is a Grant by Record, and paties the Reverson, as a Fine, i.e. to divide the Estate without Attornment, but not to make Priority to have Action of Waft, according to Co. 4 Inf. 209. But if the King will make Feoffment of it, Livery ought to be, as in Cause of a Subject; for the King may do this by Attorney. 1 Lev. 28. Patch. 13 Car. 2. B.R. Carpenter v. Marshall.

3. 5 & 6 W. & M. 18. Enafts that Grants made by King Charles 2. &c. of any Parcel of the Dutchy of Cornwall shall be good.

Provided that such Grants be for 31 Years, or determinable upon three Lives, and not punnishable of Waft; and that the usual Rent be reserved, and if no usual, then a reasonable Rent, not being under the 20th Part of the clear yearly Value.

And that Covenants &c. shall bind Recieverers.

Saving to all Persons their Rights, except the King and his Heirs, and the Duke of Cornwall and his Heirs &c.

And that Tenants compounding for the increased Rent, the old Rent, or other Rent so compounded for, only to stand.

And that the Fees &c. for Grants of small Value shall not exceed such a certain Sum, and impose a Penalty upon Officers offending.

4. 12 & 13 W. 3. 13. Enafts that all Leafes &c. made by King Cb. 2. King 1. 2. or King William and Queen Mary &c. of any Offices, Lands, &c. in the Dutchy of Cornwall, shall be good in Law &c.

Provided that the Leafes be for not more than three Lives, or thirty-one Years.

And that Covenants &c. in such Leaf or Grant &c. shall be good and effectual in Law, according to the Words.

Saving to all Persons &c. their Right, except the King and his Heirs, and the Duke of Cornwall and his Heirs.

And that Tenants compounding for taking off any increased Rent &c. on Payment of Composition Money, such increased Rent to cease &c.

And that the King may make any further Grant of Grounds &c. being Part of his Manor of Greenwich, to the Use of Greenwich Hospital.

5. 6 Anne 25. Enafts that all Leafes made of Lands &c. Parcel of the Dutchy of Cornwall, by Copy of Court Roll, or within 7 Years next ensuing, according to Custom of Manors of the said Dutchy, shall be good in Law.

Provided that no Leaf be for more than 3 Lives, or 31 Years.

And that all Covenants &c. in Leafes &c. shall be good according to the Words.

Saving to all Persons &c. their Right, except the Queen and her Heirs, and the Duke of Cornwall and his Heirs.
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And on Payment of Composition Money for taking off increased Rent, such increased Rent shall cease.

(M. b. 7) What the King may grant without Record or Inrollment.

1. Nothing shall pass from the King but by Manner of Record; but the King may give certain Things without Writing, and yet if it comes in Ure in the Law, it is not for writing: see Brian clearly. Br. Prerogative, pl. 61. cites 4 H. 7. 6. But Shelley J. was precise in the Time of H. S. that it is a good Gift of Charters made without Writing, as of a Horse &c. Ibid.—S. P. Br. Prerogative, pl. 70. cites 55 H. 8.

2. If the King grants the Recover of his Tenant for Life by Patent, this is good without Attornement, by Reason that the Letters Patents of the King are Manner of Record. Br. Prerogative, pl. 95. cites 34 H. 6. 7. 8.

3. 4 5 W. & M. 22. No Corporations, Lords of Manors, or others having Grants by Charter or other good Conveyances, to have inrolled and had the same allowed by the Court of King's Bench, shall be compelled to plead the same to any Inquisition, returned by any Coroner. And if any Corporations, Lords of Manors, or others, have or shall have such Grants from the King for Felons Goods, Deodands, or other Forfeitures, they shall not be compelled to inroll their whole Charters or Grants, but such Part thereof as may express the Grants of such Felons Goods, Deodands and Forfeitures, and no more; for doing whereof the Clerk of the Crown shall receive 20 s. for his Fee, and no more; and from and after such Inrollment, they shall not be compelled to plead the same to any Inquisition.

4. 10 Anne 18. Reciting, that several Grants have been made by the Crown under the Great Seal, Exchequer Seal, and under the Seals of the Duchy of Lancaster, of Lands in England and Wales, to take Effect in Possession, or by Way of future Interest, for one, two or three Lives, or for some certain Term of Years, not exceeding 50 Years, or for some other Estate and Term, not to exceed 3 Lives, or 50 Years, from the Date of such Grant or Lease, with Covenants importing that the same shall be inrolled before the Auditor of each County within a Time limited, which have not yet been inrolled, so that the said Leases are void or voidable. Enacts that all Persons, having before the 3d of March 1711. omitted to inroll such Leases, shall before the 3d of March 1712. bring them to the proper Auditor to be inrolled; and that in such Case the Lease so inrolled within that Time shall, upon the Inrollment thereof, and Payment of all Rent Arrears, be adjudged to have been null, as if no Forfeiture for Want of Inrollment only had been incurred.

Provided that this Act shall not continue any Lease which has been adjudged in any Court to be forfeited.

(M. b. 8) Where Grantee of the King shall have like Prerogative as the King should have.

1. The Grantee of the King of a Ward, or of his Land, of whom Br. Gard. pl. another holds by Service of Chivalry, with Fees and Advowson, shall 28. cites 8. C. have Prerogative; so that if another Ward falls, who holds of the first Ward, he shall have the last Ward by the Prerogative, the he holds of another.
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Another by Priority, who does not hold of the first Ward, by Reason that the King remains Guardian; and Livery shall be fued out of his Hands, notwithstanding this Grant made to the other; quod nona; that he shall have Prerogative. And there the Grantee of the King’s Grantee shall have the Prerogative, as it seems; for all is one Reason. Br. Prerogative, pl. 17. cites 12 H. 4. 18. 25.

2. It was said by Hill J. that the King has Prerogative, that he shall have the Ward of the Body of his Tenant, tho’ he holds him by Fiefdom, and yet he cannot grant it to another by Grant of the Seigniory to a Subject; for he shall not have the Prerogative. Br. Prerogative, pl. 18. cites 14 H. 4. 9.

3. It was held, that if the King has a Rent-change in my Land, he may distrain for it in my Land by his Prerogative; but his Grantee shall not do so. Br. Prerogative, pl. 63. cites 13 E. 4. 5. & 6.

4. If the King purchases a Seigniory, of which Land was held by Dexterity, the King shall be in a better Condition than the Subject from whom he claims, and shall have the Priority. And so shall his Grantee also in such Cases. 3 Rep. 56. b. Mich. 30 & 31 Eliz. C. B. in Knight’s Café, cites 24 E. 3. 65. Fitz. Tit. Gard. 27. 47.

5. If the King licenses A. to go beyond Sea for a certain Time, and after this Time is expired A. is commanded under the Privy Seal, upon his Allegiance, to return to England, and does not obey, his Goods, Chattels, and Lands, shall be seized into the Hands of the King for this Contempl. And it was resolved by all the Judges of England, That if A. in this Café, has a Manor where there are Copyholds and Timber fit to be sold at each Station, and the King grants it quam diu in Manibus notris fore continget, it is good; and such Patentee may keep Courts in his own Name, and grant Copies, and sell seisinable Timber. Jenk. 246. Pl. 35.

(M. b. 9.) Grantee of the King. In whose Name he may sue; and how.

1. K. IN G granted Annuity, which he had, over, and the Grantee brought an Action in his own Name. D. 1. b. pl. 7. Marg. cites 3 H. 4. 8. 2.

2. If the King’s Grantee of a Ward be ousted of the Land, or if the Rents are levied by a Stranger by Fort, the Grantee shall not have Trepsus in Contempus Regis, but shall have a Writ of Ejection from Custodia. Br. Ejectione &c. pl. 9. cites 11 H. 4. 64. 65.

3. Where the Grant is of All Fines, Fines, Amercaments &c. and that the Patentee may levy them by himself or by his Servants; there the Party may collect, and levy it, and the Sheriff of that which is warranted by the *Grant, shall have Allowance of it; but where the Grant is of Fines and Amercaments as above, without the Words, (To levy them by himself or his Servants) there the Sheriff shall levy them, and the Patentee shall sue to the Court for them by Petition; for they lie in Allowance by the Justices, quod futi concedendum; quod nona. Br. Patents. pl. 4. cites 9 H. 6. 27.

4. The King has a Bond by Outlawry of an Obligee, who grants this over, and also that the Grantee may sue in his own Name; and so he did, and adjudged good. D. 1. b. Pl. 7. Marg. cites 19 H. 6. 47. 2.

5. A.
Prerogative of the King.

5. A was outlaw'd for Treason. — The King made a Grant to B, who brought a Bill in Chancery for certain Goods of such a Value against C. who had A's Goods in his Possession. 'Twas objected, that their remedy was at Law by Detinue; but 'twas answered, that no Action lay at Common Law 'till Seizure, or finding by Matter of Record; but however, that the King had Election to proceed at Common Law, or in Equity. And the Court held, that Subpana lay, and ordered C. to make an Inven-
tory against the next Day, or that he should be sent to the Fleet. 39 H. 6. 26. b. Wallis v. Smith.

6. If Bond be forfeited to the King by reason of Oultawry, and the * Grantee fied in the King's Name, the Defen-
dant shall sue in his own Name, and not in the Name of the Grantee; but if the King * grant to another, he shall sue in his own Name, and not in the Name of the King. D. 1. pl. 7. Pach. 4 H. 9. The Grantee
The fame Difference taken by Read J. Kelw. 169. in the Prior of Sheen's Cafe.

Grant the King may sue in his own Name, and so may the Patentee; but by Manwood, Ch. 1. after Assignement of a Bond, perhaps the King cannot sue in his own Name, because 'twas not originally made to him. Savil. 2. Lee v. Brier ton.

7. B. was attainted of Treason, and having certain Obligations which
became forfeited, the King granted them to B's Wife, without any Words enabling her to sue for them in her own Name. She brought Information upon them in her own Name. It was adjudg'd (as the Reporter says he heard) that the Action was well brought, for the King only can grant Choses in Action; and, by the fame Reason that he has granted the Obligations, which are the Substance and the Original of the Actions, the Law implies that the Grantee shall use the Means to come at the Thing granted &c. D. 30. b. pl. 258. Hill. 28 H. 8. Brevton's Cafe.

8. A Scire facias issued out in the Queen's Name to shew Caufe why
Execution of a Debt which is come to the Queen by Attainder of J. S. should not be had. The Defendant pleaded, that the Queen had granted Words in the Patentee, he might sue in the Queen's Name; but this was not pleaded, and the Court held clearly, that had it been pleaded, the Suit might be brought in the Queen's Name, for the Queen had express Words to sue in the Queen's Name, though it was not pleaded. Ow. 113. Pach. 36 Eliz. Allen's Cafe.

Nota. In truth there were special Words in the Patentee, he might sue in the Queen's Name; but this was not pleaded, and the Court held clearly, that had it been pleaded, the Suit might be brought in the Queen's Name, for the Queen had express Words to sue in the Queen's Name, though it was not pleaded. Ow. 113. Pach.

9. A recovers Damages in Action Sur Cae, and afterwards is out-
law'd. — The King grants them over. — The Grantee may levy this Debt by Action in his own Name, or by Extent in the King's Name, tho' he has no Words in his Grant to sue it in the King's Name as is usual in such Cases. But an Assignment over this Debt by the Grantee to another is merely void. Cro. J. 179. Trin. 5 Jac. King v. Twyne.
Prerogative of the King.

10. A Scire facias is a Writ of Right, where the Patent is prejudicial to a Subject; and the Crown ought to suffer the Subject to use his Name. Arg. by Northev, Attorney-General (cites D. 197, 198. 11 Rep. 74, 8 Rep. Prince’s Case. Fitzh. tit. Brief 651. 2 Vent. 344. Sir Oliver Butler’s Case. 3 Lev. 220.) 10 Mod. 260, in the Case of the Queen v. Aires. — Adjudged Hill. 3 Geo. i. 10 Mod. 354. B. R. The Case of the Queen v. Aires.

See (T. b.)

(N. b) Grants of the King. Falsé Suggestion.

2. As if a Man sues to the King by Petition to have a certain Manor, and lays in the Petition, that it is worth but 10l. per Annum, and thereupon the Patent is granted; if it be of the Value of 40l. the Patent is void. 9 H. 6. 28 b. Co. 10. Arth. Legat. 112.

S. P. If the Difference of the Value be found after by Matter of Record. Br. Patents. pl. 4. cites 9 H. 6. 25. per June. But false Confideration in a Patent will not avoid the Patent; as if the King, in Consideration of 100 l. to him paid 60l. grants, where he paid only 60l. yet the Patent is good. Br. Patents. pl. 4. cites it as so said. 37 H. 8. Br. N. C. 35. H. S. pl. 510.

Jenk. 254. 3. So if the King has Title and Right to Land, of which A. is feized, and after A. is attainted of Treason, by which the King seizes, if I sue to the King to have this Manor, which comes to him by Caufe of Treason, and Patent is made accordingly, it is void. 9 H. 6. 28 b. for the false Suggestion.

Jenk. 324. 4. If a Leafe for 40 Years of a Mill and House leave the House for 20 Years, and then surrenders to the King, and therein recites, that he has all the Estate, Title and Interesse, which the first Leafe had, and which is contained in the Patent; and thereupon the King grants a new Leafe, by other Patent, to him who surrenders it; This is void, because the Recital is false, inasmuch as he had but the Reversion of Part, and this is the Suggestion of the Party. Br. Pat. 30. 10a. Sc. between Sawyer and East. Adjudged.

5. In Alifze, twas found by Verdict, that L. enfeoff’d the Baron and Feme in Fee, and after the Baron was found guilty of Felony, and arrayed, and he took to his Clergy, and was deliver’d to the Ordinary, for which the Tenements were deliver’d into the Hands of the King. And after the Baron broke the Prison of the Bishop, and the Lord sited in Chancery to have the Land by Escheat out of the Hands of the King, and had it, and a Writ sent to the Escheator; and because the Feme had a joint Estate with the Baron, and the Tenements were deliver’d out of the Hands of the King by false Suggestion, this Suit was adjug’d Diffellin in the Lord, who enter’d by this Livery, and the Feme recover’d by Accord; and because the Baron brought the Alifze as a Feme sole, and the Defendant pleaded to it as to a Feme sole, therefore it shall not be argued whether the Baron be alive or dead; and therefore it seems that the King does not make [Claim] but for the Year, Day, and Waste, and then the Entry of the Lord by the Livery obtained by the false Suggestion made the Diffellin, and
Prerogative of the King.

and there was no Dilletlin during the Possession of the King. Br. Affile. pl. 114. cites 4 Aff. 4.

6. Tenant in Title, the Reverson to the King purchase'd License to Alien in Fee, and to retook ESTATE to himself and his Feme in Title, the Remainder to his Right Herts. This Licence fo purchase'd by false Suggestion is void, and the Alienation is no Discontinuance of the Receipt of the King, where the King is deceiv'd in his Licente. Br. Discontinuance de Possession. pl. 16. cites 40 Aff. 36.

7. If a Man makes Suggestion to the King to have an Office, and obtains it; if the Suggestion be false the Patent is void; because the King is deceiv'd in his Grant. Br. Patents. pl. 25. cites 27 H. 6. 27. per billinge.

8. Matter in Fall express'd in the King's Patent, which is false, shall not prejudice, nor is it material; As if the King reciting in his Patent the good Service which J. S. has done him ultra Mare, or the like, grants to him such Land, where in fall he did no such Service, yet the Grant is good. Per Fitzherbert Justice Quod Miraum. For it appears elsewhere, and in 9 H. 6. 28, that if the King makes a Grant upon false Suggestion, which is only Matter in Fact, the Patent is void; but Brooke says, there seems to be Diversity between false Suggestion and false Consideration. Br. Patents. Pl. 1. cites 25 H. 8. 1.

9. Haule had a Dutchy Lease gotten upon untenue Surties, and the King belowe'd the Land upon the Earl of Devon for his Service done in Ireland. This Lease the Earl bought to avoid by Law; Haule prays to have the Matter examined in Chancery, and to have the Suit stay'd by Injunction; which was denied, for that the Lease was granted by Fraud, and the Fee Simple to the Earl in Possession, and not in Receipt; and nota, that the Lord Chancellor said, That where Lands are granted in Receipt, if the Grantee will avoid the Lease for a Rent paid, but not at the Days, in that Case, he will relieve, but not where the Lease is granted upon a wrong Suggestion, for that were to relieve Fraud in Chancery. Cary's Rep. 45. cites 23 Jan. 1 Jac.

10. King Ph. and Queen M. feised of the Manor of Wimondham in the Right of their Crown, ex speciali gratia &c. granted to G. H. (inter alia) omnes illas duos pecias terrae nevis called N. and W. lying in W. now or late in the Tenure of J. C. &c. Une quidem omnis * a nobis &c. concensae & detenta &c. and it was found by Verdict, that the Manor was not conceded or detainted from the King, but that it was in Onere & Compaturo, and the Reats and Profits were paid to the King, except only of the land two Parcels of Lands which were not paid to him. It was adjudged, that tho' the Grant was ex certa Scientia, Gratia speciali &c. moro motu; and notwithstanding the Certainty as to the Thing, the Quantity, the Ville, the County, the Occupation, and the Title; yet it being made upon a false Suggestion of the Party, that the Manor was conceded from the King, when in truth it was not, the Grant was therefore void. 10 Rep. 109 &c. Mich. 10 Jac. C. B. Arthur Legat's Cafe.

(N. b. 2) False Suggestion. Punishment thereof. Profits.

1. TENANT of the King in Title obtained License to alien in Fee to two, and retook of them by Fine for Life, the Remainder to E. and J. his Feme, and to the Heirs of E. who was Son of the first Feoffor, who was Tenant of the King. The Feoffor died, and E. his Feme got License upon Office found; and after Fine was found in the Treasury, by which it appeared, that the Feoffor had working but in Title at the Time of
Prerogative of the King.

The Alienation, which was sent into Chancery, and from thence by Writ; whereupon Scire facias was awarded against Baron and Feme, if they had any Thing to say, why the Land should not be refeited according to the Statute of Lincoln, and to remain in the Hands of the King during the Nonage of [E.] who is within Age, and Heir to the Feoffor; and it was refeited by Award, because the Licence was void; for the King was deceived in his Grant, inasmuch as he knew not but that the Feoffor had been feited in Foe, quod nota; and it appears often in the Book of Affifes, that Licences obtained upon talle Suggestions are void. Br. Alienation. Pl. 28. cites 21 Aff. 15.

2. Suggestion was made in Chancery, that Tenant in Tail the Reverson to the King purchased Licence of the King to alien in Fee, and to retake to him and his Feme in Tail, the Remainder to his right Heirs; the which was obtained, and the Estate made accordingly; the Baron died, the Feme married K. and after the Feme died, and Scire facias issued upon the Suggestion against K. to say why the King, who now has the Ward of the Heir of the first Baron, should not be reforted to the Issues for the Time of the Nonage for the Time which K. occupied; and because this Licence was in Decent of the King, and his Reverson by this not discontinued, it was awarded, that in Right of two Parts of the Land, he shall be charged for the Time which he occupied, and that of the third Part he shall be discharged, because of this the Feme was Dowerable. Br. Patents. pl. 37. cites 40 Aff. 36.

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of his Grant. But Per Knivet. Ch. J. the Grant is good; for the intent of the King appears. Br. Patents. pl. 48. cites 41 Aff. 19.—So where two Masters are held of the King, the one in Chancery, the other in Exchequer, and the King grants by Writs as above, that he may amortise half, this is good; and yet the one Master is a greater Loss to the King than the other; and, because it was the Will of the King, that the House should be amortised, and the Grant is de Gratia specialis, therefore it was awarded that the Grant was good. Ibid.

3. If the King presents A. and upon Refusal brings Quere Impedit, See (Q. b. 2) and, pending this, B. procures Letters Patent to present himself, without mention of the first Preseiment and this is obtained by Fraud, and in Decret of the King, it is a void Preseiment, and therefore shall not repeat the first. Dy. 17 El. 339. 47. Adjusted.

Bishop of the Diocese collated J. to it by Laple, and afterwards the Queen presented one to the Vicarage, who brought a Quere Impedit against the Bishop and his Collate; pending which Suit, the Collate by Fraud and Error obtained a Presentation from the Queen, without mentioning his Pleasure to revoke the first Presentation. The Queen by Letter certify’d the Court, that she had forgot her former Preseiment, and said her Pleasure was that it should stand; judgment was given for the Queen, because the Fraud and Decret made to the Queen was contes’d by J.’s Demurrer, tho’ the Notification of it was not under the Great Seal. D. 339. pl. 4. Bill. 15 Eliz. The Vicar of Yorron’s Case.—But if the King presents one to a Benefice, and before Admission he presents another without Fraud or Error in the second Presentation, this is a good Revocation of the first Preseiment, without express Clause of Repeal in the Patent; but if the first Presentation be admitted and Inferred, then such second Presentation is no Repeal of the former Preseiment, without a Recital thereof, and of the Admission and Inhibition thereupon; and also there ought to be express Clause of Revocation of the said first Preseiment, and of the Admission and Inhibition thereupon, mention’d in the second Letters Patent of Preseiment; and this Difference was adjust’d. D. 255. 5. Marg. cites Path. 9 Jac. in the Exchequer. Calvert v. Kitchen.

4. If the King presents, and after repeals it, and gives Notice thereof to the Ordinary, and yet the Ordinary afterwards imitates and induces him; and after the King recites, that where the incumbent was Canonicke Instituts of his Preseiment, he confirms it to hunt for his Life. This is a void Confirmation, becaus the King is deceived, insomuch as he was not imitated of his Preseiment. D. 12. El. 292. 70. Adjusted. 25 El. 3. 47. Adjusted. And no Notice alleged.

5. So it would be in the said Case if the Ordinary after the Repeal made, and before Notice of it to the Ordinary, had imitated and induced him; For the Notice is only material to make the Ordinary a Disturber. D. 12 El. 292. 70. 25 El. 3. 47. Adjusted. And no Notice alleged.

6. If a Benefice above the Value of 20l. per Annum, comes to the King by Laple; and the Chancellor being informed, that it was under the Value of 20l. presents to it under the Great Seal, and the Preseiment thereupon imitated and induced, he cannot be afterwards removed; for the Preseiment is by the King, being under the Great Seal; and there is not any Difference in Form, when it is for the King, and when for the Chancellor, that for the most Part, the one is Mandatus, and the other is Quasi, the Confusion of which Words are not of any Moment. Hob. R. 259. Lord Chancellor’s Case. * C. 272. Theor this was merely void. [The Book says] It remain’d good till it was avoided. Wynch. 19. Trin. 19 Jac. Parson and Morley’s Case.—[* The Letter (C) seems to stand for (Ca’s), but if so it is misprinted, and should be (Case 275).]

7. But, in the said Case, if the Preseiment itself under the Great Seal had recited, That the Benefice had been under the Value of 20l. 33. S.C. — Jern. 202. pl. 53. S.C. — S. P. was refer’d to Hobart, Ch. J. and Tufnield. Ch. B. to certify whether this was merely void. [The Book says] It remain’d good till it was avoided. Wynch. 19. Trin. 19 Jac. Parson and Morley’s Case.—[* The Letter (C) seems to stand for (Ca’s), but if so it is misprinted, and should be (Case 275).]

8. Where the Bishop of W. had Consent of Plots, Fines, and Assignments in D. and the King had it Tempore Vacantiorum, and granted them to the Mayor and Burgesses of D. a Scire Facias illud against them to repeal the Patent, because the King was deceived in his Grant. Br. Prerogative. pl. 99. cites 16 E. 3. and Fitzh. Brief 657.

C e 9. To
Neither the Queen nor the King's Son are restrained by this statute concerning Grants by the King, Co. Lit. 1. 8 P. Br. Li, very, pl. 16, cites H. 4. 44.

9. 1 H. 4. 6. To the intent that the King might not hereafter be deceived in his Grants, he is content (by the Affixes of the Lords Spiritual and Temporal, and at the Request of the Commons) to be hereafter concluded by the safe Man of his Council in Things touching the Estate of him and his Realm, fasting always his Liberty.

In a Petition to the King for Lands, Annunities, Offices &c. their Value shall be therein expressed; otherwise the Letters Patents thereupon had shall be void.

10. The King granted the Land in Ward to one for Life, the Remainder over in Fee, and was deceived in his Grant, and therefore he, at the Suit of the Heir, by Scire facias repealed the Letters Patents, and resumed the Land, and made Livery to the Heir; quod Nota. Br. Patents, pl. 10. cites 7 H. 4. 42, 43.

If the King be seized of an Advowson in Fee, and grants it to J. S. Habend. after the Death of W. N. this is a void Grant; because he is feigned in Fee, and has no Reversion therein. Br. Patents, pl. 29. cites 35 H. 6. 34, 35.

12. If the King gives Land to W. N. and to his Heirs Male, the Patent is void, and he is only a Tenant at Will; for the King is deceived in his Grant. Br. Estates, pl. 84. cites 18 H. 8.

* 15. The Queen by the Words of Ex certa Scientia, & vero motu, granted to A. the Manor of D. where he had by Attainder of Sir T. Wyatt; whereas in Truth, she was feigned by Defeunt. Dyer thought the Grant void, and Brown and Welton J. agreed. That it was void at Common Law; for in every Cafe where the King is deceived in himself, or of the Information of the Party, the Patent shall not be allowed contrary to the King's Intent; but in this Cafe the Patent is supplied by the Statute of Misprisions; for when the Substance of the Thing granted appears certainly the * Statute supplies all other Defects. Mo. 45. pl. 137. Mich. Eliz. Anon.

But when the Certainty of the Thing granted does not appear, it is otherwise: as where the King grants an Advowson appurtenant, where it is in Gros. it does not pass because it is not the same Thing. Ibid. — So if the King grants the Manor of D. in jac a County, where there are two Manors of the same Name, in the same County. Ibid.

14. The King was feigned of the Manor of Torrington, with a Market and Fair, held every Week on Saturday, and a Fair in Vigilio Feiti & Graffino Sanedi Michaelis, and incorporated the same, & ex certa Scientia granted to them to have a Market every Saturday, and two Fairs every Year, one in Vigilio Feiti & Graffino Sanedi Michaelis, and the other on the Feast of St. George the Martyr. Adjudged, That this Grant was void; For the King was not apprized of what he granted; For his Intent was ex speciali gratia, & ex certa Scientia, to grant a new Fair at Michaelsmas; and not to grant that Fair which they had before. Nell. Abr. 900. pl. 2. cites Dy. 276. the Cafe of Torrington.

* This Reason does not appear in Dier.—Mo. 416. S. C. cited by Coke Attor. Gen. Arg., in Califfl, 

Cafe; and that it was adjudged upon Scire.

Fleta in Chancery, in 19 Eliz. That the Queen having a Fair in Torrington, took held in the Feiti of St. Michael; She incorporated the Town, and without mentioning her Fair, she granted to the Corporation to have a Fair to be held in Vigilia in Feiti & in Graffinio Sci., and adjudged the Grant void, by the Affidavit of the Judges; Because the Queen is to have the Old Fair, and to the Grant void, and then no Fairs can to be given a Fair to the Corporation in Vigilia & Graffinio.—D 276. pl. 52. is that the Queen granted to the Corporation a Market every Saturday, and two Fairs in Vigilia & Graffinio Santii Michaelis, & aliam in Die Sancti Georgii Martyris, & duas Dicilem prsecum sequentiam. But it does not appear in Dy, whether the Grant was adjudged void. —In the Cafe of AltonWoods, 1 Rep. 50, a. Popham, Ch. J. says he was of Council in this Cafe, and that it is not fully reported in Dyer. He states it to be adjudged a void Grant; For the old Fair cannot pass, because it was plainly the Queen's Intent to create a new one; for, he adds, there was a Clause in the Grant (viz.) viz. Mercatum & Nundinum, et ejus effe ad Nundinam in cinemum Mercatum & cinemum Nundinarium; when Words are always used in the granting a new Fair. But in the Cafe of a common Place, the old one should have passed without Question; and for that cites Dy. 252. 18 Eliz. — It did not appear to the King that he had an old Fair, but he intended as the Words import to grant a new one, and not the Fair in Eliz, and therefore the Grant is void. 2 And 156. cites S. C.

15. King
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15. King H. 7. being feized of the two Manors of Ryton and Condor in Shropshire, he granted ex certa Scientia &c. tenuam illud Manerium, of Ryton and Condor &c. And the Grant was adjudged void: For that the King was deceived in it, yet in the Case of a common Perfon, it had been good. So where Queen Elizabeth being feized of the Manors of Sapperton and Milborne in Lincolnshire, granted to one tenuam illud Manerium de Milborne cum Sapperton. It was held that neither of them palled. 1 Rep. 46. a. b.— cites 29 Eliz. & 39 Eliz.

16. Sueo factus by the Queen to repeal a Patent granted to Cotton and his Wife, Anno 35 of her Reign, reciting that H. and G. Conjunction et Divinam, were bound in a Bond of 1000 Marks to the Queen, Anno 31. which was forfeited; reciting also, That the Queen, by Patent, Anno 33 of her Reign, had granted unto Cotton and his Wife, the said Bond, and the 1000 Marks so forfeited; reciting also, That at the Suit of Cotton in the Queen's Name, Judgment was given in the Exchequer, that the Queen should have Execution for the said 1000 Marks. And to the Intent that Cotton might have the said Bond, the Queen by the said Patent Anno 35 in her Reign, reciting the Judgment obtained in the Exchequer, ex certa Scientia & mero motu &c. granted him the said Bond, and the 1000 Marks, and all the Benefit and Advantage of the said Judgment. In this Grant the Queen was deceived, and the Grant thereby void. 1. because the Obligation was forfeited at the Time of the Grant: whereas the Queen recited that it was (to become forfeited) 2. Because the recited, That he had granted the Obligation before before by the Patent of 33. whereas in Truth nothing passed by this Patent, for want of true Recital of the Condition of the Obligation. 3. Because the Judgment was given of 12d. Costs and 12d. Damages, as well as of 1000 Marks; whereas the Grant of tenuam Beneficium & Advantagem of the Judgment aforesaid, extends as well to the Costs and Damages as to the 1000 Marks, which was the principal Deed, and fo the Queen deceived, which Lord K. Egerton thought was hard in Conscience, because the Earl was in the Clerk, who wrote the Privy Seal, and the Bill signed was well; But the Law was with the Queen in Extremity. Mo. 448. pl. 610. Patch. 38. Eliz. The Queen v. Cotton.

17. The Queen was Tenent pur ater Vie, and made a Lease for 40 Years; S. C. argued that in this Case he cannot absolutely contract for such Lease, yet with- out any Recital or Mention of Estate for Life, the Lease is good; for contrary to the Lease for Years is in Judgment of Law less than an Estate pur ater Vie, and the Queen does no Wrong or Prejudice to any by the Demise, and is not deceived in her Grant; for in Judgment of the Law, this is a Lease for 40 Years if Cost, que Vie lives so long. But if she had granted a greater Estate than the lawfully might, as an Estate Tail, or in Fee, there because the cannot lawfully do it, she was deceived, and by Consequence her Grant void. 7 Rep. 12. Refolv'd. Mich. 33, & 34. Eliz. in the Exchequer. Englefield's Cafe.

18. The King seizes of a Manor in Tail Remainder to his Right Heirs, Judge Jen-kins says, This is a hard Cafe. The King granted this Manor by Patent to A. in Fee, this Patent is void; for the King intended to grant one entire Estate in Fee, and not by Fractions, first for the King's Life, and afterwards to be made void by the Successor, Heir in Tail; Where the and then to be revived again, where the King dies without Issue. By all the Judges. Jenk. 257. pl. 42. cites 41 El. 1 Co. 40. b. Alton Wood's Cafe. For in the Conside- ration, nor in the Essence of the Estate, and where the King has no Prejudice, but the possible Prejud- ice is to the Patente, the King's Patent ought not to be avoided. The Grant is good in the Cafe of a Common Perfon. Prinicius beneficium decet esse manifestum. It is for the King's Honour to maintain his Patents, and it is a Dishonour to him to avoid them by too nice and subtle Constructions; And fre- quently it is to the grievous Loss of the Patente. Jenk. 257. pl. 42.

19. If the Queen in her Letters Patents of Presentation mistakes her Title; as if she has Title to present in respect that she is the very Patron, and the presents Ratione Lapis; such Presentation is void; For she is de-
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received in her Preseation. 6 Rep. 29. b. Trin. 44 Eliz. B. R. The third Resolution in Green’s Case.

20. The King makes a Lease for 21 Years to A. and afterwards reciting this Lease, grants the Reversion of this Land to B. — A. had surrendered his Lease before the Sealing of the Second Patent. The Second Patent is void; For the King had not the Reversion but the Possession at the Time of the Sealing the Second Patent; But where the King has the Reversion of Land, or a Manor, Expellent upon a Lease for Years, made by a Common Perfon, and grants the Land or Manor by Patent by such Words, the Reversion will pass; For the Reversion of the Land or Manor is the Manor or Terra revertens. Jenk. 303. pl. 67.

21. Note the Difference agreed by the Court. If the King grants to A. all the Waste in D. after an Ad quod Damnum returned, and that the Waste contains 120 Acres, yet if it contain 300 Acres, all pass: For the Grant is general, and the Ad quod Damnum was to enquire of the Damages, and not for the Quantity of the Waste. Noy. 29. Brand. v. Todd.

22. The King patifed of a Chattel Interest in Lands, for a Debt grants them in Fee. It was resolved to be void, the King being deceived. 3 Lev. 135. Mich. 35 Car. 2. C. B. Travel. v. Carterer. — cites 1 Rep. 52. a. and the Cate of H. 7. there cited; and Mod. 415.

(Q. b) Where the King shall be said to be deceived in his Grant.

1. If the King seffed of the Advowson of a Prebend in Fee which is Preseative, and he grants toam Rectoriun five Prebendam notram de [shaping Abbas in Com. South. cum omnibus Decinis qui-bufcunque eidem pertin. &c. Monasterio de Winton, nuper spec. in tam amplis Modo & Forma as the late Abbates held it. Tho’ the Abbates was seffed in Fee of the Advowson, yet the Advowson shall not pass by this Grant, but the King is deceived; For he intended to pass the Rectory and Tithes as a Lay Thing, and not the Advowson. Hill. 14 Car. This Case was referred to the Arbitrement of the Lord Keeper between the Preseience of the Lord Marquis of Winchester and one Pope the Preseience of the King, and he awarded upon hearing of Counsell as a clear Point in Law, that nothing passed by this Grant, and to the Preseience of the King obtained the Church and was instituted and induced.

(Q. b) Grants of the King false Recital. In what Cates a false Recital shall make a Patent void.

§ C. argued. Lane 74. to 79. and ibid. 108 to 112.

1. If Leffee for Years of the King makes an Under-leafe of part of the Land to another, and after dies, and his Wife Executrit takes B to Baron, who surrenders his Term to the King, and after the King reciting the first Demise, and that the Interest thereof is come
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come to B, and that he had surrendered to us, he demises to B, as
well in Consideration of 20 l. paid, as Pro eo quod the said B, su-
per &c. Assumpsit to repair the Premises at his own Costs. This
while Remainder shall avoid the Lease; For the King intended the whole
Estate of the first Demise to be surrendered to him, and this was
Dub.

2. If the King recites, that where by Letters Patents dated &c the
Office of the Marshal of B. R. was granted to J. S. for his Life, and
that the said J. had surrendered them to him, the which he accepted,

in Consideration of this Surrender the King grants the Office to
J. D. for Life. If the Office was not granted to J. S. or if he
did not surrender the Letters Patents, this new Grant made to J.
D. is void; Because those are the Considerations of the new
Grant. Mich. 13 Car. B. R. between Sir John Meade and Sir
John Lenthall. Resolved per Curiam on Evidence at the Bar in a
Trial for the Office of the Marshal of B. R. in an Action upon
the Cafe, and thereupon Sir John Meade was nonsuit.

3. A Man made Suggestion to the King, that he was failed in Fee, and
obtained Licence of the King to alien in Fee, and to retain for Life, the
Remainder over in Fee, where it was found that he who got the Licence
had not but for Term of Life; by which it was awarded, that the Land
upon Seire facias should be re-sealed, by reason that the King was de-
ceived in his Grant; quod nota. Br. Patents, pl. 77. cites 21. All. 15.

4. Queen Mary, in a Grant by her made of the Cassity of a Castle to
D. recited a Surrender to her made of a former Grant thereof dated Anno
33 H. 8. when in Truth it was dated Anno 32 H. 8. Afterwards Queen
Elizabeth, Ex speciali gratia, granted the said Office to K. Adjudged,
That by Reason of this Mifrecital of the Date, the Grant to D. was
void notwithstanding the Act 34 H. 8. and other Acts of Mifrecital.
in the Cafe of Alton Woods. S. P.

ces remain as they were at Common Law, and the Truth of this Cafe was, That the Cassity of the
Castle was an Office of Constableship of the same Castle tho' no Word of it was in the Patent; And at
length the Plaintiff, viz. K's servant was nonsuit. D. 194 b. 195 a. b. pl. 53. Hill. 3 Eliz. Kemp
v. Mack-Williams.—- (But I do not obverse that any Judgment was given.)

5. One who had only a Lease of Lands for 60 Years, made a Lease of
the same Lands for 80 Years. The Reversion came to the Crown. The
60 Years expired; The Lease surrendered to the Queen the Indenture, Estate and Interest, to the Intent it should make a new Lease to him for
20 Years, which he did, and in her Grant she recited the Lease for
80 Years, and that in Consideration of a Surrender thereof, and for
divers other good Considerations, the Ex certa Scientia &c. demised the
name for twenty Years rendering the ancient Rent. It was held
by Wray, Southcot, and Manwood, that the Demise was void; be-
cause the Queen was deceived. But Dyer held e contra; Because
there is no Suggestion but Information, with a Consideration, which tho' it
be false is yet nothing to the Purpoze. D. 252. pl. 26. Trin. 18 Eliz.
Anon. cites Fizch. 27 H. 8. and Br. Patents, 37 H. 8.

6. King H. 8. Ex certa Scientia, and in Consideration of 300 l. grant-
ed all tho' Melliages in the Tenure of B. and lying in the Parish of D,
when in Truth they did not lie there, but in the Parish of S. It was
adjudged, that tho' the Melliages were in the Tenure of B. yet because
by the Grant they were restricted to a particular Place where they were
not, and there was no other convenient Certainty to fix the Premisses,
therefore the Grant was void. 2 Rep. 32. h. Mich. 36 & 37 Eliz. Dod-
dington's Cafe.

D d
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7. King H. S. being Tenant in Tail of the Manor of Aboretly, granted it to his Servant Walter Welby, and to Elizabeth his Wife, and to the Heirs of the Body of the said Walter, and in the Patent it was recited, that the King was feiled of the said Manor in Fee; and upon Denurrer it was infiiffed, That this Grant was void, or if not, it was good only during the Life of the King; Because, he having only an ESTATE-TAIL himself, could grant only for his own Life; For he could not grant a greater ESTATE than he had, so that being Non Informatus, or Mis-informatus of his Estate, he was deceived in granting it. Nell. a. 898. pl. 25. cites Moor 413. Welli's Cafe.

The Cafe was, H. S. was Tenant in Tail to him, and the Heirs Moile of his Body, and afterwards the Recovers came to the Crown by the Atrimider of the Recovers, and it was enacted by Parliament, that H. S. should have the said Manor, and should be adjudged thereof feiled to him, his Heirs, and Successors in Fee simple, Saving to all Persons, Except the Recoverer and his Heirs, all Rights &c. It was argued, that the King had the Reversion in Fee at the Time of the Grant, yet the Patent to W. should not enure froth upon the King's Estate for Life, and then to be void against the Issue, and to be good again after the Failure of Issue; because such Operation of the Grant imports in part Grant of the Reversion which the King had, and so there ought to have been a Recital of the Issue in Poffeffion which there is not, and that the saving no way's better the Cafe, but the Grant must be considered as it was at the time of making, when the King was Tenant in Tail with Reversion explicable in Fee to him. And that Patrons of Estates cannot be in Grants of the King, viz. that the Grantee shall have for a Time, and then the King, and then the Grantee again. But afterwards, upon arguing the Cafe by the Barons in 38 & 39 Eliz. Evans and Periam Ch. B. were against the Queen (and for the Grantee) in omnis; and Clarke B. in omnis with the Queen. Nota, that Periam said, That if Tenant in Tail be, Remainder in Tail, Remainder to the Queen; and Tenant in Tail does Treason, and the Queen makes Leaf, and then Tenant in Tail dies without Issue, and afterwards he in Remainder dies without Issue, the Leaf shall continue good upon the Reversion. No. 413. pl. 57. c. Mich. 57 & 38 Eliz. Welli's Cafe.

8. The Prior of W. being feiled of the Restory of L. leased the Thibe-Corn and Hay for Years, referring 4 l. Rent, and the Leffor to pay 3 s. 4 d. per Annum for bringing the Rent to the Priory; The Priory coming by mefne Defcants to the Queen after the Statute of Difillations &c. she leased the Restory, and all the Glege with the Appurtenance ofly lot with the same heretofore, under the yearly Rent of 3l. 16 s. 8 d. to hold the Premises under the said yearly Rent of 3l. 16 s. 8 d. It was adjudged, That the Leaf made by the Queen was void, because the she was deceived in the Consideration; For the intended to lease no more than what the Prior had leased before, and to have the same Rent which he had; Now the Prior leased only the Thibe-Corn, and Hay, and had 4 l. per Annum; for the 3 s. 4 d. was not to be deducted out of the Rent, but paid by way of Covenant; whereas the Queen had but 3l. 16 s. 8 d. for the whole Recitory; so that it is plain the she was deceived in the Recital. Yelv. 42. 47. Hill. 1. & Trin. 2 Jac. B. R. Chambers v. Mason.

9. King H. 7. granted the Manor of B. to G. B. in Tail Male, and after by another Patent, reciting the former, and that in Consideration of the Surrender thereof Virtute cujus he was feiled in Fee, he de Gratia specta-
li, certa Scientia & Mero Motu re-granted the said Manor to the said G. B. and J. his Wife, and to the Heirs of the said G. B.. It was re-
solved, That the Recital of the Estate Tail, and that the Patente were hurred or delivered the said Letters Patents to the Chancellor to be cancelled were both in Judgment of Law the Information and Suggestion of the Party; But the Claufe of (Virtute cujus he was fefi-
ied in his Demeine as of Fee) was only the Collection of the King himfelf a Confequence upon the Surrender, in which the King met-
took the Law. 6 Rep. 55. b. Trin. 4 Jac. Lord Chandois's Cafe.

10. Also the Party informed the King, That he had delivered his Pa-
tents to the Chancellor to be cancelled, whereupon the King affirmed, (que quidem Littera Patentes adduisse & ibidem cancellatam fuerint) This is not the Information of the Party, but the Affirmation of the King; And the Collection or Affirmation of the King upon the Information of the Party when it is not any Parcel of the Consideration shall not avoid his Grant; For all that the Party had informed was true, and the Error was in the Confe-
Consequence or Inference made by the King upon it; Therefore in as much as the Party had truly informed the King of the Estate Tail, and of the Delivery of the Patent to be cancelled, tho' the King had mistaken the Law or the Matter in Fact, yet this being no Part of the Consideration shall not avoid the Grant; For no Default was in the Party. 6 Rep. 55 b. Trin. 4 Jac. Lord Chando's Case.

11. By Letters Patent the King granted Quemes illas Petias Terce vocat B. and C. exit in Man' de D. nuper inTen. A. S. Que quidem ovna Premises a uelis &c. Concedat & Detenta fuerunt, & Redditaris &c. inde non responfa, Habendum &c. In Ejectment it was found, that the Manor of D. of which the Premisses in Question were Part, Non Concedat nec Detent' fuit, fed fuit in Onera & Compoto, and that the Rents &c. of the said Manors (except of the Premises in Question) were answered to the King. It was resolved, That the Grant was void for the false Recital; For the Manor itself being in Charge to the King, the Premisses which are part of it cannot be said to be concealed or detained from the King, tho' in Fact they were in the Possession of an Intruder, who answered nothing for them; Nor can any Land, of which the King is seised, be said in Law to be detained from him. And therefore the Recital of the Que quidem &c. which is to be considered as the Suggestion of the Patentee, being false, the Grant is void, and cannot be aided by the particular Description or Certainty of the Lands granted, nor by the Words, Ex Cerca Scientia &c. 15 Rep. 109. Mich. 10 Jac. C. B. Legat's Case.

12. The Queen granted an House and Lands in Fingegoe in Essex to one T. S. who surrendered the same to the Queen, and the made a new Leafe of them to him in this Manner: viz. Whereas T. S. hath surrendered his Estate in Fingegoe in Suffolk &c. in Consideration thereof I grant to him the House and Lands in Fingegoe in Essex; It was objected, That there was no good Consideration for the new Leafe and that the Queen was deceived, lor it is in Consideration of his Surrender of his Estate in Fingegoe in Suffolk, whereas there is no such Place there but in Essex: Sed per Coke and Doderidge, The Leafe is good, for the Statute 43 Eliz. cap. 1. enacts, That Letters Patents shall be good notwithstanding any Mifnomer of the Town or County, and this is but a misnomer of the County, and not any material Miscalc. 1 Roll. Rep. 23. Pauch.


13. By a Deed dated 16 May, Anno 31. the Parsonage of H. was granted by S. to H. 8. and on the 21st July following the King granted the Parsonage of D. to the said S. and his Heirs, in Consideration of the Parsonage of H. to him granted, not paying it granted by Deed or How. Afterwards, viz. on the 26 July the Deed was acknowledged by S. and enrolled Secundum Formam Statuti; Hobart Ch. J. held, that tho' the Consideration expressed in the King's Grant was false, for that the Recopy was not granted to him till the Deed was enrolled, which was after his Grant to S. yet his Grant shall be good; for the King is not deceived at all in Effect; For he has the Parsonage of H. and that by the Grant of S. which was made before the King's Grant, and must be so pleaded as made 16 May. And tho' it be true that it was not compleat for want of Inrollment at the time of the King's Grant, yet when the Inrollment came, it takes its Effect, not from the Inrollment nor by it, but from and by the first Act; And therefore between the Parties it shall bind to all Purposes ab Initio, tho' this be in a collateral Respect. Hob. 221, 222. Needler v. Bishop of Winchester.

14. Queen Elizabeth, Anno 19 of her Reign, granted the Office of Clerk of the Council of the Marches of Wales to A. for Life; and by another Grant Anno 25 of her Reign she granted to the same A. the Office of Secretary there; King James Anno 1, without revoking these former Grants made us aforesaid, granted the same Offices to the same A. for Life; Afterwards King
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King James, Anno 9, of his Reign, by another Patent, recting the Patent of Anno 1, granted these Offices to J. S. for Life, when ever they should be void by the Death, Surrender, or Forfeiture of the Queen's Patents; Afterwards by another Grant, Anno 14, recting both the void Grants made by himself, but omitting the good Grants made by the Queen, he granted the said Offices to W. U. and J. M. for their Lives, after the Death, Forfeiture, or Surrender of A. who was still living, and of J. S. Can put Mortem, Surrender, Forfeiture &c. of the said A. or J. S. Non Obstante Male recitando &c. and Non Obstante Non recitando aliquod Domum &c. praecant a fata lu de Officis prédilis; Adjudged, that the Grants of 1 & 9 Jac. are void; Because the last recited those Grants which were void, and the first omitted those which were good, and that such false Recitals, or false Suggestons shall not be helped by the Non Obstante in the last Grant; Per omnes Jusdictorias prater Hide Ch. J. who held clearly the contrary; and Jones J. who seemed to doubt thereof. And the other Judges held further, That those are not properly Mistrecitals or false Recitals but false Informations whereby the King was deceived; For by Intendment the King conceived those Grants to be good which were void, and granted those Offices after Determination of those Grants Vel alio quounque Modo &c. the King is deceived, and the Non Obstante shall not aid such false Informations and false Suggestons. But there was not any Certificate made of these Judges Opinions, because the Parties compounded. Cro. C. 197. Trin. 6 Car. B. R. Ld. Brook v. Ld. Goring.

In arguing this Case by the Judges, these Diversities were taken in the Construction of Grants.

15. The King granted the Advowson of the Church of L. lately belonging to the Archbishop of Canterbury, Whereas the Archbishop of Canterbury never had it. Adjudged that the Church being particularly named, and the King not being deceived either in the Title or Value, the Grant is good enough. Freem. Rep. 178. pl. 190. Mich. 1674. The King v. Sir Francis Clarke and the Bishop of Rochester.

16. If the King grants the Manor of Dale of 5 l. per Ann. Value to A. where it is of the Value of 10 l. per Ann. the Patent is void for the Value in the same Sentence with the Grant; but if the Value be mentioned in another Sentence, and not in the Grant, the Grant is good. Utile per inutile non Vitiatur. Jenk. 261. pl. 60. cites Cro. J. 34.

(Q. b. 2) Grants of the King. Recital of Leafes [and Grants.] In what Cases a Recital is necessary.

Leafes of Rec. 1. If the King grants any Land, or any which is in Lease for Life, or Years, and does not recite it in the Letters Patents, if the Leafe be not of Record, the Grant is good, notwithstanding the Non-recital of the Leafe. In Time of P. 8. and E. 6. Br. Patents 93. Co. 6. Lord Skandios 56.

but not

Leafes not of Record; for the Subject has not prater Means to come to the Knowledge of them. A Non Obstante in the Patent helps the Non-recital of Leafes of Record. Jenk. 523. pl. 71.
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2. As if Land in Leafe comes to the King by the Attainder of him who is feized of the Reversion, or by the Dissolution of an Abbey, the Grant of the King of the Land, without Recital of the Leafe made by him who was attainted, or of the Abbey, is good; because those Leases are not of Record. In Time of H. 8. C. 6. Br. Patents 93, Ca. 6. Lord Shaftesbury 56. in Caufe of a Reversion expectant upon an Estate Tail created by him who was attainted. D. 6. 7. C. 232, 10. 11. Where the Prior of Wells left the Leafe the Demeufies of a Manor, and after the Manor came to the King by the Dissolution of the Priory, and he granted the Manor without Recital of the Leafe, and per good, and the Reversion of the Demeufies shall pass by Name of the Manor only.

3. If the King grants an Office for Life, he cannot after grant the Reversion of this Office without a Special Recital of the Estate for Life; but it is void. Co. 8. Earl of Rutland 56. b.

A. for Life, and afterwards grants the Reversion to the King in Fee, if the King grants this Office in Fee to B. without reciting the Grant to A. although it is not of Record, the Grant to B. is void; for the Grant of an Office has Reference to the Exercise of it in Prefent, and another had the Possession and Exercise of this Office at the Time of the King's said Grant to B. Jent. 302. pl. 77.

4. If the King leaves Land to another, and after makes a new Leafe Cro. E. 231, to the same Party, this is void, without Recital of the first Leafe tho' the Acceptance of this second Leafe * operates as a Surrender in an Infant: between Harris and Wing adjudged, cited and agreed D. 38. B. R. in HaleSFall and Ayleworthc's Care. vide the Care of Harris and Wing argued. P. 32. B. R. Mich. 36. 7a. in SCace. per Curiam.

of the second Leafe, it was in Efe, and therefore ought to have been recited, epecially being a Leafe upon Record; but of a Leafe by Matter of Fees, they agreed there need be no Recital—S. C. cited as adjudged. Mo. 414. in Weth. Care. 32. 2d 251. Mich. 52. Eliz. S. C. adjudge. * S. C. cited Cro. C. 193. Contr. that it was held to be no Surrender of the former Leafe.

5. If the King presents his Clerk to a Benefice, and after presents See (O. b.) another, without Mention of the first Presentation, this second Presentation is good, without any Recital of the first; for the first is revoked in Law by the second Presentation, without Mention of the first. Mich. 8. 7a. SCace. Pall. 8. 7a. between Calvert and Kitchin Altham Eas. Eas. cited 38 E. 3 5 1 by which it appears that a second Presentation made by the King was good, without a Repeal of the first; and that by Gascoigne H. 4. 32. if the King makes a Presentation to one, and then presents another, without Recital or Repeal of the first, yet the Bishop ought to receive the later Presentation; for it is good without actual Repeal. —† S. P. 6 Rep. 29. b. Trim. 44. Eliz. in Green's Care.

6. The King grants a Copyhold by Letters Patents; it need not be recited that it was Copyhold. Per Newdigate J. 2 Sid. 139. Hill. 1658. in Care of Field v. Boothby.

7. If the King grants an Office to W. N. for Term of Life, and after grants the same Office to a Stranger, the first Patentees dies, yet the second Grant is void; because the first Grant was not reheard in the second Patent. Per Keble, for Law. Br. Patents, pl. 34. cites 6 H. 7. 14.

8. 6 H. 8. 15. If any make Suit to the King for Lands, Offices, or other Things formerly granted to any Person during the King's Pleasire, the first Patentees being still in Life, the last Grantee shall express, in his Petition or Patent, the former Patent, and the Determination of his Pleasire concerning the same, otherwise the last Grant shall be void. Per c.

This Law was made on Purpose that the King might not be deceived in his Grant.
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Arg. 4 Mod. 277. in Cafe of the King v. Kemp.—If the King grants to me to be Surveyor of his Manors at B, and to take Under for the buildings of the King, durante beneficio; and the King grants after the like Grant to another, not making Mention of the first Patent, such former Statute &c. Yet the latter Patent is good; because no mere Profit is granted by the first Patent; and if a Man had granted to me that I should carry his Wood, and after grants the like Grant to another &c. Br. Patents, pl. 2. cites 27 H. 8. 28.

King Charles I. by Letters Patents granted to P. the Office of Under-searcher, Durante beneficio, &c. Afterwards Ch. 2. tends his Prior Signet, to confirm the said P. in his Place, and afterwards grants the same Place to F. by Patent, without taking Notice of the Patent to P. The Question was, Whether this second Patent was void by the Statute 6 H. 8. cap. 15. The Lord Chancellor, Windham, and Rainbow inclined that the Patent was determined, and the Scire facias to be quashed without better Cause shown. Freem. Rep. 70. Hill. 1672. in Can. The King v. Feloner.

9. If the King Tenant in Tail makes a Lease for Years, or for Life, and dies, the Heir may make another Grant without reciting them; for they are void by the Death of the King Tenant in Tail who granted; and such Successor may avoid it, or if he will be made the Rent refered, and so affirms the Lease; and when such Successor grants these Lands, he need not recite the void Lease; for tho’ it be by Patent of Record, it is null. If the Successor accepts the Rent refered by the King Tenant in Tail, a Recital of this, or a Non Obstante that it is not recited, is necessary; but where Leases are made by common Persons, and the Reversion comes to the King, the King’s Grant of this Reversion, without any Recital or Non Obstante, is good; for the Person who purchases such Reversion from the King, has no Means to know whether there be such Leases or not; for they were made in the Country, and are not of Record. Jeuk. 264. pl. 25. cites S. C.

But where his seconl Grant implies a Grant in Possession, which cannot be by Reason of a former Grant in Possession, the second Grant must recite the first, or it is void by the Reason of the Common Law. 1 Rep. 50. in Altonwood’s Cafe.

See (1. c. 2) (R. b.) What shall be a sufficient Recital of Leases; and what Things will supply the Recital of them.

Br. Patents, pl. 93. says, that this was granted to the Law in the Time of H. 8. in Sir Thomas Inglefield’s Cafe; and that it seems to him to be so.

1. If the King recites, that where J. S. holds for his Life of his Grant, he grants the Reversion to J. N. This is good Recital of the Lease, without Mention of the Letters Patents, or Date of them; for the King is not devided, inasmuch as he takes Notice upon him of the former Interest for Life. 37 H. 6. 37. b. Per Dunby. In Time of H. 8. Br. Patentes 96. Sir Thomas Englefield’s Cafe.

2. If the King recites a former Lease for Life made by himself by Letters Patents, bearing Date &c. and mistakes the Date, and then grants the Reversion, yet this will not make the Grant void, inasmuch as the King takes Notice of the State, and the Date is not material. 38 H. 6. 37. b. Per Dunby. Time of H. 8. Br. Patentes 96.

W. N. for Life, has granted to A. R. the Reversion; per Dunby Justice, and the Court in a Manner, agreed to it: And therefore it seems that if the King misrecites the Date of the first Letters Patents, or the like, yet if he well recites the Estate, and the Things, and the Name of the Letter, that then the Grant of the Reversion is good; for where the King takes Notice of his Tenant for Life, and of his Estate, and grants the Reversion, he is not deceived in his Grant; for he takes upon him Notice of the former Interest for Life; and then the Date of the first Patent is not material. Br. Patents, pl. 96. cites 38 H. 6. 37.

3. If the King grants Land, which is in Lease of Record, without Recital of the Lease, but with these Words, Notwithstanding that it be in Lease for Life or Years of Record or otherwise; this is a good Grant, and shall pass the Reversion; for the King is not deceived, and
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and diverse Inconveniences will arise by the Recital of the Leases.

Co. 4. Brev. 35. d. Recited.

4. So if Land be in Lease of Record, and the King without Recital of the Lease grants the Land, and further grants the Reversion thereof, or expectant upon any Estate for Life or for Years, the Grant is good for the Cautle aforesaid. Co. 4. Brev. 35. d. Recited.

5. 34 & 35. H. 8. cap. 21. Enacts, That all Letters Patents, and the Albo of Grants made by the King since the 4th of February, or which shall be hereafter made by him within seven Years next after the making of this Act, shall be good notwithstanding any Mis-naming, Mis-recital, Non-recital, Not taking of Offices, Mis-recital or Non-recital of Leases, Uncertainty Mis-calling, Rating, or setting forth of the yearly Values, or Rate of the Things given, or of the yearly Reents thereof, Want of Atornment, and Livery of Seisin, or of the misnaming of the Places where the Things Granted do lie, to the Tenants or Farmers of them, or any of them.

Provided also, That this Act shall not extend to receive any Letters Patent, or any Office granted by the King, which have been made void by Authority of Parliament, Judgment, Decree, or any otherwise.

This Act shall not be prejudicial to any Letters Patents, Indentures, or Writings made after the 4th of February, in the 27th Year of his Reign, and before the 28th of April, in the 28th Year of the King's Reign, or to any other Statute made for the Correcvolation of such Letters Patents, Indentures, or Writings.

6. 1 E. 6. cap. 3. Such another Statute made for the Confirmation of all Grants made, and to be made by E. 6. from the 28th of January, in the first Year of his Reign, and so during his Life, with such Provisoes and Limitations as in the former Act of 34 & 35. H. 8. are contained. See the Statute.

6. E. 6. seiled in Foy of the 9th Sefed of Corn in E. as Parcel of the Possession of the Abbey of L. in the County of York, by Patent under the Great Seal in E. 6. granted to W. R. & W. S. and their Heirs, for a Sum of Money, with the Possession of the said Leases, to the Perpetuity.

By this Patent the Patentee claimed the said Leases; for in truth all were in the Tenement of H. F. by a Lease made 56. H. 8. referring Kent, but E. was in the County of L. and not of York. The Question was, whether the Intire ninth Shilling paid by reason of the Statute of Mis-recital made the 4th of February, 1666, for the Mispossession of the County where E. lay, as it was agreed on both Sides to be not material, it being helped by the Statute, and to held Popham & Clench J. in the Abbeys of the other Jurisdictions, but Popham said, That the Patentee could not convey more than the Money, it could convey that; For the Maker of the Statue intended not to aid a Grant, in which the King was deceived, but to aid the Statue of the Manor by the King's discretion in such manner, and not by the Statute of the Manor made by E. 6. For as to the Mispossession of the County where E. lay, it was agreed on both Sides to be not material, it being helped by the Statute, and to held Popham & Clench J. in the Abbeys of the other Jurisdictions, but Popham said, That the Patentee could not convey more than the Money, it could convey that; For the Maker of the Statue intended not to aid a Grant, in which the King was deceived, but to aid the Statue of the Manor by the King's discretion in such manner. As if the King was granting the Majority of two Acres, it is not reasonable to continue the Patent to pay for a Grant which does not rest in the Difference to the Quantity where the Certainty is plain; As where the King grants two Acres called the Manor of D., whereas the Manor contains 100 Acres, it is a good Grant of all the Manor, and all the Acres; But if he had granted all his Manor of D. containing 100 Acres, whereas it contained 20 Acres, Nothing had failed by Common Law, but it is aided by the Statute. There is also a Difference as to the Quantity and Nature of the Thing; As where H. S. granted to Sir T. More Jorum Turbarie, now in D. Where a former Patentee, having such a Grant, had before converted Part thereof into Arable and Part into Pasture: Sir T. More should have only that which was given on the Patent, and the Statute does not really make such a Grant; For Turbaria is a Profit parnuble, which may be to one Place and not in another after Convenion; But, had it been a great Moor, and after such Convenion the King had granted Jorum Moorim space, it had been otherwise; For that it is prohibited by the Statute; And if he had granted all.
Non-Recitals of Events (Tail) are not added by the Statute; But if in the Tenor, the Party made, and to be made, to or by the Queen, or to the King and Queen, from the first of July in the first of her Reign, and so during her Life, such Provision and Limitations as in the said former Acts of H. 8. and E. 6. are contained.

Provided, That all Patentees, who have since Nov. 15 or 30, during the Space of seven Years, pur chase or get of the Queen any Manors &c., which, at the making of Patents, were, or shall be of more yearly Value to the Queen, and so answered in yearly Rent, or Fine, shall be traced in any such Patents.
or in the Particulars, or Rate thereof, made by any Auditor-Surveyor, or 61, 45 voc. Officer; then such Patentee & Co. their Heirs, Executors &c. within one Year after Office, or other due Proof, Order or D'vice thereof, had or made, or to be made within ten Years after the End of the present Session of Parliament &c. shall pay for such Overplus after the Rate of 60 Years Purchase, according to the Value answered at the Time of making such Patents.

of A. Of the Value of 10 l. And J. S. intending to purchase the Queen the said Seite and Demesnes presumed a Particular to be made accordingly, and obtained Letters Patents, by which Letter Patents the Queen, without Intention of the Purchaser to have more Pays to this than the said Seite and Demesnes, gave the said Seite and Demesnes, and the other Lands and Rectory; and so the Patentee had more than was any ways meant or Intended. The Question was, If the Patentee should answer according to the Rate of 60 Years Purchase, mentioned in this Statute; For in the Particular, no Rate or Value was made of any of the Lands or Rectory, but only of the Seite and Demesnes, nor was there in the Patent any Value of any Part; Wherefore, since the Statute says, That the 60 Years Purchase shall be paid for, the Overplus and Value, which is more than is contained in the Patent, Particular, or Rate, and here is No Value of them in the Particular or Patent, it was held by some that nothing should be paid to the Queen; But the Cafe considered, it appears, that the Intention was, that the should have Satisfaction for so much as the did not intend to pass according to the annual Value; and the Words are to this Purpose; For the there's No Value of the greater part of the Tenements granted by her, made in the Particular or Patent, yet they were demised for Rent, which was a Rate made by the Officer, and so remains in the other. And so the Statute has granted a higher or other Value, which Officer never has been vested, it was held by the two Ch. J. and Baron of the Exchequer, That in such Cafe she had not been aided by the said Statute. And. 110. PL. 145. Amen.

H. S. in the 25d Year of his Reign made a Lease for Years to the Earl of B. of the Rectory of Bridgewater, and of the Tithes of two Hamlets in W., parcel of the Rectory of W. The Rectory was demised by the King at 10 l. a Year Rent, and was continued in Demise till 2 Eliz., when A. purchased of Queen Elizabeth, the Rectory of W. at the Value of 10 l. a Year, and had general Hoods of the Tithes of two Hamlets, but no Rental of the Rectory of the Earl of B. then in Life, and thereby he granted the Rectory of B. and the Tithes of two Hamlets, and all contained in the Earl of B.'s Lease, to the Corporation of Bridgewater. Afterwards Boiville, the Son of A. after this Statute of 12 Eliz. which had retrospect to the Beginning of her Reign, claimed the Titles of the said two Hamlets against the Corporation: Upon this A Bill was preferred in the Court of Ward, and it was agreed by Counsel on both Sides, That the Patent made to A. was void at the first, as to the Tithes of the said Hamlets, for Want of Seal. of the Earl thereof till 1 Eliz. To the Earl of B. and so continued void till the Statute of 18 Eliz. Two Questions were made, 1st. If the Statute of 18 Eliz. will make the Grant good by Relation against the Corporation of B. who has taken New Grant of the Tithes of the two Hamlets in 3 Eliz., because the Statute is, That Patents made since 2. Nov. 1 Eliz. shall be good against the Queen's Majesty, her Heirs and Successors, notwithstanding Non-conv. edly, if the Decret in under-valuing the said 4tithes of the two Hamlets, which made the Grant void, be remedied by the Statute also by Relation of the Patent made, or of the Statute made; And it was argued, That the Patent should be good against the Queen, her Heirs and Successors, but not against others, and consequently not against the Corporation of B. Afterwards by the Opinion of the two Ch. J. it was agreed against Boiville, Mo. 131 pl. 282. Trin. 25 Eliz. Boiville v. the Corporation of Bridgewater, — 2 And. 191. S.C. by Name of J. Allibert v. the Corporation of Bridgewater says, The Grant to the Corporation of Bridgewater was for 21 Years, and the Grant to A. was to him and his Heirs, and the Leafe to the Corporation was agreed to be good. For the Intention of the Statue was not to make Grants void, but void one good, and that the Inheritance shall be in Boiville, by the Statute of 18 Eliz. the said second Grant was void and the Queen Art. then the Patron to be vested by the King, whereas the first is void and the 2d good, the second remains good and the first void. Sav. 58. S. C. reported thus, viz. J. S. was possessed of a Lease for Years of a Manor, of the Demise of the Queen. A took a new Lease in 2 Eliz. for 21 Years, without reciting the Lease to J. S. for which Reason, this second Lease is void. Afterwards Boiville got a third Lease for 50 Years, with a Rent of the former Interests. It was agreed by all the Judges and Barons assembled at Serjeant's Inn, that by this Statute all Patents are made good against the Queen, her Heirs etc. but not against her Patents and Alliances, and that to make the Leafe to A. to be good, which was void at the Commencement, would be a hard Contraction of the Statue. The Queen made a Lease of Lands to A. and granted the Receipt to J. S. without mentioning the Tenant's Name, and afterwards made a third Grant to W. R. with a true Receipt of the Tenant's Name; and afterwards the Statute was made; this shall not revive the first [29] Grant, because it was retroactively done. And W. R. was called to be resolved by the Judges in the Court of Ward, in one Bridgewater's Cafe; and that all the Judges now affirm'd it to be good. Hill. 43 Eliz. C. B. in Cafe of Child v. Low. A. feit off in Cafe, was attainted in a Premature, but before Trial gave his Land in Tail to J. S. Afterwards he was attainted of Premunire, and this was found by Office under the Exchequer Seal. Queen Elizabeth granted their Lands to C. under the Great Seal, within the Time of the Proviso of 18 Eliz. cap. 6. And it was resolved that the Grant of the Queen was not to be voided by the Common Law, because upon the Right of the Franktenement for rents, which ought to be an Office of Intitling, and not of Information only of the Particulars of the Lands; and also resolved, That this Grant is not aided by this Act of 18 Eliz. for the Intention of Statute was to make a Grant good, where the Right of Franktenement was settled in the King, and no Office found; In such Cafe this Statute adds the Defect of finding an Office, according to the Statute of 18 H. 6. cap. 6, but not to make a Grant good, where the King has not any Estate before Office found. This 112 Title I.
Prerogative of the King.

Statute makes the Grant good against the King, his Heirs and Successors, and not against a Stranger; and therefore does not defeat the Estate of the Donee in Title; and so upon this Point without Argument. Judgment was given for the Defendant. Jo. 217, Mich. 5 Car. B. R. Glolle v. Gaye ——

Cro C. 17; pl. 18. S. C.

9. The Queen demised a Rectory to the Churchwardens of S. for 21 Years, and afterwards by Letters Patents, reciting the first Grant, and that the Church-wardens had surrendered all their Estate for Years, (Modo habentes & ad pretens Possidentes) &c. in Consideration of the said Surrender, and for a Fine of 20 l. &c. demised the said Rectory to them for 50 Years. It was adjudged, That there need not be any actual Surrender of the first Leafe, because the Words in the second Leafe, (viz.) Modo habentes & ad pretens Possidentes import, that they were then possessed of the first Leafe, and their Acceptance of the new Leafe for 50 Years was in Judgment of Law a Surrender of the first Leafe for 21 Years, and shall precede it, and that a Corporation may make a Surrender of their Term by an Act in Law without Writing, tho' not an express Surrender without Writing. And the Reporter adds, That he had seen several other Letters Patents made on the like Consideration of a Surrender, with the Words (Modo habens & Possidentes) in none of which there was ever any actual Surrender made. 10 Rep. 66. b. Trin. 11 Jac. in Scacc. Church-wardens of St. Saviour's Cafe.

(R. b. 2) Recital and Pleadings.

1. That for as much as the Abbey is the free Chapel of the King, be granted that the Abbey shall be discharged of Collection of Tents, and therefore he ought to aver the Recital of the Patent, upon which it is [viz. that it is] (the free Chapel of the King) and because he did not, therefore ill; but Hufley Ch. J. e contra. And per Cur. the Patent was disallowed because it was ill pleaded, in as much as he pleaded it good continuer inter alia, that such a Thing was &c. and did not aver it in full; but it was said per Cur. That at another time he shall have Advantage of the Patent, and so it is not lost for ever. Br. Patents, pl. 7. cites 21 E. 4.

47. 2. And where the King recites, That whereas I have done him good Service, and am Decreet and Lame, therefore be grants to me &c. there I need not to aver the Service nor Restitute in the Rehearsal, where the Patent is Ex certa Scientia & Mero Motu; for there the Rehearsal is void, and the Patent good; Per Hufley Ch. J. Ibid.

3. Otherwise it is where the Surmise comes of the Part of the Party Ibid.

4. As where the King grants a Manor which elebated to him &c., and in truth it is his Inheritance the Patent is void; For it arises of a free Surmise of the Party himself, but where it comes from the King, and not from the Party the Rehearsal is void and the Grant good, Quod Curia concella. Ibid.

5. But where the King grants Land, in as much as the Grantee shall release all his Rights in such Lands to the King, there he ought to aver that he has released accordingly. Ibid.

6. So where the King for Service performed Grants to a Man Land, this is good, tho' he did no Service; Per Fairfax Justice, and therefore it seems, that there is a Diversity where the King himself takes Custome of the
Prerogative of the King.

the Surnise or Consideration, and where the King bas it by Information Wroth's, and Surnise of the Patentee. Ibid.

(S. b) Grant of the King. Repealed by or without Seire facias. In what cases a Patent may be repealed and made void without Seire facias.

1. If the Patentee of the King of an Office commits a Forfeiture by Wherever the Condition in Fact, or in Law broken, the King may out him before any Seire facias granted, or Office, or making of any new Patent. Ch. 9. Sir G. Reynell. 95. b. Dy. 3 El. 198. 50, and 211. 29, contra,

whereof the King has not made any new Patent, there the Patentee shall not be oufted by the King unless by Seire facias at the King's Suit; Per the Reporter. D 198. a. pl. 50. who says, He infers it from certain Precedents there cited, and that the Reason seems to be, That he who is placed in an Office by Matter of Record, whereof the King has Notice, ought not to be removed but by Matter of Record viz. by Seire facias and Avoidance of the Letters Patent &c. and cites S. P. between Sir Robert Chester and Ed Haftings.

If the Forfeiture be of an Office for Life, tho' the Conviction be of Record, yet there must be a Seire facias; Per Holt Ch. J. 12 Mod. 79. But otherwise of an Office at Will. The King v. Kemp.

2. If the King grants Land by his Letters Patent under the Great Seal, and in the lower part, after all the Patent ended, it is put (per Warrantum Commision,) this being done by Warrant of the Commissioners of defective Titles upon Composition with them made, if the Commissioners had not an Authority by their Commission to make any Composition in this Case by force of their Commission, and to this is out of their Commission, those Letters Patent are void in Law without any Seire facias to repeal them, and it is good Pleading [to say] Non concebit &c. against those Letters Patents. Trin. 12 Car. B. Rot. 344. 345. between Bevans, Bert, and Orvey for the Bicadige of Carters in Com. Cambridge in a Qua- re Impedit; Resolved per Curiam upon Evidence at the Bar, and the Plaintiff nonsuit upon this Resolution. (But quere how this Aversion dehors may be taken against the Letters Patent, the Words per Warrant. Commition not being within the Body of the Patent, but after all the Patent ended.) But it seems this Aversion may well be, in as much as in the Composition it is appointed, that upon the Warrant of the Commissioners the Patent shall pass under the Great Seal without other Warrant, and in the end of the Patent is put (per Warrant. Commissioner.) Pich. 16 Car. B. R. between Pitkin &c. and ....... for, and others, per Curiam upon Evi- dence at Bar.

3. Patent of the King shall be reversed in Chancery by Suit there only, by Petition, Traversfe, or Montlans de Droit, and Seire facias thenceon. Br. Jurisdiction. pl. 102. (his) cites 21 E. 3. 46. Seire facias to repeal the King's Patent can only be in Chanc- ery. Br. Petition, pl. 1. cites 21 E. 3. 45. — Where the King grants the Land by Patent, and the person and therefor the Office, he ought to have Seire facias in Chancery against the Patentee before he can join Br. Seire facias, pl. 183. cites 14 E. 1. 6. — Br. Traversfe de Office, pl. 59. cites S. C.

4. If the King be settled, be it right or wrong, a Man shall sue to him by Petition; Pet Wilby; Quod' Nota; and this where the King en-
6. Prerogative of the King.

6. A man struck a favor at Westminster who put it against him, for which he was adjudget to Prison for his Life, and his Hand to be cut off, and his Lands seised into the Hands of the King, and the King, thinking it had been forfeited, granted it to W.N. and afterwards he purveyed all the Offence to the Offender, and all that to him belonged, by which the Hess revok'd Scire facias, reciting the Act, the Grant, and the Pardon, to say why the Land should not be re-seised, and Livery made to the Heir; and the Tenant demanded Judgment, because the Scire facias was not found upon Record, and the Charter is no Warrant of the Judgment &c. Et non allocatur, but Execution was awarded. Br. Scire facias, pl. 163. cites 41 All. 25.

6. Quære Impedit brought by the King by reason of the Custody of a Ward, because the Grantor of the Ancestor of the Infant of this Admowion had prefented; and the Grantor obtained Ratiification of the King; and because it was perceived that it should be prejudicial to the King the Ratilication was repealed, and Procedendo granted in the Quære Impedit; Quod Nota; Br. Repellane, pl. 1. cites 45 E. 3. 19.

7. Where the King re-seised or refoues Land after Livery made to a Prior Alien &c. without Caufe flown, the Party shall have Petition and Scire facias against him who has the Land, but if it be re-seised or refused for Caufe flown, he shall have Traverfe to the Caufe, and Scire Facias against him who has the Land; Per Cur. and so it was done there. Br. Scire facias, pl. 55. cites 211. 4. 10.

8. Traverse was taken to an Office which entitle the King to the Land by Ward which was granted by Patent to A. B. — C. came and traversed the Office, and had Scire Facias against A. B. who was warned, and did not come; and therefore per Cur. his Letters Patents are void. Br. Scire Facias, pl. 131. cites 4 H. 6. 12.

9. Where the King seised for Felony and Leafe for Life, and a Stranger has Title, there the King shall rume and make Livery to the Party; for there he has Reversion. And where the King makes Feeoldment of Land in Ward, in this Case the Letters Patents shall be repealed, and the Land rumed into the Hands of the King, and Livery made to the Heir; for there the King had not Fee Simple to give. Br. Scire facias, pl. 58. cites 7 H. 4. 20.

10. Scire facias was sued to realle Letters Patents, inasmuch as King E. 3. was poffifse'd of Land in Ward, and died; and this came to King R. 2. who granted it for Life, the Remainder over in Fee; and the Land was refeised, and Livery made to the Heir Sine Exitibus, and the Letters Patents revok'd and annul'd; quod nota. Br. Scire facias, pl. 65. cites 7 H. 4. 41.

11. Writ of Error was sued upon an Outlawry of Felony, by which Scire facias was awarded against the Lords Mediate and Immediate, and against the Tortoymen who were warned, and one cause and alleged Grant by the King for Term of Life, and prayed Aid of the King, and had it; and after Procedendo they were at Issue, if the Party was imprisoned at the Time of the Outlawry pronounced or not, and found for the Outlaw; by which be prayed that the Outlawry be reverced; and the Letters Patents repealed, which was denied him: Whereupon Judgment was given that the Outlawry be reverced, and be refer'd to the Common Law, and to all that he lost for this Cause; and as to the Letters Patents they would advise; but by this Judgment of Restitution he shall re-have his Land; Per Gafcoign and Huls; but Tyrwhite contra, before another Scire facias sued; and he held strongly, that he shall have another Scire facias, and thereupon the Outlaw pleaded Pardon of the King of the Felony; and it was allowed. Br. Scire facias, pl. 76. cites 11 H. 4. 53.
12. If Traverse of Office is tender'd, and the Plaintiff takes the Land to Farm according to the Statute, and finds Surety, and after it is awarded that the Traverse does not lie, by this the Farm and Surety is discharged, without suing Scire facias to repeal the Patent of the Farm. Br. Scire facias, pl. 172. cites 4 E. 4. 29.

13. Where a Man traverse's Office for Land, Office &c. which passes for him, and against the King, there he shall have Scire facias against him who has it of Grant of the King of Estate certain, as for Life, or Durante minoræ ætate, or the like; contra against him who has only the Occupation at Will. Br. Scire facias, pl. 173. cites 5 E. 4. 3.

14. Where the King by his Letters Patents dated 13th May grants to me an Office or other Thing, and after by other Patents dated 2d May, he grants the same Thing to a Stranger, those second Patents are merely void; and yet I shall have Scire facias against the second Patentee, and avoid those last Patents by Judgment of the Court. Per Cur. Keilw. 196. b. Mich. 9 H. 8.

15. Scire facias to repeal the Grant of the Office of Remembrancer of the Exchequer to one Blague, made 18 H. 7. and afterwards in the 3 H. 8. he was made Baron of the Exchequer, Quam diu fe bene gerit in eodem Office Baronis. Afterwards H. 8. at the Request of Blague, granted the said Office of Remembrancer to Blague's Son for Life, To Have after the Surrender or Demife, feu aliquid modo quoque et quandocunque vacare contigerit. And because Blague had no legal Estate after his being made Baron, upon Scire facias returned, and Default made Judgment was given to revoke the last Patents &c. D. 197. b. 198. pl. 47. cites Hill 15 H. 8. Blague's Cafe.

16. Scire facias illud to repeal a Grant of the Office of Bailiff of the Hundred of C, which P. the Plaintiff had by Inheritance in Fee Simple, and was expelled &c. by Colour of Letters Patents. Upon the Scire facias returned, and Nil Dictum, the Patent was revoked, and P. restored to the Office Unam cum Exitibus, with a Salvo Jure equillibri. D. 199. a. pl. 49. cites Hill 28 H. 8. Penwarren's Cafe.

17. The Lord Ch. J. Brooke granted to G. the Office of Prothonotary of 2 And 115. C. B. and afterwards revoked it; without a Scire facias, because he was incapable to execute that Office, and granted it to another; and thereupon a Precedent was shewed, 5 Ed. 4. where the Office of the Clerk of the Crown was granted to one Vyntner, and Croxon who died; and then Vynter exhibited his Patent, and prayed Admittance, but the Court would not admit him to the Office, because he was unexperienced in it; and his Difability being signified to the King, Ores tenus, without a Scire facias, he commanded them to swear and admit another. Dyer 156. b. pl. 1. Mich. 4 & 5 Ph. & M. Vynter's Cafe.

18. Sir Maurice Ferkly having the Office of Bannor beareship in the Field, surrender'd the same before a Master in Chancery out of Court, but did not deliver up his Letters Patents to be cancelled, this Surrender was accepted and recorded by the said Master; and thereupon the Office was granted to Sir John Sullyard. Afterwards Sir Maurice Berkley brought a Scire facias to repeal the Grant to Sullyard. And the Question was, Whether the said Record was sufficient to make a Surrender, or not. But the Matter was compounded by the Lord Keeper, Ex Allenf Partium; and Sir J. S. was removed, and Sir Maurice was restored Sine Exitibus vel Feodis medio tempore receiptis. D. 176. pl. 29. Hill 2 Eliz. Sir Maurice Berkley v. Sir John Sullyard.

19. The Tenent of the Plaintiff conveyed the Land to the King, and the King conveyed to a Corporation; so as in Rigour of Law the Seigniory of the Plaintiff was extinguished; but the King was deceived in his Grant; for he was made an Infrument to do Wrong, to deprive the Plaintiff of his Seigniory, and therefore the King's Grant was void. Upon the whole Matter, forasmuch as the Plaintiff's Tenent can't have the Land, because he has conveyed it to the King, and the King can't have the Land, because of the Wrong it would do to the Plaintiff as to his Seigniory;
Seigniory, therefore the said Letters Patents shall be repealed. If the Plaintiff's Tenant had conveyed the Land to the King by Deed inroll'd, or had been attained of Treason, and the King had granted it to a common Perfon to hold of the King; now the Seigniory of the Lord in this Cafe had been extinguifhed; but the King upon Petition ought to repeal this Patent, and grant it fo that the Seigniory of A. shall revive. Jenk. 22, pl. 40.

20. Upon a Scire facias againft Richard Earl of Dorfet, and others, Members of Sackvill-College in East Grinfield in Suffolk, to shew Caufe why the Patent of Incorporation should not be repealed, as far as it concerns Edward Earl of Dorfet, and the Heirs Males of Robert Earl of Dorfet the Founder; the Writ recited the Will of Robert, who deeded to his Executors &c. that they should Found and Endow the said Hospital, and make By-Laws, and that the Heirs of the Founder should have the Patronage and Visitation thereof. It recited also, that the King intending to incorporate the said Hospital according to the said Will constituted the Corporation, and granted Licence to purchase the Endowment intended; and also that Edward Earl of Dorfet, who was Heir Male of the Founder, should have the Patronage and Visitation; reciting further, that the Lady Thanet and the Lady Compton are Heirs of the Founder, and that Edward Earl of Dorfet had taken upon him the Patronage and Visitation; to the Diminution of those Ladies: Upon this Scire facias Richard Earl of Dorfet demurred. As to the Question between the Heirs General of the Founder, and the Heirs Male, Twifden J. held, that the Letters Patents to Edward Earl of Dorfet and his Heirs Male are void, and ought to be repealed, and may be repealed, tho' they are void; and cited Hill. 12 H. 7. Keilw. 19. a. per Keble. And that they are void appears, 1ft. Because they are contrary to the King's Intention, as Hob. 223. Anne Needler's Cafe; 10 Rep. 110, b. Vow's Cafe. 2dly. The King cannot deprive the Patron of those Rights which are appen- dant to him, which are Jus Patronagii and Jus Visitant. which are in Earl Robert and his Heirs; but the Lord Ch. Baron Hale gave several Reasons why he could not give Opinion to repeal this Patent without great Caufe. He held, That such Scire facias lies not in Point of Form. 3dly. A Patent may be repealed in Part; but this shall be only in Clauses independent. 4th. Petition 19. 2dly. There will be an infinite Inconvenience, if by this Way Part of this Patent may be repealed; for by this Way a good Patent may be made nought; & c contra. 3dly. The King had said How he will have this Corporation qualified, and he is dead, and now he will make other Patrons after his Death. 4thly. The King hath said How it shall be governed, and Not Otherwise. And here is no Necessity to repeal this; because if there be void Clauses they may be tried in Affife, and therefore the Writ is ill. 2dly. It doth not lie for the Matter. 1ft. Because the King takes Notice of the Clauses in the Will, which was defired to be repealed; and therefore he is not deceived in this Grant. In the Creation of the Hospitall, Sun[t] tres Ac- tores fabulae, 1. Earl Robert. 2. The King, whole Right is to grant the Incorporation. 3. The Executors, which ought to endow this Hospitall. 2dly. The Executors are not at any Prejudice, because they are not compellable to indow this Corporation, if it be not according to the Will of Earl Robert. 3dly. If the Executors have indow'd the Hospitall, being so created, it is a Breach of Truit. There is no Patronage till the Foundation of the Hospitall, and the Heir of Robert hath not to do with it till the Foundation; and the Executors do not break the Truit. The Lord Keeper would advise; and so it was adjourned.


21. In Error of a Judgment in Scire facias in the Petry-Bag, which set forth, That the City of Rochester was an ancient City, and incorporated Time out of Mind till 1 Ed. 4. who incorporated them by a new
Prerogative of the King.

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Name of &c. That before and after that Time they had a Market there, held every Wednesday and Friday, and Toll &c. And that the King by Letters Patents, 7th of March last past, reciting an Inquisition upon an Ad quaod damnum, by which it was found, That it would not be to the Damage of the King, or of any other Person, if the King should grant to the Defendant a Market in Chatham, to be held there every Tuesday, whereupon he granted to the Defendant a Market, to be held there every Tuesday, Cam omnibus Potestuis &c. prout per literas patentes apparet; And that Whereas Chatham is within a Mile and a Half of Rochester; And Whereas Datum eft Nobis intelligi by the Mayor &c. of Rochester, that the Writ of Ad quaod damnum was executed on the Day it bears Date at 30 Miles distant from Rochester, and without Notice given to the Mayor &c. Surpeditio & Fraudulententer; and that the Grant is Ad damnum of the City of Rochester, and of the Market there; and by Reason thereof the Grant is void; Therefore the Sheriff of Kent is commanded to warn the Defendant &c. to show Cause why the Letters Patents should not be cancelled. The Defendant demurr'd, and the Attorney-General joined in Demurrer. And the Lord Chancellor Finch, affisted by North Ch. J. and Jones J. gave Judgment, that the Letters Patents should be cancelled and vacated: Whereupon the Defendant brought a Writ of Error in the House of Lords; and there it was objected, That this Scire facias doth not lie to repeal Letters Patents, because there is another Remedy at Common Law, by Affidavit of Nuance, or Quod Pemittat, where the Matter may be tried by a Jury. But the Judgment was affirm'd; and it was resolved that the King hath a Right to repeal a Patent by Scire facias, in which he was deceived, or the Subject prejudiced. 3 Lev. 220. Trin. 1 Jac. 2. in the House of Lords, The King v. Butler.

22. A Grant was made by the Crown, for the setting aside whereof an Englishe Bill was brought, and it was argued, that it was the proper Remedy in this Case; for that no Scire facias would lie, it not being a Record of this Court; and if it would, yet it would not reach the Fraud objected, it not appearing within the Body of the Grant; and that in this Case Equity did but follow the Law, and that it was not fitting it should be left in the Power of the King's Officers, by their Conivance in passing Grants, to put the King without Relief in a Cafe of Fraud and Surprise; and this there was no Precedent of such Sort, yet all Precedents had a Beginning, and that, in this Case, was sufficient Ground for a Decree, there being all the Badges of Fraud and Surprise imaginable, &c. In the passing the Grant there was no Scire facias made out the Particulars; nor to the Surveyor, to return an Estimate; nor Bill with a Daquet, signed by the Attorney; nor any of the usual Methods observed, but only a Warrant under the Sign Manual for passing the Grant in Question to the Chancellor, and countersigned by him; which is making a Warrant to himself, a Thing never before heard of. And tho' a Patent may pass by immediate Warrant under the Privy Seal or Signet, yet this is in Effect no Warrant, being only under the Sign Manual, and no Seal, either Privy or Signet, to it. That this Matter was dispatched with great Hurry, the Warrant being signed the 29th, and the Patent paid the Dutchy Seal the 31st of the same Month, tho' it would take a Week's Time to ingros it; and that here the Petition Proposal, the Chancellor's Report, and Warrant for the Grant, are all of the Writing of the Grantee's Servant; And that the over-value was excessive. And for these Reasons the Patent was set aside by the Chancellor, affisted by Jones, Ch. J. and Montague, Ch. B. See Vern. 277 to 282. Mich. 1684. And 370, 382, to 392. Hill. 1635. Attorney-General v. Vernon, Brown and Bohme.
(T. b.) What shall be good Cause to repeal a Patent
upon a Scire facias.

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Prerogative of the King.

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given for the Forfeiture, and that the Letters Patent and the Inrol-
ment thereof be annul’d. D. 197. b. pl. 46. cites Mich. 14 H. 8.

Office of the

Serjeant at

Arms, for

not attending

his Office, so that the King’s Business remain’d not done. In Contemptum Regis. &c.

And upon two

Nihil remedii et Delinquit. Judgment was given accordingly, and that the Office be vested into the

King’s Hands as forfeited &c. D. 198. 3. pl. 43. cites Trin. 26 H. 8. Elton’s Case.

6. Altho’ the King, as to his natural Person, may be within Age,
yet his natural Person being joined with his politic, they are one indivi-
dual Body. And he shall not avoid his Grants made within Age, nor
his Receipts by Nonage, whether he be dead in Tail, or in Right of the
Duchy of Lancaster, or in Right of his Crown. The Lands of the
Duchy of Lancaster are sever’d from the Poilieions of the Crown, as to
the Manner of granting them; but for Age, Aid, and such personal Re-
lations, the Duke is as King; but the King may avoid his Grants by
Dutch; as in Case of Rebellion, if the Rebels having the King in Cul-
tody extort Grants from him, as it happened in the Case of H. 3. in the
Baron’s Wars. Jenk. 265. pl. 69. cites 2 Eliz. Plowd. 213.

7. In a Great Ven of Land, Part of the Earth fell upon a Miner, and
kill’d him; Only that Parcel, and not the whole Vein, was forfeited for a
Deoxid. ‘The King, by his Letters Patents, granted the said Vein to
S. The Lord Chancellor of England, on the Prayer of the Owner of the
said Vein, called in the said’s by Scire facias in the King’s Name, and
by the Prerogative Law caused the said Letters Patents to be revoked;
because they were obtained surreptitious, and in Deceit of the King.
Jenk. 64. pl. 21.

(U. b.) Who may sue the Scire facias.

1. If by an Office a Tenure is found of the King, and that A. B.
is in Ward to the King, and thereupon the King grants the
Wardship of A. B. of Body and Land; and after C. D. comes and
travels the Office, he shall have a Scire facias against A. B. to
repeat his Patent. 4 H. 6. 12.

2. If the King grants two several Patents of the same Thing, the
first Patentee may sue a Scire facias against the last Patentee, to re-
Precedents hold accordingly.

be called, he has his Election to bring an Affidavit or Scire facias, if the Patents are for

Land or for

an Office for Life. By the Judges of both Benches, Judge Jenkins says, that Regularly the
Law is, that the first Patentee may have Scire facias against the second, but the second Patentee may
have it against the first. — Where two Patents are granted of one and the same Thing, that it
be known by the Name of the Master of St. and of the Master of S. yet if the last oults the first, Scire
facias lies to repeat the Patent; and if it be of divers Things, Affidavit lies, and not Scire facias. Br.
Scire facias pl. 176. cites 2 H. 4. 6. — Br. Patents. pl. 65. cites S. C. — Scire facias was awarded
for a first Patentee to repeat Letters Patent of a third Patentee to be Park-Letter; and upon Re-
turn thereof, and a Judgment by Nisi dicit, the Judgment was given in Chancery, that the Letters Pa-

3. If the King grants two Patents of one and the same Thing,
the second Patentee shall not have a Scire facias against the first Pa-
tentee to repeat the first Patent. D. 10 El. 277. 54. Where it
is said, that this is contrary to the Books and Precedents and the
Common Course. 39 H. 6. 33. Contr. 4. If the King grants a Patent of Land, or of an Office, he may
sue a Scire facias against the Patentee to repeat the Patent upon
an express Condition broken, or for a Forfeiture by Force of a Condition in Law. D. 3 El. 197. 47. 4 El. 211. 29.

5. If the Predecessor King aliens by Charter any of the Pottellions of the Duchy of Cornwall, the eldest Son of the Successor King, being Duke of Cornwall, may bring a Scire facias in the Name of the King to avoid this Patent. Co. 8. The Prince's Case 1. So done and admitted. And ibidem, Fol. 22. b. 23. Diverse Precedences cited accordingly, without any Allegation of any Fraud or Deceit in the obtaining of it.

6. 6 C. 4. 3. b. The first Patentee of the Office of Clerk of the Crown sued a Scire facias, in the Name of the King, to repeal a second Patent; but there resolved in Cam. Scacc. Fol. 9. b. by the Justices, that both ought to be of the same Thing; for if the Patents are of several Things, and the first Patentee is ouit by the second Patentee, the first Patentee shall not have any Remedy by Scire facias, but is put to his Affile. [Bagges's Case.]

7. Where the King is intitled by his Office, and grants the Land over, be who is grieved may traverse the Office, and have Scire facias thereupon against the Patentee. Nota. Br. Scire facias. pl. 69. cites 9 H. 4. 6.

8. Where a Patent is granted to the Prejudice of the Subject, the King of Right is to permit him upon his Petition to use his Name for the Repeal of it in Scire facias at the King's Suit, and to hinder Multiplicity of Actions upon the Case; for such Action will lie, notwithstanding such void Patent. Per Finch. C. 2 Vent. 344. Hill. 31 & 32 Car. 2. in Canc. in Sir Oliver Butler's Case.

9. Scire facias out of Chancery, returnable in B. R. to repeal Letters Patents of the Redort of Algare; it was held, that if Letters Patents are granted to the prejudice of any Subject, he may have a Scire facias, upon the Inrolment of them in Chancery, to have them repealed, as well as the Queen may. As if a Fair be granted to the Damage of mine, I may Sue Scire facias to repeal such Grant. Mod. Cates 229. Mich. 3 Anne. B. R. Brewter v. Weld.

(X. b.) What Thing shall be [or amount to] a Repealing.

1. If the King brings a Scire facias against a Patentee to repeal his Patent, and the Patentee is returned warned, and makes Default, and thereupon Judgment is given against him, by this the Letters Patents are annulled, made void, and of no Effect. D. 3. El. 198. 50.

2. So the King granted at several Times, and the same Thing to several Patentees, and the first Patentee brought a Scire facias against the second Patentee to repeal his Patent, who is Returned Warned, and makes Default, upon which Judgment is given against him. His Patent is by this annulled, made void, and of no Effect. D. 3. El. 198. 50. 37. B. 6 14.

and had Seire agaist A. B. and was warned and made Default; & per Curiam, by this Declaratory Letters Patents of the Ward are said: Brook says, where if the same Law be upon every other Scire facias to repeal a Patent, and says it seems clearly that it is. Be Patents, pl. 2a. cites 4. H. 6. 12. — And upon this another Patent was granted of the Land by the King to C. D. until it shall be diffused between him and the King in the traverse, and after C. D. was raised, and per Cheney and Hales Justices, by the Nonquit this is a Diffusion of the Traverse, and therefore the Second Letters Patents are void also, good nota. Br. ibid. S. P. And this Judgment shall be Planted against the Patentees in any Court. Br. Patents. pl. 25. cites 57. H. 6. 12. ——- Br. Scire facias pl. 138. cites S. C. 3.

3. The King granted to A. B. these Liberties, viz. to be exempt from Juries and Impuqtes &c. and after all Premajlies granted by this King were Re-
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Pealed by Act of Parliament. Quere, if Liberties are Repealed by this

4. The Chancelor of England demanded of all the Justices, that Where
the Inheritance of the Crown of England, and of France, with all Pre-cou-
venes and Prerogatives were given by Act of Parliament to H. 7, and to
the Heirs of his Body, Whether the Liberties and Franchises were by this
repealed; and they answered that it was not; the Reason seems to be in-
fulm much as it shall be intended such Things were in the Crown at this Time,
and not those which other Men had by good Title. Br. Repellance &c.
pl. 5. cites 1 H. 7. 13.

5. 34 & 35 H. 8. 21. Provides that (notwithstanding the Act) the King's
Grants of Offices, and their Fees for keeping of Castles, Houses, Parks,
Chales, Forefts, & Black-Houses, shall be void, when the Cause of exercising
such Offices is determined.

(X. b. 2.) Patente. Ousled How.

WHERE the King is initié by Office to a Ward, or such like, and
Grants the Land over by Patent, and during the Nonage one comes,
and traverses the Office, or makes Petition, and this Matter is found for him,
Scire facias shall be awarded against the Patente, to say why the Party
should not have Execution; And to see that the Patente shall not be
ousted without being warned by Scire facias. Br. Scire facias. pl. 156.
cites 37. Ali. 11.

2. If the King cause his Vastell to be admitted to a Corod in an Abbey, of
which he is not Founder in Juve Coronis, by which the Abbot files by Pe-
tition, and upon the Matter discharges the Corod, he shall have Scire
facias against the Vastell to remove him, though the Name of Vastell be
not named in the Petition; Per Jüdiciarios; But in a Petition of Land he
shall not have Scire facias against the Tenant for Term of Life of the Land
of the King &c. unless be be named in the Petition; For it ought to appear
in the Petition in whom the Frankenteament is; quod nona, the Difference; For
there the Land is demanded; But in the other Case the Corod is not in
Demand, but it is to discharge the Corod. Br. Scire facias. pl. 169.
cites 5 E. 4. 122.

(X. b. 3.) Patents Repealed. Pleadings.

1. An Office found. That M. the Tenant of the King died seised, 1st
Br. Traverde
Here section. Age, and the King granted the Ward to W, and the Office, pl.
Feoffees traversed the Office, that the Tenant involved them, Abique see, that
he died seised, and had Scire facias against the Grantee to repeal the Pa-
tent, who came and said, That another Office is found that the Feoffee
was by Collusion to toll the King of the Ward, and demanded Judgment, if
he should be answered to the Scire facias this Office not being traversed,
& non allocutus, because it was found pending the Writ; But yet the
Defendant was suffered to plead the same Matter to save his Patent;
and so he did, and said, That the Feoffee was by Collusion &c.
and thereupon were at Issue. Br. Scire facias. pl. 79. cites 11 H. 4. 80.

2. Where the King has a Manor in Ward, which is known by the Name
of the Manor of B. and of the Manor of S, if he grants the Custody of the
Manor of B. to one, and after grants the Custody of the Manor of S, to an-
cite pl. 170.
other, cites S. C.
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other, and he ouls the first Grantee, and he brings Scire facias to repeal the Patent, he ought to shrieve, That the Manor of S. and B. are all one &c. so that it may appear, that the Patents are of one and the same Thing; For if they are of divers Things Affixe lies, and not Scire facias. Br. Patents, pl. 63. cites S. E. 4. 6. per Markham and Choke.

3. Where Scire facias issues at the Suit of the King, the Cause of the Forfeiture of the Thing is touched in the Writt; But otherwise in other Scire facias's sued by one Patentee against another. D. 198. b. pl. 50. And vide Ibid 197. pl. 45.

(Y. b.) What shall be [said to be] a Grant against the Law.

1. If the King grants to another that he shall not be punished for any Felony which he shall do in the Time to come, this is void; because it is against common Right and Justice. 19 H. 6. 62. b.

2. So it is if he grant that he shall not be punished for any Trespass which he shall do hereafter. 19 H. 6. 62. b.

3. The King cannot grant to any to hold a Court of Equity; because this is in Degradation of the Common Law. 38, 67. between Martin and Marshall. Not to the Queen.

4. Trespass of Goods carried away against T. C. who pleaded to the Jurisdiction, because he is Chancellor of Oxon, and H. 4. granted to J. K. Chancellor of Oxon, and his Successors, that they should not be imploided by Writ of Trespass, nor Controll for Things done by their Office, and thought that he was displeased with his Office for not making of a Pervent; and the Opinion of the Court was, that the Grant is not good; For it is contrary to Law and Justice, that a Man shall not be imploided in any Place. Br. Patents, pl. 15. cites 8 H. 6. 19.

5. And also the said T. C. came, and said that he is Chancellor of Oxon, and that King R. 2. had granted to J. K. Chancellor, and his Successors, that they should have Conscience of all Pleas moved in Curia Regis, whereof the one Party was Clerk of the University, and abiding there, and said that he is Clerk, silicious Doctor of Divinity, and abiding there, and prayed the Conscience; and by the Opinion of the Court he shall not have it, because he is Party, and cannot be indifferent in his own Cafe. And per Martin and others, the Grant is not good, unlefs it were licet idem Caellinarium fuerit Pars, and if it had those Words, yet it is not a good Grant, unlefs the Grant be alto, that then he may make a Deputy or conmand another Man to be Judge; For he himself cannot be Judge and Party by the Words (licet fuerit pars) and the other Judices in the same Opinion. Br. Patents. pl. 15. cites 8 H. 6. 19.

6. A Man has Liberty to sue where he will, but the King may prohibit him of it; As if he grants to J. S. that all Trespass's done in his Mansors the Pleas shall be before him; Per Babington Ch. J. Ibid. Br. Patents, pl. 53. cites 6 H. 7. 4.

7. Where Rape is made Felony by Statute, it is not inquirable as Felony unlefs before Judices who can hear and determine Felony; the King cannot make it inquirable in Lex by his Grant, nor grant the Lex to be of either Nature than at Common Law. Br. Patents, pl. 53. cites 6 H. 7. 4.
8. It seemed to some, that by Common Law the King might prohibit the importing Goods, and that for doing contrary to such Prohibition the Ship should be forfeited; but this Law is altered by several Statutes, viz. 11 R. 2. 12. 25 E. 3. 2 &c. But Quere if the King makes such Grant with special Non Obstante of those Statutes, Sid. 441. Hill. 21 & 22 Car. 2. B. R. in Case of Horne v. Ivy.

9. The King by his Grant cannot grant that a Subject's Goods shall be forfeited by his doing a Thing which his Patent prohibits. Sid. 441. Mich. 21 & 22 Car. 2. B. R. Horne v. Ivy.

(Z. b) Grant of the King limited. [By Reference to Words &c.]

1. If the King grants the Manor of D. to J. S. and his Heirs, and within the same Manor to have Waifs, Strays, Bona & Catalla Felonum &c. diem Manerio spectante, & pertinent. Those Words, dicto Manerio spectante, & pertinent, do not refer to the Goods of Felons or other Franchise which lie in Point of Charter which cannot be by any Usage or Title appendix or appertainent to a Manor; but they shall pass by this Grant, tho' they were not ever destined or used with the Manor. Co. 9. Ab. Stra. Mar. 27. b. per Curiam.

2. If a Portion of Tithes in Lougham appertaining to the Rectory of Greenhall which was a Rectory Precipitante, and all the other Tithes were Parcel of the Rectory of Lougham, which was appropriated to the Abbey of D. which came to the King by the Dissolution of the Abbey, and the King grants these Tithes in Portionem Decima- rum & Garbarum fuerit in Lougham in Com. Norfield, cum omnibus aliis Decimis suis quibuscumque in Lougham in dicto Com. Norf. tunc vel nuper in Occupacione Johannes Corbet, where in Truth John Corbet never had any Tithes in Lougham in his Occupation. This Grant is utterly void; for the last Words in the Occupation of John Corbet refer to all the Sentence, as well to the first Words as to the second Words, and here a Portion of Tithes in gross was intended to be passed and not all the Rectory, and here all ought to pass or nothing. Co. 4. Bezauma 34. b. resolved.

3. If two Rectories appropriate in one Church in one Parish comes by 31 H. 8. to the King by the Dissolution of a Hospital to which it was appropriated, and the King grants this by the Name of a Rectory, but before this Grant in the same Patron there is a general Grant of all the Lands and Hereditaments which ever belonged to the Hospital, and the Hospital itself, and after the Grant of the Rectory there is also a general Grant of all Lands, Tithes, and Hereditaments in the Vill, where those Rectories lie, at any time to the said Hospital [belonging.] That the Grant be void in the Grant of the Rectory, it being two Rectories, yet the general Words shall pass. 15th 15 Car. B. R. per Curiam, resolved upon Evidence upon Trial at Bar, which concerns Mr. Slaughter for the Rectory of Noriton in Com. Warwick, which came to King 8. by 31 H. 8. by the Dissolution of the Hospital of St. John's in Warwick to which it was appropriated.

4. Ed. 6. being seized of the Rectory of D. in Hampshire, granted it to B. by these Words, femiam Rectoria de Dix, ac omnis Dominus &c. One quidem omnes & jugulae Produnisia modo extendidit ad verum valorum de 32 l. per Annua. At the Time when this Grant was made, there was a Farm in the Parish, which, with the Tithes thereof, was in
Lease made by the Alber Ann. 16 H. 8. referring Rent, which continued till the 16 Eliz. 1. And the Question was, Whether the Grantees of the Respects, after the Expiration of the Lease, should have the Tithes of this Farm? And adjudged, That he should; For tho’ the Words (Quae quidem omnia) in the Grant refer to the Value of the other Tithes and not to those of the Farm, (because they were then suspended by being in Lease with the Farm), and probably the King intended to grant no more than Tithes of that Value expressed in the Grant; yet by the General Words of Totam Reipvan, the Tithes of this Farm shall pass; but otherwise, if there had been any Special Words. 2 Roll. Rep. 118. Mich. 17 Jac. B. R. Dixon’s Cafe.

(A. c) What Things shall pass by General Words [of Reference to former Grants.]

1. The Dean and Chapter of P. were lesse of diverse Manors in Elset in Fre, and in the 1. E. 4. the King granted to them and their Successors, that they should be discharged of all Purveyors of the King in their Manors in Elset, and after by 27 H. 8. cap 4. it was enacted, that the Purveyors of the King might purvey in all for the Provision of the King, as well within Liberties as without, notwithstanding any Grant to the contrary, and after in 37 H. 8. the Dean and Chapter surrendered those Manors to the King his Heirs and Successors. and afterwards the King granted those Manors to the Successor of the Lord Darcy with not tales tanta & hujusmodi Liberrates, as the Dean and Chapter or any of their Successors habitually, aliquo Statuto Non Obstante. In this Case, in as much as the ancient Liberties were extinct by the Statute, this General Grant shall not create de Modo the said Liberties which the Dean and Chapter had before. Tr. 38 El. B. R. adjudged. Vide, that by the Succeeder to the King they were extinct if they had not been extinct before.


2. The Bishop of Coventry, among other Liberties, had a Liberty of Catalis Felonum within his Manor of B. and after this Manor came to R. 8. by Attainder, and he granted it over with not tales tanta & quales Liberrates as the Bishop or his Successors had. The Grantee shall not have by this Grant the said Liberties which the Bishop had. For when they are once extinct, Words of Reviver will not be sufficient, but there ought to be Words of Grant, and such general Grant will not be sufficient. 25 El. in Scacc. Lord Pegge’s Cafe, cited per Curiam, cited per Coke 38 El. B. R. Mere.


3. Where the Vill of L. claims Liberties by Grant of the King, by these Words such Liberties and Franchises as the Vill of N. has &c. they ought to new Record or Prescription proving what Liberties and Franchises N. has, and then it is well as it feems there. Br. Patents, pl. 31. cites 20 El. 3. and Fitzh. Awowy 129.

4. If Garter dies, and the King grants the Office with such like Fees and Wages as Garter had, this is a good Grant, per Choke; which was affirmed, that is to say, to have such Fees as Garter had. Br. Patents, pl. 62. cites 5 El. 4. 8.
5. In Trespasses &c. the Defendant justified, for that Northampton is an ancient Town, and that King H. 7. granted to the Mayor and Burgesses a Fair to be held yearly upon the Feast &c. Cum omnibus Libertatibus &c. to the said Fair belonging; Then he set forth, that W. R. at a Fair there holden, sold a Cow to the Plaintiff, for which the Defendant demurred one Penny for Toll; and because the Defendant refused to pay it, he as Bailiff distrained the Cow; Upon a Demurrer to this Plea, it was adjudged, That by the Grant of a Fair, Cum omnibus Libertatibus, Toll was not due nor demandable, because it is not incidental to a Fair; It is true, that such Liberties which a common Person hath either by Grant or Prescription, and which the King himself should have throughout England, as Waff, Eftrey, Wrec'h &c. There if a common Person hath them by Grant or Prescription, and they come to the King by forfeiture or otherwise they are extinguished in the Crown, and the Queen shall have such Liberties by her Prerogative, and they cannot afterwards be granted but by a new Creation. But where a common Person hath Liberties, which the King would not have by his Prerogative, if such common Person had them not, as War, Park, Fair, Market with Toll &c. if these come to the Crown, they are not extinguished, but remain in Effe; For if the King should not have them by this Means they would be lost. Wherefore, ab mute Clearch, it was adjudged for the Plaintiff. Cro. E. 558. 559. Mich. 39 & 40 Eliz. B. R. Heidy v. Wheelhouse.

6. The King was Lord Paramount, the Abbot of Westminster was meyne, and C. was Tenant of the Manor of R. The Tenant was tenant of Trefason, and after Office found, the King granted the Manor to Sir J. M. and his Heirs, to hold de nobis & Successoribus nostris, and other chief Lords of the Fee, per Servitutia inde debita &c. It was inlited, That the Tenure should be of the King, because the Msnaity being extint by the Attainder of the Tenant, (for where there is no Tenant there can be no Meine) there could not be any Services due to him; But adjudged, That the Words are sufficient to create a Tenure in the Meine as it was before the Trefason; For such was the King's Intention; and it is consonant to Equity, that he who never offended should not lose his Services, and therefore the Grant shall be taken beneficially for the Honour of the King and the Relief of the Meine, and the Word Tenendum cannot have any other reasonable Construction. 6 Rep. 5. b. Hill. 40 Eliz. in the Exchequer, Sir John Molyn's Cafe.

See (T. b) —
(K. b) —
(L. b) —
(Z. b) —
(A. c) —
(D. c) —
(E. c) —

(B. c) Grants of the King. [To what the Words shall extend.]

1. If the King grants to another All Issues, Forfeitures, Fines, and Br. Patents, and of another, * he amerced, the Grantor shall not have this Amercement, because he is not his sole Tenant. 22 All. 49. per * Fol. 194. Keichn.

Grants 146. cites 2 R. 7. 4. But he shall have Fines and Amercements of those who hold of Him Only. —
But Br. Patents, pl. 90. cites 2 R. 7. 4. Contra, that he shall have it of those who hold jointly of him and of others, as it was said. But Brooke makes a Quere. —
Where the King grants Fines and Amercements to J. N. in his Manor of D. and he does Trespass, there he shall not have Fines and Amercements depending upon it. Br. Grants, pl. 31. cites 21 E. 2. 7. 4. — The King's Grant to A. of all Fines and Amercements in the Tenants of A. does not pass Fines and Amercements imposed in the King's Bench, Common Pleas, or Exchequer, nor before Justices of Gaol Delaroy, Justices of the Peace,
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2. If the King grants all his Lands and Hereditaments of such a Priory in such a City, a Mill whereof the King is feited with other Lands Parcel of the Priory shall pay by those general Words, the Mill ought to be demanded in a Writ by special Name. D. 37 El. 2. R. per Curram.

3. So if the King grants all his Lands, Tenements and Hereditaments in D. the Advowson of the Vicarage shall pay by it. D. 37 El. 2. R. in the said Case held.

4. P. 2. granted to the Burgesses of Dublin Quod int quieti de Theolono Pallage Montage, & omni Confectudine per toutam Terram nostram Anglia, Normanne, Walliae & Hiberniae, Ubicunque vere recto, nulli ipse & res eorum. Tho the Citizens have been always since this Grant till this Day exonerated of the said Custom which is called Magna Antiqua Cattuma in Anglia, & Magna Nova Cattuma in Hibernia, yet they shall not be discharged of the said Custom by this Charter: for the Words (Theolonomus & Confectudina) may be applied to diverse Things; and where the Words in the King's Grants may be applied to diverse Things, they shall not be extended to the said Custom, which is the ancient Inheritance of the King, by any Usage whatsoever. B. 16 El. 3a. Staic. Resolved. Quere.

5. Presentment was made against an Abbot for suffering a Bridge to fall, which he and his Predecessors Lords of the Vill had used to repair Time out of Mind. The Abbot pleaded the Charter of H. 3. to be quit of Reparation of all Bridges, Walls and Cauys, and that this Charter had been allowed in Quo Warranto &c. yet this Plea was not allowed; for this was a special Charge or Duty by Reason of his See, which is not discharged by this general Clause; for where there are Words in the Grant of the King, which under a general Name comprehends Things Royal, and Bafe Things, it shall be taken in Favour of the King, and the Bafe Things shall pass, and the Royal Things shall remain in the Crown. Dav. Rep. 17. a. cited E. 3. Fitzh. 445.
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6. If the King grants Fines and Amencements in D. this will not serve Br. Comn. for Fines Pro Libentia Concordandi, as it is said there. Br. Patents, pl. 12. 107. cites 44 E. 3. 28.

Ex certa Scientia, speciali Gratia &c. they belonging to the King in so high a Degree of his Prerogative. 2 Inf. 38. - King E. 4. granted to the Dean and Chapter of Paul's all Fines pro licentia Concordandi of all their Homagers and Tenants, Refusants and Non-refusants within their Fee; Gowyd J. held, that this Grant did not extend to the Post-fines; for Fine pro licentia Concordandi is the Queen's Silver, and not the Post-Pine. But Wray held that all shall pass by it; for it is about one and the same Matter, and they were of Opinion to give Judgment for the Plaintiff. 1 Leon. 249. pl. 388. Pach. 52 Eliz. Strat. v. Bragg.

7. Note, by the Opinion of the Court, that by Grant of Conrurance of It is said in Pleas, and of Executions of it, a Man cannot levy Fines, nor bring Writ of Right, and make Protestation in Nature of Writ of Covenant. Per Perley, City or Town Covenant; Per Knivet, non valet; for a Man can't by Protestation in Writ of Right change this to a personal Covenant, and yet the Grant was Quod habet actionem omnium plactorum, & quod in omnibus actibus, quos placitum fequestre, &c. And yet by the Opinion of the Court, he cannot levy Fines without express Words of it; therefore quare, and it seems that such Matter ut supra does not lie in Grant. Br. Fines, pl. 22. cites 44 E. 3. 33.

Grant of the King, that yet they cannot levy Fines. But Brook says, That if they have used to levy Fines, it is good enough. But Coke says, That he cannot see how such Fines can be good; for it is expressly against the Statute of Mody Lewd roads Fines, which provides that no Fines shall be levied but only in C.B. or before Justices of Oyer; to that none can be levied elsewhere, unless specially given by Statute, (as he thinks) as Fines cannot be levied in Ancient Demesnes, for the Caufe aforesaid, and because it is no Court of Record; but they may be levied within the County Palatine of Lancaster or Cheles; but that he apprehends to be by diverse Acts of Parliament. And it may be in Cities and Towns Corporative, where they have used to levy Fines, if all their Opin and Customs are confirmed by Act of Parliament, they may levy Fines there; but that such Fines shall not be any Exchequer, nor any Strangers who have present or future Right. Co. R. on Fines 9.

8. Grant was made to John of Gaunt Duke of Lancaster of all Strays within his Fees, and a Special of Spalding held of the Grantee certain Lands in B. in Frankalnoign.; and a Stray came there, and the Grantee claimed it by his Grant: And the best Opinion was, that he shall have it; for he has Tenure there, and therefore has Fee there; for if the House be dissolved, he shall have the Exchequer, and the Tenant may have Writ of Mene, or Inquirit Vexes. Br. Patents, pl. 61. cites 7 E. 4. 11.

9. By Grant of Tenure placent, a Man shali not have Conrurance of Pleas. Br. Patents, pl. 4. cites 9 H. 6. 27.

Grant to J. Biphon of Sarrum and his Successors certain Liberties in all his Lands and Fees; this Grant to be shall not extend but to those Lands and Fees which he had at the Time of the Grant. But per Billing and Prior, if the Grant be in all his Lands, and in Lands to be purchased by him or his Heirs, this shall extend to his good, tho' no Land which he had at the Time of the Grant, and to Land which he or his Heirs shall purchase hereafter. Br. Patents, pl. 28. cites 38 H. 10. 11.

10. Trespa on the Cafe, where the King granted to J. Biphon of Sar- rum and his Successors certain Liberties in all his Lands and Fees; this Grant to be shall not extend but to those Lands and Fees which he had at the Time of the Grant. But per Billing and Prior, if the Grant be in all his Lands, and in Lands to be purchased by him or his Heirs, this shall extend to his good, tho' no Land which he had at the Time of the Grant, and to Land which he or his Heirs shall purchase hereafter. Br. Patents, pl. 28. cites 38 H. 10. 11.

11. If the King grants to J. N. to amortise certain Land, yet if he gives Land held of the King in Capite in Mortmain, the Land shall be settled for Fine for the Alienation; and therefore it is used to put in such Patents now. [viz.] that it be held of us in Capite. Br. Patents, pl. 44. cites 2 H. 7. 13. Per Keble.

12. A. was Lestee for Lili of the Scite and Demnefies of a Manor ren- dering Rent, the Reversion thereof, and of the Residue of the Manor, to John K. K.
Prerogative of the King.

13. King H. 8. granted to A. Turbariam suam in D. for 21 Years; the Grantee plov'd Part of it, and then Q. Mary granted to B. Todum illiam Turbariam before demised to A. It was adjudged, that the plow'd Land did not pass, but only that which was Turbaray. Owen 67. 23 Eliz. C. B. Farrington v. Charnock.

14. The King granted the Manor of B. to J. S. in Tail Male, and afterwards by another Patent, reciting the former, and the Surrender thereof &c. De Gratia specially, ex certa Scientia &c. here-granted the said Manor to the said J. S. and M. his Wife, and to the Heirs of the said J. S. It was resolved, that by the Grant of the Manor without the Word Revocation, the Revocation pass'd; for the Word Manor includes all Estates and Degrees of Estates of, or in the Manor. 6 Rep. 36. Trin. 4 Jac. Lord Chandos's Cafe.

(C. c.) Grant of the King. [What shall pass by general Words.]

1. The Right of the King shall not pass by general Words.

2. By a Grant de Bonis & Catalis felonum, Goods of a Felo de se shall not pass. 8 D. 4. 2.
Prerogative of the King.

3. Nor of a Clerk convict. 8 H. 4. 2.

4. Nor of one who is put to Penance. 8 H. 4. 2.

5. By a Grant of the Goods Eorum qui pro aliquo Delicto Vitam vel Membrum amittere debent, the Goods of one who is put to Penance shall not pass. 8 H. 4. 2. Dumtart.

6. If the King grants all Forfeitures of the Tenants of the Grantee for any Trepass or any other Offence, for which they shall lose Life and Member, or aliquo allo Delicto for which they shall lose their Chattels; yet Forfeitures for Contumacy, as Forfeiture of Goods upon Sounlawry in Trepass, shall not pass thereby. 11 H. 6. 50. a.

7. The King may grant Lives and Amencements by general Words. Br. Patents. 9 H. 6. 27. b.

8. By such Grant Forfeitures of Goods upon a Premium for Non-appearance, by which the Party is put out of the Protection of the King, do not pass. 11 H. 6. 50. b.
Prerogative of the King.

If the King grants to J. N. Mayor or Lord &c. and does not make mention of Fees of Knight and *Advowson, there shall do not pass; for they do not pass without express Words. Br. Patents. pl. 5. cites 41 E. 3. 5.


In Quære Impedit, the Case was, that King H. before the Statute of Prerogativa, granted a Manor to J. N. without expressing the advowson, and without saying Cun Pertinentiis; and yet by Judgment the Ad-

vowson passed, where it was appurtenant to the Manor; but now by the Statute of Prerogativa, Ad-
vowson, Dower, Fees of Knight, do not pass, unless expressly mentioned; and that if a Common

Peeff be sealed of a Manor with Advowson appurtenant, and grants the Manor cum Pertinentiis, the Ad-

This Act is restrained only to these three Cales of Advowsons, Knight Service, and Dower; for

Let shall pass without express Mention, or Words equivalent, as is held in 13 H. 6. 12. So of

Forf appellant to an Honor, as is agreed in 26 Aff. 60. So of Corody appellant to a Patronage of a Priory, as appears in 26 Aff. 62. — The Words of the Act are Quamdenominat Rex dat se petendas, and therefore in Case of Refutation, Advowsons &c. shall pass without express Mention of them, or Words equivalent, as in Livery to the Heirs. 224. In Refutation of Temporalties to the Successor of the Bishop &c. 10 Rep. 64 b. cites 41 E. 3. 5. 27. Aff. 43. Pl. in Lord Birkby's Cafe. 231, 232, 25 Eliz. D. 366. accordingly. But that Thorp, Ch. 1, said in the same Plead, That if a Manor with Ad-
vowson appurtenant be in the Hands of the King by Effeat or by Purchaso, if he at this Day (since the Statute of Prerogativa Regis) gives it as entirely as J. S. held it before it came into our Hands by effeat of Effeat, or as J. S. held when effeat'd it in; in such Cafe, the Advowson shall pass without paying in the Charity of Fees & Advowsonibus, because the Law in such Cafe intends, that the King is apprized of his Right. Quod Curia concedat.

10. If the King grants a Hundred, which has a Leet, to J. N. and ano-

ther Man has a Manor and a Leet in it within the Hundred, if he makes

Hue and Crie there &c. the said J. N. shall not have the Punishment of it, but it shall be punished in the Eyre. Per Wilby. Br. Grants. pl. 31. cites 21 E. 3. 3. 4.

Coral, where he makes Livery at full Age upon Office upon Suit, there they pass by general Words; but in the other Cales, they do not pass without special Words expressed.

Note a Diversity. Ibid. — So in Quære Impedit, 41 E. 3. 5. Where the King renders the Temporalties to a Bishop still before that he be found. Fees and Advowsons do not pass without express mention. Ibid. 5 Contra, where he renders them after the Consecration of the Bishop. Ibid.

12. If the King grants Returna omnium Breviter, yet the Grante

shall not have Return of Exchequer Summus. Br. Patents. pl. 32. cites 22 Aff. 49.

13. King H. was seised of the Honour of Pickering, to which a Forest

was appurtenant, and the King granted the Bailiwick of it to one in Fee, rendering Rent; and after he gave the Honour cum Pertinentiis to E. Earl of Lancaster; and by this the Forest pa's'd, but not the Bailiwick nor the Rent referred upon it; for this was ferwered before from the Honour, and therefore cannot pass as appurtenant; for it was in Grafs before, and does not pass unless by express Words, Quod nota. Br. Patents. pl. 35. cites 26 Aff. 60.

14. The King is Founder of a Priory, and confirmed to the Prior all his Possessions, Tenement, libere & quiete ab omnibus Placitum, Gildis, Tollibus, Querelles, Actionibus & Demands, et ab omni Servicio et Exchequer Secundari &. And notwithstanding those Words, he was charged of Corody, Responsible Aids, and to repair Bridges and Causeways; quod nota, that the general Words do not bind the King. Br. Patents. pl. 78. cites 50 Aff. 6.

15. In Trefpafs, the Defendant judg'd by Grant of King R. 2. who

granted Bona & Catala felenam & fugitivorum, & allitorus qui pro aliquo Delitio &tenue vel Moneanam amittere debent seu pro aliquo alici Delitio, pro quo bona aut Catala perdere debent in his Manor of D. and one was out-

law'd of Trefpafs, and he took his Goods; and the heir Opinion was, That he well might, by reason of the Words (Delitio pro quo perdere debet Catala fere.) Br. Patents. pl. 56. cites 11 H. 6. 50.
Prerogative of the King.

16. A Rectory, to which an Adwoufon of a Vicarage was appendant but the annual Revenues and Profits of them were cancelled, came to the Queen by the Attainer of J. S. which being found by Office, the Queen, for a valuable Consideration, ex certis scientia &c. granted the Possessions of the Glebe, and Tithes of the Rectory, by special Names, and generally annua Hereditamenta &c. belonging to the same, not mentioning expressly the Rectory or Adwoufon of the Vicarage, also pience &c. as the said J. S. had it, and proued ad manus iusipus Regine devenrunt feu denombre debuerunt; with this Provifo, That if the Premisses were not concealed &c. Adjudged, that by these Words the Adwoufon of the Vicarage did pass, and that the Queen was not deceived in her Grant, for want of Knowledge. D. 350. b. pl. 21. Patch. 18 Eliz. * Anon.

17. The Queen (s)efed of the Manor of Gasaugne, and of a Grange called Gasaugne-Grange in D. granted all Her Lands, Tenements, and Hereditaments in D. Adjudged by the whole Court, That the Manor did not pass. Godb. 136. pl. 159. Patch. 28 Eliz. C. B. Giles v. Newton.

18. The Queen having the Adwoufon of the Vicarage of D. granted the Vicarage to B. It was held, that the Adwoufon did not pass; for by her Grant nothing passes but what she intended to pass, and the Vicarage is a different Thing from the Adwoufon, and every Thing must pass by its proper Name; Nor shall it pass in the Cafe of a Common Person. Cro. Eliz. 163. Mich. 31 & 32 Eliz. C. B. Anon.


20. Jac. 1. granted to Sir R. M. and his Heirs, by Letters Patents, the Territory of Rout, which is Parcel of the County of Antrim, and adjoining to the River of the Banne in ea parte, where there is a Pilchary of salmon ; and the Grant was of annua Coftra, Melfin, Tipta, Maldona, Columbaria, Gardina, Hortos, Ponnard, Terras, Pastae, Patfures, Bosos, Subbofcos, Reddit. Reverfiones & Svecitae, Piscariae, Fiectiones, Aqua, Aquarima Cyrtus &c. Ac annua alta Hereditamenta in vel infra dict Territorium de le Rout in Comitat Antuim exceptis, et ex hac conceffione nobis Hereditibus et Succefforibus noftris, reuerfati tribus partibus Fiectionis humiliis de Banne. The Chief Judges being of Privy Council, upon View of several Pipe-Rolls, in which this Matter was found severally in Charge as Parcel of the ancient Inheritance of the Crown, and upon Consideration had of the said Patent, certified their Opinion and Resolution, That no Part of this said Pilchary poffed by the Letters Patents afofaid. It was also resolved, That no Part of this Royal Pilchary of the Banne could pass by the Grant of the Land adjoining, by general Grant of all Pilcharies; for this Royal Pilchary is not appertinent to the Land, but it is a Pilchary in Gros, and Parcel of the Inheritance of the Crown by itself. And lastly it was agreed, That where the King had granted to Sir R. M. all the Territory adjoining to this River, and all Pilcharies within this Territory, exceptis tribus partibus Piscariae de le Banne, that the fourth Part of this Pilchary shall not pass to him; for the Grant of the King shall no pass anything by Implication. Dav. Rep. 55. a. to 37. b. Mich. 5 Jac. in Ireland. The Cafe of the Royal Pilchary of the Banne. —— alias Sir Randal Mac Donnell's Cafe.

21. General Words in a Grant of the King shall not pass such a special S. P. Dav. Royalty as belongs to the Crown by Prerogative ; As Mines Royal, Amerce- ments Royal, Efecheats Royal, shall not pass by general Words of All Mines, Amerce- ments, and Efecheats. Dav. Rep. 57. b. In the Cafe of the Royal Pilchary of the Banne.
22. It was resolved, that by a general Grant of a Manor (which had been forfeited to the King by Attainder of Treason) Cam Pertinentis, and of all his Interest, Claims, and Demand thereon, a Writ of Error to reverse a Common Recovery (which had been erroneously suffer'd of the Manor) did not pass, notwithstanding the Clause De speciali Gratia &c. For if the King could grant it, it must be by Virtue of his Prerogative, (for no common Person could do it) and then it ought to be by express and precise Words. 3 Rep. 4. b. Trin. 25 Eliz. The Marquess of Chetters's Cafe.

23. If the King grants Reclamation, the Adluction passes ; For the Intent, and not the precise Words, are to be regarded in the Grant of the King. Per Jones, J. Lat. 248. Hill. 22 Jac. In the Cafe of Evans and Afcough. — cites 7 Eliz. 3.

24. Sir Francis Forstecue sais'd of a Manor granted it to the E. of Dunhight, except such Lands as were then held for Life by Copy. Afterwards the Inheritance of this Copyhold was granted to the said Earl; The Copyholder dies, the Earl granted again by Copy, and then forfeited all to the King. The King granted the Manor &c. and every Part or Parcel, or reputed Parcel thereof. Lord Ch. J. North deliver'd the Opinion of the whole Court, that these Copyhold Lands passed by the Words (Reputed Parcel.) And that in this Cafe, where the Jury have found the particular Matters, and those Particulars are a solid Ground for a Reputation, the Court shall adjudge it Reputed Parcel, and so shall pass by those Words in the Grant of the King; and Judgment was given accordingly. Freem. Rep. 207. Patch. 1676. C. B. Lee v. Browne.

See (1 b. (L. b. (K. b. (L. b. (Z. b. (A. C. (B. C. (C. c. (E. c. (D. c. Grant of the King \[by general Words; and what passes.\]

If the King grants to another * Bona & Carall tenementum suorum fugitivorum & Iclonom qualiter cunque damnum; and after a Tenure of the Grantee is attainted of Treason for killing the Heir of the King, the Grantee shall not have his Chattels, because he is attainted of Treason. 22 Aft. 49. Unjudged.

Bona Fidem & qualiter cunque Damnum does not extend to High-Treason, because felony is named first. Hard 442. cites 11 H. 6. 54 b

* The King granted to the Earl of Arundel and his Heirs, ex gratia speciali, certa Scientia & mero motu omnia Bona & Catalla fidelonum, & fidel de fe, attit' de preditionis, de fidelionis, Obligations in enanguo fiderum, Homiemam fumam, integrum tenementum &c. & integri transitum, restitutione de &c. in omnibus mancipiis, & Hereditamentis dicit Coartis. The said Earl was seized in Fee of the Hundred of Paling to the County of Suffex. B. held a Tenancy in Fee within the said Hundred of the said Earl, as of his Person ; B. was attainted of Treason committed by him in the County of Hereford, and had a Lease for Years and Goods within the said Hundred of Paling, and elsewhere, where the Earl had not any Hereditaments. Resolved by all the Judges of England, that the Lord Lumley, who has the Estate of the Earl of Arundel, shall, by Force of the said Patent, have the said Tenancy, Lease, and Goods. The Word (De) shall be construed to relate to any Tenure of the Person, or of any Manor of the Earl ; The Word (in) relates to Goods, the Word (De) to Tenancies which are held of the Earl, be the Tenants resident or non-resident. This is a good Precedent to confirm Beneficium principis, quod debet esse mancipium. The Words in a Patent Ex certa scientia, speciali gratia & mero motu, make the Cafe of the King like the Cafe of the Grant of one Subject to another; if the King be not evidently deceived. Jenk. 255. pl. 45. — cites 52 Eliz. Lord Lumley's Cafe.

2. But upon this Grant he shall have the Chattels of his Tenant who is attainted of Petty Treason for killing of his Master. 22 Aft. 49:}

3. The
Prerogative of the King.

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3. The King by general Words may grant Chattells. 9 P. 6. 28.

4. If a Man outlaw'd be posse'sd of a Term for Years, or of a Ward, and the King grants to another all the Goods and Chattells of him so outlaw'd, the Parentee shall have the Term and the Ward. 9 P. 6. 28.

5. If the King grants to another, that he and his Men shall be discharge of Toll, by this he, his Villeins, and also Homagers, shall be quit of Toll; for in doing of Homage, he says, I become your Men. Ibid. 14 H. 6. 12.

that if such Grant had been before Time of Memory, his Villeins, and not Homagers, should go quit of Toll by such general Words. But, per Cheiny and June, a Grant by such Words at this Day will discharge Villeins and Homagers.

In Qno Warrant. The King granted to W. N. that he and his Men should be quit of Portage; Th' extends only to his Villeins, and not to others. Br. Patents, p. 105. cites L. N. Not tempore. E. 3.

6. If the King grants to another Bona & Catalla felonum & Br. Patents. fugitivorum de hominibus fuis, This extends not to the Goods of S. C. Patents, p. 36. cites Hamoners, but only to Villeins, unless it had been anciently used to extend to Homangers. 44 H. 4 pl. 21. Abjured.

7. If the King grants Conuance to another of Actions concerning him & homines fuis; This shall extend to his Villeins, and not to his Homagers. Ibid. 12 H. 4 pl. 35.

Shard, it extends to those who become their Men in doing Homage; Quere, Of those who do Fealty? But Farning was merely contra; and it was said, that, in Protection profe & Hominum, neither Villeins nor Frankenants shall be aided; therefore it seems there, that it extends only to his familiar Servants. Ibid.

(E. c.) Grant of the King by general Words.

1. If the King grants certain Liberties to T. S. and inter alia grants to him omnia Bona & Catalla Felonum de se within the Vill of S. This shall pass Obligations, Specialties, and Debs due to the Felon; for if the King grant in other Cases omnia Bona & Catalla fua, where it is not granted as a Liberty, Specialties and Debs shall not pass without special Words, being Choise en Action; yet in case of such a Grant of a Liberty, it shall pass such Debs and Specialties, because all Liberties of such Nature have used to pass by such Words, in all Ages before; For all ancient Liberties have been granted by such Words, and enjoy'd by Force of Law; and therefore, they shall pass by such Words at this Day, by such Grant of the King. P. 25 Fasc. upon a Reference out of the Star-Chamber between the Bishop of Winton the Ammoner of the King, and one Burren of the City of London, to whom such Grant was made by E. 6. of Goods and Chattells Felonum de se in Southwark, to the Judges of B. R. All the said Judges seemed to meaning, that it shall pass Specialties and Choises en Action, but they certified for the Certainty of the Case, that it was conve-xent to be tried at the Common Law upon a Suit there.


The Lord N. has a grant of Bona & Catalla Felonum et fugitivorum within the Isle of Ely. J. S. dwelling within the Island, was attainted of Felony. W. R. cases intituled to try. His case, was intituled to try Manc as a Mayor of the Lord S. who also had Bona Felonum &c. exist in his Manor. The Question was, which Lord should have the Money. All the Barons of the Exchequer were clear of Opinion, that the Lord S. could not have it; for the Place of Payment is in London, but the Obligation is the Sub-
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Prerogative of the King.

Since which came to the Lord N. within the Isle. But being insulted by Rocham, the Queen's Attorney, that the Money belonged to the Queen, and that the Lord N. could not have it; for that by the penal Words of Bona & Cattala felonum Things in Alien do not pass, but by express Words they will pass; otherwise, not. And therefore Day was given to the Lord N. to shew his Letters Patents. 2 Le. 16 pl. 51. Trin. 29 Eliz. In the Exchequer. Lord of Northampton v. Lord St. John. — S. C. cited Sid. 142.

The Queen granted to one Cattala Urgentorum & Felonum de sic, within such a Precinct; a Debt was due to the Queen by a Felo de fe within the Precinct. Resolved, the Queen shall have the Goods to satisfy her Debt. 4 Le. 6. 26 Eliz. In Scace. Anon.

2. If the King be seized of a Ward, and grants the Land and Body, with all Reversions and Remainders to another, and after other Land descends to the Ward within Age, the Patente shall have this Land also. 9 H. 6. 27. b. Where this; For the King continues Guardian, and it is to be intended that he was in Ward for Capte Land.

3. If the King releases to an Abbot or Prior of his Foundation all Services, and that he shall be as free in the Church as the King in his Crown; This was an ancient Grant, yet the Corody and Penfion due to the King are not discharged by these General Words. 14 H. 6. 11. b.

4. If the King grants Land to another in Fee, and grants further, that he shall be as free in this Land as the King in his Crown, yet those general Words do not discharge Fines for Alienation, which are due by Prerogative, if he aliens without Licence. 14 H. 6. 12. b.

5. When King E. 3. granted to his Son the Duchy of Cornwall, Cum omnibus ad eam spectantibus finmifter cum Wardis, Maritagiis &c. &c. &c. With such extra Comitats, &c. Obbligate Prior Prerogativa Regis, and after a Man who held of the Duke in Chief by Service of Echivalry is dead, and his Heri is in Ward to the King for cause of Ward for other Land; The Duke shall not have the Wardship of him by those General Words; For the King shall not pass such Things as he has in Right of the Crown without express Mention of his Right. 43 Aff. 15. Adjudged. D. 9. 10. El. 268, 12.


7. Exitus tenet. vel Fines and Ameircaments of Confables and other Officers of the King are not allowed in the Exchequer upon a Grant of the King without Words Lietent. Vicecom. Coronator. Vallivi Officieris au Minifi Regis sunt, because they are royal. D. 10 El. 269. 18. 2 P. 7. 7.

8. If the King has two Titles to a Church, &c. &c. &c., the one as Parnon of the Fee, and the other by Prerogative by Lapte the Church being void; Tho' the King grants the Fee of the Advowson without express Grant of this present Avoidance to prevent the Grantee shall not have this Prerogative. D. 18 El. 348. 12. 15 P. 6. 10 E. 2.
Prerogative of the King.

9. If the King is feited in Fee of an Advowson, and the Church voids, and afterwards he grants the Advowson without speaking of the Avoidance, the Grantee shall have it. D. 9, 10. Cl. 269. F. N. 33. ii. 18 E. 3, 22. 9 E. 3. 26. 3 H. 7. R. 10, cited in D. 10 Cl. before. Hobart's Reports 189. Contra D. 13 Cl. 300. 36, where the Grant is of the Manor with the Advowson thereto belonging.

Advowson was appendant, granted the Manor una cum Advovtione, the Church being void, yet the Judgment was, That the Queen should present Hac vice Sir Thomas Gorge's Cafe. — 5 Le. 196. S. C. by Name of Sir Thomas Gorge v. Dalton. — S. C. cited accordingly. D. 502. pl. 56. in Marg.

10. B. G. held a Manor of the King, and R. W. held another Manor of the King This is not of that Manor, to which left there was an Advowson appendant; Both these Men were attained of Treason, and the King forfeited both their Manors, and afterwards granted the Manor, which B. G. held of him una cum Advovtione exim pertinente. Adjudged, That the Advowson did not pass with that Manor, but was still appendant to the other. Nelf. Abr. 904. pl. 5. cites Mich. 30 H. 8. Dyer 44.

The King comes to an Einsatz as Lord, and where he comes to it as King of England; For where he comes to it as Lord he shall not be in other Course than as Common Lord, but where as King it is otherwise, and then cites the principal Cafe as the Cafe of 6 E. 3. 52. thus, viz. That B. G. held a Manor of the King to which a Royal Armed was appendant, viz. to have Einsatz of all Tresions of such as hold of this Manor, and that R. W. held another Manor of the same Manor to which the Advowson is appendant, and that R. W. was attainted of Treason, by which the King forfeited, and then granted the Manor held of him una cum Advovtione exim pertinente. Asd by the Opinion there the Advowson paffed not with this Manor, but is appendant as before; But it was held, that the Frankfife Royal by the Einsatz was extinct and rejected to the Crown.

11. If the King grants Omnia Fusa Regina, or to be as free as Tongue can speak or Heart can think, this shall not be taken according to the Words, but according to the ancient Allocaance, To hold Pleas or to have Consent &c. Br. Patents, pl. 110. cites 10 H. 7. 13.

12. A Patent in Generalibus without Restriction, As if the King grants Omni Terra sita, or Mineria sita, or releas all Demands, is a void Patent. Dolus veratur in Generalibus. Jenk. 304. pl. 77. cites 2 H. 7. 11 H. 7.

13. If the King grants all his Lands and Tenements in D. this is a good Grant by these General Words. Br. Patents, pl 95. cites 30 H. 8.

14. King Edw. 6. was seised of the Manors of Hackney and Stepney, within which was a great Marsh called Stepney Marsh, Parcel of the Manor of Stepney, which he had in Exchange with the Bishop of London, and also of 20 Acres of Land called Stepney Marsh, which he had as Parcel of the Possessions of the late Priory of Grace, and granted to the Lord Wentworth and his Heirs the aforesaid Manors, Nec non Mineria sita sita de Stepney prioro. Nec non omnia Terras & Tenementa & Minos dictis Manerios aut ceteris Praeulis pertinent. &c. The Question was, If the 20 Acres pafs in the General Words of the first Nec non? Or if the Words in the 2d. Nec non (dictis Maneria pertinent,) restrains the Generality of the first Words? Gawdy, Clerch, and Wray conceived, that the 20 Acres did pafs; And Wray said, That against express Words no Favour will be given to the King. And it is said, Note, that the Marishes pertaining to the Manor are in the third Clause, Ergo the Marsh in the second Clause shall be intended a Marsh in Grofs, or otherwise it should be idle. And afterwards Judgment was given a gainst the Queen. Le. 120. pl. 162. Tin. 3 Eliz. B. R. the Queen v. Lewis and Green.

15. A. being seised of the Manor of Q, and also of the Manor of C, which was held of the Manor of Q, was attainted of Felony. Queen Mary
Prerogative of the King.

Give the Manor of Q. to Sir W. M. cum omnibus suis finibus & parcel-

his; Adjudged, that the Manor of C. passed by this Grant, became it

was now Parcel of the Manor of Q. Cited by Periam J. 1 Lev. 26 pl.

33. Patch. 27 Eliz. C. B. in Cave of Mart, and Smith, as Sir Walter

Mildway's Cave.

(E. c. 2) Grant. Pass what. By the Words Constitute-
mus, Concessimus & c.

1. In Affife, upon a Grant of the Office of Clerk of the Crown in Chancery,

it need not be shewn if there was such Office at the time of the

Grant or not: For per Catesby, the King by this Word Concessim-

us & Ordinamenti he may make an Office and Officer which had not

Elie before, and the Office of one of the Clerks of the Crown in Chancery

was granted to two, where, per Catesby, two cannot have the Office of

one Clerk; Contra of Grant of the Office of Clerk of the Crown to two, and

yet not allocutus, but the Grant is good. Br. Patents, pl. 21. cites 9 E.

4. 11.

2. The King having granted to Hugh Moyle the Office of Broker of

London, by the Word Concessimus to the H. M. Office of Broker, &c.

And by all the Serjeants the Patent is void, because it wants Constitu-

mus; because the King never had granted such Office there before. And per

Brian the Patent is void; For this Office does not belong to the King.

By which he granted another Patent, which had Concessimus & Ordinanti-

mus & c. And yet held void, because there was never such an Office & c.

But the Mayor admitted him. Br. Patents. pl. 73. cites 21 E. 4. 76.

(E. c. 3) By the Words *Ex Certa Scientia, †Mero Motu & c.

*Ex certa Scient. I If the King grants by these Words, ex certa Scientia & mero Motu,

such Patents shall be taken more strong against the King. By some,

Br. Patents, pl. 82. cites 9 H. 7. 2.

2. Where the King recites a former Grant, and confirms it ex certa

of the Thing Scientia & Mero Motu, he shall be Estopped to deny the Recital; per

Hufley; But Brooke says Quere. Ibid.

†Ex Mero Motu properly imports the Honour and Bounty of the King, who rewards the Patente for

the Merit of his Service of the mere Motion of the King himself, without any Suit of the Party; and

it was said, That those Words were added after the Statute of 4 H. 4 cap. 4 by which the King declared,

that he would abstain from granting any Part of his Revenues, Lands or Wards, but to such as deserve

them, and the late act for any such Thing shall be punished, and shall not have the Thing for which the Suit

was made; After which Act, to the End that it should not appear, that any Suit was made, those

Words were added, viz. ex Mero Motu. 10 Rep. 112 b. 115. a. in Legat's Cave. — S. P. Arg. 5 Le. 249 in the

Cafe of Harris v. Wing — S. P. Pl. C. 502 b. Mich. 18 & 19 Eliz. in the Cave of Grendon v. the

Bishop of Lincoln.

3. If the King has a Mine Royal in the Land of J. S. and he Ex-
grata speciali, certa Scientia & Mero Motu fits, grants to a Stranger
Prerogative of the King.

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all Mines, which he has in the Land of... by this Grant the Mine... Royal shall pafs; for otherwise the Words shall be void; for he cannot have bale Mines in another's Soil, and therefore when he says Excerta Scientia, and recites, That it is in the Soil of another, he cannot be taken Mifconunant of the Thing, and therefore it shall pafs. Per Dyer Ch. J. of C. B. Pl. C. 337. Hill. 9 Eliz. in the Case of Mines.

4. The Words Ad Hamiltem Petitionem diminith the Force of the Words de Gratia specialia, ac Ex certa Scientia et Mero Motu; for the Charter shall not then be taken to proceed from the Grace of the King merely, and to be taken more stritly against the King, and in Favour of the Patentee, unless it is merely of the Motion of the King, and without Suit of the Party. Per Carlin Ch. J. Pl. C. 337. in the Case of Mines.

5. Queen Mary being seated in Fee, in the Right of her Crown, of a Manor, to which an Adowion was appendant; and the Church being then void, the, in the Time of the Vacancy, ac certa Scientia granted the Minor & onnis Adowicientes edem Manerio pertinent. five incurrent. in Grantee shall tam amplis modo & forma prout &c. but no Mention was made of the present Accident, which was at that very Time when the Grant was made.

It was adjudged, that the next Presentation did not pass by such a Grant. Dyer 300. pl. 36. Pach. 13. Eliz. The Case of the Manor of Bedminster.

Dier. 269. And this Judgment is good Law, per Car. Mich. 29 & 30. Eliz. C. B. & Dier. fol. 549 (and where) A had a Manor to which Adowion was appendant, which is void, he grants the Minor Unitas Adowictiones to B. In this Case B shall not present Hae Vinc. Pach. 29 Eliz. Per Catlin Ch. J. of the George's Cafe, in a Case of the King, and Trin. 15 Jac. Bitchcomb's Case being the Case of Common Felon.

6. Grant to J. H. Son of T. H. Ex certa Scientia, & Mero Motu. J. H. P. Per Per Manwood Ch. B. was a Boyard. The Grant shall not be taken in such Plight as the Grant of a Common Felon, void for Uncertainty, because the King takes notice of the Person of what Degree he is; and in the King's Cafe where he takes Knowledge by the Words Ex certa Scientia, there all Matter of Uncertainty shall be avoided, and made good; but not Matter which is not true.

And where a Thing may be taken two Ways, there without the Words Ex certa Scientia &c. the best shall be taken for the King, and the strongest against the Patentee per Manwood; but per Dyer by the Words Ex certa Scientia, the Uncertainty is evaded, and shall be taken strong for the Patentee; and If it can be any ways taken for him, the Patent shall not be void; and here the Word (Son) may be taken either for a Bafe, or a (Ex Mero True Son. But where the King in his Grant recites a Thing which is false, that shall not make the Patent good, altho' the Words be Ex certa Scientia & Mero Motu. 3 Le. 49. pl. 69. Mich. 15 Eliz. in C. B. Anon. the King's Case, (I grant it without the Suit of or Information of any Person, but of my own Knowledge, and all Uncertainties, as if he grants Lands which belonged to the late Dissolved Monastery of Christ-Church, when in Fact there were several Monasteries of Christ-Church, this is help'd: But such Patent shall never aid a Falsity. As if the King grants Lands which came to him by the Dissolution of a Monastery, when in Fact they came to him by the Attainder of Cardinal Wolsey. Per Car. 57. 13. pl. 56. Mich. 24. & 25. Eliz. in Scacc. Attorney-General v May.

1 S. P. per Holt. Ch. 2. Salk. 501. Hill 9 W. 7. in the Case of the King v. the Bishop of Chester.

7. By Attainder of one Dissolved, a Right to certain Land became for... feited to the Queen, who after the Death of the Dissolved, by Letters Patents De Speciali Gratia, Ex certa Scientia, & Mero Motu, granted all the Lands, Tenements, Rights, and Herediments, which she had by Attainder of the Dissolved. But it was adjudged, that such a Naked Right shall not pass by such general Words of the King; For that (if it can be granted at all) it must be with a special Recital by express and special Words. 3 Rep. 4. b. cited, and affirmed by the Court to be good Law, by the Name of Cromer's Cafe.

S.C. cited Hob. 245. in the Case of Lord Scand-...
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S. P. Arg. 5. I. c. 219. in the Case of Harris v. Wing.

9. Ex Gratia sua Speciali, is in respect of the Grace and Favour which the King has conceived in respect of the Patentee. 10 Rep. 113. a. in Legates's Case.

(F. c.) Grants of the King. In what Cases they shall be void for Uncertainty.

1. If there are two Breifs in Yorkshire, anes, Willowbrig and Borrowbrig, and the King grants to a Man, That he shall take so much for every Beast which shall go over Willowbrig for Tolls, as has usually been taken for every Beast which should go there et alibi intra Regnum Angliae; Two he avers, that so much in certain has been paid at Borrowbrig aforehand, and to much he claims to have, yet this Grant is void for the Uncertainty of the Words (Et alibi intra Regnum Angliae) For this has not any Certainty; For one Place may be 2 d. and at another Place more or less. P. 15. Ja. B. R. Lightfoot and Lovett. Adjudged.

2. If the King grants to me that I shall not be Sheriff, this is not good for the Uncertainty, because he does not say of what County; But contra, if he says that I shall not be Sheriff of any County in England. Note the Diversity. Br Patents. pl. 92. cites 2 R. 3. 7. Per Hurley.

3. The Queen seised of a Great Waffe, called Ruddlestown, in the Parth of Chipman, granted a Moety of a Yard Land in the said Waffe to the Mayor and Burgesses of Chipman, without any Certainty, Name, or Description, and after granted the Waff to H. Adjudged, That the Grant was void for the Uncertainty of the Thing granted, it being in the Caf of the King, though otherwise it would be in the Cafe of a Common Person, where the Grantee might by Election reduce it to a Certainty; And the Court held farther, That the Grant was void, not only against the Queen herself, but also against H. her Patentee. Le. 30. pl. 36. Trin. 27 Eliz. B. R. Sir Walter Hungerford's Cafe.

This Grant is void, and the Patentee shall not have his Election in the King's Cafe. 12 Rep. 86 in Stockdale's Cafe.

4. If the King grants a Rent or Land without Limitation of any Efficacy, the Grant is merely void for the Uncertainty, and the Grantee shall not be Tenant at Will to the King, as it is ruled in Atlin Wood's Cafe. And the Reason is, Because the Grant of the King shall be taken most strong for his Benefit and Advantage. Resolved. Dav. Rep. 45. a. Patch. 5 Jac. B. R. in Ireland, in the Cafe of the Dean and Chapter of Fernes.

5. If the Thing granted be of such a Nature that divers Efficacies may be limited thereof; As of Land, Seignory, Rent &c. If the King, in his Grant of such a Thing does not limit any certain Efficacy to the Grantee, nothing shall pass by this Grant, but it shall be adjudged merely void for the Uncertainty. Resolved. Dav. Rep. 45. a. in the Cafe of the Dean and Chapter of Fernes.
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6. Certainty is requisite in the Grants of the King. Per Fleming Ch. J. Bullit. 10 Hill. 7 Jac. in the Cave of the Earl of Shrewsbury v. Earl of Rutland.

7. King James granted to W. S. so many Debts, Duties, Arrearages and Sums of Money, being on Record in any of his Courts from the 1st Year of H. 8. to the 14th of Queen Eliz. as shall amount to 1000 l. It was resolved, That this Grant was void; for there is no Certainty what Debt should pass. And that the Word (Arrearages) being coupled with the Words (Debts, Duties, and Sums of Money) should not pass Arrearages of Rents, or Things Real, but must be intended of Things Personal; but there being a Provizo that the Grantee should take no Benefit of any Arrearages of Rents, Reliefs, Tenths, or annual Payments whatsoever, till J. S. should be satisfied the Sum of 1000 l. this explains what Arrearages were intended, viz. of Rents &c. and is one Part of the Patent must be construed by the other; but clearly Meine Rates are not within the said Words; nor they are the Profits of De- meine Lands. 12 Rep. 86. Trin. 9 Jac. in the Court of Wards. Stockdale's Cave.

8. In Ejectment, the Cave upon the Evidence in a Trial at Bar was, that Eleanor Queen Dowager of H. 3. in the Year 1273. founded St. Katharine's Hospital, referring to her self during her Life & Regins Anglie nobis faccenitibus the Nominacion of the Matter of the Hospital, which was incorporated, and the Grants confirmed by Letters Patent. And the Question was, Whether by those Words (Regins Anglie) the Queen Dowager or Queen Confort was intended? And it was held, that the Queen Dowager had the Right to nominate; for Queen Eleanor, at the Time of Foundation, was only Dowager, and therefore could never be intended to exclude such Queens as should succeed her in that Capacity. And the Words will include a Queen Dowager; for she is Queen of England, and as such may sue in the Exchequer. 1 Vent. 149. Mich. 23 Car. 2. The Cave of St. Katharine's Hospital.

(F. c. 2) Grants. 

1. The Assize had usually been held in York-Castle, and Queen Eliz. granted the Castelry of the Castle to J. S. with all the Herbertage in the Castle. Upon demanding the Opinion of the Matter of the Rolls, the Ch. J. of B. R. and the Lord Ch. Baron, they held that the Assizes might be held there, whether the Patronet would attenn to it, or not; for if he might prevent it, so might every one, and so the Business for the Publick Good would be unexecuted, which would be very inconvenient, and would be in Effect the barring the Queen herself from coming into the Castle, it being her Service which is there to be executed, and the Seat of Justice her Seat, for which the Common Law with their Commilion gives Authority to the Justices to appoint the Place of their Sessions. 1 And. 345, pl. 320.

2. Where the Words Damus & Concedimus in the King's Grant cannot enure by Way of Grant, but may by Way of Confirmation, there they shall enure by Way of Confirmation; so that a Forlieture, before Office found of the Forlieture, is discharge of those Words; and tho' they are void as to amounting to any Grant, yet they confirm the Estate of the Patentee. Mich. 7 Jac. 8 Rep. 167. in the Earl of Cumberland's Cave.

3. Holt Ch. J. cites it as said by his Brother Turton, that the King's Intention is a qualified Intention, viz. according to the Letters Patents; but
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but Holt said that a legal Intention is not necessary in the King, but only a moral Intention. Skin. 664. Mich. 8 W. 3. B. R. in Case of King v. Bishop of Chester. (Sir William Theedkton’s Cafe.)

(G. c.) In what Cases it shall enure to a double Intent.

Br. Patents, pl. 9. cites s. c. that he may make such Officers after; and so well. If the King, grants Conuance of Pleas to one N. and does not say before what it shall be held, the Grant is void; for the Grantee cannot make a Judge; but if he had Court before, there the Grant is good. Br. Patents, pl. 44. cites 2 H. 7. 13.

2. If the King grants to a Spiritual Corporation to hold such Church in proper Use for ever, where the King himself is feoffed of the Advowson of the said Church at the Time; this shall not enure first to a Grant of the Church, and then to an Appropriation: But the King is deceased, and therefore the Grant void. 1st. E. 3. 39.

3. If the King be feoffed of a Manor, whereof a Copyhold Tenement in Fee is Parcel, and the King grants the Copyhold Tenement to J. S. for his Life, by his Letters Patents, this shall be a good Grant, because the King is not bound to recite such Copyhold Estates, they not being of Record, yet after the Death of J. S. the King may grant it by Copy again; for this both not extinguish the Copyhold, because the Grant of the King shall not enure to a double Intent, especially to such collateral Intent; and it would be of dangerous Consequence to the Conveyance made by the King to the Subject, if the King once make a Lease for Life or Years of a Copyhold, that this should destroy the Copyhold for ever. If a Bishop Tenant in Tail, for Life or Years, lease a Copyhold, yet this shall not bind the Successor Issue in Tail, or him in Reverion, to grant it by Copy, nor shall bind an Infant Lord of a Manor; and the Estate and Possessions of the King are in like manner under the Protection of the Law, in respect of the great Affairs of the King; and peradventure it may be a Prejudice to the King to extinguish the Copyhold by an Act in Law, by Way of Consequence, without open Intent of the King; for perhaps a common Appendant or Appurtenant to the Copyhold will be lost, if the Copyhold be extinguished. P. 1651. between Cremer and Burrow adjudged upon a De

4. In the Case aforesaid, if the King after the Death of the Tenant for Life grants over the Manor to J. D. in Fee, the Grantee may grant it by Copy, as well as the King might, if he had not granted it; but for the Death of the Tenant for Life, it is reduced to the same Condition as it was before the making of the Lease for Life. In the said Case of Cremer and Burrow adjudged per totam Cautionem, for the Grantee of the Manor doth not communicate of the Prerogative of the King, but has the Manor in the same manner as it was in the King at the Time of the Grant made to him.

name by Copy again, they agreed might be a Quonston. But Jo. 449. Lev. b. Boothby, which seems to be the S. C. with this of Crumm v. Burrell, reports that it was agreed by Burke, Crooke and Jones, that this Grant (which was of a Copyhold demised to the King) is an Extinction of the Copyhold, so that it is not again grantable by Copy, either by the King or his Grantee of the Manor after this Estate for Life shall be determined; and that Bramston was of the same Opinion.—Roll. Copyhold (d.) 81. 1. accordingly Mich. 15 Car. 2 R. Dentellita v. Burrell, resolved per Com. upon
5. Letters Patents of the King shall not enure to two Intents; as S.C. cited as where Land or Office is granted to an Alien born; this does not make him a Denizen. Br. Patents, pl. 62. cites 7 E. 4. 30. per Cur.


6. If the King grants the Office of Steward or Constable of the Castle of D. where there is no such Office before, the Grant is void; and therefore the best shall be taken for the King; and if the King will make such Office, it ought to have this Word Constittimus &c. Br. Patents, pl. 63. cites 8 E. 4. 6. Per Choke.

7. The King granted the Office of one of the Chamberlains of the Exchequer to H. C. and the Heirs Male of his Body, to be exercised by him or his first Deputy; and after the Patents granted it to J. L. for his Life; and the King confirmed it, and granted thereby the same Office to J. L. for his Life; and after H. C. had Issized, and died, and the Issize died without Issize; and the King granted the Office to another, and J. L. made Debate; and it was held clearly, that of such Offices as are granted by the King to one upon Truth and Confidence, as an Esquire for his Body, the Grantee can’t make an Allignment, if there be no Allignment in the Grant, as here, to him and his Issue, but of the Office of Parker, he may make an Allignment; and if the Patent had not been by him and his Deputy &c. he could not have made a Deputy. And it was mov’d, that tho’ the Grant to J. L. is void against the Issize in Fad, yet tis good against the King, by Reason of the Confirmation of the King. Contrary per Billing; for by him, if the King does not recite the first Grant, and grants the Office to J. L. Habendum after the Death of the first Grantee for Life of the second Grantee, tis not good; for the King has not the Office to grant during the Life of the first Grantee. Br. Grants, pl. 99. cites 49 H. 6. 14. and 11 E. 4. 1.

8. The King granted to W. N. by his Letters Patents, that he may give to l. Rent to a Chaplain to celebrate Divine Service in B. pre bano Stat. A. & animosus &c. justus Ordinationem ipsius W. N. feiend. Rete said this is a good Grant, notwithstanding that the Chaplain be not named, as where the King grants to them of N. such Liberties as those of London have, this is a good Grant. But Fines and Keeble held the principal Grant void; for Grant of the King cannot endure to two Intents; J. N. a Duke, and grants to him Land by the same Patent, and by the same Name. Ibid. — So to make a Mayor and Commonalty, and to give Land to them by the same Patent, or License to under which is common &c. Ibid. — But if the King grants to J. N. to answer for certain Lands, yet it he gives Land held of the King in Capite in Mortmain, the Land shall be levied for Prize for the Alienation, and therefore it is said to put in such Patents now, tis he is held by us in Capite. Per Keeble. Ibid.

9. It was held by the Justices, that if the King grants Land to a Corporation by another Name than that by which they were named before, and the Land shall pass, and the Letters Patents shall be to them as a new Incorporation &c. 3 Le. 192. Mitch. 26 Eliz. C. B. Dean and Chapter of Christ-Church v. Paroc.
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10. The King's Grant cannot enure to two Intents, viz. to make a Leave, and to accept a Surrender; Per Popham, and many other grave and learned Men upon a Conference. 3 Lea. 243. Mich. 32 Eliz. in Cafe of Harris v. Wing.

That the Rule is true where both Intents enure and work against the King. But where one Intent serves for, and works for the Benefit of the King it is otherwise.

The King's Grant shall not enure (to his special Prejudice) to two Intents, viz. to a Demise of the Land, and also to a Surrender of his Condition by which he may defeat the Estate for Life, and other Estates, as it should be in the Cafe of a common Person; or to a Demise in respect of his present Estate pur anter Viz. and also to a Confirmation of his Condition by which otherwise he might defeat all, as it should be also in the Cafe of a common Person; For the Grant of the King shall be taken according to his express Intention comprehended in his Grant, and shall not extend to any other Thing by Contraction or Implication which does not appear by his Grant, and therefore in such Cases the King ought to be truly informed, and he ought to make special and particular Grant, which by express Words may enure to all such several Intents as are intended. 7 Rep. 14. a. Mich. 33 & 34 Eliz. in England's Cafe.

11. If the King's Grant may be taken to a double Intent, it shall be adjudged void for the Doubtfulness thereof. Resolv'd. Dav. Rep. 45. a. Patch. 5 Jac. B. R. in Ireland, in the Dean and Chapter of Perne's Eliz. in Cafe. of Greendon v. the Bishop of Lincoln. — S P. per Williams J. Bull. 4. Hill. 7 Jac. in Cafe of the Earl of Shrewsbury v. the Earl of Rutland.

12. When the King has two Rights in him, he cannot exclude himself of both without special Words; as Adwovfon held of the King is alien'd to an Abbot, now the King has Title to the Adwovfon by the Mortmain, and after the King by his Letters Patents grants to the Abbot that he may hold the Adwovfon to his own Ufe, yet the King shall not lose Advantage of the Mortmain. 7 Rep. 14. b. Trin. 6 Jac. in Calvin's Cafe.

See (Y. 2) pl. 18.

(H. c) How it may be without Grantee. [Or where it must be by way of Ordinance.]

If the King grants Land in Fec Farm Probus Hominibvs de Dale it was held to be a good Corporation. And so where it is given Burgenfungr, Civitv & Community, and they by such Names of Corporations may have Actions of Things touching their Farm &c. and the Writ shall be Ad respondent. Hominibus Ville de Dale, vel Civibus &c. 7 E. 4. 14. a. pl. 7. — — * Orig. is. (Et par coe levi et bon come la pur Necelity.)

The King may grant generally without Mention of any to whom he makes Grant, that the Men of such a Vill shall be a Corporation, as he may lay Constituimus the Men of such a Vill to be a Corporation, feliciter, Mayor and Commmity, or such like; For he can not grant the Corporation to the Vill in their natural Capacity, and they are not a politick Capacity before the Grant, and to the Grant to them would be to no Purpose, * and therefore it is good here as there for Necelity.

2. The King may grant to J. D. that his Tenants shall be a Corporation naming the Corporation in certain; For this is an Erection of a Corporation as well as in the other Cafe. 20 E. 3. Complaince de Pileas 46. Admitted.

3. The King by his Letters Patents may ordain, that from a Vill which is not incorporated shall come Burgesses to the Parliament to be elected by the Inhabitants of the Vill; For this is the Cafe of several Vills and Burrows in England who have Burgesses by Description that never were incorporate, and there this Liberty could not

Findings:

- Prerogative of the King
- King's Grant cannot enure to two Intents
- Doubtfulness of double Intent in King's Grant
- King's two Rights in his property exclusion
- Action of Things touching Farm and Corporation
- King's general grant without mention of specific individuals
- Creation of Corporation by Letters Patents
- Liberty of electing Burgess to Parliament
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Commence by Grant to any but by way of Ordinance. Hobart's Reports, 22. Case of Burgeltes of Parliament.

1. That which is an Inheritance in the King at the time of the Grant, will well pass by the Grant.
2. As if the King grants to the Tenant, that when he dies his Heir shall enter without hearing of Livery, this is good. 19 H. 6. 62.
3. The King may grant to another all Recognizances which shall be made in the Chancery hereafter; Because this is the Profit of the Court. 19 H. 6. 64.
4. The King may grant Wards and Marriages to such a Value which shall happen till such a Day; paying f. 34. 3. 1. Rot. Fin. Brev. 15.
5. The King may grant the Ward of &c. quando acciderit. 29 C. 1. See (l. c. 2) pl. 1. S. P. Br Patents. pl. 32. cites 6 H. 7. 4.
6. The King may discharge such Thing as shall be, which is not in him at the Time of the Discharge.
7. As he may grant to a spiritual Man, that he shall be discharged of Tents when they shall be granted by the Clergy. 9 H. 6. 62.
8. *So the King [may] grant to another, that he shall not be impecch'd of a Recognizance, if he enters into it afterwards. 19 H. 6. 64.
9. The King by Patent, reciting that H. B. held of him in Chief, granted to T. T. that if H. died his Heir within Age, that he shall have the Ward of his Heir and Heirs &c. which was argued in the Exchequer Chamber. Choke said the Grant is good; for the King has an Interests.

(i. c) At what Time he may Grant.

S. C. cited
Comb. 316
Hill. 6 W.
B. R. in
Cafe of the
King v. Lar-
wood.

* Fol. 198.

* (7) 6. So the King may grant a Privilege to a Corporation by
 way of Interest, and commit the Execution of it to any Persons who are not Members of the Corporation. Hobart's Reports, 22.

7. Vaughan held, That the King may dispense with a Corporation; and he said, It was very usual to Licence them to purcbare in Mortmain, to make Parks, to convert Arable into Pasture, or Wood into Arable, to erect a Fair, to appropriate a Reitory &c. Freem. Rep. 139, Hill. 1673. in Cafe of Thomas v. Sorrel.
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of this he may have in the Ward, tho' he has not Possession. But Hallion said, "If the Grant shall be good, it shall be by Reason that the King has Tenure in him; but it the King after the Grant grants the Services to a Stranger before the Ward falls, T. shall not have the Ward; quare inde; for the Seigniory was charged by the first Grant to T. But the Justices held the Grant void by the Statute * 18 H. 6. that Grants made before the King be intituled by Office shall be void; but this is only of Land, which see in the Statute, and this Grant shall ensue in Lieu of Covenant. And there some argued that the Statute does not extend to this Cafe; for it was for the King's Advantage; therefore it seems that there is no Difference.

Br. Patents, pl. 74. cites 30 H. 6. and Fitzh. Grant 91. 10. Note, per Choke and Catesby, Where the King writes to have B. admitted to a Croody for his Life, in the Abbey of B. who is admitted, the King cannot write in the Life of B. to have N. admitted to such a Croody in the Life of B. after the Death of B. For the King has only a Presentation, and he can't present in the Life of B. who is only an Incumbent in Effect in this Cafe. Br. Patents, pl. 30. cites * 39 H. 6. 48. 11. Contra per Laicon, That the King may grant Office for Term of Life; and by another Patent he may recite the first Grant, and grant it to another after the Death of the first; and well; but it seems that he can't grant it by Name of a Reversion; for there is no Reversion of an Office; for it is determined after the Death of the Grantee; but he may grant it by Name of Office Habend after the Death of the first Patentee. Ibid.

12. In Escape out of the Prizon of the Bishop of S. by Negligence, the Bishop thwed ancient Grant allowed in Quo Warranto, where the King had granted to his Predecessors that he should be quit of Escapes of Thieves and Felons, and of Escape of Prisoners out of his Prizon. And all the Justices held it good, because it was allowed in Eyre; for this is Judgment final in this Point. Br. Patents, pl. 51. cites 3 H. 7. 15.

13. Note where the Statute of 31 H. 8. gives to the King the Possessions of Abbots, and all Rights, Entries, Actions, Conditions &c. which the Abbots might have had; and that he shall be in Possession without Office; and that he shall be adjudged in actual and real Possession of those in such Pleit and Suit as they were at the Time of the making of that Statute, yet it an Abbots was disseised of four Acres of Land, the King cannot grant it ever before Entry made by him into it, because it is a Chief in Action Real, and not like to a Chief in Action Personal, or Mijxt, as Debt, Ward &c. by some; and by some Contra, by Reason of thole Words, that the King shall be in Possession; but this seems to be that he shall be in such Possession as the Abbots was, viz. of the Thing whereof the Abbots had Possession, the King has by this Actual Possession; and of such whereof the Abbots
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Abbot had only Caufe of Entry, or Right in Action, of thofe the King shall be vefte of a Title of Entry, or Title of Action: but the Thing to which he has fuch Caufe of Entry or Action, is not by this in him in Possifes ion; and therefore cannot pass from the King by general Words. Quare if the King restricts the Difference, and how the Right and Action is given thereto to him by the Statute, and grants it particularly, it seems that this is good. Br. Chofe in Action, pl. 14. cites 33 H. 8.

14. If a Man be accused or indicted of Treafon or Felony, his Lands and Goods cannot be granted to any, no, not fo much as by Promise, nor any of his Lands or Goods fetled into the King's Hands before Attainder; for when a Subject obtains a Promise of the Forfeitude, many Times undue Means and more violent Prosecution is used, than the quiet and just Proceeding of the Law would permit, and the Party ought to live upon his own until Attainder. 2 Inst. 48.

15. The King granted the Office of Scarcely in the Port of P. to J. M. without granting it to him for Life; fo that he had only an Estate at Will; and afterwards reciting this Grant, granted to Kemp for his Life the fame Office, from and after the Death, Surrender or Forfeiture of M. This was adjudged a good Grant. 12 Mod. 77. Trim. 7 W. & M. 7, the King v. Kemp.

(I. c. 2) Grant of the King in futuros. Good, and when it shall take Effect.

1. Grant of the next Ward &c. is good; for it produces in Covenant &c. Br. Patents, pl. 53. cites 6 H. 7. 4.

2. Grant of an Office, reciting the first Grant, and to take Effect after the first Grant determined, is a good Grant; for tho' the King has no Reversion, yet he is called of the Office in Law, and Inheritor of this Grant after. Br. Patents, pl. 57. cites 8 H. 7. 12.

3. Queen Elizabeth granted the Herbage and Pawnage of Clipston-Park to J. S. for Life; and afterwards King James by Letters Patents, reciting the former Estate for Life, granted the Herbage and Pawnage to the Earl of Rutland for Life, not mentioning in this second Grant, when the Estate in the Herbage and Pawnage should begin, yet the Grant was held good; S. C. for the first Grant being truly recited in the last, the King could not be mistaken, or intend to pass a greater Estate than he had to grant; and therefore the Estate in the Herbage and Pawnage shall commence to the Earl, as by Law it may, viz. after the Death &c. of the first Tenant for Life; nor was there any Uncertainty when it should commence; for tho' the Grant to J. S. might be determined several Ways, either by his Death, Forfeiture or Surrender, yet it can determine but once, and which ever first happens, the other Grant shall then commence. 8 Rep. 55. Mich. 6 Jac. C. B. Earl of Rutland's Cafe.

4. Queen Mary granted Edwood-Park to the Lord Stafford and his Wife, and to the Heirs of the Body of the said Lord; afterwards Queen Elizabeth, Anno 7. of her Reign, reciting the former Estate, and that she had the Reversion Expectant, the for the Sum of 53 l. 18 s. granted the Reversion to J. S. and to the Heirs of his Body; and the did further will and declare, that if the said J. S. did pay the further Sum of 20 s. &c. then he should have Precedent Reversionem to him and his Heirs forever. And it was adjudged that the Words (Will and Declare) are sufficient to amount to a Grant; and such Words are always used in Patents of Liberties and Franchises, being Things contingent, and future: and such Grant, with a Condition Precedent, might be annexed to Things lying in Grant, as a Reversion, as well as to Things lying in Livery; or to an Estate Tail, as well as an Estate for Life, or Years. And fai-
Prerogative of the King.

ly, that the Words (Revocorum prædict. ) must be intended of such a Reverson as the Queen had, and could grant, viz. the Reverson of the Fee, and do not mean the Reverson in Tail which the had before granted to him, and therefore could not grant to him again. And that such Words, in the King's Grant, ought not to receive too nice a Construction.

8 Rep. 73. b. Trin. 7 Jac. Lord Stafford's Case.

5. Grant of an Office of Searcher &c. for Life, after the Death, Surrender or Forfeiture of the former Grant of the same Office, which was granted at Will, is good. And if the King should determine his Will in the Life of Grantee at Will, without any Surrender or Forfeiture, in such Case the second Grant shall not commence during the Life of Grantee at Will; but in the mean Time the King may grant it to whom he pleases.

Per Holt Ch. J. 12 Mod. 80. Trin. 7 W. & M. The King v. Kemp.

81. S. C.

(i. c. 3) Grant determined by Death of the King, or Patentee.

1. WHERE the King grants to his Tenant, that his Heir after his Death shall be in Ward, or grants to an Abbot that the Covent shall make an Abbott without Licence of Erection, if the Tenant dies his Heir shall be in Ward, or if the Abbot dies, the Covent shall not make an Abbott without Licence; For in the one Case the Grant expired by the Death of the Tenant, because it was not granted to him and his Heirs; and in the other Case, because it was not granted to the Abbot and his Successors; For when the Grantee is dead, none is alive who can enjoy or plead the Grant; But where it is granted to the Tenant and his Heirs &c. the Heir shall not be in Ward; nor where such Grant as above is granted to the Abbot and his Successors; [And there] the Grant is good clearly; Per Laucon; & nemo contradixit. Br. Patents, pl 30. cites * 36 H. 6. 48.

2. If a King grants Convance of Pleas to J. N. and dies, the Grant is not good against the other King, in as much as it was not granted for the King and his Heirs; For it is de Jure Corone, and yet Confirmation of the new King shall make it good. Brooke says, it seems, That the first Case is not Law. Br. Confirmation, pl. 28. cites 2 H. 7. 10.

3. Contra of Annuity which changes the Person. Ibid. cites S. C. and

Where the Grant is Office or Annuity for Life &c. which is not a Judicial Office and dies, there needs no Confirmation of the new King; By all the Justices. Br. Patents, pl. 89. cites 1 R. 5. 4. — 50 of Prince's, contra of Judicial Office. Ibid.

Br. Confirmation, pl. 29. cites S. C.

4. If the King for him and his Heirs grants Catalla Felonum &c. which lie in Grant, and dies, the Grantee needs no Confirmation of the new King; but if the Thing be abused or unied, as Fair, Market or such like may be, or if it be a Thing judicial, or Power granted, As to be Judge of Peace, Exchequer, or such like, there he ought to
have Confirmation of the new King. But it seems, that the Grant of a Thing which has in Grant is good clearly without those Words (for him and his Heirs,) but of Warranty. Covenant, Annuity, or such like, there ought to make it for him and his Heirs. Br. Confirmation, pl. 19. cites 33 H. 8.

5. A Licence granted by the King to alien in Mortmain shall serve a

gainst the next King, if the Grantor dies. Br. Prerogative, pl. 106. cites F. N. B. 223.

Wroth's Case, where it is said, That it seems to be good Reason, tho' the Grant was not made for the King and his Heirs, in as much as it was granted in the Body Politick of the King. — Br. Prerogative, pl. 106. adds, that Contr it is said elsewhere of Grant made to the Tenant to alien, this shall not serve against the next King — Co. Litt. 52. b. says, That it wasresolved, Mich. 3 Jac. in C. B. that the Licence may be executed after.

6. King Edw. 6. granted to foreign Merchants to export Merchandises, paying the like Customs as any English Merchants paid; now though the Grant did not express Pro se & Heredibus, yet because the King had an Inheritance in the Customs as a Prerogative annexed to the Crown, it seemed to all, that the Grant was good for the Custom. D. 92. a. pl. 17. Mich. 1 Mar. Anon.

7. If the King grants to a Man to export 1000 Tun of Beer, aliquo Statuto non Obstante, and says not, for himself, his Heirs, and Successors, the Question is, It in such Case the Grant determines not by his Death, it being only a Licence Dispensative and revocable before Execution of it? D. 92. a. pl. 17. in an Anonymous Case there, but no Opinion given.

8. The King grants Annuity for Term of Life Perscipient ad Receptum Sectarum noftror, and does not say in his Grant, Pro se & Heredibus & Successoribus suis; whether the Heir or Successor shall be charged with this; and the Habendum was, Perscipient ad Receptum Sectarum nostri per Manus Thefaurarii Camerariurn nostrorum ibi den pro Tempore existent. And this Grant was pro Servitio tam Regii H. 8 quam dieo Regi E. 6. impert. It was debated in Sergeant's Inn; And by the Opinion of Cordel Solicitor, Griffith Attorney, Dyer one of the Queen's Serjeants, Whiddon, Brooke Ch. Baron, Morgan and Bromley Ch. J. the Annuity is determined by Death of the King; But Stamford, Saunders, Brown and Portman held the contrary. Ideo Quære. And it was strongly held, that the Grant is void to charge the Peron of the King, and without shewing clearly by whole Hand it shall be rendered, the Grant is void; And this by the Opinion of Fitzh. in N. B. last Case in Writ of Annuity and then for this Readen there is no need of saying Pro Haredibus & Successoribus Regis; but by reason of the last Words, viz. Sectarum &c. and not in nostra per Manus Thefauri &c. this refers only to King F. 6. and need of the therefore the Life in the Annuity was limited, and by the King's Death determined. D. 92. a. b. pl. 19.

9. Queen Mary, Ex specialita gratia &c. made a Grant to A. B. to keep a Tavern and sell Wines by Retail Non Obstante the Statute £d. 6. in which the Commanded her Officers to prevent the Potent to keep a Tavern and sell &c. for Life; Catlin held the Dispensation perpetual during the Life of A. B. and that he, as it were, exempted out of the Statute utterly, or otherwise the Licence being once put in Ure is immediately determined &c. But Dyer and Saunders contra, and that ought to be by certain Time and Limitation of the Prince's Pleasure, How long the Dispensation and Licence should continue, and that by the Death of the Prince this Commandement shall utterly cease. Ideo Quære Legem. D. 22o. pl. 22. Hill. 10 Eliz. Anon.

Life, which Cafe Coke affirmed in C. B. Paflch. 8 July, and that he denied the Opinion of Chake 3 B. 4. 8. 41 E. 4. 49.
Prerogative of the King.

10. Wine Licence was granted by the King for & Harelibus to A. and B. and their Affigns, to sell Wine in such a Vill. Adjudged, That this continues notwithstanding the Denifle of the King. Sid. 67. Mich.

11. And per Bridgman Ch. J. This Cafe differs from Caffes of a naked Authority, in as much as the King who makes the Grant has an Intered of Inheritance in the Thing which he granteth; and he likened it to the Cafe where the King granted 10. of Tonmage and Poultage; This is good, tho' Tonmage &c. has ceased by the Parliament's not granting it. Sid. 7. in Cafe of Young v. Wright.

12. So if the King grant the Tenth or Fifteenths of D. to J. S. tho' the Clergy at the time have not granted it to the King, yet the Grant is good. Because the Inheritance is in the King, tho' not then in Prender, and so a fortiori the Grant shall be good in the principal Cafe of the Wine Licence. Sid. 7. in Cafe of Young v. Wright.

13. Scire facias to repeal a Patent; The Cafe was, That King Ch. I. granted to one P. the Office of Under-searcher &c. durante beneficio medio, and after King Ch. II. was restored, he sent his Privy Signet to the Lord Treasurer to confirm P. in his Place. F. obtained a Patent from King Ch. H. of this Place without taking Notice of the former Patent to P. And the Question was, Whether this second Patent was void by the Star. 6 H. 8. cap. 15. It was agreed on all Hands, that the King's Privy Signet did but intimate the King's Mind, but could transfer no Interest. But the Lord Chancellor, Windham, and Rainsford inclined, that the Patent was void, and the Scire facias to be quashed without better Cause shewn. Freem. Rep. 71. Hill. 1672. the King v. Foiles.

(K. c) Grant of the King. Prerogative. What Immunities the King may grant.

1. The King may grant, that the Citizens of a Vill shall be quit of Toll in every City and Vill in England of all their Merchandize.

2. 3 E. 3. Rot. Claudio Memb. 8 D. 3. Grant that for such time J. S. shall be free De Summonitibus coram Justiciariis Inferioribus.


4. D. 6. by his Letters Patents, 20 D. 6. granted to Corpus Christi College in Oxford, that they and their Successors and their Tenants should be discharged of Payment of Toll for Pountage and Passage in every Place in England; which is admitted good. 43. 2. R. between Wood and Harwell.

5. 18 E. 1. lb. Parl. 1 R. 1. Grant to the Bishop of Coventry and Lichfield, that all his Lands and De feu liberti sita quidque de Murdoch & Latrocinio & Shire & Hundred, &c de Sestis Shire & Hundred, &c Auxilis Vicecom. de Foretia & Placitis Foretia, &c de Valtis & Allartis
Prerogative of the King.

Affinis Regardis Forella, & omnibus aliis Operibus tam Castellor. quam Vivar. & Stagnor. &c.


7. Glanv. of Lincoln's-Inn, in his Reading in Lent 1629, said, That he had seen a Patent granted to One, that he should not be compell'd to be Sergeant, or Judge, or Knight. D. 52. a. Marg. pl. 1.

(L. c) Prerogative. Immunities.


(M. c) Patents. Consideration.

See (Q b)

1. If the King be deceived in the Consideration which he intended to have, the Grant is void; otherwise, it not. (Co. 16. 67.)


As where the King, for 10 l. to him paid, gives such Land, and the 10 l. is not paid, the Patent is not valid.

Citus. Of Patent granted upon false Sworn, as that the Land came to the King by Atsumer of J. S. which is not true, or the like; Quaer as Diveritatem. Br. Patents pl. 100. cites 37 H. 8. — Br. N. C.

In all Cases where the Considerations are real, and favour of the Land, or extend to such a Real Thing, if it be false it destroys the Patent. But where the Consideration is Person; as in Consideration of * Money paid, or for Service done; altho' it be false, yet the Patent may be good. Per Popham, Attorney-General, Arg. 3. Le. 228. N. 35. 17. Eliz. B. R. in Case of Hasselman &c.


3. If A. leased of Land for Life, takes New Estate of the King, by Letters Patents, in which the land Estate is recited, and in Consideration of this Estate, the King grants it to A. for a certain Estate. This is a good Grant, tho' there was not any actual Surrender,
render, but only a Surrender in Law by the Acceptance of this new Patent. Hob. R. 275.

4. But if Baron and Feme are seised in Right of the Feme for Life of the Feme, and the King grants it to the Feme for Life of the Feme, with Reminders over, by new Letters Patents, in Consideration of the Surrender of the first Estate. This is a valid Grant, because this Surrender is not absolute, inasmuch as the Feme after the Death of the Baron, may claim her ancient Estate. Hob. R. 275. between Swain and Homan.

5. If the King makes a Lease for divers Considerations executed and it appears to the Court, that some of them are not performed in truth, the Lease shall be adjudged void. B. 11. J. A. Scear. St. Sa 

S. C. cited

6. If the King recites, that where B. had surrendered to him an Estate for Life, he, in Consideration of this Surrender, grants it by Letters Patents to B. &c. if this Surrender was not absolute, but upon * Condition revocable, this is a valid Grant, because the King is deceived. Hob. R. 276.

7. If the King lease Land to B. in Consideration tam de 20 l. paid, quanti pro quo the said B. super se attempt to repair the Thing leased at his own Costs, (being then greatly in Decay) and to maintain and leave it well repaired; and after the Lease doth not repair it; yet this shall not avoid the Lease because the King may have Action of Covenant upon the Patent against the Leesor upon the said Promise. B. 8. J. A. Scear. between Swayer and Easft. Dib. 

8. Considerations null, and affirmed to be so in the Patent, need not be found, or averred to be true. Ed. 10. 67. b.

9. But otherwise it is the Consideration be future.

5. Rep. 94. 

10. The Queen granted a Manor for 21 Years. The Grantee granted a Copyright Parcel of the said Manor, and afterwards surrendered the Manor to the Queen, who, in Consideration of the Surrender, granted him a New Lease of the said Manor. The Barons, viz. Ferman, Clarke and Evans, agreed, That the second Lease made in Consideration of the Surrender, whereas all the first Lease was not surrendered, was void; Because the Queen was deceived in the Consideration. Mo. 393. pl. 509. Hill. 37 Eliz. Berwick's Case.

11. The Lord Chancellor said, That the Service done to the Realm was as valuable as if 500l. had been given for the Land. Cary's Rep. 45. cites 23 Jan. 1 Jac.

12. If the King, in Consideration of Land conveyed by J. S. to the Lord Treasurer, for the King's Ute, grants to J. S. and the Land conveyed by J. S. is given by Dislais, and the Dislais enters upon the Lord Treasurer, yet the King's Grant shall stand good; for the Consideration was true, and you must not strain it beyond the Words by any Imaginary Intent. Per Hobart Ch. J. Hob. 221. Hill. 12 Jac. in the Case of Needle v. the Bishop of Winchetter.

13. When the King makes a Grant by the Words Ex extra Motu, and yet expresses a real Consideration moving his Grant which is false: Now (since these are Contrarieties, and cannot stand together) the Law shall July.
judge upon the Consideration, and shall not regard the Clause of the Form Ex nunc Motu, which is Claustra Clericorum, but shall reject that as the Court does the Opinion of the Jury when they find the Fact, and conclude upon it contrary to Law. Per Hobart Ch. J. Hob. 222. Hill. 12 Jac in the Cafe of Needler v. the Bishop of Winchelsea.


(N. c.) Patents of the King; how they shall endure. To See (G. c.) how many Intents.


As to make an Incorporation, to make Succession, and to grant a Rent. 10 Rep. 28. a. Mich. 10 Jac. B. R. in Sutton Hospital's Cafe.

(O. c.) How they shall be Expounded.

1. If two Constructions may be made of the Grant of the King, and by one the Grant shall be void, and by the other good; then for the Honour of the King and the Benefit of the Subject such Construnction shall be made that the Grant shall be good. Co. 6. Molyn. 6. Co. 10, 67.

and not to make any strict or literal Constrution in Subversion thereof. 6 Rep. 6. a. Hill. 9 Eliz. in Sese in Sir John Molyn's Cafe.

When a Charter of the King may be taken to two Intents, and both Intents are of Effect and good, in many Cases it shall be taken to such Intent, as is most benefical for the King; but if it may be taken to one Intent of Effect, and good, and to another Intent void, and of no Effect, it shall be taken and confessed according to such Intent, that the Grant shall take Effect, and this in Judgment of the Law hangs with the Intent of the King; For it was not the Intent of the King to make a void Grant. 3 Rep. 157. a. Mich. 7 Jac. The Earl of Cumberland's Cafe. — 3 Mod. 291 Mich. 8 W. 3. C. cited Arg. and says, That it is a good Rule — S. P. 8 Rep. 66. Mich. 6 Jac. in the Earl of Rutland's Cafe — S. P. 10 Rep. 67. b Trin. 11. Jac. in the Church-warden's of St. Saviour's Cafe. ——— S. P. 11 Rep. 11. b. Mich. 10 Jac. in the Cafe of Priddle v. Napper.


3. Antient Charters, whether they were before Time of Memory or after, ought to be construed as the Law was taken when the Charter was made, and according to antient Allowance; And when any claimed before the Justices in Eyre any Franchises by an antient Charter, tho' it had express Words for the Franchises claimed; Or if the Words were general, and a continual Possession pleaded of the Franchises claimed; Or if the Claim was by old and obfure Words, and the Party in pleading expounding them to the Court, and averring Continual Possession according to that Expounding, the Entry always was inquisitor supper Possession new & Uitima. 2 Initi. 252.

4. 2 Initi. 286, 497. Upon the Statue of Quo Warranto 18. E. 1. says, The Rule laid down is an excellent one for Construction of the King's Letters.
Letters Patent, not only of Liberties, but of Lands, Tenements, and other Things which he may lawfully grant, that they have no strict or narrow Interpretation for the overcoming them, but secundum earum Plentitudinem judicentur, viz. to have a liberal and favourable Construction for the making them available in Law unique ad Plentitudinem, for the Honour of the King; And that it is also hereby implied, that they are to be construed Secundum earum Plentitudinem, viz. as fully and benevolently as the Law was taken at that Time when they were made; And Lord Coke adds, That certainly these ancient Laws were Directions to the Sages of the Law for the Construction of the King's Charters and Letters Patents, as appears in our Books.

5. 43 Eliz. 1. Enacts, That the Letters Patents of all Grants made by the Queen shall be expounded most beneficially to the Patentees, any Mis-naming, Mis-recital, Non-recital &c. notwithstanding.

6. Every Gift or Grant of the King has this Condition either express'd, or implied annexed to it; &c. Qua quid Patras prae Donandum illuam magis solito non occurrat sed proscript, 11 Rep. 86. b. Trin. 44 Eliz. in the Case of Monopolies.

7. King James, Ex certa Scientia &c. granted to John Webb, the Office of the Master of Tennis-Play, as well within the Palace of Wapping, as of the said King elsewhere, during his Life; It was adjudged, That this Grant should have a reasonable Construction, and extend not only to when the King himself plays in Person, but likewise to Tennis Plays of the King's Honour. 8 Rep. 45. Mich. 6 Jac. C. B. Jehu Webb's Cafe.

8. When the King's Grant cannot be construed to a double Intent, the fame is then to be construed according to the Intent and Meaning of the King. Per Williams, J. Bull. 6. Hill. 7 Jac. in Cafe of the Earl of Shrewsbury v. the Earl of Rutland.

9. The King leased for 21 Years, and the Lesees, his Executors and Assigns, were thereby tied to repair. And it was moved, that this being the King's Patent, wherein the Lesse takes only, and not made by him, whether that Clause for the Repairing should be taken and interpreted as a Condition on the Lessees Part, to bind him and his Assigns. And resolved, that it should. Cro. J. 240. Pach. 8 Jac. B. R. Lord Ewe v. Strickland.

10. In several Cases tho' the Grant of the King extends to a future Time, yet it shall be intended of Things present and in Eisle at the Time of the Grant. Dav. Rep. 15. a. Mich. 15 Jac. B. R. in Ireland. In the Grant.

11. Where there are Words in a Grant of the King, which under a general Name comprehend Things Royal and Things Defer, it shall be taken in favour of the King; and the Defer Things shall pass, and the Royal shall remain in the Crown. Dav. Rep. 17. a. in the Cafe of Customs...

Without this Recital C had not been remitted, but rejected by Acceptance of the said Patent, to claim any other
Prerogative of the King.


13. The Construction made on Grants of the Crown is, That where the Intention is plain the Words are taken most favourably for the Subject. Per Raymond, Ch. J. Gibb. 308. Trin. 5 Geo. 2. Dr. Bentley v. Elly (Bishop.)

14. It was objected by Turton, J. That the general Words should be construid with relation to the Recitals, which Holt, Ch. J. said was fo sometimes; as when the King design'd a Profit to himfelf; as in a Grant of concealed Lands, and not to diminish his Revenue. But if there are Words to show his Intent, Non Obstante that they are not concealed, there the Patent shall be good. Skin. 663. Mich. 8 W. 3. B. R. in the Cafe of the King v. the Bishop of Cheltehr. —- cites Hard. 231.

(O. c. 2) Difference between the Grants of the King and a common Person, as to the Effect thereof.

1. If the King grants Lands by Letters Patents, and says not for what Time, 'tis but a Lease at Will. D. 270. pl. 22. Marg. cites it as adjudg'd 17 E. 3, and affirm'd by Coke in C. B. Patch. —- Jac. And he denied the Opinion of Choke 5 E. 4. 8. 21 E. 4. 46. Cro. 76. 5 H. 5. 3. Co. Litt. 21. b.

2. Lease of Duchy Lands was made by the King in his Minority, yet good. D. 209. b. 22. Mich. 3 & 4 Eliz. Anon.

3. By the Common Law the Grant of every common Person is taken more strongly against himself, and more favourable against a Stranger; but Grant of the King is taken more strongly against a Stranger, and more favourable as to the King; tho' the Thing which he grants came to the King by Purchase or Deed. Per Welton, J. Pl. C. 243. Trin. 4 Eliz. in the Cafe of Willion v. Lord Barkley.

4. If the King grants a Manor, Except all Courts and Perquisites, it is good; but in the Cafe of a Subject, it is void. D. 288. b. 54. Patch. 12 Eliz.

5. The Deced of a Subject has Relation only to the Time of the Delivery, and not to the Time of the Date; but the Charter of the King 1st tit. has Relation to the Time of the Date, and not to the Time of the Delivery; inasmuch as Matters of Record by Premption of Law, import Truth in them. Per all the Justices. Pl. C. 491. Mich. 18 & 19 Eliz. in the Cafe of Ludford v. Gretton.

6. The Grants of the King are favourably interpreted, so as no Prejudice shall accrue to the King by Construction or Implication upon his Grant, any more than he truly intended by it. 5 Rep. 56. Mich. 30 & 31 Eliz. in Knight's Cafe.

J. S. was his Heirs, this should not infringe this by Implication. Ibid. — And if two are co-leased to the King, and the King releases the One, yet this shall not discharge the other. Ibid. cites a R. 2. 4. 24 E. 4. 46. and 24 H. 6. — And if the King releases all Demands, this shall not release a Right of Inheritance. Ibid. cites 6 H. 7. 15. and 11 H. 7. 10.

7. If the King has two Manors A. and B. and grants totum illud Manerium de A. & B. Cum Pertinentiis in the County of C. the Grant is void as to the King. In the Cafe of a common Person both Manors would pass. 1 Rep. 46. a. Trin. 42 Eliz. in Altonwood's Cafe.

8. By the Words Omnium terrarum Dominicet Manerii de W. — In the King's Cafe, Customary Lands held by Copy, Parcel of the same Manor, shall not pass; but otherwise it is in Cafe of a common Person. 1 Rep. 46. b. Trin. 43 Eliz. in Altonwood's Cafe.

(P. c)
(P. c) Patents Allowance. What Patents need Allowance.

1. The Charter of the King granted before Time of Memory is not of any Value now. 8 H. 6. 4. b.

2. Concourse of Pleas granted before Time of Memory is not of any Value now, if it has not been allowed since Time of Memory. 8 H. 6. 4. b. * 14 H. 6. 12. b.

3. A Grant de Catallis of such Men as shall be outlawed in a personal Action before Time of Memory, is not of Value without Confirmation. 11 H. 6. 5. b.

4. A Release of a Corody by the King to an Abbey before Time of Memory is not any Discharge now, if it has not been allowed since Time of Memory, tho' the King never was seised of the Corody after the Release; for it is due of common Right, if there be no Discharge, 14 H. 6. 12.

5. If the King had granted to one before Time of Memory, that he and his Heirs should not be impanell'd in any Jury, yet this shall not be any Discharge without Allowance, tho' he had never been impanell'd afterwards, yet he had not * any Means to compel the Sheriff to impanel him. 14 H. 6. 12. b.

6. If the King before Time of Memory granted to another, that he and his Heirs should be discharged of Toll, this is not any Discharge without Allowance. 14 H. 6. 12.

7. If a Man pleads the Charter of the King, dated before Time of Goods and Chattels of Felons, then he may prescribe to have it with a Confirmation after Time. 8 H. 8. 190.

8. If a Man shows the Commencement of a Sanctuary, whilst, if he shows the Letters Patents of the King, and the Bulls of the Pope, dated before Time of Goods, then he may prescribe with Confirmation after Time, but otherwise not. 8 H. 8. 190.

9. If Charter * of exemption of Jury, or the like, be shown in the Time of the same King who granted it, there needs no Writ of Allowance. Per Opinionem; but Brooke makes a Quære. Br. Patents, pl. 84. cites 9 E. 3. 25.

10. King H. 2. founded the Abbey of St. Bartholomew in London, and granted that they should be as free in the Church as the King was in his Crown. It was laid by some that the King was not bair'd of Corody and Peison by such general Words, because they are incident to him as Founder. Holy, Trelfan and Portington held the Grant good; and Portington held it good without Allowance. But Pafton, June and Vamp held it not good without Allowance. Br. Patents, pl. 27. cites 14 H. 6. 12.

11. What can't pass without Charter, is not good without Allowance in Eire; but otherwise it is of a Thing lying in Prescription without Charter; for Ulage makes it as Leets, Waifes, Strays. Per Coke Ch. J. Roll. R. 149. in Cafe of the King v. Wray.

12. Grants of franchise and Liberties must be allowed in Eire; and to my Lord Rolls must be underfoot in his Abridgment. 2 Mod. 322. Trin. 34 Car. 2. B. R. in Cafe of James v. Trollop.

(Q. c) Patents Allowance. What Allowance will be peremptory to the King.

1. If Allowance has been of Concourse in Eire, this is peremptory to the King. 44 E. 3. 18.

2. But
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2. But if Consonance has been allowed in R. against the Law, yet if afterwards it appears to the Court it was not well granted before, they ought not to grant it again. 44°. 3. 18.

(R. c.) Patents, Grants. [What] shall pass by general
Words, with Reference to other Person or Thing. See (I. b)

(K. b) (L. b) (Z. b) (A. c) to (E. c)

1. WHEN the Charter of the King in general Terms refers to a Certainty, it contains as express Mention as if the Certainty had been expressed in the Charter, tho' the Certainty to which the Reference is, be not of Record, but lies in Averment by Matter * See (L. b) en Paix, or in Fact. Co. 10. * Whistle. 64. Resolved Co. 9. Count pl. 1.
Selop 46. b.

(S. c.) Exemptions. See (F. f)

1. If the King grants to another to be exempt of Admiral Jurisdiction of Things within a certain Liberty, this is not good without giving Power to have Admiral Jurisdiction there; for it should be good, there would be a Failure of Justice. Ten. 15 Car. 2. R. between and Stratton. Per Curiam. Prohibition denied in this Case to the Court of Admiralty upon this Reason, and the Court said that this was to resolved in the Case of Colebrooke. No Exemption from ordinary Jurisdiction may be pleaded, but the Party ought to form a Jurisdiction within the Place exemp-
ted, in what Manner Justice may be done; for the King can't grant an Exemption without such a Provision; for a total Exemption from Justice can't be. Per Holt Ch. J. Skin. 685. Brown v. Borlace.

2. King H. 4. had granted to the Rector of Edington, his Confrere But Brooke and Successors, that when any Tax or Tallow by the Commonalty, or Tenth by the Clergy, shall be granted to him, that the Rector and his Successors for their Goods, Chattels, Lands and Possessions shall be discharged of it; and that a Tenth was granted to the King by his Clergy, and the Collectors upon their Payment prayed to be discharged of 10 li. to be levied upon the Rector, which they could not levy by Reason of the Grant aforesaid; and the Rector came and put in a Plea, containing this Matter, and prayed to be dismissed; and the King's Attorney demurred. And per Fortescue, the Grant is void; for it was not in the King at the Time of the Grant. And per Newton, The Grant here is not good; for Tents and Fifteenths are at the Will of the People; and therefore the King is not Inheritable to it. Br. Patents, pl. 16. cites 19 H. 6. 62. that the Rector may plead by Rebuttal, and shall not be compelled to sue by Petition of it, or to have Writ of Covenant against a common Person upon such a Grant by him, as to hold without Impeachment of Wall &c. Ibid.

3. In Attain, a Man shewed forth Charter of the King, That be should For more of not be sworn in Affiz Juries nor Attains, and prayed Allowance thereof this Matter, see Trial. (A. c. z) &c.

4. For a Juror upon Attain shall expend 25 li. and if thereby there shall any Default, then it seems that the Charter, by this, shall be void; and it is said that Sir Richard Newton disallowed such Charter for this Cause, and so he may well by the Words of the Statute of Marlbridge. 14. Br. Exemption. pl. 16. cites 34 H. 6. 23.

4. The King granted to the Barons of C., that they should not be impleaded Extravagant Walls but before the Battalions of T. of Things done to T.

R.

And
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And by some the Grant is void; For the King cannot compel a Man to file Extra Bancum unless he will; But the best Opinion was contra; and that it stands with Justice that the King may grant Conunance of Pleas, and for Grant of Things done in D. to be tried in B. Br. Patents pl. 67. cites 12. E. 4. 17.

6. The King cannot grant a Charter of Exemption to any Man to be freed from Election of Knight, Citizen, or Burgess of the Parliament (as he may do of some inferior Office or Places) because the Elections of them, ought to be free, and his Attendance is for the Service of the whole Realm, and for the Benefit of the King and his People, and the whole Commonwealth hath an Interest therein; and therefore a Charter of Exemption that King H. 6. had made to the Citizens of York, of Exemption in that Cause, was by Act of Parliament enacted, and declared to be void. And though we find some Precedents, that Lords of Parliament have fixed out Charters of Exemption from their Service in Parliament, yet those Charters are holden to be void; For though they be not eligible, as is afore-said, yet their Service in Parliament is for the whole Realm, and for the Benefit of the King and his People, of which Service he cannot be exempted by any Letters Patent. And if he hath Lavatorium or other things, or be extremely fickle, or the like, these be good Causses of his Excite in not coming, but no Cause of Exemption for he may recover his Memory and Health &c. So as the said Precedents were Grants de Facio, not de Jure; For if the King cannot grant a Charter of Exemption from being of the grand Affile in a Withe of Right, or of a Jury in an Attaint, for the Mischief that may follow in those private Actions a fortiori, he cannot grant any Exemption to a Lord of Parliament; For his Service in Parliament is publick for the whole Realm. But if any Lord of Parliament be aged, impotent, or sick, as he cannot conveniently, without great Danger, travel to the High Court of Parliament, he may have Licence of the King under the Great Seal to be absent in the same, during the Continuance or Prorogation thereof; but if the Rehearsal be not true, or he recover his Health, so as he become able to travel, he must attend in Parliament; Or without any such Licence obtained, if he be so aged, impotent or sick, as is afore-said, yet is amerced for his Absence, he may reasonably and honestly excuse himself by the Statute of 3 R. 2. 4 Inf. 49. cap. 1.

7. The King granted to the City of Canterbury, a Privilege to be exempted from serving on Juries out of their City, excepting only in Causes of Treason; and in express Words that they should not serve Coram de Rege; And it was agreed by all, that without such express Clause, the Grant would not exempt them from serving on Juries in the Court of B. R. Sid. 243. Parch. 17 Car. 2. B. R. The King v. Percival &c. al.

8. It was agreed per omnes, that though the Privileges of London are confirmed by Parliament, the King may by his Charter grant Exemptions from them. Sid. 288. Trin. 18 Car. 2. B. R. in the Case of Swallow v. the City of London.

9. In Replevin, the Defendant avowed the Taking as a Diffre to towards the repairing the Highways. The Plaintiff replied and set forth a Grant from the King for exempting the Lands, where &c. from that Duty; It was argued, that such Grant was not sufficient, because it was prior to the making this Statute, and to before any Cause of Action, and Judgment accordingly was given for the Avowant. 3 Mod. 96. Hill. 1 Jac. 2. Brett. v. Whitech. 10. Exempt Jurisdiction in this, and was granted to Cities and Towns orpCorate for Benefit of Trade; it was a Grant to the Freemen of such a City
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City or Town, that they should not be impleaded out of their City or Town; and this Grant was good, if there were a Court in the City or Town, to hold Plea of the Matter. Per Holt Ch. J. 12 Mod. 644. In the Case of Crollie v. Smith.

11. As to an Exempt Jurisdiction, that always is for the Benefit and Ease S. P. Per of the Refnants within such a Vill, Borough &c. not to be sued out of their Vill &c. And there where they may serve that Benefit, and remove their Causes to the superior Courts; And it one, who is within an Exempt Jurisdiction, be impleaded out of it, his Way is to plead it, and the Lord has nothing to do with it. 12 Mod. 666. In the Case of Taylor v. Reingolds.

12. Lord Lieutenant of Middlesex is empowered by the 14 Car. 2. to inflict a Penalty of 20 l. upon Persons to and so qualified for not finding a Horse &c. to serve in the Militia, King Cha. 2. in the 15th Year of his Reign, granted to the College of Physicians a Charter of Exemption from bearing or providing Arms to serve in the Militia, by which Charter another is recited, which was granted to the said College by H. 8. and another by Ja. 1. exempting them from Several Services. It was strongly argued Pro & Con, whether the King could grant charters of Exemption from Penalties &c. imposed by Act of Parliament. The Court, upon the first Argument, declared it a Case of great Difficulty, and Consequence as to the Prerogative of the King, and the general Right of the Subject, and therefore ought not to be determined on a Case stated. But upon this first Argument, the Ch. J. was of Opinion, that the King by his Prerogative could not dispence with an Act of Parliament which was made for the publick Good of the whole Nation; But the Question in this Case was, Whether this Statute had divested the King of any Part of his Prerogative, or whether it was made to ease him of the Care of Arraying Militia, and intrusting the Lieutenants and other Officers therewith; For it was, then it did not divest him of any Authority he had before the Act. Now he was of Opinion, that this Charter did not exempt the Physicians from being contributory to the finding Men to serve in the Militia, tho' probably it might exempt them from Personal Duties; yet it cannot be inferred from thence, that he might exempt them from being contributory to others to perform these Duties which are required by an Act of Parliament, especially where the Subject hath an Interest that such Duties should be performed, or a Loss if they should not, and the better Opinion seemed to be, that the King could not exempt in such Cases. That in the principal Case, the Contribution to be made to the finding a Man with Arms to serve in the Militia, is a Charge upon the Land, as well as on the Persons of the Owners; and if this Charter of Exemption should be good, it would increase the Charge on all the Lands of Persons not exempted, which would be a very great Damage to such Persons, because the Physicians who are exempted are a considerable Body of Men in every County; for which Reason it would be very hard if the King had Power to lessen the Tax imposed upon one Man, and charge it upon another; Besides the King cannot exempt in any Case where the Subject hath an Interest, As where particular Persons are bound by Prescription or Tenure to repair Bridges, the King cannot exempt them from F. N. B. repairing, because all the Subjects have a common Benefit to pafs and repas over publick Bridges; But it was adjourned for a farther Argument. 8 Mod. 18, 19 Mich. 7 Geo. 1721. The Case of Sir Hans Sloane, President of the College of Physicians.

(T. c.)
(T. c.) Exemption. To what Thing it shall extend.

1. If the King grants to a Bishop, quod omnia Maneria, & omnes Terre & omnia Feoda, of the said Bishop and his Successors inde in perpetuum libera fin & quieta of such Forest of the King &c. The Bishop and his Heirs shall be exempt from all Power or Authority of the said Bishop, and those Terres & Feoda, &c. shall be quieta in Seilima of the said Bishop. 18 E. 1. lib. i. Parl. 1. Bishop of Coventry and Liegefield's Exemption.

2. If the King grants to an Abbot, That he & Homines suis fuit quieti ab omni Tempore, in omni Foro & in omni tranitu Portuum Viarum & Mariarum, per totum Regnum nostrum & omnia Mercata sua & Hominum futorum &c. The Abbot and his Heirs shall be only quit Et Praelectione Theloum in Vindiciationibus & Emancipationibus per ipsas factis de Necellariis suis, ut in Viciu, Venitiu, & simulibis & hoc ad Opas proprium iptronumb Abbatis, & Hominum futorum, licet & prœdictus Abbas aut Homines suæ Emptiones, seu Vindiciae necissit ur Mercatorum communes, & de communiis Mercandiarum & Patronum Merchandiarum facienda, sedem Theloum, heaw & easter Mercarios communes, Non Obstante Charta praebita.

3. No Franchise, nor Charter of Exemption, shall be allowed against the King, nor Array shall not be challenged against the King. Br. Prerogative. pl. 87. cites 38. Ail. 19.

4. Grant was made by the King to the Abbot of C. that he should be Collector of the Tents granted per Clerum Angliae, and Tenths were granted by the Province of Canterbury, and the Abbot was appointed to be Collector of it by the Archbishop of C. and pleaded his Patent in the Exchequer to be discharged, inasmuch as this Tenth was not be granted per totum Clerum Angliae; For the Province of York granted nothing. And also the Convocation granted that no Perfon privileged should be discharged &c. but this is not to the Purpose; For this cannot toll the Power of the Grant of the King; And yet Per Cur. the Grant is good, though it be not by all the Clergy; For the Province of Canterbury and York do not intermeddle; And also the one and the other is Clerum Angliae; For if one be bound to pay 20 l. if Men of L. come to B. there if two Men of L. come to B. the Obligor shall pay the 20 l. tho' all the Men of L. do not come to B. and also the Patent is Ex certa Scientia & mero Motu, which is taken most strongly against the King; Contra of Patent upon Suggestion; And the not shewing of the Patent in the Convocation House is no Estoppel against the Abbot; For they can neither allow nor disallow it there; And it is no Matter tho' the Abbot was one of them in the Convocation who granted the Tenths; For this is Divertis Respectibus, and therefore the Patent and Grant is good. Per. Cur. Br. Exemption. pl. 9. cites 21. E. 4. 1.

5. If the King grants to one a Franchise Royal, sibi & Heirs shall be quit of Toll &c. If he dies without Heir of the Part of the Father, the Heir of the Part of the Mother shall have Advantage of this Discharge. Pl. C. 445 b. Past. 15 Eliz. in the Cate of Clerc v. Broke alias Cobham.—cites 49. E. 3.

6. Th-
6. The Queen granted by Letters Patents to Pelham, that he should not be Bastard, Contable, or other Officer or Minister, Lib. eligatur. Adjudged that this Grant shall not discharge him, if the Queen make him Sheriff of a County; for the Word Officer in the Patent, shall not extend to Royal Officers; And also the making of a Sheriff is not by Election, but by Denomination only of the Queen; so that if he have not these Words ( Lib. eligatur per nos) he shall be Sheriff. Held before the Treasurer and the Barons in the Exchequer Chamber, And they said it was the Opinion also of Ld. Chancellor Bromley. Godb. 21. pl. 28. Patch. 25 Eliz. Pelham's Case.

(U. C.) *Liberties.

1. * Liberties in this Place signify the Franchises and Privileges which the Subjects have of the Gift of a King, as the Goods and Charters of Felons, Outlaws, and the like, or which the Subject claims by Prescription, as Wrecks, Wall, Stray &c. 2 Hil. 45.

2. and among the said Petitions, fol. 2. Radulfus Pippard petit quod uti possit Regalibus Libertatis in Manerio tuo de H. licet Johannes Gifford coram Rege recognovit &c Consilium eit per Concilium quod licet & Baronibus de Scaccario mandatur in forma predicta.


4. King H. 3. granted to the Duke of Shrewsbury Authority to take Toll in their Market, scilicet, a Halfpenny of every &c. Tr. 43 Ch. 22.

5. Rot. Parl. 43. C. 3. 11. The City of London, and all other Cities and Boroughs of England pray, That where it is contained in the Great Charter, that they ought to have their Franchises which were confirmed by divers Progenitors of the King to sustain their Charges, and among others they have uses, that none should sell Merchandizes nor Victuals at Retail, if they were not infranchised within the Cities and Burghs, which which they have had in the Time of all his Progenitors, and in his Time till the ninth Year of his Reign, * which was then taken away, to the hindrance of his said Cities and Burghs; they pray, That it please the King in this Parliament to confer their Franchises granted to them, notwithstanding the Statutes and Ordinances made to the contrary, and that none sell or Retail within the said Cities and Burghs, if he be not a Wall merchant among them, and that no Merchant alien buy of other Merchant alien any Merchandizes nor Wares within the Cities and Burghs to sell again. Answered, It is affirmed, that those of London and no other sell at Retail virtually only, and this of the special Grace of the King till the next Parliament, that it be well ruled and governed in the mean time to the Common Preset; and it is the Intention of the King, that no Privileges be due to the aliens who have Franchises by Charters of Kings.

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8. Rot. Parl. 21 C. 3. N. 17. The Common pray, for that the Franchises have been so largely granted in Times past by our said Lord the King, that all this Land is almost all unfranchised, to the great + Avertement and Eclipsment of the Common Law, and in great Opposition of the People. Please our Lord the King to restrain such Grants for the time to come. Answer, The King will order, that the Franchises which shall be granted shall be made by good Adulment.

9. The King made a Corporation, and granted to the Bailiffs and Citizen therein their Heirs and Successors, that the Bailiff and Recorder of the said City for the Time being, or two of them, of whom the Recorder to be one, Una cum huiusmodi alii Personis per nos &c. ad hoc Affermatis, shall be Justices of Gaol-Delivery for the said City, and that no Shiriff, or Justice of Peace, or other Ministror or Commissioner of the King, his Heirs or Successors &c. shall in the said City, in any Thing therein to be done intermediate under the Penalty of 100 l. &c. The Question was, Whether the Justices of the General Gaol-Delivery of the County might try Felonies committed in the City; And it was held per Popham, Anderdon, and Periam, That they might, because this Patent, as to holding a Gaol-Delivery by the Bailiffs and Recorder, is void; for they have no Authority but jointly with such as the King shall appoint; And that Appointment the King is not obliged to make; but if he does make it, it must be by Patent, and not otherwise; and therefore they cannot have a joint Authority with the Bailiffs, whose Authority (if they have any) must arise from their Patent; and so at several Times; that the King is deceived in his Grant, in mislaying the Law; and therefore the Grant is not good. 1 And. 296. Anon.

Sec. 1 b. pl. (X. c) In what Cases they shall be extinct by coming to the Crown.

1. If the King grants certain Manors which are within his Forest of D. to a Bishop and his Successors, and grants further, that they shall have the said Manors free and acquired of the said Forest and Pleas of the said &c. And after the said Hancs come into the Hands of the King, and he renews them to the Bishop, yet the Bishop
Bishop shall not be exempt from the Forest for those Manors. 18 E. 1. 
Ff. 2. The Bishop of Coventry and Lichfield’s Case.

2. A Liberty to have Wreck as appendant to his Manor shall be extinct so a Liberty by Escheat to the King. Keilw. 157 b. Itin. temp. E. 3. 

3. It was adjudged in B. R. that where a Man has Return Brevium S. C. cited which comes to the King by Unity of Possession or otherwise, the King shall per Hale Ch. use it as well as his Tenant, or him by whom the King claims, and so — S. C. cited this Unity of Possession in the King does not extinguish the Liberty; as cited per Turner J. Vent. 42: who says it is only a Ministerial Thing.

4. If the King purchases a Manor to which Franchises Royal are regard- Br. Incidents, p. 12. cites S. 12. Liberty pas; For by the Purchase, the Franchises of common Right was annexed to the Crown. Br. Extinguishment. C. 52. cites 43 All. 10. per Thorp.

5. Unity of Possession of Liberties in the King is an Extinguishment. When a Br. Quo Warranto, pl. 11. cites 15 E. 4. 7. Franchise is lifted into the Hands of the King it is extinct; For it shall not be said Franchise in his Hands. Br. Quo Warranto, pl. 9. cites 15 E. 4. 10. — For if I have Fair or Market of the Grant of the King, and I grant it to the King, he takes it of me by Way of Extinguishment. Ibid.

Libertas which if the King would have himself throughout England if not granted to or prescribed for by a common Person are merged in the Crown, if a common Person that had them by Grant or Prescription commits a Forfeiture of them, or they come otherways to the King, and the King has them by his Prerogative; and they cannot afterwards be granted but by a new Creation, as Here, Straip, Wreck &c. But such Liberties as a common Person has by Grant or Prescription which the Kings (if such Grant or Prescription had not been) could not have by this Prerogative, as Warren, Park, Fair, Market with Toll &c. if the come to the Crown &c. they remain in Eife, and are not extinct; For if the King should not have them, by this Means they would be lost. Cro. E. 591. Mich. 39 & 40 Eliz. B. R. Heddy v. Wheelhouse.

6. A Manor, to which Wreck belonged by Prescription, came to the King’s Hands, who granted to A. the Office of Admiral, with all Wrecks at Sea, and all Profits to the said Office belonging; this does not pass the Wreck Appurtenant to the Manor. 12 Mod. 259. Hill. 11 W. 3. B. R. Wiggan v. Branthwaite.

(Y. c.) * Liberties. Seifure.

1. A mong the Petitions of Parliament 18 E. 1. there is such a * Liberties Petition. Gives London petum, quod Rex velit eis concedere primum atatum, Seifurit, Majorem & Antiquas Libertates Rex non habet inde Conslium quia sunt in bono Statu ut fici videatur, & hac Vice which are Statum non mutabat, ex quo Omnia bene fuerint ut Omnia sint in Pace, & nullum Commod. apparat.

2. Felton Goods &c. the which if they are forfeited Judgment may be of Outter or Seifure; for the King may have them again. adly A Thing newly created, the which the King cannot have. As a Corporation, the which, if it commits a Forfeiture and Judgment of Outter be given, in such Case there needs no Seifure; for to what Purpose shall there be a Seifure by the King, when he may not have it? The same Law of 5 Judgment or Seifure, as forfeited; for this amounts to a Judgment of Outter. Otherwise a Seifure Seifere, me. 3. There are Things newly created, as Markets &c. the which may subsist after Seifure by
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By the King; and in such Case, the Judgment of Ouerer be given, there shall be a Seilure for the
King. Skin. 311. Hill. 5 W. & M. B, R. The King v. the City of London — 12 Mod. 18. S. C.

2. Among the said Petitions of the Parliament of 13 E. 1. vol. 5. there is Petition, Libertates de Norriche captae fuerunt in manus Domini Regis quas petunt Homines ejusdem titi reiuit ; faciant finem pro transeunte & limine renetur debitum integriter quod Allocacionem qua & fiat els ad Seccarium Jutilida. Quia Homines de Southampton verberaverunt & vulneraverunt usque ad Mortem Gilb. Canon qui exequatur Præceps Regis in dicta Villa, pro transeunte Villeta capta Huit Villa ita in Manum Regis, & finem reterunt. Et firmam suo exalravert ad 26 l. fer Ann.


4. If one who has a Franchife does not come at the fifth Day of Eyre, then his Franchise shall be seifed into the Hands of the King, and he shall make a Fine, and shall have his Franchise by Replevin. Keilw. 15. b. 6 E. 1.

5. All of Bread and Ale, Pillory and Tumbrel, are app diagonal to View of Frankpledge, where a Man has it by Grant of the King; and if he does not use Pillory and Tumbrel, he shall lose his Franchise. Br. Quo Warranto, pl. 8. cites It. Canc. 6 E. 2. 7.

6. If one conveys Record of a Franchise, and at another Day shews the Charter; quere if he shall forfeit his Franchise by Failure of the Record. Keilw. 13. a. Itin. Temps E. 3.

7. Liberties claimed by one as app diagonal to the Manor of B. were seifed into the Hands of the King, because the Frankement of the said Manor was not in him who claimed them. Keilw. 139. b. pl. 7. Itin. Temps E. 3.

8. In Quo Warranto, if one claims Warren as Appendant to his Manor, and another claims it as Appendant to his Manor, and makes Default, Judgment shall be that the Franchise be seifed, but effer Executo till the Inquilet be pass'd. Keilw. 148. b. Itin. Temps E. 3.

9. A Prohibition was awarded out of C. B. to the Bishop of Norwich, and be excommunicated the Person who served him with the Writ; and thereupon the Party brought his Action, and declared upon all this Matter, and the Bishop being found Guilty, it was adjudged that his Temporalities should be seifed until he abolished the Plaintiff, and satisfied the King for the Contempt of his Writ; and Damages to the Party of 10000 l. and this Judgment was affirmed in Error brought in R.R. Cro. C. 253. says such Precedent was shown of Trin. 21 E. 3. Rot. 46. or 460.

10. In Quo Warranto the Writ was returned served, and the Defendant did not come, and Veri facias staff returned servable in another Term, which was returned served, and he did not come, and therefore the Franchises were seifed; and for the Default of the Defendant Judgment was, that it be * seifed into the Hands of the King. Br. Quo Warranto, pl. 9. cites 15 E. 4. 10.

S. P. 2 Inf. 282
S. P. Keilw. 139. a. pl. 5
Itin. Temps E. 3. 5.
S. P. And not that it shall be forfeited; for it does not appear whether there be Cause of Forfeiture. And no Man shall finally lose his Land or his Franchise upon any Default, if he has never appeared. By the Judges of
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both Benches. Jenk. 141. pl. 91. cites 15 E. 4. 7. — But it was said, that if a Man has used Franchise without Title, Judgment shall be that he be cashiered. Br. Quo WARRANTO, pl. 9. cites 15 E. 4. 10.

But if he offends a Franchise which he has by Title, the Judgment shall be that the Franchise be forfeited into the Hands of the King. Ibid. * Britton, cap. 19. p. 30. (61. 17.)

Quo Warranto was brought for using certain Liberties, viz. Libr., Markets and Courts. * At the Day of Rest, the West Defendants did not appear. It was agreed by the whole Court, that if they do not show good Cause in Excuse of their Default, their Liberties shall be forfeited into the King's Hands, according to the Book in 15 E. 4. 2 Roll Rep. 92. Trin 17 Jac. B. R. The King v. the Mayor &c. of Wygもらって in Lancaster.

11. Writ of Error to remove a Record out of B. and the Bailiffs did not find it, nor come till the Pluries, which is a Process of Contempt, and took Day to bring it in, and failed at the Day, and by several their Franchise shall be forfeited, viz. their Conunance of Pleas; quere, Br. Relefeer, pl. 29. cites 20 E. 4. 5.

12. The Abbot of C. had a Gaol, wherein diverse Men were imprisoned, and because he detained some, that were acquitted of Felony, after their Fees paid, the King seised the Gaol for ever. 2 Intf. 43.

Republ. Cafl., as 20 E. 4. 5. b. the Abbot of Crowland's Cafe.

If Steward of a Liberty arraigns a Man by Colour of Injustice, and adjudges him to Death, the Liberty shall be forfeited by this, but the Steward shall suffer no Pain; for he did it Colore Libertatis, and therefore no Felony; quod nota. Br. Corone, pl. 173. cites 2 R. 3. 9. 10.

14. If a Writ be incorporated by Letters Patents before Time of Memory, and those Franchises never used since Time of Memory, they have lost their Franchises. Br. Franchise, pl. 10. cites 14 H. 7. 1. Per Vavitou. Non-user of Liberty doth not deprive it, nor any Prec


15. If a Lord does not make Hae and Cry within his Franchise, Lord Coke says, it seems that he shall lose his Franchise for ever; for the Words of the Statute are, That the King shall take to himselfe the Franchise (viz. as forfeited.) 2 Intf. 173.

16. The Non User of a Fair, or Market, or Courts, or such like Liberties, wherein the Subjects may have Interest for the Common Profit or Common Justice, is Cause of Seizure of them; But the Non User of Parks or Warrens, or such like, which are to the Profit or Pleasure of the Owner only, is not any Cause of their Loss or Forfeiture. Per Coke, Ch. J. said to have been so adjudged. Cro. J. 155. Palf. 5 Jac. B. R. Leicester-Forell's Cafe. — Affirmed by Popham; but he laid, it had been about the same Time adjudged otherwise in the Exchequer. Ibid.

17. In Cafe of Precipitation for Warren within Forests, altho' it had not been used for divers Years, if he that had it, had it by Grant, or can prove it by Precipitation, a Non User is no Cause of Forfeiture thereof. Resolved. Cro. J. 155. in the Cafe of Leicester-Forell.

18. There is a Diversity where the Liberties are florello and dependent the One upon the Other; there the misusing and abusing of a Liberty is Forfeiture of all the Liberties; but otherwise it is where the Liberties are juculal. Arg. And Montague, Ch. J. held it clearly so. And Doodridge, J. accordingly; But if one misuse and abuse the Fair, he forfeits the Court of Pre-judicries, because it is incident to the Fair. 2 Roll. 1 Rep. 136. Hill. 17 Jac. B. R. in the Cafe of the King v. the Warden of Maidenhed.

19. The Franchise &c. of a Body Politick may be seised or surrendered &c. and the Body itself remain untouched, as appears in the Bishop of Rochester's Cafe, and more clearly in the same Cafe after in Jones, Fullard and Haywood's Cafe; for Franchise &c. are not eftential to a Corporation, but a Privilege pertaining to it. Skin. 311. Hill. 3 W. & M. in B. R. The King v. the City of London.
(Y. c. 2) Pleadings of Letters Patents, Exemptions &c.

1. He, who would make Title to a Franchise by Grant of the King inroll'd in Chancery, without shewing the Charter, ought to have the Record ready. Kelw. 140. a. Itin. temps. E. 3.

2. In Quare Impedit, where a Man would intitle himself to an Advershon because the King was seised, and granted it to J. and E. for Life by Patent, and after granted the Reversion to three in Fee; there, if be will plead the first Patent or Grant for Life, he ought to shew certainly the Date and the Year, Days, and Place; for if the other will say, Nul titel Record, it cannot be certified, nor exemplified, it he does not plead it certain. Per Prift. But, Per Danby, it suffices to say and plead the Patent of the Grant of the Reversion in this Form, &c. That the King, by his Letters Patents, bearing Date &c. reciting, that when he had granted the Adversyon to J. and E. for Term of Life, he granted the Reversion to three in Fee, who granted it to the Defendant &c. and then well; But, Per Prior, if he will plead the first Patent, he shall plead it certain. Br. Pleadings, pl. 58. cites 38 H. 6. 35.

3. In Affico upon Grant of the Office of Clerk of the Crown in Chancery he need not shew if there was such an Office at the Time of the Grant, or not; For, Per Catesby, the King, by this Word (Concessions) may grant an Office which had Elife before; but by those Words (Constitutiones & Ordinamenta) he may make an Office and Officer which had not Elife before. Br. Patents. pl. 21. cites 9 E. 4. 1.


5. In Trefpa the Defendant justified the Taking, as his proper Goods, and pleaded a special Justification; the Plaintiff replied, and made Title to the Goods by a Seizure; for that the King by Letters Patents dedite & concedit to the Town of L. Liberty of a Market &c. and shewed a special Caufe of Seizure, as an Officer there; and upon Demurrer the Plaintiff had Judgment. Error was brought, and it was assign'd for Error, because the Plaintiff had made a Title by Letters Patents, but did not say, Sub magni sigillo Angliae confetatas; And this was held clearly an Error; for if the Grant was not under the Great Seal, it was not good; and tho' he faith, that it was inroll'd in Chancery, yet this is not good; for any Patent may be inroll'd there, and therefore the Judgment was reversed. Cro. E. 117. Mich. 30 & 31 Eliz. B. R. Kingdon v. Barne.

6. King James by Letters Patents inroll'd in B. R. granted to the Earl of Southampton all Deodands within the Manor of Titchfield; an Inquisition was certified in B. R. that a Deodand was forfeited within the Manor, and Proceeds went out &c. Upon a Motion in Behalf of the Coheirefles of the Earl, for the Direction of the Court, Whether they should be oblig'd to for forth their Title in Pleading, which would be inconvenient, and the Charge exceed the Value of the Deodand, the Court said, That if they could satisfy the Office of their Title without pleading it, that should be sufficient in regard the Letters Patents were enrolled in this same Court. 1 Vent. 142. Titn. 23 Car. 2. B. R. Earl of Northampton's Heir's Cafe.

(Y. c. 3)
Prerogative of the King.

(V. c. 3) Pleadings of Letters Patents of Grants, Exemptions &c. And in what Cases there must be Profession or Monstrance of them.

1. If a Gift in Tail be by the King by his Letters Patents, which is the King executed, yet the Heir shall not have Formedon against the Letters Patents. Per Martin, clearly. Br. Monitrans. pl. 2. cites 2 H. Land in Tail, and after intended to give

it to him in Fee-Simple, and to extinguiish the Tail; and it was doubted, that the Surrender of the Letters Patents of the Tail, and the Cancelling thereof, and of the Involvement, and Bill assigned would not extinguiish the Tail; for the Tail executo may be aver'd without shewing the Patent, and Formedon lies after the Tail executed, without shewing the Patent. Br. Patents. pl. 97. cites 52 H. 8.

2. Where a Man brings Debt against the Custome, or Debt is assigned to him to be paid by the King and Tally of Exchange, he need not shew this Tally to the Court upon his Declaration, as in Debt upon Obligation; for the Debt does not arise only by the Tally, but by the Assignment by the Record, and the Tally is only to deliver to the Custome to take Allowance of it upon his Account. Nota, Br. Monitrans. pl. 8. cites 27 H. 6. 9.


4. If a Man pleads Letters Patents in the Court where they are inviol'd, * S. P. Br. Pleadings, pl. 110. cites 21 E. 4. 48, 49.

5. Note; If a Man pleads Letters Patents made to the Abbot of St. Albans, that he shall make Justices of the Peace within his Liberty, and that no other Justices should intermeddle there; and that he was intermeddle there before the Justices of the Peace of the County, who sit within the Liberty, and therefore a void Indiction; Per Feneux, Chief Junt. he shall not shew the Patent. Br. Monitrans. pl. 172. cites 13 H. 7. 14 & 20 H. 7. 6.


7. Formedon of a Gift of Land by the King by Letters Patents. Either said, If a Man loyest his Letters Patents, he may have new Letters Patents out of the Chancery, if he shews to the Chancellor that he has loit them, Quare inde; for it seems that he shall have only a Confar, ex non negatur ibidem. But it was admitted upon the Argument, if he shews the Letters Patents of the Gift of the King or [does] not; but [hews], that he has loit his Letters Patents and has a new Patent, that is intended a Confont, as it seems to me, that in this Case it shall force him to shew or plead as well as the first Patent. Br. Patents. pl. 38. cites 22 H. 7. 12, 13.

8. In Trespass the Defendant said, that the Place where &c. was 10 Acres S. C. cited of Land, of which the King was feised in Fee in Right of his Crown, and by his Letters Patents granted the Land to the Lady Ceresco for Term of Life, who leas'd to the Defendant for Years, and aver'd the Life of the first Leicester, and so justified; and it was moved, if the Plea be good without shewing the Letters Patents of the King; and it was held clearly
Prerogative of the King.

clearly by Knightly, Montague, and Fitzherbert, that he ought to shew the Letters Patents. But Browne, Willowy and Baldwin contra.
And it seemed by them, that there is a Diversion when the Grantee of the King grants over all his Interest; for there the Patent belongs to the Grantee, and therefore he shall shew them; but when he grants only Parcel, it is otherwise &c. D. 29. b. pl. 199. Hill. 28 H. 3. Anon.

9. It was enacted Anno 4 H. 7. cap. 9. That no Man should convey Wine into the Realm out of Gallicane but in English Ships &c. and where the Master and Mariners were English &c. upon Pain of Forciture. And H. 8. granted Licence to a Man, Anno 9. That he, his Deputies, Factors, or Alligns, might convey &c. in any Ship whatsoever, Non Officinante the said Statute, 600 Tunn of Gallicane-Wine, without mentioning any Thing of the Mariners &c. And by the Statute made Anno 32 H. 8. cap. 14. it is enacted, that the said Statute shall stand in full Force and Virtue, so that from henceforth no Person shall attempt to do contrary to the Tenor and Effect thereof, upon the Pain limited in the said Statute. And one R. was sued by Information in the Exchequer for 40 Tunn imported into the Realm Contra Formam &c. R. pleaded this Licence as Affirmate for the 40 Tunnns, without briefing the Patent of the King, and also without briefing Deed of Allignment; but he aver'd by Prefcription, that there is a Custom among Merchants, that he who has such Licence may affign it by Parol &c. without aversing the Life of the first Grantee. And upon this Plea, it was demurred in Law. And by the best Opinion the Plea is not good without shewing the Letters Patents. D. 54. a. pl. 17. Mich. 34 H. 8. Richard's Cafe.

10. The Patente of the Queen made a Lease of the Lands to another. Per Periam. J. the Leefece ought to shew the Letters Patents; for he derived his Interest therefrom; and he said, that if any Books were against his Opinion it was marvellous. Godb. 111. pl. 133. Mich. 28 & 29 Eliz. C. B. Anon.

11. *Hic* the Patent is in Court, yet it ought to be pleaded with a Hic in Curia Prolat. 3 Bull. 58. Trin. 13 Jac. The King v. Capell.

See (M. 2) pl. 6. S. 2.

(Y. c. 4.) Grants to the King. What may be granted or assigned to him.

1. Brother makes a Quare, If a Man's Beasts are dispair'd, if he may give them to the King before he has repays'd them; and says, It seems he cannot. Br. Prerogative. pl. 36.

2. If a Man gives Land in Tail, Cum omnibus officiiis ea tangentibus, or gives to 7. S. an Office with all Lands to the same belonging, the Remainder to the King in Fee; This is a good Remainder (tho' the King cannot be Officer to any Man) because he may grant it over. Br. Done. pl. 51. cites 1 H. 7. 31. Per Brian.


4. P. was Collector of the Subsidy granted by Parliament, and by reason thereof was indebted to the Queen; and one B. being indebted to him, P. assigned the said Debt to the Queen for Parcel of her Debt; upon which Process illud out against B. And now at the Return of the Proceeds, it was
Prerogative of the King. 169

was moved in Behalf of B. that the Affigment was not good, for that no Affigment of Debt to the Queen is effectual where the Goods and Lands of the Queen's Debtor are sufficient: But here Contu de claro that P. is sufficient. And Per Fenner, there is not any Authority in our Law for such Affigments of Debts to the Queen. 4 Le. 8o. pl. 170. 29 Eliz. in the Exchequer, Pigor's Case.

5. If A. be bound to B. by Obligation with Condition for the Performance of covenants, altho' the covenants, or some of them, be for the Payment of Money, yet the Affigment of such Bonds to the Queen shall not be received: and if it be assigned, it shall be put out of Court; for no Bonds shall be assigned as above, but such as are made for the Payment of Money. 4 Le. 9. Nich. 33 Eliz. in the Exchequer. Sir John Hawkins v. Chapman.

6. A and twelve others were possessed of diverse Trees by the Grant of the Owner of the Soil, and the said A. for and in Satisfaction of a Debt, which he owed to the Queen, assigned to her by Deed inroll'd all the Trees; and the Question was, If the Queen should have by this Affigment all the Trees. Coke, for the Defendant, did agree, that where the Queen came to an entire Thing by Act in Law, as Attainer or other Act in Law, the by her Prerogative shall have the whole; but where the comes to have Part of the Chattel by the Grant of a common Person, he by his Grant shall not prejudice his Companion; and therefore, in that Case, the Queen shall not have her Prerogative. Quere of this Difference. The Barons did not speak to the Case, but they said it was strong against the Defendant; and they gave him Day to take Advice, if he could say any other Matter. Cro. E. 265. Nich. 33 & 34 Eliz. The Queen v. Fairclough.

7. A Man recover'd Damages in an Action on the Case, and he assigned Parcel of this Debt to the Queen before Execution, and the Queen thereupon brought a Scire facias. Manwood, Ch. B. and all the Court held clearly, that Parcel or a Meterity of this Debt could not be assigned over to the Queen. Ow. 2. The Queen v. Allen.

8. 7 Jac. cap. 15. No Debt shall be assigned to the King by &c. any Debtor or Accountant, other than such Debts as did before grow out originally to the King's Debtor or Accountant, bona fide. All Grants and Assignments of Debts to the King &c. contrary to the true Intent of this Act, shall be void. P. was bound in a Statute of 1700 l. to C. who dying intestate, Administration was committed to his Wife, who married P. which P. became bound with others to the King in 1701 l. and then he and his Wife did, by Deed inroll'd in the Court of Wards, assign this Statute to the King for Payment of the said Debt of 670 l. to the King, which was payable at certain Days after the Assignment. And it was resolve'd, that this Assignment was good, notwithstanding this Statute; for the Purpose of this Law was, that no Debtor of the King should procure another Man's Debt to be assign'd which was a common Practice; but this way P's own Debt, did not to his own Life, which he may himself release and discharge, and by the same Reason may assign. Hob. 255. Bradman v. Cooks. —— Cro. J. 524. Hill. 10 Jac. S. C. by Name of Pawn's Cafe.

(Y. c. 5) Grants to the King. Aided or Conversed. How.

1. 34 & 35 E. 34. Acts, that the King shall hold and enjoy allHonours, Lands, and other Enheritments, which he has obtained since the 4th of February in the 22nd Year of his Reign, or shall hereafter obtain, within 7 Years next after the making of this Act, by Bargain, Exchange, or Purchase, notwithstanding any Statute, New or Old, or not naming the said Honours &c. or of the Place where they lie, or of any Part thereof, or any other Matter or Contra-whoe'er. The Right of others is fixed, save only for Rents, Services, and Revenues.

2. The
2. The Words of Gifts of Subjects made to the King by the Parliament shall be taken most string for the King where they have two Intendents: Per Saunders one of the King's Serjeants, who said it was as a Rule. Pl. C. 11. a. Patch. 4 E. 6. in Cache of Reniger v. Fogalia.

The Prior of M. was fertil of an Advowson and 22 Acres of Land, and 20 H. S. the King licenced him to appropiate. The 21 H. S. the Bishop who was the Ordinary aforesaid, that after Church should become void, the Prior might hold it Appropriate. The 22 H. S. the Incumbent died; so that the Appropiation took Effect, and was united to the Poffession of the Rectory Appropriate, and also of the Land out of which Tithes were due to the said Prior in respect of the said Rectory. The Priory is dissolv'd, and the Appropriation and Lands given to the King by the 31 H. S. who granted the Appropriation to one; and the Lands to another. 2 Brown, 25. Priddle v. Napper.

S. C. 11 Rep. S. b. Mich. 10 Jac. 11. 3. 35 Eliz. 3. Enacts, that all Abby Lands which came to the Hands of H. S. shall be adjudged to have been in his actual and lawful Possession, notwithstanding any Defect, Want, or Inefficiency of, or in any Surrender, Grant, or Conveyance thereof, or of any Part thereof made to the said King, or any other Matter or Cause whatsoever whereby he might be intitled therunto. The 1st Point was, If the Appropriation was good or not? 2dly, If it was not good by the Common Law, Whether the Statute of 35 Eliz. cap. 3, has supplied the Imperfection thereof or not? As to the 2d. Point, (admitting the said Appropriation had been vold) it was objected, that this Act of 35 Eliz. had made it good, it being thereby declared, That all Manors, Lands, Tenements, and Hereditaments, which at any time before were the Possession of an Abby, Monastery, Priory &c. after the said 3 Feb. 27. H. S. were granted or conveyed, or mentioned to be in or by any Letters Patent, Ordinance, or by any other Matter, to have been lawfully and perfectly in the actual and real Possession of the said late King, and of his Heirs and Successors, at such time as the same were granted by him. And where it was answered by the Plaintiff's Counsel, that this Act of 35 Eliz. extends only to Letters Patent made by H. S. and that the Letters Patents in the Cafe at Bar were made by Queen Eliz. and therefore out of the Statute of 35 Eliz. it was resolved, and so the Truth is, that this statute extends not to this Cafe, but not for the Reason alleged by the Plaintiff's Counsel; For that it be true, that Queen Elizabeth granted the Inheritance of the said Rectory, yet it appears by the Special Verdict, that H. S. by Patent indented had demised the said Rectory to W. P. for 21 Years, and this Act of 35 Eliz. provides, That all Manors &c. mentioned to be granted &c. in or by any Letters Patent whatsoever made by H. S. to any Person or Persons, Bodies Politick or Corporate, shall be reputed, taken, and adjudged to have been lawfully and perfectly in the Actual and Real Possession of the said King, his Heirs and Successors. In which Proviso four Things are observable: 1st. The favourable Penning thereof, viz. mentioned to be granted, the in Effect Nothing paid by the Grant. 2. The generality of the Words, first, in respect the Quality of the Letters Patent, viz. in or by any Letters Patents whatsoever, be they under the Great Seal, Exchequer Seal, the Court of Augmentation Seal, the Dutchy Seal &c. Secondly, In respect of the Eflate or Interfell mentioned to pass by the Letters Patents without Restricution to any in certain; So that if they purport Grant for Life or Years, the Statute has as great Operation as to the Proviso, as if the Patents had been in the Name of the Proviso, For it extends not only to make the Grant good, but also to vest the Manors &c. of the late Abbeys &c. in the Actual and Real Possession of H. S. and likewise (fourthly) in his Heirs and Successors. And so to the Proviso extends to three other Cafes. 1st. Where any Lands &c. came to the Hands or Possession of the said late King H. S. 2dly, Or which were put in Charge to or for his Heirs in his Court of Exchequer, or any other Court of his Majesty's Revenue. 3dly, Or by any Auditor or other Officer of the said late King. And in every one of those Cases, the said Proviso has an operation to the Hands of Letters Patent, as to the Lands &c. intitled in the King, his Heirs and Successors; But yet it was resolved, That this Act of 35 Eliz. extends not to this Cafe, For the Proviso has a Qualification or Restraint which he has not been mentioned before at the Bar, viz. That the said four Cases only such Lands &c. shall be reputed, taken &c. in the Actual &c. Possession of the King, his Heirs &c. at such time as the same did come to his Hands or Possession, or were to be put in Charge, or granted, or conveyed by H. S. as aforesaid, notwithstanding 1st. any Defect &c. of or in any Surrender, Grant, or Conveyance of the said Manors &c. or any Part thereof, to the said H. S. 2dly, Or any other Matter or Cause whatsoever whereby he might have been intitled to the same. So that the Scope of the Act was to vest in H. S. all the Lands &c. which the Abbeys &c. had, notwithstanding the Defects aforesaid. But if the said Appropriation was void, and was not given to the King by the Statutes of Monastaries, then the 3dly, or had nothing in the said Rectory besides the Advowson and Jas Prelats and. Notwithstanding which this Act of 35 Eliz. has great Effect; For since the 31 H. S. gives not to the King any Monastaries &c. but such only as have been surrendered, granted &c. or dissolved, this of 35 has implied the Defect of a Surrender, as of an Insufficient Surrender, Grant, or Conveyance, in that there be any Other Surrender &c. or not, be it, if any, sufficient or not, the said Lands &c. are actually vested in the King, his Heirs &c. 2dly, If the Abbots &c. had been dispossessed, or, where an Office, Scire Facias, Seilure &c. had been requisite to vest the Possession in the King, there the 1st. Words, viz. or any other Matter or Cause whatsoever whereby his Right was or might have been intitled to the same, implies all such Means whereby the King might lawfully have been intitled and put in Actual Possession. But then there be a Defect in the Appropriation, yet if the Rectory be in Reputition appropriated and be used as such, it was given to the King by the Statute 27 H. S. cap. 53 or 51 H. S. cap. 13. Note, that in the Statute of Monastaries there is a saving of Rights &c. but the Founders, Donors &c. are excepted out of the Saving; so that they are bound by the Body of the Act. 11 Rep. S. b. Mich. 10 Jac. Priddle v. Napper.
Prerogative of the King.

4. 43 Eliz. 1. Enacts, that all Grants made to the Queen since the 8th of February in the 27th Year of her Reign, (except by Ecclesiastical Persons, or Bishops Politick, not having Power or Ability to make such Grants) are confirmed. The Right of all others is saved, except of the Parties and Privies to such Grants.

(Z. c) Grant to the King. How the Grant may be. In See (B d) what Cases without Record.

1. A Man cannot grant Land in Fee to the King without Matter of Record. Contra. 50 Att. 1. It was held, that if a Man will give Land to the King and to his Heirs, the which he will vest in his Body Natural, and not in his Body Politick, the King cannot take it by Livery, but it ought to be by Matter of Record. Pl. C. 213 b. Mich. 4. en. in the Case of the Duchy of Lancaster.—The Prerogative of the King requires Matter of Record to bring Lands in the Hands of the King as well as to sell or remove it from him; Per all the Julices. Pl. C. 284. b. Mich. 17 & 18 Eliz. in Case of Nicholls v. Nicholls.

2. A Man cannot grant the Services of his Tenant in Fee, or for Life, to the King without Matter of Record. Contra. 50 Att. 1. The King cannot be infeoffed but by Deed inrolled of Record; S. P. Br. For no Livery can be made to him; Quod nota bene. Br. Prerogative, pl. 65. cites E. 4. 7.

Imped it was agreed, that Feoffment made to the Use of the King of a Manor, voids nothing in him; For he cannot take unles by Matter of Record; For he cannot have Feoffees to his Use. Br. Prerogative, pl. 41. cites H. 7. 21.

4. 2. No Parliament shall bind the King, and he cannot take any thing but by Matter of Record, as by Deed inrolled. Brooke says Quere; For others are of a contrary Opinion. Br. Prerogative, pl. 70. cites E. 4. 7. Gift to the King without Deed is good, and the Time of Gift by him of Goods without Deed as some held, but Contra it seems of Land clearly; and Gift to the King of Chattels is good as it seems clearly. Br. Prerogative, pl. 56. cites 57. H. 6. 14—Br. Done, pl. 16. cites C.

5. The King cannot take Land by Gift in Possession or in Remainder unless by Deed inrolled; and otherwise it is by easy Conjecture, As where the Tenant in Fee Simple pays Aid of the King, alleging that he holds for Term of his Life, Remainder to the King. Br. Prerogative, pl. 56. cites 1 H. 7. 28.

6. If a Man gives Land in Tail, the Remainder to the King, this Re-Br. Relation, remainder shall not pass to him before the Deed be inrolled, and when it pl. 22. cites is inrolled it shall pass Ab initio; and so long as it shall not pass by Livery, or to the Tenant in Tail, and yet it shall pass by the Inrollment after. Br. Prerogative, pl. 57. cites 1 H. 7. 30. 31. per Briton and Collow.


Copyholder to the King, Lord of a Manor, was good without Matter of Record. Keb. 722. Patch. 16 Car. 2. in Case of Lee v. Boothby.

8. If A. makes a Feoffment to the King of Lands, which is not recorded, the King takes nothing by this Deed. If an Escheator finds an Office of this Feoffment made as above, and not recorded, and returns the same into Chancery; If the Land be in the King’s Hands, the Chancellor upon a Motion will, by a Superedease, restore A. to the Land. If the King

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King has granted it to another, a Seque facias shall be awarded against the Patentee, and the Chancellor shall restore A. For it appears in the Chancery, that the said Office, Patent, and Deed are all void. Jenk. 123. pl. 30.

(A. d) What shall be said a sufficient Record.

1. If Tenant in Tail, or any other particular Tenant, surrenders their Letters Patents in Chancery to be cancelled, there needs not any Involuntary of this Surrender; For the Remembrance made of it is sufficient Record to pass it to the King. Dig. 42. 43. El. V. R. per Popham agreed.

2. So if Tenant in Tail surrender his Estate per Chartam suam de Libertam de Recordo in the Exchequer, this is sufficient without Involuntary thereof; For this is a sufficient Master of Record to intitle the King. Dig. 42. 43. El. V. R. between Abrahain and Wilecks, per Curtam, periter Popham.

And the Prayer of the Leis for the Lord, that he be inrolled was indisposed, but not inrolled, and accordingly, the King takes not by the Involuntary, but by the Deed, so that the Deed is the Principal, and the Involuntary but Testimony that the Deed is of Record; And thro' it is usually said in the Books, that the King cannot take but by Deed inrolled, this is to be intended only that the Deed be made, and yet it is not sufficient to make Deed of Land to the King, and cast it into the Exchequer, or other Court of Record, after that such Deed is made, to leave it in Court, but the Party ought to deliver it of Record in Court, and to be indorsed by the Officer emititum in facias, and delivered such Deed to the Use of the King, and then this countervails Involuntary. Per tot. Cur. Nullo contradicente.

3. If a Man makes Lease for Years of Land to the King, and after the acknowledged it before certain Commissioners appointed for the same Purpose, and the Leis prays that it be inrolled, and the Commissioners return it accordingly, yet the King shall take nothing by this Lease without Involuntary; For this is not sufficient Record to intitle the King. Tr. 8 Ja. 2. Stace. Sir Edward Binnock's Cafe. Anjudged, yet it was adjudged against the King, that the Grant was not good. See Lane 51. 52 & 56 a. the Arguments of the Council and of the Court 6 Jac. and Trin. 7 Jac. in the Exchequer. S. C.

4. If Lease for the Life of the King renders and delivers up his Letters Patents in the Chancery Ad Cancellandum. This without more is not sufficient Record to intitle the King to it. Dig. 5 Ja. Stace. Sir Robert Johnson's Cafe.

5. A Deed of Gift Bargain and Sale was made to E. 6. by the late Duke of Somerset in Fee, and was acknowledged to be inrolled before a Master in Chancery, and also before the Chancellor of the Augmentations, and delivered into Court, and there put into a Chest, but not yet inrolled; The Attorney General moved it might lawfully be enrolled now, and thereby the Lands to vest in the Queen as Heir, or Purchaser; and it feemed by the Opinions of Wray, Dyer, Bell, and Manwood, that it cannot be cited into any Interest in the Queen, according to 5 & 7 E. 4. & Br. Tit. Opinion of Bolkaup. Done 37 H. 6. D. 355. pl. 37. Hill. 19. Eliz. Anon. E. 5. 5. H. 6. 11. and also this Cafe of D. 355. but says, That Wray, Dyer, Bell, and Manwood were of this same Opinion; and it was further moved, if it might be yet inrolled or not, and it was held by the greater Part, that it might the'divers held the Contrary, and their Reason was, because it was made and acknowledged in the Time of another King, and he being dead it is not to be Inrolled. —— And D. 355. Marg pl. 57. says, That Sir Tho. Egerton, Master of the Rolls in Mr. Middlworth's Reading in Lincoln's Inn in Lent 38 Eliz. said, That when he was Attorney, he had Occasion to de- mand the Opinions of Wray and Manwood Chief J. and Chief Baron, who then denied their Opinion where to have been as Dyer here his reported; and they said, That there is no Foundation that the King cannot take but by Mattern or Record. For he said, that the King is intituled in many Things which are in Facias in the Rolls, and in the Memorandum in the Exchequer; and yet these are Titles sufficient for the Queen. —— About the 55th of Eliz. this Cafe came in Question again between the * Dian and
Canons of Wimbledon and Middlemore, and by the Resolution of all the Justices of England, it was agreed, that the Deed might be enrolled now, and so it was, and so Middlemore was cuffed of his Term; and it was also debated in the Parliament House, and there also agreed accordingly; And it was also resolved by all the Justices, that the Acknowledgment of the Deed before the Mayor in Chancery, and the Delivery thereof into the Augmentation Court, does not make it a sufficient Record before In- rolment, to vest the Interest in the King; But when it is enrolled now, with another Date, it vests the Interest in the King with Relation; For all Persons are stopped to say, that it was not enrolled according to the Date, as appears in the Case of Luffudd v. Griften, 11. C. 419. b. But the contrary is held at this Day; For if it be in Fiduciary, or any where among the Memoranda of the Exchequer, it suffices for the King, D. 555. Marg. pl. 57. — ——— 8. C. cited No. 66-6 p. 92. c. by Lord K. Egerton, and said it was enrolled upon Conference, that the King, by the bringing and leaving of the Deed in Court, took it well enough without Inrolment. —— Hutt. 2. Patch. 15. J. Comyns. 16, now, the Court delivered their Opinion, that if there was a Deed by which the Land then in Question was conveyed to H.8. and that was brought into the Court of Augmentation, although this Deed be not found nor enrolled, yet it is a sufficient Record to intitle the King, and it is a Record by long usage into Court, and there received to be enrolled; And the Report in D. 555. 19. Eff. was not as it is there reported, For it was for Borne's Inn, and it was adjudged a good Conveyance.

A Deed to the King of certain Land acknowledged before a Judge, or Mayor in Chancery, and delivered into Court, but not recorded by the Neglect of the King's Officer, is good to the King. Jenk. 154 in pl. 58.

(B. d.) How the King may take; where without Rec- See (Z. c.) ord. Chattels.

If a Man devise Goods or Money to the King by Parol, yet the In- Deed shall have it. 42. All. 35. Tr. 8. J. Seatt. per Bromley. gers to the King by Parol, and without Deed or Testament, the King upon Suggestion of this shall have Allies, and it was accorded by Judgment against W. C. who was Executary of R. C. his Father, who had devise his Goods to the King by Parol, that Execution shall be made of the Goods of the Devise, to whosoever Hands they were given, and against the Occupiers; For the Occupation of Goods of the King shall charge him against the King, and The Tenant had devised to the King 1000 Marks which were in a Cooper, The Executor, W. C. at the Time of the Death of the Tenant he was at London, and never had occupied the Goods of the King, But his Tenant had made full Administration, and W. after 1st Death &c. occupied the Goods of his Master, Although, that he occupied the Goods of R. And after he was examined upon Oath and confuted &c. that he had occupied two Manors, which R. and his Father had, and paid before hand, by which it was awarded, that the King have Execution of the 1000 Marks of the Goods of the Deceased, and that first Execution shall be made of the Farms which W. had confuted, and the Account that he had held against his own Conscience shall be held for Nat. Br. Surmise, pl. 5. cites 42. All. 35. — Br. Prerogative pl. 52. S. C.

— Br. Prerogative, pl. 145. cites 8. C.

2. If a Man leave Land for Years to the King by Deed, the King shall take nothing by it without Inrolment of the Deed, Because it is Real. Tr. 8. J. Seatt. Sir Edward Dinock's Case adjudged.

3. Leesee for Years cannot surrender to the King in Reversion with- out Deed inrolled.

4. If a Bighope leave Land for Years to the King by Deed inrolled, and this is confirmed by the Dean and Chapter. This Confirmation is good without Inrolment; Because this makes no Interest, but is only an Assent. Tr. 8. J. Seatt. Sir Edward Dinock's Case. Per Curtail.

5. If Leesee for Years of the King surrenders his Patent to the King in the Chancery ad Cancellandum, and pays the Fees, yet the Chate is not surrendered before Record or Deed made thereof, enter d. 3d. 11. J. B. R. St. Sermonis Case. Boll. 11. J. B. Abraham's Case.

If it be only a Chate Real, yet Chate. Real perchat. Lane 60. S. C.


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6. An Obligation may be granted to the King by the Obligee, tho' it be a Choise en Action, and the King may bring an Action upon it, tho' the Grant be by Deed without Involvent. Br. Choise en Action. pl. 4. cites 21 H. 7. 19.

Brooke says, to see that the King shall take a Choise in Action by Grant of another, and may sue in his own Name, Contra of a Common Person; And it seems that the King may take Chattel or Choise in Action, which is not Frank-tenement, without Deed involved. Br. Prerogative pl. 40. cites 31 H. 7. 19.

7. An Use cannot vest in the King by Will or otherwife, without Matter of Record, any more than Frank-tenement, or Inheritance &c. D. 74. a. pl. 17. Nich. 6. E. 6. in a Case of Exceptions taken to an Information.

(B. d. 2.) Entry by the King, Congeable in what Cases.

1. A Tenant for Life, the Remainder to the Heir in Ward of the King. If A. had atained, the King might have entered, and if a Condition, which descended to such Heir, had been broken, the King might have entered for the Heir, quod nota; but Brooke says, It seems that the Matter ought to be found by Office. Br. Entre Cong. pl. 126. cites 19 E. 3. & Fitzh. Gare. 113. 114.

2. A Man leased for Life rendring Rent with Re-entry. The Tenant committed Felony, and Proces is issued to the Exigent; and Mean between the Exigent awarded, and the Outlawry, the Lefer re-entered for Non-payment, and well, because the King had not entered, nor was feised before it. Br. Entre Cong. pl. 114. cites 27 Aff. 50.

3. Where a Common Person may enter for Estreat Ward, Mortmain &c. if such Matter be found for the King by his Office, the King may enter. Br. Entre Cong. pl. 93. cites 12 H. 7. 20, 21.

Cessavit, Debt upon Recognizance for a Condition broken &c. there if such Matter be found for the King, he cannot enter, but it is put to his Scire facias; Quod nota; per Frowke, Mordant, and others. Br. Entre Cong. pl. 93. cites 2 H. 7. 20, 21 — Br. Prerogative, pl. 63. cites 12 H. 7. 19 S. C.

4. By the Statute to H. 4. the Possessions of the Dutchy were separated from the Possessions of the Crown; so that in all Things concerning these Possessions the King may demean himself as a Subject, and not with his Prerogatives as King. But a Difference has been held upon the said Statute, That where the King, as Duke of Lancaster is to do any Action inseparable in Person, there he shall enjoy his Prerogative to excise his Person; But in Actions concerning the Possessions of the Dutchy, he shall have such Advantage only as the Duke of Lancaster had; therefore upon great Debate in the Dutchy Court, it was adjudged, That were the King made a Leaf of Dutchy Lands, referring Rent with a Clause of Re-entry &c. that bennafi demand the Rent before he can re-enter; because it is a material Advantage to the Tenant, that the Rent should be demanded before he should receive any Damage which might happen for Non-payment; And that Demand is a Thing which may be made by an Attorney. Arg. Mo. 161. in the Case of Saffron-Walden. — cites it as* Eonny's Case. [Note: *Mo. 161. in the Case of Saffron-Walden. — cites it as* Eonny's Case.]

5. 'Tho' by the Statute 33 H. 8. cap. 20. the Lands of Persons attainted of Treason shall be in Actual Possession of the King, without Office found; yet if a Diflifee is attainted of High Treason, the King hath only a Right by the Attainder, and shall not have the Possession without a Seire facias, or Seife at the least; Because when a Stranger is feised at the Time of the Office found, the King shall not be in Possession till Seifure, and with this agrees Stanif. Prerog. 54. 17 E. 3. 10. 29 Aff. 30. 21 E. 4. 4.

Besides, all Possessions &c. are saved by the said Act, as if the Act had not
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not been made, and therefore the Possession of the Defendant is saved thereby, in the same Manner as if a special Office had been found by the Common Law. 3 Rep. 11. Trin. 28. Eliz. in the Exchequer, the second Resolution in Downtie's Case.

The Queen granted Lands reserving a Fee-Farm Rent, with a Condition of Re-entry for Non-payment, and afterwards the Queen granted this Rent to J. S. in Fee; the Rent was behind; and adjudged, That the Queen shall Not Re-enter, because by that Means she would defeat her own Grant, which would be a Tort to the Grantee of the Rent. Cro. Eliz. 69. pl. 23. Mich. 29 & 30 Eliz. Crammer's Case.

(B. d. 3) Entry upon the King, or his Patentee. What is to be done.

1. If the King seizes the Ward which belongs to another Person, yet he cannot enter at full Age, but shall issue to the King. Br. Entry Congeable, pl. 62. cites 26 Att. 57. Per Thorp & tot. Cur.

2. If the King be seized by Reason of an ill Office, the Party who is As where it ousted shall have Affise; Per Hulz clearly. Br. Office and cite S. 7 H. 4. 46.

3. Where the Escheator seizes Colore Officl, or by Reason of an Office, so where it which is insufficient, and does not intitle the King, As by Outlivery in an is found that Action Personal &c. there the Entry of the Tenant is sufficient upon the Assumption of an Escheator; & for the King ought not to seize but to take the Profits. Br. En- try Congeable, pl. 1. cites 9 H. 6. 20.

and he enters, I may oust him. Ibid.—Contra where the Escheator seizes by Writt where the King has no Title, there the Party cannot enter; note the Divinity. Ibid.

4. Where the King is intitled by double Matter of Record, a Man has no As if a Man Remedy unto by Petition. Br. Entre Cong. pl. 123. cites 10 H. 6. 15. be acquired of ufe, and it is intitled by Office that he was intitled at the Time &c. of such Land &c. and the King grants it over, he who Right has cannot enter, nor have Action, nor Traverse to the Office, but is put to his Petition. Br. Entre Cong. pl. 128. cites 10 H. 6. 15. — And it was agreed, that if the Escheator or other enters to the Use of the King without Title, yet the Party cannot enter; for the King is intitled, and yet the King is no Difficult. Br. Entre Cong. pl. 128. cites 5 H. 6. 61. — but if the King grants it over, the Party may enter upon the Patentee. Br. Entre Cong. pl. 128. cites 3 H. 6. 61. — but where the King is intitled by Office, and grants it over, tho' it be sole Office, the Party cannot enter upon the Patentee, but is put to his Traverse of the Office; Per Latton & Needham; & non Negatur. Br. Entre Cong. pl. 128 cites 3 H. 6. 61. — S. P. Br. Entre Cong. pl. 6. cites 5 H. 6. 60. — S. P. Br. Entre Cong. pl. 96. cites 4 E. 21. 21. 25. — S. P. Br. Traverse of Office, pl. 32. cites S. C. — S. P. Br. Traverse of Office, pl. 32. cites 10 H. 6. 15. And Brooke says, Note the Divinity thereof; for where he cannot enter upon the King by Reason of a Record for the King, which runs in Force, there he cannot enter upon the Patentee; and not bese: for the Title remains, and the Patente is in by the King. — S. P. But where the King is intitled to Land by Office, and another has Rent-Charge or Common out of it, and the King after grants the Land to J. S. there he who has Rent-Charge may distrain or ut his Common; for the Grantee nor the Commoner is not out of Possession by such Office. Contra, if he has Title to the Land; note the Difference. Ibid.

5. It was euaily by Parliament, That the Lord Hungerford should be attainted of Treason, and forfeit his Lands, with a Profile, that such Lands wheresoever he was intitled to the Use of others, that Copy for Use might enter; yet where the King is intitled, he cannot enter upon him, but shall issue Ofuer le Main. And to it leems that the King is not bound by any Statute, unless by express Words of the King; As if it had been that he
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might enter as well upon the Possession of the King as upon others. Br. Entue Cong. pl. 134. cites 4 E. 4. 21.

6. If a Man dispossesses the King's Tenant, and the Dispossessor makes continual Claims, and the Dispossessor dies seized, and Office is found for the King, by which he seizes, the Dispossessor cannot enter upon the Possession of the King by the continual Claim. Br. Entue Cong. pl. 97. cites 5 E. 4. 4.

7. A Man can't enter upon the King and another, and this seems to be, where the King and another are jointly seised. Br. Entue Cong. pl. 101. cites 14 E. 4. 2.

8. It was agreed for Law, That if Land escheats to the King, which is in Lease for Years, or charged with a Rent-charge, and Office is found for the King of the Escheat, [but] the Lease or Grant not found in the Office, the Lessee cannot enter, nor the Grantee cannot distrain; but if the King grants the Land over, the Lessee may enter, and the Grantee may distrain. Br. Entue Cong. pl. 125. cites 33 H. 8.

9. But a Man who claims Franktenement in the Land, can't enter without traversing the Office, as it seems. Br. Entue Cong. pl. 125. cites 33 H. 8.

(B. d. 4) Seisin of the King. In what Cases the King shall be said to be seised or posses'd. And of what Things he may be put out of Possession.

1. The King seised the Possession of a Prior Alien in Time of War; and therefore the King has Possession there, and not only the Proffes. Br. Seisin, pl. 11. cites 21 E. 3. 44.

2. The King shall not be said seised by Seisin of his Servant, unless it be in his Advantage, and by his own Agreement. Br. Error, pl. 130. cites 39 Alt. 18.

3. None can gain Franktenement by any Entry made upon the Possession of the King, or upon former of the King; for a Man by Entry may dilate a common Perfon, but not the King. Br. Prerogative, pl. 79. cites 2 H. 4. 7.

4. The King may be put out of Possession of Things Transitory, and shall have thereof Action, As Restitution of Ward, Squaie Impediment &c. Br. Prerogative, pl. 55. cites 1 H. 7. 19. and 4 H. 7. 1.

And where it is found that his Tenant ceased by two Years he shall have Secre facias, and is not in Possession of the Land, or of Rent-charge; note the Difference. Ibid.

5. Where the King is intimated to [Land by Reason of] Want done by his Tenant for Life, he is not in Possession of the Land, but shall have Secre facias. Br. Scire facias, pl. 122. cites 14 H. 7. 23.

6. Where a common Person may lawfully enter by any Title, there if such Title be found for the King by an Office, the King shall be adjudged in Possession without Secre facias against the Tenant; but where a common Person by his Title or Matter cannot enter, but is put to his Action,
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1. *Quo Warranto.* Of *what Things it lies.*

See Hundred (E.)

* See Britton, cap. 19.


2. The *Quo Warranto* was framed for *Franchises* which belong to the Crown; and such as the Subject has are derived from the Crown, *Liberates Regales ad coronam spectantes ex Conceccione regum a Corona exteritur.* 2 Inst. 496.

3. *Quo Warranto* lies not of such *Liberties* as do not lie in Claim; as *Felon's Goods* &c., which lies only in Point of Charter. Per Shute, J., who said it had been so holden in a Reading upon the Statute of *Quo Warranto*, supposed to be Frowick's. 3 Eliz. 184. pl. 235. Mich. 29 Eliz. B. R. in Sir Germaine Clifton's Cafe.

4. *Quo Warranto* against the Lord of a Manor to know *by what Authority* the Defendant holds a *Court Baron.* It was objected, that it was *incident to the Manor, and is not any Liberty which the King may have distinct from the Manor, and being a Matter of Common Right the King cannot have a *Quo Warranto* thereof.* And of that Opinion was Fleming, Ch. J. Fenner doubted. But Yelverton, Williams and Coke held, that a *Quo Warranto* well lies; for it is a Matter of Right to hold Courts, and to administer justice, and to hold Pleas, and to draw *Affidavits of Men* together, and to swear *Officers,* which if any doth without Right, he is to render an Account thereof; and therefore a *Quo Warranto* lies to shew by what Title he holds it. But if he there intrude himself to the Manor, he needs not then shew that he is to have a Court Baron, for that is incident thereto. And here the *Judgment is not, That the King shall seize; because it is not any such Franchise as the King may have; but it is, That the Defendant shall be ousted of that Liberty.* Cio. J. 259. Mich. 8 Jac. B. R. The King v. Stanton.
5. A Quo Warranto was brought for obtaining a Forefit and a Court of Swanninmore. The Defendant made his Claim by a Charter granted by H. e but did not shew it. But Coke, Ch. J. and Doderidge, J. that no Subject can have a Forefit; A Swanninmore-Court, Doderidge said, a Subject may have, but not a Forefit; because none can make a Justice in Eye but the King. 2 Bult. 295. Mich. 12 Jac. The King v. Briggs.

6. If Markets were kept without the King's Grant, a Quo Warranto lay against those who continued them; and the People that frequented such Markets were punishable by Fine. Arg. 3 Mod. 127.

7. 4 & 5 W. & M. cap. 18. 8. 3. The Clerk of the Crown in the Court of King's Bench, shall not, without express Order given in open Court, file any Information for any Trespass or Misdemeanor before he has taken a Recognition from the Person prosecuting such Information to be enter'd into to the Person against whom it is exhibited in the Penalty of 20l. that he will effectually prosecute such Information, and abide by and observe such Orders as the Court shall direct. And if the Person against whom such Information is exhibited shall appear and plead to Issue, and the Defendant, or if the Informer procures a Nol Proseque, the Court is authorized to award the Defendant his Costs, unless the Judge, before whom such Information is try'd, shall at the Trial certify upon Record, there was reasonable Cause for such Information; and if the Informer shall not, within three Months after the Costs is awarded and Demand made, pay to the Defendant the said Costs, the Defendant shall have the Benefit of the said Recognizance.

It was moved for Leave to file an Information against the Mayor and Common-Council of Hertford, in the Name of Sir Samuel Ahtrree, to know by what Warrant they admitted Foreigners and Strangers to the Freedom of the Town; and alleging, that this was no Quo Warranto in the Name of or at the Prosecution of the King, but only a Method to try a Right, whether the Mayor and Common-Council could, contrary to the express Words of the Charter, as it appeared, admit those to the Freedom of the Town who were Strangers and not Inhabitants therein; and produced 4 or 5 Precedents in the Time of King Charles I. After several Motions, the Court gave Leave to file an Information, because the injury done to the Freedom of the Town could have no other Way to remedy themselves, or to try their Right. In this Case, Holt said, that a Quo Warranto is in the Nature of a Writ of Right, to which the Defendant can have no Plea but to justify or disclaim, and can't plead Not Guilty; and that Judgment both for and against the King is final. But Judgment in an Information in the Nature of a Quo Warranto, it against the Defendant, is final, but not if against the King; and that in this Case the Right is in the Corporation, and the Execution only in the Mayor and Aldermen. 12 Mod. 223. Mich. 10 W. 3. Anon.—cites 1 Sid. 96.—9 Co. 28. a. — 2 Inst. 292.
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(C. d. 2) Quo Warranto. Of what Thing it lies.

By what Words.

1. *Quo Warranto; by this Word (Tell) he  claimed Tullage of his Vil-

tains; and by Word * (Term) he claimed their Progeny, and by the all the Edi-

Word (Sake) he claimed Suit of his Tenants, and by the Word (Sake) one of

he claimed Conscience of Pleas of his Tenants, and by the Word (Murder) he

to have Accusements of Murderers, and by the Word † (Oxford) to have


which in Summ. Gloss. signifies Mancipiorum Sobolem, and in Spelm. Gloss. the Word is Their. Team, and Theam accordingly. And see Keilw. 143. a. — t Br. Description, pl. 110. cites S. C. Brooke says, This seems to commence by Grant at first, and therefore makes a Quære if a Man may profit in it.

2. *Tell-Tell is to have 'Tell for Beasts driven to be fold, cho they are not fold. Br. Quo Warranto. pl. 3. cites It. Not. Fol. 21 & 32.

L. 3.

(C. d. 3) Proceedings, Pleadings, and Judgment in a

Quo Warranto, in general.

1. T E Defendant in a Quo Warranto was admitted to Impar. It was moved


for a second

Impar. for Impar. in

a Quo Warranto, and it was said that it was granted in the Case of the City of London; but the Court
deny’d it; for After said, by the Judges of the Court, they were to have but the common Indemnity:
And (Per Cur.) being ex gratia, we may grant or deny it as we see Cause. Comb. 12. Hill. 1 & 2.
Jas. 2. B. R. Anon.

2. A Quo Warranto was brought for Vexation upon 43 Points; and the

Court being moved in it, ordered that the Prosecutor should wave that Quo Warranto, and should bring a new one, and therein insist only upon three

Points; but that he might proceed to a Trial upon his New Quo Warranto in such Time as he might have done upon the Old (Hill. 22 Car. B. R.) to the End he might not be delay’d in his Proceedings by bringing of the new Quo Warranto. 2 L. P. R. 414. Tit. Quo Warranto.

3. There is a Difference between a Writ of Quo Warranto and an In-

formation in Nature of a Quo Warranto, as to the Proces upon them; for it seems, that the Proces upon Information are Res. fac. and Disfringens.

But upon the Writ of Quo Warranto it is Summons; and for Default of Appearance, that the Liberties shall be feit’d. Sid. 86. in the Case of the

King v. Trinity-Houfe.— cites Co. Ent. 527, 528 &c.

4. A Verdict between private Persons may not be read as any Evi-

dence against the King, in an Information on a Quo Warranto. 2 Show. 43. Pafch. 31 Car. 2. B. R. The King v. Carpenter.

5. A Verdict in a Quo Warranto on the meer Right, concludes the

King, but on Information it does not. 2 Show. 47. Pafch. 31 Car. 2.

B. R. The King v. Carpenter.

(C. d. 4.)
(C. d. 4) Proceedings, Pleadings and Judgment in Quo Warranto, as to Liberties and Franchises.

1. 18 E. 1. ENACTS, that if any can verify by good Inquest or otherwise, that they, or their Ancesters or Predecessors, have used any Liberty whereby they have been invaded by Quo Warranto before the Death of R. I., and have hitheerto (not having abided such Liberty) they shall be adjourned to a reasonable Day before the Justices, within which Time they may repair to the King with the Record thereof signed by the Justices Seal, which done, the King will confirm their Estate; and if any judgments have been given upon such Writs by the Justices at Westmynster, upon the Complaint of the Party griev'd to the King, he will give them

The Coff, Charges, and Expenses of the Subject in these Causes were excessive, and therefore to meet with this Mischief, and that the Subject might receive Justice in his own Country, and as it were at his own Door, it was the King's special Grace, that Pleas of Quo Warranto should be heard and determined in the Eyes of the Justices. 2 Inf. 297.—When Justices in Eyre cease, then this Branch for the Ease of the Subject, and for saving their Coff, Charges and Expenses, had its Effect; for with Justices in Eyre this Branch lived, and with them it died. Jenk. 498.

2. In Quo Warranto he claimed Franchise &c. and he made Default at the Day, by which it was awarded that the Franchise be seised into the Hands of the King, and that the Sheriff answer the Profits; and after the Defendant came by Attorney, and prayed to reply the Franchise, and had it Salvo Jure Regis; and said that he claimed the Franchise as appellant Time out of Mind, and was received. Br. Quo Warranto, pl. 5. cites It. Can. 6 E. 2. 6.

3. In Quo Warranto the Defendant claimed Affise of Bread and Ale &c. He said that it was Appendant to the Manor Time out of Mind &c. and claimed by Footment of the Manor our pertinence. And it was held that he may vouch, because the Franchise is seised with the Manor; and it was admitted also that he may prefer it. Br. Quo Warranto, pl. 6. cites It. Can. 6 E. 2. 7.

4. In Quo Warranto if a Man claims Court of his Demesne Tenants in his Manor, it suffices to shew that he has Manor there without more; and there it was said that he need not answer to it. Br. Quo Warranto, pl. 4. cites T. 17 E. 2.

5. In Quo Warranto he claimed to have Franchise in his Manor of G. and said that his Father was seised of the Manor in Fee, and died seised, and he entered as Heir, and prayed his Age, because he is within Age; and the Parol demurred. Bro. Quo Warranto, pl. 3. cites It. Not. fol. 21. and 52 E. 3.

6. When Franchise is allowed in Eyre, the Award is no other than that he go to the Sheriff of the Regis; and if it be rightly allowed and well

Quo Warranto is in Nature of
used, it shall be allowed, but if it be not well allowed, we will not al-

Franchises and Liberties, wherein judgment final shall be given either against the King for the Point adjudged, or for the King; and the Sise Juris for the King seventh for any other Title than that which was a judgment; and therefore William de Penbrugge the King's Attorney, for protesting a Quo War-
anto against the Abbots of Fitchamp for Franchises within the Manor of Stevenings sine precetto, was

7. A Man at the Commencement of the Eyre claimed to have View and Waif in his Manor of L. and in the Writ of Quo Warranto Waif was omitted, by which he prayed that he might plead for it upon his Claim, Et concepption fuit etc; quod nota. Keilw. 147. b. Itin. Temps E. 3.

8. In Quo Warranto against Sir J. C. for claiming Wreck Defendant pleaded that E. Duke of B. was seized of the Manor of D. to which he had Wreck appendant, and was de Alta Prudentiae debito modo attinclus, and that found before the Echecator; and that the Manor defended to Queen M. who granted the same to the Earl of W. who granted to the Defendant. Upon which it was demurred, and Exception was taken to the Plea, that the Attainer was not fully and certainly pleaded. But Plowden argued contra, that it was certainly pleaded, viz. Debito modo attinclus; and it is shown that the Wreck is appendant to the Manor, and then if he hath the Manor he hath the Wreck also; and if Defendant hath the Minor, it is not material, as to the Queen, How he hath it; for she does not claim the same, but impeaches the Defendant for using such a Liberty there; but if the Heir of the said Duke had demanded the Manor there against him, the Attainer ought to have been pleaded certainly. 3 Le. 72. pl. 111. Hill.

9. Information was, That where the Defendant was seised of a Manor, and of an House within it, he claimed to have a Court or View of Frank-
pledge infra Maleficiam pridell. and also that Sine aliqua Concessione five
Authoritate jurisprudenti Libertates pridell. Defendant pleaded, That Nullo
Uturpatione Libertates pridell. infra Maleficiam pridell. Modo & Forma. It
was insisted that the Plea is not good; for the natural Answer to a Quo
Warranto is either to Claim or Disclaim, and Defendant does neither of
them. Shute j said a Quo Warranto contains but two Things in it. It
demands Quo Warranto he claims such Liberties. 2dly. He charges
him with a torious Uturpation of them; and here the Defendant hath
answered to the Uturpation, but not shown by what Title he claims them.
And that the like Case was adjudged in this Court, That Non
Uturpatione Modo & Forma was no sufficient Answer. The Case was
adjudged, Gedd. 91. pl. 103. Mich. 28 & 29 Eliz. B. R. Sir Jervis
Cilton's Cafe.

10. It was agreed by the whole Court, That in a Quo Warranto it is
not sufficient for the Defendant to say that such a Subject hath lawful interest
to bold Leets without making Title to himself; for the Writ is Quo
Warranto he claims them. 2 Le. 28. pl. 31. Trin. 30 Eliz. B. R. The
Queen v. Partridge.

11. Quo Warranto &c. the Defendant pleaded that the Abbots of B.
was seized of Wails and Strays by Prescription, and had used and exer-
cised the Liberty to have Catallis Pelionis within three Months before the
Suppression, without flowing by what Title, Grant or Charter; and that by
the Statute 32 H. 8. for receiving the Liberties, and by Patent of Sir, Talii,
Tanta, Confiniilia Libertates &c. as the Abbots had, be concluded Pro
Warranto be used and claimed the Liberties aforesaid, as pertaining to the Mi-
nor. Two Judges were of Opinion, That the Defendant had yet forth a
sufficient Title by Way of Ufage in the Abbey, without flowing the
Grant made to the Abbey; As a Man may plead a Discharge of Tiches of
Abbey Lands by the Statute 31 H. 8. that the Abbey had discharged at
the Time of the Dissolution, without flowing how he was discharged;

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but Popham Ch. J. e Contra, because Felons Goods could not pass from the Crown without Matter of Record; now if an Usage should be pleadable in such Case, and Illue should be taken upon a Travert of Legitimate use, this must be tried by a Jury; and by Consequence they must find what the Law is upon that Record, which is against the Maxims of the Law; but the Cases of Tithes are otherwise, because they may be discharged by Unity of Possession, or by Real Composition, which is Matter in Pais, or by the Pope's Bulls, which are not Records in our Law. But they all agreed that he ought to show the State of the Abbot, because the Statute revives no other Estate in the Liberties in the Crown, than such as came to the Crown by the Dissolution of the Abbey. And as to the Conclusion of Ex Warranto, they all agreed that it was good, because it was taken distributively, viz. That he us'd such as Appurtenant, which might be Appurtenant, and the others by the other Title. Mo. 297. pl. 443. Patch. 42 Eliz. The Queen v. Vaughan.

12. A Quo Warranto against the Bishop of Durham to know why he claimed to have the Goods and Chattels of Felons and Perjurers standing Mate. He pleaded that Durham was a County Palatine, and bad Jor. Regina, and by Reason thereof he claimed that Privilege. Per Coke, and the whole Court agreed thereto, That tho' a Man cannot prentice to have Felons Goods, because such Precription is only for Matters in Fact, yet a Man may prentice to have a County Palatine, and by Consequence to have all these as Incidents to it. 2 Bull. 226. Patch. 42 Jac. Sir Jerom Bows v. Bishop of Durham.

13. Quo Warranto was brought to shew why they claim divers Liberties &c. within the Palace of the Archbishop of Canterbury. The Defendants as to Part in such a Place justify in the City of London, in Staple-gate and Weet-gate, and good Rights have in divers. It was resolved that the Defeuerne extends to Staple-gate and Weet-gate, notwithstanding the Preter quam; and Judgment of this Part was given immediately for the King. 2 Roll. Rep. 482. Mich. 22 Jac. B. R. The King v. the Citizens of Canterbury.

14. In Quo Warranto for claiming of a Market. The Defendant claimed the same by Letter's Patents of E. 3. made to the Abbot of G. but did not plead Hic in Curia prolat' as he ought to do. The Attorney General confessed this; whereupon the Court was moved for Judgment for Defendant. But though the Patent was in Court, Dodderidge J. said, it did not appear so to the Court Judicially, it not being pleaded with Hic in Curia prolat'. And this cannot be amended without the Attorney General's Consent, and without Amendment Judgment must be for the King; And afterwards a Rule was entered by Consent of the Court, it being moved by Coke Ch. J. viz. That the Opinion of the Court was, That the Plea in Bar here is not good, neither in the Mariner nor Matter of it; And this was done, because otherwise this Matter hereafter might be Evidence against the King. 3 Buls. 58. Trin. 13 Jac. the King v. Capel.

15. A Quo Warranto was brought for claiming divers Liberties, Privileges &c. without expressing any Certainty of what they contended, as Waite, Etray, Frank-pledge &c. as Defendant might make a particular Answer to them, and therefore the Court held it nought. But Mr. Waterhouse the Prothonotary said, that there are Precedents accordingly; Whereupon a Day was given to Searc the Precedents, and Proceeds was ordered in the mean time to cease against the Defendant. Noy. 121. Sir Henry Cheverell's Café.

16. A Quo Warranto was brought for usurping certain Privileges within the Manor of Linton. Illue was joined, whether John Abbot of P. ever used Privileges of Court Leet and Court Baron; and found that he had not used them &c. It was moved in Arrest of Judgment; 1. Because they find that the Keeping of the Court Leet and Baron is an Occupation, whereas they also find that such Courts are used as within the Manor (having the...
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Major) which is impossible; For a Court Baron is a necessary Incident to it as it is a Manor and cited 6 E. 3 11. No Judgment was given. 2 Sid. 68. Patch. 1658. B. R. Wildmore's Cafe.

17. In a Quo Warranto against the Town of Farnham, for using a Fair and Market, and taking Toll &c. Issue was taken, whether they had Toll by Proscription or not, and it was found that they had; but it was moved in Arrêt of Judgment, that here was a Discontinuance, because there was No Issue as to the other Liberties claimed by them, (viz.) a Fair and Market; and this Action is not helped by the Statute of Jeoffeys, Quo fuit concession; But the Chief Baron said, that they were too soon to urge that, because Judgment was not yet given, and before Judgment there can be no Discontinuance against the King, because the Attorney General may yet proceed, by the King's Prerogative, to take Issue upon the reft, or may enter a Nolle Prosequi, but if he will not proceed, the Court may make a Rule on him Ad Replicandum, and so there may be a special Entry made of it, wherefore non Allocatur. Hard. 504. Patch. 21 Car. 2. in the Exchequer. Attorney General v. Town of Farnham.

18. Upon a Quo Warranto when the Liberties are seized quosfuisse &c. and they do not reply them, (per Atrry) the Curier is, That Judgment final shall be given Nisi they plead within such a Day. Comb. 19. Patch. 2 Jac. 3. R. Anon.

19. Wherever any Judgment is given for the King for a Liberty usurped, it is Quod extinguitur, and that the Person who usurped Libertates &c. Naltralisus intrinssius &c. which is the Judgment of Outer, but the Quo Warranto must be brought against particular Persons. But where it is for a Liberty claimed by a Corporation, there it must be brought against the Body Politick, in which Case there may be a Seizure of the Liberties which will not warrant either the Seizure of dissipating of the Corporation itself. Per Curiam. 4 Mod. 58. Mich. 3 W. & M. B. R. in Sir J. Smith's Cafe.

20. If several Privileges are granted in a Charter, and there is a Forfeiture of the Charter for an Abuse of one of the Privileges, and a Quo Warranto is brought, and Judgment upon it, this is a Forfeiture of the whole Charter. 2 L. P. R. 414. tit. Quo Warranto.

21. It was moved for an Information in Nature of a Quo Warranto against the Steward of a Court Leet, and against the Bailiff and Constables, for impounding a Jury not duly summoned, the Bailiff being the proper Officer to summon them who should be all Freeholders, for they only have a Right to be Jurymen, but there were none summoned, and 6 Persons who had no Right being present in Court were sworn of the Jury, and 6 Freeholders being likewise present in Court refused to be sworn because not summoned, neither would they serve with those who had no Right to be of the Jury, whereupon the Steward swore 6 more; and the Jury thus constituted of 12, not having Right to be Jurymen, chose the Bailiff and Constables. The Steward shewed for Cautie, that the 6 Freeholders who appeared in Court were duly summoned but refused to be sworn, whereupon he swore a Jury out of such as were present, which he intiited was a good Election, and that this Jury chose the Bailiff and Constables, and that this was the constant Causel of choosing such Officers: And that it would be dangerous to make a Precedent of trying the Right of choosing such Men by a Quo Warranto. The Court thought there was no Room for any Complaint against the Constables or Bailiff; but if any, it is against the Steward, and for a Rule was made for him to attend, and shew Cautie why an Attachment should not go; and the Rule for the reft was in the mean time enlarged. 8 Mod. 130. Trin. 9 Geo. 1724. The King v. Harrison.
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(C. d. 5) Proceedings, Pleadings, and Judgment in Quo Warranto, as to Corporations.  

1. In a Quo Warranto brought against the Bailiffs, Aldermen &c. they appeared by Warrant of Attorney, but one of the Bailiffs named in the Warrant did not appear nor agree to it. The Appearance by the major or greater Part being recorded was held sufficient. And also, that the Warrant of Attorney was under another Seal than their common Seal, yet being under another Seal and recorded it cannot be annulled. Godd. 439. Bailiffs &c. of Yarmouth's Cafe.  

2. Information in Nature of a Quo Warranto against the Defendants, for taking Gravel and Sand in the River Thames for Ballast; they justified by Virtue of a former Patent to them by the King of the Office of Lakeage and Ballage of all Ships in the River Thames; and the Opinion of the whole Court was, that the Defendants had a good Title to take Sand there for Ballast, without paying Com pertinentis; But upon a Defect in Pleading, Judgment was given against them; 1. That they pleaded their Patent as a Grant and Confirmation, which made it double, (it being upon Demurrer) and cited D. 115. But the Reporter says, Vide the Case of the King v. Britagg in Quo Warranto, in 17 Jac. where it was held good. 2dly, They did not allege that it belonged to the said Office to take Sand and Gravel in that River. 3dly, They did not say that the Office was an ancient Office. Sid. 86. Trin. 14 Car. B. R. The King v. Trinity-House.  

3. In a Quo Warranto against the Musicians Company in London the Return was, that they were a Corporation &c; but the Court took Exceptions to the Return. 1. Because it appears that the Name of their Corporation was The Master and Wardens; whereas in their Return they made themselves Guild or Fraternity; For they must be the one or the other. 2dly, They returned, that they may elect Persons of the Fraternity into the said Fraternity, which is contradictory; For they ought to elect into the Society such as were not of it before, and not such as were. Sid. 292. pl. 7. Trin. 18 Car. B. R. The King v. Berdwell.  


5. A Corporation aggregate may be forfeited and seised into the King's Hands upon a Breach of Tryst reposed in them for the good Government of the King's People. And in the principal Cafe a Seisure is plainly implied in the Statute of 28 El. 3. cap. 10. which enacteth, That on the first Office of the City of London, it shall forfeit 1000 Marks, on the second 2000, and for the third, the Liberty and Franchise of the City of London shall be taken into the King's Hands, which plainly argues that there may be a Seisure of the Corporation; and as to a Forelosure the Act of Obligation proves it, where 12 Car. 2. cap. 11. S. 5. is, "That all Bodies Corporate, Ci-
ties, Boroughs &c. are pardoned and acquitted of all Forfeitures &c., And should the Law be otherwise, it would erect to many independent Republicans, as there are Corporations now in England, which would be of mischievous Consequence to the King and Kingdom. 2dly, The affirming a Power to make By-Laws for levy[ng] Money as they have done, is a great Oppression of the People, and consequently a Breach of that Trust reposed in them for the Welfare of the King's Subjects, and consequently a just Caution of Forfeiture. 3dly, A Petition (mentioned in the Pleadings) scandalous to the King and his Government, and tending to beget in the People an Hatred of their Sovereign is a just Caution of Forfeiture. Resolved. 2 Show. 278, 279. Hill. 34 & 35 Car. 2. B. R. The King v. the Mayor &c. of London.

6. If the Corporation in a Quo Warranto appears not therein, Judgment shall be entered for a Seizure Quo Quafo, and if in the mean time they come not and replace their Corporation and appear, then Judgment final shall be given against them in the Term after; and it shall not be a good Appearance, unless the Warrant of Attorney be made under the Corporation Seal. 2 Show. 305. pl. 356. Trin. 36 Car. 2. B. R. The King v. Cheller City.

7. 9 Ann. cap. 20. S. 1. Where any Writ of Mandamus shall issue out of the Queen's Bench, the Courts of Sessions of Counties Palatine, or the grand Sessions in Wales, to admit and restore Burgesses or Officers of Corporations, such Persons, who by Law are required to make Return, shall make their Return in the first Writ of Mandamus.

S. 2. As often as in any of the Cases aforesaid any Mandamus shall issue, and a Return shall be made, it shall be lawful for the Persons, issuing such Mandamus, to plead to or traverse all or any material Facts contained in the Return, to which the Persons making Return shall reply, take Issue, or demur, and such Proceedings shall be had therein, as might have been had if the Persons issuing such Writ had brought their Action on the Case for a false Return, and if Issue shall be joined on such Proceedings, the Persons issuing such Writ, may try the same in such Place as an Issue joined in such Action on the Case might have been tried; and in Case a Verdict be found for the Persons issuing such Writ, or judgment given for them, they shall recover their Damages and Costs as they might have done in such Action on the Case to be levied by Capts. ad Satiscanduum, Frei, Facias, or Elegit; and a peremptory Writ of Mandamus shall be granted without Delay, as if such Return had been adjudged insufficient; and in Case Judgment shall be given for the Persons making such Return, they shall recover Costs.

S. 3. If Damages be recovered by Virtue of this Act against any such Persons making such Return to such Writ, they shall not be liable to be sued in any other Action for the first Writ of Mandamus.

S. 4. In Case any Persons shall usurp, intrude into, or unlawfully hold any of the said Offices or Franchises, it shall be lawful for the proper Officer in each of the said Courts, with the Leave of the Courts, to exhibit to the Nature of a Quo Warranto, at the Relation of any Persons desiring to prosecute the same, and who shall be mentioned in such Informations to be the Relations against such Persons so usurping, intruding into, or unlawfully holding the said Offices or Franchises, and if it shall appear to the Courts, that the several Rights of several Persons to the said Offices or Franchises may properly be determined on one Information, it shall be lawful for the said Courts to give Leave to exhibit one such Information against several Persons, in order to try their respective Rights; and such Persons shall appear and plead as of the said Term and Sessions in which the Informations shall be filed, unless the Court shall give further Time, and such Persons who shall prosecute such Informations shall proceed thereupon with the most convenient Speed.

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S. 5. In Case any Persons, against whom any Informations in Nature of a Quo Warranto shall in any of the said Cities be exhibited, shall be found guilty of an Insultation, or Intrusion, or unlawfully holding any of the said Offices or Franchises, it shall be lawful for the said Courts to give Judgment that the Relations shall recover their Cofts; and if Judgment be given for the Defendants, they shall recover their Cofts against such Relations.

S. 6. If shall be lawful for the said Courts to allow to such Persons, to whom any Writ of Mandamus shall be directed, or against whom any Information in Nature of a Quo Warranto, in any of the said Cities afterwards shall be presented, or to the Persons, who shall present the same, such convenient Time to make a Return, Plead, Reply, Rejoin or Denun, as to the said Courts shall seem just.

S. 7. The All 4 Ann. cap. 16. for Amendment of the Law and all the Statutes of Judicature, shall be extended to Writs of Mandamus and Informations in Nature of a Quo Warranto.

S. 8. The Mayor, Bailiff, or other Officer, to whom it belongs to preside at the Election, and make Return of any Member to be borne in Parliament, and who ought to be annually elected, and who has been in such annual Office for one Year, shall not be capable to be chosen into the said Office for the Year immediately ensuing; and where any such annual Office is to continue for a Year, and until some other Person be chosen and sworn into such Office, if any such Officer shall voluntarily and unlawfully present the choosing another Person to succeed into such Office at the time appointed, he shall forfeit 100 l. to be recovered with Costs of Suit by such Person as will sue for the same in Her Majesty's Courts of Record, one Majesty thereof to be to Her Majesty, and the other Majesty to him that will sue for the same.

8. Information in Nature of a Quo Warranto against S. for usurping the Office of a common Burgess of the Town of the Devises in Wiltshire; and upon a Trial at Bar upon this Issue, Whether Sutton was chosen a Capital Burgess by Mayor, Recorder and Capital Burgesses? the following Points arose; the Recorder had made a Deputy Recorder by Writing under his Hand and Seal, and afterwards had revoked this Deputation by another Writing, a Copy of which was offered in Evidence of the Revocation. But this held not good Evidence, because it did not appear but they might have produced the Original. Deputation of an Officer is in its own Nature grantable by Parol; and therefore tho' it should happen to be granted by Writing, yet since it is in itself grantable by Parol, it may be revoked by Parol. By the Charter that incorporates the Town, the Mayor, Recorder, and in his Absence Deputy-Recorder and Capital Burgesses, et majores pars corundem, are empowered to change Capital Burgesses: Now the Question was, Whether upon these Words of the Charter, Acts done by the Mayor and Majority of the Burgesses, without the Presence of the Recorder or his Deputy, were good? And the Court seemed to incline that they were good, because the Word (Eorundem) refers not only to the Capital Burgesses, but Mayor and Recorder and Burgesses; and yet the Reason why the Presence of the Mayor is necessary to Corporate Acts, is not because he is particularly named, but because he is the Head of the Corporation; and if this were not so, the Addition of thse Words in Charters (Quorum Recorder unus) would be useless and unnecessary.

10 Mod. 74. 75. Hill. 10 Ann. B. R. The Queen v. Sutton.

9. Another Question was, Whether supposing it not necessary by the Charter, that the Recorder should be present, yet the Issue did not oblige them to prove him present at the Election? To this it was said by the Council, that Conceivably the Charter did not require the Presence of the Recorder, the Question was no more than this, Whether they should be obliged to prove an immaterial Part of the Issue? It was said further, that by a Purity of Reason it might be expected that they should prove the Presence of every one of the Common Burgesses; That by the Issue no more was meant, than that the Election was made by those who had a Power to do it;
That Ubi major pars, ibi tota, viz. the Authority of the whole. And of this Opinion was the Court. 10 Mod. 75. The Queen v. Sutton.

10. Another Question started was, Whether in a Corporation that was by Charter to consist of Mayor, Recorder, Common Burgesses &c. the same Person might not be both Mayor and Deputy Recorder. 10 Mod. 75. The Queen v. Sutton.

11. Another Point was moved upon the Words of the Charter, which appoints the Swearing of a Common Burgesses to be done before the Mayor, Recorder, Common Burgesses, or the Majority of them. Tunc ibi praestentium; whether or not a Majority of the whole Body was by these Words necessary to be present at the Swearing, or whether a Majority of those that were present was only requisite, thd they should not be the Majority of the whole?

It was said, that upon the Reason of the Thing it was not necessary that the Swearing in should be done with the same Solemnity as the Chaining in; for the Choice is a voluntary deliberate Act; the Swearing in on the contrary is what a Person once chosen may challenge as his Right, and may by Mandamus compel them to do. And it this Construction did not prevail, the Words in this Clause of the Charter concerning the Swearing, Tunc ibi praestentium, which are not in the Clause concerning the Election, would signify nothing. As for the Objection, That it seems absurd to say a Man must be sworn before a Majority of those that are present, since if they are present he must unavoidably be sworn before them all. The Answer is, That this Clause is to be understood of being sworn in by the Conjoint of a Majority of those that were present. 10 Mod. 75. 76. The Queen v. Sutton.

12. Another Question was, Whether by a Charter that requires Acts to be done by a Majority of the Corporation, a Person might not be removed by a Majority of that Body, excluding the Persons that are to be removed, and cannot vote in their own Caucus? But the whole Court were of Opinion, that a Removal being an Act of an odious Nature, all Clauses concerning it must receive a strict Interpretation; and that therefore the Word Majority should be understood of a Majority of the whole Corporation. 10 Mod. 76. The Queen v. Sutton.

14. Another Question raised was, Whether not summoning to a Meeting, Members de Facto disfranchis'd, the afterwards upon Re-examination it should appear they were ill legal Members, should acts done in those Meetings? Court inclined to think it would not vacate them. 10 Mod. 76. 77. The Queen v. Sutton.

15. An Information in Nature of a Quo Warranto was brought against W. for exercising the Office of Mayor in Portsmouth. W. pleaded the Charter of King Cha. 1. incorporating the Town of Portsmouth &c. and sets forth a particular Clause in the Charter, declaring, That if the Mayor should die, or for just Reasons be removed, it should be lawful for the Aldermen to elect another Mayor for the remaining Part of the Year, until the Time to elect came about again; then he sets forth, that the Mayor died, and that he was chosen by the Majority of Aldermen, Secundum formam Chartae predicta. The Attorney General replied, Non electus Moto & Forma &c. Upon Trial at the Assizes it was infirmed, That the Defendants to prove the Issue must first prove themselves qualified by receiving the Sacrament according to the Act of King Cha. 2. which Point, instead of being found specially, was faced by the Judge who tried the Cause. It was afterwards argued for the Defendant, but no Judgment is mentioned. 10 Mod. 64. Mich. 10 Ann. B. R. Whitehorn the Mayor of Portsmouth's Cafe.

16. An Information in Nature of a Quo Warranto was for exercising the Office of Post-receve in the Borough of Houston. The Defendant in his Bar set forth a Right to that Office, and concluded with a Traverse of the Issue, that the Defendant usurped the Office. The Crown in its Reply taking
taking no Notice of the special Issue set forth by the Defendant, joined Issue upon the Traverse and Affirmation, and upon this Demurrer is joined. Powis jun. J. said, He ever took it, that in this Cafe the Abique hoc &c. was but a meer Matter of Form, and a respectful Way of concluding the Plea. And Parker Ch. J. said, The Question turns upon this, Whether the Traverse be only Matter of Form? for if so, the Crown cannot take Issue upon it; but if it be a material Plea, most certainly the Crown may do it. 10 Mod. 210. Hill. 12 Ann. B. R. The Queen v. Blagen.

17. Upon a Rule to shew Cause why an Information in Nature of a Quo Warranto should not be granted to shew by what Authority be claimed to be Mayor of Lostwithiel in the County of Cornwall, it was shewn, That by the Charter of Incorporation a Mayor is always to be elected out of the Capital Burgesses, and to continue in his Office till a new Mayor be duly chosen; That the Defendant the present Mayor never was a Capital Burgess, and consequently never could be duly chosen Mayor out of those Burgesses; and therefore is no Mayor. To this it was answered, That he was chosen a Capital Burgess in 1697. and that as many of the Inhabitants as are now living say that he was duly elected, except one John John, who now complain against him; and that having now so long acquiesced under that Election, it shall not now be brought in Question, it being a standing Rule in Cafes of this Nature, that they shall not be examined in such remote Degrees. That Defendant was chosen Mayor in 1706. and that the Corporation, for some Differences among themselves, did not proceed to any Election of Capital Burgesses since that Time; so that the Borough wanted a sufficient Number of such Burgesses to choose a new Mayor, and for that Reason the Defendant had continued Mayor ever since. The Chief Justice was of Opinion, that the Fact was plain that Defendant had been Mayor for 16 Years together, which is a sufficient Cause for an Information; so that the Rule was made absolute, and the Parties were left to try their Right upon this Information, tho' one of the Judges was of Opinion, That a Mandamus to elect a Capital Burgess and a Mayor had been a good and proper Method. 8 Mod. 132. Trin. 9 Geo. 1724. The King v. Alexander John.

18. On a Rule to shew Cause why an Information in Nature of a Quo Warranto should not go for claiming to be Capital Burgesses of Brecknock, it was objected that they never were duly chosen Burgesses; and tho' one had been Burgesses de Fealty 12 Years, and the other 16 Years; and tho' it was urged that it would be of fatal Consequence to this Borough, after so long an Acquiescence, to make all the Corporate Acts done by them during all that Time void, yet it was answered that the long Acquiescence could be no Colour against this Rule, which is made on the meer Right, and that Length of Time will never establish a Right gained by usurpation; that 'tis true, in Cafes of not taking the Sacrament, or the Oaths of Allegiance and Supremacy, the Court after a long Acquiescence will intend that they were duly taken; but a Right shall never be intended when the Merits of it are controverted (as in the principal Cafe) and
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and no collateral Point disputed. And the Court being of that Opinion, the Rule was made absolute. 8 Mod. 165. Trin. 9 Geo. 1724. The King v. Powell & al.

and before he was taken into the Office: the Court discharged the Rule made to the like Paroches as to the Recorder, because he did not rely upon his first but upon his second Election. Ibid. Price's Case.

19. Stat. 9 Ann. 29. is not exclusive of a Quo Warranto in all Cases not recited in the Preamble of the Act; and in the principal Case, which was for excelling the Office of Bailiff of the Town of D. which was aver'd to be an Office for the Administration of Justice, and therefore of a Publick Nature, Judgment was given pro Rege. Gibb. 82. Trin. 2

& 3 Geo. 2. The King v. Boyle.

20. If the Party on whom a Rule is made for an Information in Nature of a Quo Warranto, can shew to the Court, that his Right to the Franchise in Question has already been determined on a Maudamus; or that it hath been acquiesced in many Years without any Dispute; or that it depends on the Right of those who voted for him, which hath not yet been tried; or that the Franchise no ways concerns the Publick, (as all those which relate to the Government of a Corporation, or the Election of Members of Parliament, and Fairs and Markets &c. are wont to do) but is wholly of a private Nature, as a Consecration &c. or that the Election by which he claims is agreeable to Charter; or that he has never acted under it, the Court will not grant the Information unless there are some particular and extraordinary Circumstances in the Case, the Determination whereof being left wholly to the Discretion of the Court cannot well come under any Routed certain Rules. 2 Hawk. Pl. C. 262. 263. cap. 23. S. 9.

(D. d) Fifteenths and Tenths —What.

1. Fifteenths and Tenths are a certain Tax anciently by Parliament. Speelman's Impolita tingulis Civitatis, Burges & Oppidis, but not upon every particular Man, but generally according to the Rate of the 15th Part of the Goods and Possessions, as it seemed, of the Place. Camden

That it was Liber Annuallum 80. A Fifteenth was granted to E. 1. as appears by 2. R. Cl. Claud. Henry 5. 8 E. 1. Henry 3. 6. 3 E. 1. R. Pat. Henry 6.

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the Realm; but it is yet levied in some Places upon their Goods, but in several Places upon their Lands; which was agreed by the Barons. Br. Quinzime. pl. 9. cites M. 34 H. 8.

(F. d) How the Taxation shall be.

There is no Number to this Plea in Roll. Br. Imprisonment, pl. 12. cites S. C.,

* All the Editions are (del biens et Tenements Inhabitants in les &c.) + Orig. (Tenements)

But Per Hill; the Laymen shall be charged for their Goods to the Fifteenth, and the Lay Tenants for their Land. Ibid.

4. If Fifteenth, Tenth, Tax, Tallow, or Subsidy be granted, and the Vill of D. is tax'd to 10. and of D. is privi'd therefrom by Grant of the King, there his Sum shall be recoup'd, and the Vill shall be charg'd of the rest. Per tot. Cur. Argueno, quod nota. Br. Quinzime, pl. 5. cites 19 H. 6. 63.

5. It was held, that Fifteenths are to be levied of Goods and Chattels properly, and one Township sometimes is richer than another, and therefore it is not Reason that they pay their Fifteenth always according to the same Proportion. But by Clerk Baron, where the Custom has been, that the Fifteenth should be tax'd according to the Quantity of Acres, there the Rate and Purport shall be always one, whatsoever holds the Land. 4 Le. 115. Trin. 32 El in the Exchequer, Barathe and Hind's Cafe.

6. Since the Time of Magna Charta, the Manner of the Fifteenth is alter'd; for now the Fifteenth, which is also called the Task, is not originally
Prerogative of the King.

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Initially set upon the Polls as at that Time it was, but now the Fifteenth is
certainly rated upon every Town. And this was by Virtue of the King's
Commission into every County of England in 8 E. 3. Taxations were
made of all the Cities, Boroughs and Towns in England, and recorded
in the Exchequer; and that Rate was at that Time the Fifteenth Part of
the Value of every Town, and therefore retaineth the Name of Fif-
teenth still. 2 Inst. 77.

(G. d) Who shall pay it.

2. Note that Cities and Boroughs shall pay to the Tenths, and Uplands
to the Fifteenths. Br. Quinzieme, pl. 8, cites 11 H. 4. 2. and says, this
was likewise agreed in the Exchequer, Anno 34 H. 8.
3. And lee in the Register 181, that none shall pay to the Tenth but Bo-
roughs, and Tenants in ancient Demesne and others shall pay to the Fifteenth,
and none shall be double charged, nor compell'd to pay to the one and the
other. Ibid. and cites F. N. B.
4. A. was asfill'd to a Fifteenth, but upon Refusal to pay the fame,
the Collector distrain'd his Beasts and sold them. A. brought Trefpats.
The Collector exhibited a Bill against A. who shew'd, that the Statute
29 Eliz. which enacted this Fifteenth, Provides, That it should be levied of
the Moveable Goods, Chattels, and other Things usual to such Fifteenths
and Tenths, to be contributory and chargeable. And shew'd further,
That his Beasts distrain'd were temporar Distrihibit upon the Globe-Land of
a Parsonage-Presentative, which he had in Lease; which Globe-Land is not
chargeable usually to Fifteenths granted by the Temporality, nor the Cattle upon
it. It was the Opinion of the Justices, That tho' the Parson himself
shall pay Tenths to the King, yet the Lay-Farmer shall pay Fifteenths,
and his Cattle are distrainable upon the Globe-Lands of the Parsonage. And
so the Diliffers and Sale were awarded lawful. 3 Le. 259. pl. 344.

(H. d) In respect of other Charge.

1. An Abbot or other Religious Man shall not be charg'd to the
Fifteenth for those Goods of which he pays a Tenth among
the Spiritual. (Note this) 1 C. 2. Rot. Pat. Demb. 7. 3 C. 2.
Rot. Pat. Demb. 27.
2. If an Abbot be charg'd for Tenths for his own he shall not be
charged for the same for a Fifteenth. 11 H. 4. 35. Adjudged.
3. If Land be charg'd of Fifteenths in the Lands of the Abbot
Br Quin-
zime. pl. 3. cites S. C.
In respect of Tenths paid by him, if the Land after comes into the
Hands of Tenants, and after comes back to the Abbot, yet it is not
chargeable. 11 H. 4. 35 b. 37.

served of his Sum of the Goods of other Lay-Tenants.— It shall be dis-charged of the Tenth. Per
Thirn. And therefore it seems that it shall pay the Tenth again. Br. Extinctions, pl. 12. cites
11 H. 4. 34, 35.
4. If Land has been charged of Fifteenths in the Hands of the Abbey, and there are no Inhabitants upon the Land; if after there are Inhabitants and a Vill, yet the Inhabitants shall pay Fifteenths, tho' their Lord pays Tenths for the same Land. 11 H. 4. 36. b.

See (N. d.) pl. 5.

(I. d) Fifteenths. Tenths.

1. If who is assessed in one Vill by his Beasts or Goods in the Fifteenths, cannot be assessed also in another Vill. 11 H. 4. 35. b. 21 C. 3. 42. b.

2. A Man cannot be assessed to the Fifteenth for certain Beasts, if he has not any Beasts at the Time. 11 H. 4. 36. b.

3. If I have Terretants in a Vill, and they pay for their Goods to the Fifteenth, I, who have nothing in the Vill but the Rent of my Tenants, shall not pay to the Fifteenth. 11 H. 4. 45. b.

4. If I lease Land for Beasts or Life, rendering Rent; the Lessee shall pay to the Fifteenth for his Goods, and I shall pay nothing for the Rent. 11 H. 4. 45. b.

5. So if my Tenants pay Fifteenths for their Chattels, I shall not pay Tenths for the Rent of the same Land. 7 H. 4. 33. b. Adjudged.

6. If a Manor be annexed to the Spirituality of a Priory, and the Prior is taxed after among the Clerks for this, yet the Tenants in Fee of the Manor shall be taxed to the Fifteenth among the Temporal Men.

7. And to the Prior himself, if any of those Tenements in Fee come to him by Eschat, shall be taxed to the Fifteenth for them. 7 H. 4. 33. b.

8. But if any Tenements which were in the Hands of the Tenants by Bondage, or of Tenants for Life or Years at the Time of the Annexation of the Manor to the Priory, shall after come to the Prior in Possession, he shall not be taxed to the Fifteenth for them. 29 C. 3. 28. b.

9. H. 4. 7. Enacts that Goods shall be chargeable towards the Payment of Tenths or Fifteenths in the Place where they were at the Time the same were granted; howbeit, none shall be twice charged for his Goods.

10. The ancient Way was by Tenths and Fifteenths, then by Salts, and after by Royal Aids, and at last by a Pound Rate; the former were all on the Perfon or Personal Estate, and were much the same Thing; the latter was upon Rents and Lands. In 8 E. 3. a Valuation was made on all the Towns in England, and returned into the Exchequer, which became the Standing Misfortune for taxing. The first Subsidy was in and by 32 H. 8. 50. which was a Tax on the Perfon for his Lands and Goods, payable by the Party where he lived; and this continued till 15 Car. 1. The Allotment of Tax according to a Pound Rate came in in 17 Car. 1. and there was a Clause empowering the Tenant to deduct, and if it was in 1642, 44, 49. and thence it came to be provided in Conveyances, that there should be no Deduction of Taxes. 2 Salk. 615. Hill. 9 W. 3. B. R. Brewster v. Kidgell.

(K. d.)
Prerogative of the King.

(K. d) For what Goods they shall be taxed.

There is no Number to this Page in Roll.

1. Of this Taxation of Goods of the Community of all the Counties shall be forepriz'd Armour, * Horfe Furniture, and Robes to Knights, and to Gentlemen and their Females, and their Vehicles of Gold, of Silver, and of Brass; and in Cities and Boroughs to be excepted one Robe for the Man and another for the Female, and one Bed for both, one Ring and one Buckle or Clap of Gold or Silver, or one Girdle of Silk which the always used, and also one Cup of Silver or of * Nazir, out of which they drink. And of Goods of * Houles there, where they are governed by Sovereign, they are not to be taxed, nor priz'd; and if they be Houle governed by a || Meafe Lord, their Goods shall be taxed as well as others are. And of Goods of People out of Cities, Burghs, and Depofites of the King which Goods are found by Taxation not to exceed the Value of ten || Soudes, nothing is to be demanded or levied; nor of Goods of People of Cities, Burghs, or Depofites of the King, which do not pass the Value of 15 Soudes, is any Thing to be demanded or levied.

the Perfian Gulph, and is of the Value of about 10 French Sols. Richelet's Dict. — A Sol is about an English Penny. See Boyer's Dict.

(L. d) At what Place it may be taxed.

1. If a Han has Land in a Vill, low'd with Corn, and has used the Care time out of Mind to carry the Corn to another Vill, and spend it there, if the Corn was growing there at the Time of the Grant of the Fifteenth, and at the Time of the affenting of the Poles, and he taxed for this Corn there, tho' he carries it into the other Vill after, according to the prescription, and it is 13 there taxed, yet they shall be charged where the first Tax was. 21 Ec. 3. 42. b.

2. But otherwife it had been, if he had brought the Corn after the Grant, and before the Taxing of the Poles according to the prescription, and there had been taxed for them. 21 Ec. 3. 42. b. by Impic.

as he and his Anfeters had used to do Time out of Mind, and was affized for that Corn and his other Corn in W. and yet was affized for the fame Corn in H. and the Collector disaffemed him, and he sued Replevin, and the other avowed for the Fifteenth, and the Iffus was taken, if he had Corn in H. at the Time of the Affizement or not. Br. Quinimize. pl. 6. cites S.C.

(M. d) How it may be levied.

1. A Collector of a Fifteenth may levy all the Tax of a Town-Manwood, ship upon the Goods of one Inhabitant only if he will, and the Inhabitant shall have Aid of the Exchequer to make every other Inhabitant to be contributory. Cr. 8 Jac. Secce. Per Curtain.

did not advise any Collectors of Subsidies or Fifteenths, to bring Bills in the Exchequer Chamber for the Non-payment of Subsidies &c. for such Bills should not be allowed hereafter, because they had Remedy by Disref. It was also holden, that if any be advis'ed for the Fifteenth which he ought to pay, or if two Ch B gave it for a general Rule for all Councilors at Law, that they
2. The King is not inheritable to the Fifteenth, but yet when it is granted, the King is inheritable to dothrawn for it. Per Hill [and Norton.] Br. Quinzime. pl. 3. cites ii. H. 4. 35.
3. At a Convocation the Clergy gave to the King by the Heads of a Metropolitan, Two Shillings in the Pound of the Temporal Possessions of Religious, and Two Shillings in the Pound for the Tenths, in the Defence of the Church of England; and the Exchequer awarded Fieri facias against Abbeys &c. to levy it. Br. Quinzime. pl. 1. cites 23. *H. 6. 11.

(N. d) Subsidy.

1. 1 R. 2. A to Parliament, the Commons were spared, and the Nobles, Bishops, Abbeys, Judges, Esquires, Parliaments, Knights, Vicars, and all Spiritual Persons charged with the Subsidies. Speed 599.
2. 1 Or 2. Rich. 2. a Subsidy was granted, That every Man or Woman, under a certain Age, should pay by Poll 12 d., which was the pretended Cause of much Mischief after. J. Strawe. Speed. 594.
3. In Time of H. 8. a Subsidy was granted, to wit, the Tenth Part of all Temporal Subsistence; And Cardinal Wolsey, who had the Charge to levy it, would have every Man sworn for his Wealth, but the Citizens of London refused it, and the King was displeased with Wolsey for it. Speed 761.
4. 4. E. 3. 5. There was a Special Grant, that for every Knight &c. for every Trown an armed Man, to go into Gacony &c. This pardon by the King.
5. 18. E. 3. cap. 1. 2. Tenths and Fifteenths granted to the King to go into France: So that the Money found of the same be dispensed in the Bullion shewed to them, in this Parliament, by the Advice of the great Men thereto assigned: And that the Aids beyond Trent &c. be put in Defence of the North.
6. The Subsidy is uncertain, because it is set upon the Person or respect of his Lands or Goods, which commonly do ebb and flow. 2 Init. 77.
7. Auxilia at the Time of the Confirmation of Charters &c. *25 E. 1. was a general Word, not only including Aids due by Law andTenure, as Aid to make his Son a Knight, to marry his Daughter &c. But Aids also granted by the Free-will of the Subjects in Parliament, which afterwards were called Subsidies. 2 Init. 528. in his Comment upon the Act of the Confirmations of Charters of the Liberties of England &c. made 25. E. 1. where Lord Coke says, That yet the Matter, upon which that Act was made, was never in quiet, until it was more particularly explained by divers Acts of Parliament, which we have drawn into one Body of a Law divided into several Branches. 1. No Man shall be charged to arm himself, or to find Men of Arms, or any Hobblers or Archers (other than those who hold by such Services, or Devoires of the King, or of other Lords) if it be not by common Consent, and grant in Parliament. 2. No Man shall be compelled to go to the King's War out of his Shire, but where Necessity of sudden coming of strange Enemies into the Realm. 3. No Man shall be charged to give any Wages either to the Preparers or Conveyors.
Conveyors of Soldiers, or to the Soldiers, to go into Scotland, Galleyng, or elsewhere; but that Men of Arms, Hoblers, Archers, chosen to go into the King's Service out of England, shall be at the King's Wages from the Day they depart out of the Counties where they were chosen, till they return; which Acts of Parliament are but Declarations of the ancient Law of England: And according to this ancient Law, the Commons after the said declaratory Acts of Parliament did, when this Point concerning Maintenance of Wars out of England came in question, make their continual Claim of their ancient Freedom and Birth-right, as in 1 H. 5. and in 7 H. 5. &c. the Commons made Proteckation that they were not bound to the Maintenance of War in Scotland, Ireland, Calice, France, Normandy, or other foreign Parts, and caulled their Proteckation to be entered into the Parliament Roll, where they yet reman; which in effect agree in that, which upon like Occasion was made in this Parliament of 23 E. 1. But here may be obversed, that when any ancient Law or Custom of Parliament is broken, and the Crown posseffed of a Precedent, how difficult a Thing it is to restore the Subject again to his former Freedom and Safety.

(O. d) * Martial Affairs, Justs and Turnaments.

For in those Days this Deed of Chivalry was at Random, whereupon great Perill ensued. Therefore in the Reign of E. 3. for Safety; there is no Number to this Plea in Roll.

But if the King makes Proclamation, That there shall be Justs and Turnaments &c. And one kills another in Juiting &c. it is not Felony, Contra where it is without Command or Proclamation of the King.

A Vex Comitibus Baronibus Militibus, s omnibus alias hoc in

stanti De apud Kingdum componere ad Turnamentum

subden Satcken. Prohibemus vos sub Pena Amificationem Terrarum & Turnamentorum, sit in Regno nostro tenens, ne fe bel aliud

dice De vel alius Dichius turnare, Justis sacere, Aventure quare, et allo Sodo ad Terra fec presumpitio line licentia nostra speciali.


* Murage.

See (E) pl.


A 20 D N. S. the Petitions of Parliament of 18 E. 1. there is

such Petition, Gives London potest Muragium propter Decre-

rionem Murorum; Rex non vidit quod sit Necessarium. 1. E. 2.


M. 20.

* Murage is

reasonable.

To be

called a

very Care, Wayne, or Harvest laden

coming to that Town, for the protection of that Town with Walls of Defence for the Safety of the People in Time of War, Inflammation, Tumults, or Uproars, and is due either by Grant or Prescription. 2

Inl. 222. 3. But if a Wall be made which is not defensible, nor for Safety of the People, then

ought not this Toll be paid. For the End of the Grant or Prescription is not performed. Abd

Murage is only. Toll payable for the Repair of Walls out of Things sold in Market by Rol-

(Q. d) *Tronage. Pesage.

(R. d) *Aulnage.

1. R D T. Parl. 22. E. 3. N. 31. 32. There is a Petition of the Workers of Clothes of Worsted in Norfolk, against the Office of the Aulnage of the Aulnage of Worsted granted to Robert de Soley, which was after repealed by the Counsel of the King as there appears.

2. Rot. Parl. 27. E. 3. N. 11. The Commons pray to take away the Office of Aulnage. Answer. They shall treat to give Recompense to the Officer.


4. 25 Ed. 3. 1. All Manner of Clothes vendible, shall be measured by the King's Aulnager, or his Deputies, and all Cloths which shall be found of less Measure by a Yard than the Aulnager shall be forfeited to the King.

5. 27 Ed. 3. 4. Cloths shall not be forfeited, altho' they want of the Aulnager, but the King's Aulnager shall measure the Cloth, and mark how much it contains, and for so much as the Cloth wants of the Aulnager, an Allowance shall be made to the Buyer, and the Aulnager shall have for his Fee, an Halfpenny for a whole Cloth, and a Farthing for half a Whole, and nothing for Cloths that are less; but Cloths offered to Sale before they are marked, shall be forfeited to the King, and taken into his Hands by the said *Collector or Aulnager, or by the Deputy of one of them, or else by the Bailiff of the Town where such vendible Cloths not sealed shall be found.

6. There were several other Statutes concerning Aulnage, as 3 R. 2. cap. 2. which enacted, That if the Aulnager seal faulty Cloth, or seal it for more than it is, the Cloth shall be forfeited, and be punished. And also, 13 R. 2. cap. 11. which excepted coarse Cloths from being of the Aulnager of other Cloths. And also, 17 R. 2. cap. 2. which enacts, That every Man of the Realm may make and put to Sale, and sell Cloths, as well Kersey as other, of such Length and Breadth as he shall please, paying the Aulnage Suitably, and other Disserters, that is to say, of every Piece of Cloth after the Rate, notwithstanding any Statute, Ordinance, Proclamation, Refrainment, or Defence made to the contrary, and that none shall sell or put to Sale any Cloths before that they be measured by the King's Aulnager, and sealed with the Seal to that ordained, upon the Pains contained in the Statutes thereof made, and that no Man shall put, meddle, cause, or make other Dissent in the Cloths of Kersey, upon Pain of Forfeiture of the same. And also, 5 & 6 E. 6 cap. 6. which gives a Forfeiture of 20 s. for not paying the Aulnager's Fee, and
Prerogative of the King.

and prohibits Cloth to be exported without the Author's and Owner's Seal, the Maker, and the Seal of the Maker, and also the Act of 8 Eliz. 5 which enacts, That the Length of Lancashire Cloths shall be marked, and that the Queen's Seal shall be fixed thereon in a Man of Perpetuity, and also, that the Author shall Seal his Cloth without Weighing, on Pain of 20 s. for every Pack. But since those Statutes there is a Statute made as follows, viz.

claimed Property severally to the said Bys, and severally demurred to the Information; The Question was, Whether the Subsidy of Annuity was due for Bys by Virtue of the Statute of 27 E. 3, cap. 4, not being any of the Cloths mentioned in the Statute, and differing from them both in Weight, Length and Breadth; Hale Ch. B. said, That it would be hard to bring them within that Statute, for the Reason before mentioned, but that is a concurrent Statute made Anno 17 R. 2, cap. 2, which makes the Quantity a necessary Ingredient to the Subsidy; For 17 R. 2, proportions the Subsidy given by 27 E. 3, which settles the Duty only; and, agreeing with the other Judges in Opinion for the Plaintiff, said, He grounded his Opinion for the Duty upon 17 R. 2, the Words whereby, (Pay all the Duty according to the Rate) which Words bring the Statute of 27 E. 3, to that of 17 R. 2, and upon both these Statutes together the Duty arises, and the Penalty for Non-payment of it; and the Generality of the Words (Cloths, as well kerseys as other) complete all; and there cannot be more comprehensive Words to include all Manner of Clothes; and by the Demurrer they are confined to be Clothes as laid in the Information. Hard 205, 212; Mich. 17, 1; Car. 2, in Scoce. Vero, qui tant & c. v. Simpkin & al * Powis, Turton, and Ward, Ch. B. held, that no Person had Authority to fix the Cloth fore-mentioned by this Statute, but only those very Officers expressed in that Statute; and therefore they held, that a Deputy Annuity whose Depotaition extended only to the Counties of Devonshire and Cornwall, had no Authority to fixe at Reculth. Cart. 326. Trin. 6. W. & M. in Scoce. Martin v. Ursford.

7. 11 & 12 W. 3, cap. 20. S. 3. Enacts, that the Subsidy and Annuity of the old and new Draperies, and of all Wooden Manufaictures shall cease after the Grants thereof are expired.—[Those Grants are long since expired.]

(S. d) Proclamation. The Force of a Proclamation.

WHEN in the Time of E. 1, the Jews were banished out of the Realm, all their Debts and Goods remained to the King, and were his Chancels, and therefore Proclamation foloennis hebat per totem Regnum, & quod ommes qui Debita aliqua aliquo Judaeo debebant aut de eorum Debitis, Bonis & Catariss aliquld recebant, Domino Regi aut aliqui de Concilio sua leire facerent, de qua quidem Proclamatione multis diebus postea quin seuiret aut se uerba effectora remaneret; and because the Defendant had concealed a certain Debt, Deo in Silicordia. 21 E. 1. Ab. Dial. 62. b. 63. Abjudged.


3. By 25 H. 8. cap. 2. It is enacted, that the Lord Chancellor and others shall tax the Price of certain Victuals, and that after a Proclamation under the Great Seal shall be made thereof, and that Victuals &c. shall be bound to sell according to the Prices set forth in the Proclamation under the Pains to be expressed and limited in the said Proclamation to be forfeited and levied to the Use of the King in such Manner as by the said Proclamation shall be declared.

4. By 25 H. 8. cap. 12. It is enacted, That Proclamation shall be made of the Decree of Elizabeth Barton, and that it shall be contained in the Proclamation, that all Books &c. concerning the said Decrees shall be brought to the Lord Chancellor, under Pain of Imprisonment and Fine to the King, and that every one [who] shall offend against this, being thereof by due Examination convicted before any of the Council of the King, shall suffer Imprisonment, and make Fine to the King by the Direction of the Council of the King, and according to the Merits of his Offence.
5. 35 H. 8. cap. 16 The Statute of Strangers where there is a Prorogative of the King.

+ There is no such Year of Cales in the Year Book to examine this by The Words (Rev. 34. 36. E. 3. B. Kt. per. pro. totum) seem not to be right, and (Rev.) at least, seems to be Surprize; but the Sense seems perfect enough without any of them.

7. 11. 12. 23. R. 33. Divides imperialiter de eo quod contra Proclamationem Regis e. 1. Inhibentur ne quis duci fueret extra Regnum Anglo Eques, Armaturas, Monetam, quamque Vasa Angliae, 2. Argentea in Malta line Liciens et &c. ipsi aburcrint divers munis of money &c.

8. The King by Proclamation may make the Coin of a Foreign Realm current here. 5 El. cap. 11. admitted.


10. It was agreed for Law, that the King may make Proclamation to his Subjects, Quod Terrorem Populi to put them in Fear of his Displeasure, but not on other Pain certain, As to forfeit their Lands or Goods, or to make Fine, or to fuller Imprisonment or other Pain; For no Proclamation in itself will make a Law which was not before, but to confirm and ratify an ancient Law, and not to change this or make new; Yet diverse Precedents were shown out of the Exchequer to the contrary, but the Judges had no Regard to them. Dal. 20. pl. to. 2 & 3. P. & M. Anon.

11. A Proclamation prohibiting Importation of Wines from France upon Pain of Forfeiture is against Law, it not appearing that there was any War between the Realms. 2 Inst. 63. cites Pach. 1. Eliz. in the Exchequer. German Cioll's Cafe.

12. Proclamations are so far just, as they are made Pro Bono Publico. Hob. 251. in Armitied's Cafe.
Prerogative of the King.


(S. d. 2) Proclamation. By whom made, and how pleaded.

1. WHERE Parishioners make By-Laws that every one shall pay a Sum for Reformation of their Church, and for Defraying of Payment to Defraud by Absent &c. there those who are absent, it Proclamation be made to do it, shall be bound as well as those who are present; Per Kirton; quoad non negatur. And to see that a common Person may make Proclamation. Br. Proclamation, pl. 1. cites 44 E. 3. 18.

2. The Court upon the first Motion were all of Opinion, That where Objection a Proclamation is pleaded, it must be pleaded to have been under the Great Seal; for it doth not bind unless it be under the Great Seal; and if it be denied, there can be no Sine upon it, but only Nat. tit. Record, which cannot be unless he pleads it to be Sub Magna Sigillo. But afterwards it being again moved, Jones and Windham seemed to doubt thereof; because when it is pleaded, That such Proclamation was made, it shall be intended duly made; as in Reques, if it be returned Quod est Warrantum, alioquin it be not pleaded to be in Writing, yet it shall be intended. But it was an Answer, That true it is wherein it is but by Way of Inducement; but otherwise when it is the Substance of the Plea, Whereupon it was adjourned. Cro. C. 180. Hill. 5 Car. B. R. Keyly v. Manning.


(U. d.) King. [Guardian.]

In the Absence of E. 1 his Brother Edmund was made Guardian of the Realm. (Nota the Name of Guardian) 18 E. 45. b. 2. Leannell the second Son of E. 3 was Cusfas Regun. 21 E. 3. 59.

*(U. d.) King. [Guardian.]*

Prerogative of the King.

2. The Guardian of the Realm, in the Absence of the King, may present to the Adowvon in Right of the King. 18 C. 3. 15. b

3. When there is a Guardian of the Realm in the Absence of the King, the Writs Original shall be in the Name of the King. 21 C. 3. 58. b.

4. But the Writs shall not be Telle Meipfo, but Telle L. flio nolro charttimo Cuitode Anglie. 21 C. 3. 59.

5. 14 C. 1. Bot. Claudio Senib. 3. 4. Telle Edmuono Comire Cornub. Contangunio Regis apud Wettm. (This Edmuon was Custos Regni,) and 16 C. 1. Senib. 9. in Dorf 7. in Doria.

(Y. d) King. What Things shall go in Succession, and not to his Executor.

* Br Presentation, pl. 11. cites 8. C. 11. in Quare Impedit it appears that Chattelles may descend to the King; for where the King has the Temporalities of a Bishop, and dies, there, and all Presentations depending upon it, shall descend to the new King. Br. Chartles, pl. 2. cites H. 4. 7. — S. P. Br. Prerogative, pl. 83. cites 44 E. 3. 44. and the Executors shall not have them.

2. So if the King be seiz'd of a Ward, and dies, his Successor shall have it, and not his Executor. 7 D. 4. 42. b. 21 C. 3. F. Chitpopel 161. admitted. 1 C. 3. 22. b.

3. The Treasure and other valuable Chattels, are to necessary and incident to the Crown, that in Case the King dies, they shall go with the Crown to the Successor, and not to the Executors. Co. 11. 92. Count Devon.

4. The King can have nothing in his natural Capacity, unless in Right of his Dutchy, or an Estate Tait by the Statute De Donis, and Duteby Lands would now be in the Queen, if not kept separate by Act of Parliament. Per Holt. Far. 78. Mich. 1 Ann. B. R. in Cafe of the Queen v. Smith.

(Y. d. 2) Descent of Lands. How.

The Reason of these Cases is, because the Quality of the Person does in these, and many other like Cases alter the Descent, as in the Lands and Possessions where-
Prerogative of the King.

3. The eldest Daughter and Sister of a King shall inherit all his Fee Simple Lands. Co. Litt. 15. b.

4. If the King purchases Lands of the Calton of Gavelkind, and dies, having issue dative Sons, the eldest Son shall only inherit these Lands. Co. Litt. 15. b.

uppon and follow the Crown, and therefore to whomsoever the Crown descends the Lands and Possessions descend also; For the Crown and the Land, whereof the King is feited in Jure Coronae are Concomitants. Co. Litt. 15 b.

5. The King has two Capacities; for he has two Bodies, of which the one is a Body Natural, consisting of natural Members, as every other Man is, the other is a Body Politick, and his Members thereof are his Subjects. He may take in his Body Natural, Lands or Tenements, as Heir to any of his Ancestors, and also in this Capacity may purchase to him and his Heirs, and his Heirs shall retain it notwithstanding that he is removed from the Royal Estate. And he may also take or purchase Lands or Tenements in Fee in his Body Politick, that is to say to him and to his Heirs not Kings of England, or to him and to his Successors Kings of England; And to his double Capacity remains, as it does in other Persons, who have a double Capacity, As Bishop or Dean; And to prove that the Estate Royal does not * confound the other Capacity * S. P. Per Wotton J. PL C. 242/ in S. C.

The Cafe in 45. Art. 6. was cited, where it appears that King H. 3. gave a Manor to the Earl of Cornwall in Tail, saving the Reversion to him, and died; the Earl gave the Manor to another in Fee by Deed with Clause of Warranty in Exchange for another Manor, and after the Earl died without Issue having Heirs, and the Warranty and Reliefs defended upon E. r. being Heir to the Earl; And there it was adjudged, That the King, by this Warranty with Reliefs, was barred, by which the Allience of the Allience had Restitution of the Manor out of the Hands of King E. 3. who had feited the Manor into his Hands for the Reval of the Cafe. Which Cafe proves that the Capacity, which the King has in his natural Body, remains after he is King, or otherwise the Warranty could not have defended upon him, not the Reliefs to him as Heir to the Earl his Ancestor; and by the Warranty and Reliefs which defended upon the Body Natural of the King, he was barred of the Reversion, which he demanded in his Body Politick; For it was Parcel of the Possessions of the Crown for any thing which appears; And as his Capacity remains to take by Descent as Heir, so it remains to purchase therein. Arg. Pl. C. 234. 3 Eliz. in the Cafe of Willion v. Lord Barkley.

6. The King may take in his Body Politick, as King to him and his Heirs, or as King to him and his Successors; For he may have Heirs in his Body Politick, and he may have Successors in his Body Politick; And therefore a Gift to him his Heirs and Successors is good to the Body Politick in both the Limitations; For if the Heirs fail, it shall go to the Successors; And his Heirs, as Heirs to the King, may take in their Bodies Politick. Per Wotton. J. PL C. 242. b. in the Cafe of Willion v. Lord Barkley.

(Z. d) *King. In what Cafe by the Name of King, his Successors shall be comprehended.

* A Remainder limited to King H. by the Name of King H.; is well limited to him by such Name; for the King naturally, unfitly, and

[1.] The Successors of K. H. 3. are within the Statute 27. H. 8. cap. 24. of Redemption of the Liberty of Purveyance to have Benefice of the Statute, though they are not named; for they are included within the general Word King. Tr. 38. El. B. R. Lord Darcie's Cafe adjudged.
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Purchose by other Name than by Name of King. For the Name of King has merged his Surname, and in the Name of King, his Surname and proper Name also are included. Per Brown J. Pl. C. 444 b Trin.

4 Eliz. in the Case of Wiltmon v. Lord Barkley.

Lord Coke, in his Commentaries upon Magna Charta, cap. 1, says, That at that Time Heareis were taken for Successors, and Successors for Heareis. 2 Inft. 5. — S. P. Ibld. r. That antiently Successors and Hareides were Synonima. — † There is no Number to this Pia in Roll. — † Cro. E. 512. S. C.

2. Patents, without the Words (Pro nobis, Harededibus, & Successoribus nostris) and being granted for a Corporal Exercise of the Office or Service are good. Cited per Saunders Ch. Baron. Pl. C. 459. a. as Resolved by all the Justices. 28 April. 1 Mar.

S. P. Pl. C. 166 Mich. 4 Mar in the Case of Hill v. Grange.


4. King H. 6. Anno 20. of his Reign, granted for himself, and did not pay (for his Successors) to the College of All Souls in Oxford, for them, their Lents, and Farmers, to be discharged of Bell; It was agreed per Cur. That this Grant to be discharged was good against his Successors, though not named, as well as in Case of the Grant of an InteTrest, which in Plowd. Com. in Sir Thomas Wroth's Cafe, was agreed to be good. Yelv. 13. Mich. 44 & 45. Eliz. B. R. Wood v. Hamitck.

* All the Barons in the Exchequer were of Opinion, that such a Grant of an Annuity should bind the Heirs and Successors of the King, notwithstanding the Omission, inasmuch as the Body Politick of the King is charged, which is perpetual, and never dies. Pl. C. 457. a. Trin. 15 Eliz. Sir Thomas Ulthan's Cafe. — S. P. Pl. C. 166 Mich. 4 Mar in the Case of Hill v. Grange.

A Gift to the King passeth the Inheritance without the Word Successor. So of a Gift made by the King. Jenk. 209. pl. 41.

A Gift to the King of any Hereditament is a Fee Simple, as a Gift to a Mayor and Comonwealth, without mentioning Successors. By all the Judges of England. Jenk. 224. pl. 84. — S. P. Jenk. 271. pl. 59.

Dyer Ch. 1. said, That the adding of Successors in Grants to the King, is but of late Time, and a New Device. Pl. C. 250. Trin. 4 Eliz. in the Case of William v. Lord Barkley.

† The Council Board is a Nobility, Honourable, and Reverend Assembly of the King and his Privy Council in the King's Court or Palace; With this Council the King himself doth sit at his Pleasure; Their Councilors consist of, and for the publick Good, and the Honour, Defence, Safety, and Profit of the Realm: It is called the Council Table, a Confident, Secundum Excellantem. They are called Consilium Regis Privatum, Concilium Secretum, and Continuum Consilium Regis. The Number of them is at the King's Will, but of ancient Time they were 12, or thereabouts. 4 Inft. 53. cap. 2.

† My Lord Coke says, That the Duty of a Privy-Councilor appears by his Oath, which consisteth of theses Articles or Parts. 1. That he shall, as far forth as Cunning and Discretion will permit, truth, justice, and even Counsel and Advise the King in all Matters to be commended, treated, and demanded in the King's Council, or by him as the King's Counselor. 2. Generally, in all Things that may be to the King's Honour and Benefit, and the Good of his Realms, Lordships, and Subjects, without Partiality, or Exception of Perons, nor leaving, or chosing it to do for Affection, Love, Mecd, Doubt, or Dread of any Person or Persons. 3. That he shall keep secret the King's Council, and all that shall be committed by way of Council in the same, without that he shall commit it, publish it, or discover it by Word, Writing, or in any other wise to any Person out of the same Council, or to any of the same Council, if it touch him, or if be Party thereof. 4. That he shall not for Gift, Mecd, nor Good, nor Promise

(A. c) * Council Privy of the King.

1. † R. 16. C. 2. 23. R. Rot. 42. Baron de Bellomonte was committed to Prioen for refusing to counsel the King, touching a Truce proposed between the King and the Scots, the said Baron being of the Prioen Council of the King.
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Promise of Good by him, nor by mean of any other Person, receive or admit from any Promotion, (or) favouring, nor for declaring, letting, or binding of any Matter or Thing to be treated or done in the said Council. 5. That he shall, with all his Might and Power, help and strengthen the King's said Council, in all that shall be thought to the same Council for the universal Good of the King and his Land, and for the Peace, Rest and Tranquility of the same. 6. That he shall withstand any Person or Persons, of what Condition, Estate, or Degree they be of, that would by way of Fear, attempt or intend the contrary. 7. And generally, that he shall observe, keep, and do all that a good and true Councillor ought to do unto his sovereign Lord. By the Power of this Oath, and the Cautions of the Realm, he is a Privy Councillor, without any Patent or Grant, during the Life of the King that maketh choice of him. 4. Hist. 54. cap. 2.

2. Rot. Pat. 21 E. 3. N. 28. The Commons pray, that no People from henceforth by Suggestion, or Conscriptation of any Accusers voluntary be commanded by Writ to come to the Council of the King, and then be constrained and compelled to make Pnce, or pay down a great Sum of Money, or otherwise to travel over the Sea as before this Time has been in Accriment of all the People, pray that such Directress and Grievances from henceforth be not done. Ait. It pleases our Lord the King, that henceforth such Things be not done against Reason.

3. Rot. Pat. 22 E. 3. N. 4. Fifteenthis granted upon diverse Conditions to be enter'd in Rolls of Parliament, petition, among others, That no Imposition, Tallage, nor Charge by way of Loan, nor other whatsoever Manner be laid by the Privy-Council of the King, without their Grant and Assent in Parliament.

4. Rot. Pat. 2. part N. 16. The Commons pray, that the Loans which are granted to the King by divers Persons of the Commons be released, and that none from henceforth be compelled to make such Loans or Contributions against their Will, for it is contrary to Reason and Franchise of the Land, and that Institution be made to those who have made such Loans or Contributions.

5. Rot. Pat. 23 E. 3. 1. Part N. 16. The Commons pray, that no Man be put to answer of his Frankenaemen, nor of any Thing which touches Life and Member, Fines and Redemptions, by Appraisals before the Council of the King, nor before his Ministers whatsoever, unless by Proces of Law thereof, & herefor to file. Ait. It pleases the King, that the Laws be kept, and that none be bound to answer of his Frankenaemen, unless by Proces of Law; but of Things which touches Life or Member, Contempts or Excess, be it done as has been used heretofore.

6. Whereas divers are accused, and are made to come before the Council of the King by Writ or other Commandment of the King, upon grievous Pain against the Law, the Commons pray, that from henceforth if any Accuser proposes any Matter for the Profit of the King, that this Satter be sent to the Judges of the one Bench or the other, or of all, thereof to enquire and decree according to the Law; and if it touches the Accuser or Party, let him sue at the Common Law; and that no Man be put to Answer without Prefentment before Justices, or Thing of Record, or by due Proces and Writ original, according to the ancient Law of the Land; And if any Thing from henceforth be done to the contrary, be it done in Law, and held for Error. Ait. Because this Article is a Article of the Great Charter, the King will eth it. Rot. 42 E. 3. N. 12.

7. 1 D. 4. N. 160. The Commons pray, that no Action personal be between Party and Party be held by Priy Seal before the Council of the Great Council; and they in the Petition shew, that in the Time of R. 2. it was to done for Brogage made to some of the Council. Ait. The Statute, thereof made, held and kept there, where the one Party is to great and rich, and the other poor, that he cannot otherwise have to recover.
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8. 2 H. 4. N. 69. The Commons pray, that all Writs or Letters of Privy Seal of our Lord the King directed to divers Lieges of the King to appear before our Lord the King in his Council, or in his Chancery, or Exchequer, upon certain Pain comprised therein, be for ever hereafter omitted, and that every Liege of the King be treated according to the rightful Laws of the Land: and they add, Let not such Writ be made unless in Case where it seems necessary, and then by Direction of the Chancellor or Council of the King for the Time being. Vide Sim ple * 4 H. 4. N. 28.

9. Mr. Pryne, in his Animadversions &c. on 4 Init. pag. 45. cap. 2, refers the Reader for the ancient Jurisdiction and Proceeding of the King's Council to Mr. William Lambard's Archiation. 188 to 186. Mr. Crompton's Jurisdiction of Courts, fol. 29 &c. The several Bundles of Petitions to the King and his Council in the Tower of London, and the Answers to them; Placita Parliamentaria coram Rege & Concilio in the Tally-Office in the Exchequer, and in the Parchment Book of them in the Tower under King Edward I. The first Part of my Brief Register and Survey of Parliamentary Writs p. 365 to 394. In what Cases and Things their Jurisdiction and Proceedings have been restrained and taken away since those Initiates were compiled by a special Act made in the Parliament of 17 Car. 1. cap. 10. Intituled, An Act for Regulating the Privy Council, and taking away the Star-Chamber Court, the Act itself will best inform you.

10. 6 Ann. cap. 6. S. 1. Enacts that the Queen shall have but one Privy Council for the Kingdom of Great Britain, and such Privy Council shall have the same Powers as the Privy Council of England had at the Time of the Union, and none other.

11. 6 Ann. cap. 7. S. 8. Enacts that the Privy Council for the Kingdom of Great Britain shall not be dissolved by the Death of her Majesty, her Heirs or Successors, but shall continue six Months, unless sooner determined by the Successor.

(B. c.) Queen, [Consort of the King.]

1. The Queen, Feme of the King, may inform by her Attorney General in the Chancery by English Bill, to have a Decree made in the Court of the Queen confirmed. For this she is a Subject yet the hath such Prerogative of the King as that she is his Feme. B. 16. J. in Chancery. Sir Robert Floyd's Cafe, ruled upon a De-

2. 2 C. 1. Rot. Claudio Hemb. 13. Conventio inter Reginam, Feme of the King, and a common Peron for the enjoying of certain Land for Years, and the Queen fecit Attornatum, and the other appointed to be in proper Peron.

3. 11 C. 1. Rot. Wallace Hemb. 1. The King gave a Manor to the Queen his Feme, and her Heirs for ever, adeo integre & plene, as S. held it. Other fuch Grant. Hemb. 3.

4. 2 C. 1. Rot. Wallace Hemb. 2. The King granted to the Queen his Feme such Land ad vitam suam, i.e. raman quod Maneria &c. a Corona Angliae non lapenatur.

King E. 4. proves certain
Lands to the Queen his
Frame for
Term of her Life; and she lease'd it for Years; And so it seems that she has a Capacity to take of the Grant of the King, and she may lease alone without the King; And so she is a Person exempt. Br. Non- nabilite. pl. 61. cites H. 7. 7. — It was adjudged, that where H. 8. granted a Manor to the Queen his Feme for Life; there the Queen was a sole Person exempt by the Common Law, and may make Lease or Grant without the King, and so may plead and be impleaded alone. 4 Rep. 23 b. Trin. 26 Eliz. in the Cafe of Clark v. Pembisher.

5. 11 Cl. 1.
Prerogative of the King.

5. 11 E. 1. Rot. Chart. Henib. 5. The King granted to the Queen a Manor Habendum ibi & Hereditas.


7. 9 E. 1. Rot. Chart. Henib. 4. Pro Iohanne Ferrer, the * Orig is Queen, Confors Regis, * granted Maneirum dilecto Militi nostro Domino (Granter.) Iohanni Ferrer.

8. 8 E. 1. Henib. 4. The Queen by Affento and Consent of the King granted a Manor &c.

9. 10 E. 1. Rot. Chart. Henib. 3. Part 16. Inscreminus the Grant of the Queen of the Manor in Fee Familiari Militi nostro Galfrido de Pichford, which had been granted to the Queen and her Heirs by another &c. The King confirmed &c.

10. 11 E. 1. Rot. Chart. Henib. 4. The King confirmed a Grant which the Queen had made &c. 18 E. 1. Henib. 11. 20. accordingly by of a Grant in Fee by the Queen.


12. The King cannot grant to another for Life the Office of making Saddles for the Queen; because the is as a Feme folio, and to may elect own Officers. Dibb. p. 6. in. B. between Admiration and Care.

13. In Quaere Impedit by the Queen, the Writ wanted these Words, Co. Lit. Et nisi facet. Thorp said the Queen is a Person exempt, and shall not be amerced for her Nonsect; and therefore the shall not find Placitis de Pronto,

14. In Scire facias it was admitted, that the King may give to the Queen certain Portion by his Letters Patent, by Divition certain. And to see, that the Queen has a Capacity, tho' she be Feme Covert, and may take of her Baron; and this seems to be for Term of Life. Br. Nonability, pl. 58. cites 49 E. 3. 4.

15. In Formeldon the Tenant vouch'd the Queen and two others, as Heirs of the Duke of York, and showed Cause by the Duke. Brian said the Queen is not a Person able to be vouch'd as here; for this is a Real Matter; but in Personal Causes she is exempt, and has Ability as a Private Person, and may make Gift or Leave for Term of Life: And therefore by him the Tenant shall have just * Aid of the King, and after of the Queen, but not of both together. And it was doubted if the Queen be a private Person + exempted by the Common Law, or by Statute; for if it be by Statute, it ought to be pleaded; Per Brian; for it is a private Statute. But per Tounsend, if he be exempt by the Common Law, the Tenant need not have Aid of the King. Br. Nonability, pl. 56. cites 3 H. 7. 14.

16. Suit by Petition does not lie to the Queen; for Affe, Precipio Co. Lit. good reddit, and the like lies against her. Br. Nonability, pl. 60. cites 153 b.

17. In Quaere Impedit brought by the Queen, some say that Pleasancy is no Plea more than in Cae of the King. Co. Lit. 133 a.

18. If any Bailiff of the Queen's bring an Action concerning the Hundred, he shall say In Contempt Domini Regis & Regine. Co. Lit. 133 a.
Prerogative of the King.

19. The Queen shall pay no Toll. Co. Litt. 133. b.

20. If the Tenant of the Queen alien a certain Part of his Tenancy to one, and another Part to another, the Queen may disfrain in any one Part for the whole, as the King may do, but other Lords shall disfrain but for the Rate; and therefore where the Queen so disfrains, there lies a Writ de De-onerando pro rata Portione. Co. Litt. 133. b.

21. The Writ of Right shall not be directed to the Queen no more than to the King, but to her Bailiff; otherwise it is when any other is Lord. Co. Litt. 133. b.

22. A Protection shall be allowed against the Queen, but not against the King. Co. Litt. 133. b.

23. The Queen is not bound by the Statute of Mortmain for driving a Dintref into another County. Co. Litt. 133. b.

24. If any do convey the Death of the Queen, and declare it by any overt Act, the very Intent is Treason as in the Case of the King. Co. Litt. 133. b.

25. Queen Confort, in Case of Treason by her, shall be tried per Pares, as Queen Anne, the Wife ot H. 8. was. Patch. 28. H. 8. in the Tower of London before the D. of Norfolk then High Steward. 2 Heng. 50.

26. It was adjudged, that where the Queen was Tenant for Life, and a Copyhold of Inheritance Ejects to her; there the Queen may grant it to whom the pleasce, and this shall bind the King his Heirs and Successors for ever; for she was Domino pro Tempore, and the Custom of the Manor shall bind the King. 4 Rep. 23. b. Trin. 26 Eliz. in Case of Clark v. Pennflather.

* It was refelved, 1. That this ought to be Sponte by the Subject for Lodging, so that this ought to be at the Pleasure of the Subject, whether he will offer, or give, or no. And for this all Fines upon Judgment, or by Offer or Fine for Alienation, or in any other Case where the Subject does not do it Sponte, sine aliqua conditione, viz. That the King of right ought to have it, there the Queen shall have nothing.

1. 15 E. 3. cap. 6. Item, That the Queen's Gold shall not run in Demand by reason of this Grant. This was upon the Grant of the 9th. Lamb Fleece and Sheep by way of Subsidy. Rot. Pell. 15 E. 3. Doris 60. for a Fifteenth.

2. It ought to be Sponte, sine Consideratione annujus Reversionis seu Interesse, That the King hath in Efte in Jure Cerna, and for this upon Sale of Devis of his Lands, or Wares, or Goods of Fellen, Outlers, &c. and silltial Case, for these are Contracts and Bargains concerning the Revenues and Interests of the King; And it cannot be laid in such Case, that the Subjects Sponte se obligant, as to purchase or buying any the Revenues or Interests which the King has.

3. It ought to be Sponte sine Consideratione, &c. non ex mere Gratia & Benevolentia Subditis; For that which is of mere Grace is not properly said of Obligation or Duty, and the Words of the Records are to have De illo qui Sponte se Obligant, and so it was ordained by the King and his Council, as appears by the Record of Hill 4 E. 1. in Staccario &c.

4. It ought to be Sponte sine Consideratione, quae non attingit Reversiones us Interesse Cerna in any Thing which the King has. As if the Subject give to the King Sponte a Sum of Money for Licence in Mortmain, or for to create a Tenure of his own, to have a Fair, Market, Park, Chafes, or H aren, within his Manor, the Queen shall have it; For the Subject did this Sponte, and was not constrained to it. And this does not concern any Revenue or Interests of the King. But if the King has a Fair or Market, or Parks, or Warrens, and grants it for a Sum of Money, there the Queen shall have nothing; For this was a Thing in Efte, and Parcel of the Revenue of the King. And by that it appears, that by as much as little or nothing is given in such Case where this of right is due, this is not now of any such Value as was pretended. And this Resolution was reported to our Sovereign Lord the King by Popham, in the Gallery at Hitehall, 12 Rep. 21. Patch. 4 Jan.
Prerogative of the King.

2. 31 E. 3. cap. 13. The Commons grant a Fifteenth to the King, and our Sovereign Lord the King hath granted to the said Commons, That the said Quinzim [being] so granted, no Gold shall be demanded nor levied to the Use of the Queen, but that the said Commons shall be there of wholly discharged.

(D. c) * Monopolies.

1. Rot. Parl. 1. H. 5. N. 41. The Commons pray, That all Merchants may export to any Place abroad, or import from any Place by the King any Goods, (except those of the Staple) at their Pleasure, paying the Customs and other Duties due to you; any Proclamation to the contrary notwithstanding &c. Answer. The King will be advised by his Council.

* A monopoly is an Institution, or Allowance by his Grant, Commission, or otherwise, to any Person or Persons, Bodies Politick or Corporate of or for the sole Printing, Selling, Making, Working, or Using of any Thing, whereby any Person or Persons, Bodies Politick or Corporate are entitled to any Freedom, or Liberty that they had before, or hindered in their lawful Trade. 2 Inl. 181. cap. 85 Hawk. Pl. C 231. cap. 79 S. 1 —— The Difference between Monopoly and Engrossing is, the one is by Patent from the King, the other is by Act of the Subject between Party and Party. Arg. S. 10, Palfch. 56 Car. 2. B R. in Case of the East India Company v. Sandys.

2. Monopolies are against the ancient and fundamental Laws of the Realm. 3 Inl. 181. cap. 85. ——— Generally all Monopolies are against Magna Charta, because they are against the Liberty and Freedom of the Subject and the Law of the Land. 2 Inl. 47.

(D. c. 2) Monopolies as to Printing, and of Suits relating thereto.

1. The Patent for Printing Law Books, derived down to Col. Atkins, was to Print all Law Books that concern the Common Law, wherein Nobody else has an especial Privilege granted under the Great Seal of England. Afterwards an Agreement was made, in Pursuance of this Patent, with the Stationers, which was, That the Stationers should no longer Print Law Books, without the Consent of Col. Atkins. In arguing the Case of Printing Roll's Abridgment, being Licenced by the Judges, it was imputed and admitted by the Council of the Patentee in Parliament. 1. That this Grant is no publick Grievance. 2. That the stopping the Impression, tho' licenced by the Judges is justifiable. 3. That the Law Patentees may not Print Law Books without the Judges Licence. 4. That an Injunction out of Chancery against Printing such Book is Just and Right. The Words of the Act of 14 Car. 2. 33. whereby the Licencing of Books is enacted, lay, That no Man shall Print a Book till it be licenced. Therefore there are two Things in this Clause. 1. That no Man can Print a Book till it be licenced. 2. The Licence must purify this Act of Parliament. If I bring a Book to the Licencer, and he will not [licence it] I have no Remedy, not so much as an Action upon the Case, only a Recourse to the King to make Complaint. So that although this Abridgment be licenced by the Judges, yet if in Truth it be not licenced by the King to Print it, though the Book may well be Printed by Him that has Authority, yet he that has No Authority cannot. It is one Thing to licence a Book, by saying, This Book is fit for Publick View; And another Thing to say, This Book thus licensed shall be
Prerogative of the King.

be Printed by any that can get it into his Hands. License to Print, goes to the Bookseller or Printer; License to be Printed, goes to the King. Cart. 39. Mich. 18 Car. 2. in Parliament. The Stationers v. the Patentees about Printing Roll's Abridgment.

2. The Company of Stationers brought an Action against S. for Printing Gadbury's Almanack without their Leave. Upon a Special Verdict found, the Question was, Whether the Letter Patents granted to the Company for the sole Printing of Almanacks were good or not? The Court said, That Almanacks might be accounted Prerogative Copies, and without Doctur, this might be granted by the King, and accordingly gave Judgment for the Plaintiffs, Nih Caufa &c. 5 Mod. 256. Trin. 29 Car. 2. C. B. The Company of Stationers v. Seymore.

S. C. cited
Skin 254
Patch 1 Jac.
2 B. R. in Case of the Company of Stationers v. Parker. But ibid. 256 the Court held, they thought it a hard Case. A Question was, Whether the Grant of the Crown to the Company of Stationers to have the sole Printing of Almanacks, provided they were licensed by the Archbishop of Canterbury, and Bishop of London, were a good Grant, or void, because against the Liberty of the Subjects? It was argued in Favour of the Patent, that since the Art of Printing was found out, it has been more under the Care of the Crown than any other Art whatsoever. 11th. Because it was an Art introduced by the Care of the Crown; it said in Carter's Case, which gave the Crown a Propriety in the Trade. 12th. Because of the Greatness of the Inconvenience, that may redound to the Publick, from the Mismanagement of the Premis. In Case Rep. 89, the Controversy was about the Patent for sole Printing of all Law Books; judgment against the Patentee in B. R. for the Uncertainty of what should be offered a Law Book; but this Judgment was reversed in the House of Lords, 1 Mod. 256. Seymour's Case (full in Point, the same Objections made as here.) 25 Jan. 32 Car. 2. Stationers v. Company of Stationers. zwe. B. Shiner, Patent allowed for Printers, Pfaffers, Pfahms, and Almanacks. 32 Car. 2 in Chancery, Company of Stationers v. John Gale; No Decree, indeed, for Printing Pfahms, Pfaffers, and Almanacks; But the Reason was, because the Person controverting the Patent, submitted without 25 Jan. 32 Car. 2. Stationers' Company v. B. Shiner; Patent for Printing Pfahms allowed. Mich. 33 Car. 2. Stationers' Company v. R. Another Patent for Pfahms. Trin. 12 W. 5. Stationers' Company. A Patent for Almanacks. In Stat. 9 Ann., this very Patent now in Question was taken Notice of. And per Car. the Patent for sole Printing of Law Books is not now to be shaken, having had the Sanction of the Crown of Lords. Monopolies are odious; this Case is therefore to be distinguished, by deriving to the Crown some special Interest in Almanacks. No Opinion was given; but to be spoken to again. 10 Mod. 106, 107, Mich. 11 Ann. B. R. in Case of Company of Stationers v.


3. An Injunction was granted to stay the Selling of some Books imported from Holland &c. the sole Printing whereof belonged to the Company of Stationers. 2 Show. 258. to 261. Hill. 34 & 35 Car. 2. the Company of Stationers v. Lee.

4. King Charles II. granted to the Plaintiff the sole Printing of Blank Writs, Bonds, and Indentures, for the Space of 39 Years. The Defendant was a Stationer, and the Company of Stationers had constantly for the Space of 40 Years past, before this Grant, printed Blank Bonds, the Question was, Whether this Grant was good exclusive of all others? The Court said, That the King had a Prerogative to grant the sole Printing to a particular Person; but inclined, that the Patent was not good. 3 Mod. 75. Patch. 1 Jac. 2. B. R. Earl of Yarmouth v. Darrel.

5. King Charles 1. grants to the University of Oxon, Power to Print their Libros content, in the Charter granted by King James to the Stationers of London. Quam alioi non prohibibis. In an Action brought against P. by the Stationers of London, he pleads the Letters Patent of Car. I. The Court inclined for the Defendant, for this is a Prerogative of Power annexed to the Person of the King, which he could not grant, but that he may refuse; otherwise it is of the Grants of an Interest; but Ad[iv]-perse vult. Skin. 233 to 236. Patch. 1 Jac. 2. B. R. Company of Stationers v. Parker.

6. In 3 Ch. I. there was a Patent granted to the University of Oxford to Print Bibles and other Books not prohibited. 30 May, 8 Car. the Patent is confirmed, and limits that there shall be but two Presets and three Printers.
Prerogative of the King. 

Printers. The Plaintiffs claim as the King's Printers under several Patents continued down by meafe Alignments, and bring their Bill to restrain the Defendants from Printing Bibles &c. The Lord Keeper was of Opinion, That it was never meant by the Patent to the University, that they should Print more than for their own Use, or at least but some small Number more to compensate their Charge; but as they now manage it, they would ingrofe the whole Profit of Printing to themselves, and prevent the King's Farmers of the Benefit. However, he said, That the Validity of their Patents was a Matter proper to be determined at Law, and the Plaintiffs were now proper only for a Discovery, and therefore ordered, that the Plaintiffs should bring an Action at Law in B. R. against the University, or those who claimed under the University, and that it should be tried at the Bar, and the Defendants were to admit that they had Printed a competent Number of Bibles at the Trial. And tho' the Plaintiffs pretend'd much for an Injunction to stay the University Printers, yet the Lord Keeper refused to grant it; because, if it should be found for them, they would receive a Prejudice which he could not compensate, nor make good to them. 2 Vern. 275. Mich. 1684.

Hills & al. v. the University of Oxford & al.

7. Sergeant Hawkins says, It seems to be the better Opinion, That the R. S. L. King may grant to particular Persons the sole Ufe of some particular Im- portation, as of Printing the Holy Scriptures, and Law Books &c. The sergeant's whereof an unrestrained Liberty would be of dangerous Consequence. Authorities, Hawk. Pl. C. 231. S. 6.

242 says, That neither

7. Sigeb. 792. (Trin. 29 Car. 2. B. R. The Stationer's Company v. Seymour) &c; Mod. 75. [Patch. 1. Jac. 2. Earl of Yarmouth v. Darrel.] nor his Reasons seem to carry any great Weight with them; That as to the Cafe of the Company of Stationers v. Seymour, which is most to his Purpofe, the Action was brought against Seymour, for printing an Almanack, which was there held to be the proper Copy of the Company of Stationers only with some trifling Additions concerning the Weather &c. Besides, the Act of 15 and 16 Car. 2. against Printing without Licence was then in Force; as it was alfo, when that Judgment in the Haufe of Lords, cited in that Cafe, was given against one who printed a Law Book, from the Patentee [And after other Things, he says] But further, the Patent for printing Law Books as it stands at this Day, does not at all prevent the Inconvenience Mr. Hawkins would refred; For these Books are never perused by any of the Learned before they are put to the Press; and if the Maxim of Fum Fum, or Dollar Dobbin come to their Pres under the Title of Law, I dare undertake, the Patents would make no Scruple of printing them as fuch; therefore if it should be admitted to be reasonable that some learned Man of the refpective Professions of Law, Divinity and Physick &c. ought to peruse every Book before it goes to the Press, this is far from being a Reason for establishing fuch a Patent as is contended for; If there be any dangerous Confequences to be apprehended, they must arise from the Books not being perused by a Man of Judgment, appointed by Authority, and not from the Printing them by this or that Man; For let the Book be ftruck perused, and have the Sanction of an Imprimator, the Printing will be probably better performed, and the Publith better ferved, where there are feveral Shops to go to, than where we are tied up to one; For in this Cafe, whatever Hardships, or unfair Dealing we meet with, it may be difficult to find Redresses. [As to the Law-Patent, I believe I may confidently afirme, that there is not one Individual Gentleman of Learning in the Profefion, but thinks the Patents have most profefly abused it, to the great Defilement and Defpereation of the Law, and the great Injury of the Body of its Profeflers. Whence arises the great Defilement entertained by Foreigners of our Laws, but from the many trifling, paltry Books, which the Patents, from a Penumbré of Power, which they flatter themselves to be invested withal, as well as Want of Modesty, and decent Regard to their Superiors, and in Defiance and Contempt of the Profeflion, have from time to time murdered into the World! And nothing probably can secure the Honour and Dignity of our Laws, but putting a Stop to thefe Licentious Practices, by restraining the Patents from publithing any Book, within the Compafs of their Patent, without the Sanction of an Imprimator; And under fuch Restriction I am inclined to think the Patent may prove more prejudicial to the Publick.]
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Monop. 56. See the same Case argued. Cr. 44. between Davy and Allen.


A Grant to any particular Corporation of the sole Importation of any Merchantize is void, whether such Merchantize be prohibited or not, as being against the Freedom of Trade, and discouraging Labour and Industry, and restraining Persons from getting an honest livelihood by a lawful Employment, and putting it in the Power of particular Persons, to set what Prices they please, all which are manifest Inconveniences. Hawk. Pl. C. 231. cap. 79. S. 2, 5.

Hawk. Pl. C. 231. cap. 79.

§ 4 says it has been resolved for the like Reason as in the Note on pl. 2 and 3 above.

Jo. 231.


§ 4. If the King grants by Patent the sole ingrossing of Wills and Inventories in the Prerogative Court J. S. This is a Monopoly, and to void; for it takes away the Liberty of the Subject, who may ingross it himself, or any other whom he pleases. At the Parliament of 15 and 19 Jac. Resolved in Sir Robert Fludd's Case. And the Patent, adjudged by the Parliament to be a Grievance, and Sir Robert Fludd put out of the House for a Projector.

§ 5. If the King grants by Patent the sole making of Bills, Pleas, and Briefs in the Council of York to J. S. for a certain Fee, where before the Attorney's used to make them, and to have the Fees, by which new Fees are allowed to the Attorneys; This is a void Patent, and a Grievance. For this is a Monopoly; For by the same Reason, by several Patents, the sole making of Bills and Declarations, may be limited to certain Persons in every Court of Westminster, and to Lawyers utterly excluded to make any of them. At the Parliament 15 and 19 Jac. Resolved in Lewton's Case, and his Patent adjudged a Grievance: For it is against Reason that every one shall be compelled to shew his Evidence to one Man, and upon Cross Bills he shall have the View of the Evidence of both Sides, which is not Reason.

§ 6. In 50. E. 3. John Peachey of London was severely punished for procuring a Licence under the Great Seal, that he only might sell fortified Wines in London. 3. Int. 181. cap. 85.

§ 7. King Philip and Queen Mary, by their Letters Patents, granted to the Mayor, Bailiffs, and Burgesses of Southampton and their Successors, (for that King Philip first landed there) that no Wines called Mahafies, brought into this Realm from the Parts beyond the Seas by any liege Man or Alien, should be discharged, or landed in any other Part of the Realm, but only at the said Town and Port of Southampton, with a Prohibition, that no Person or Persons shall do otherwise, upon Pain to pay treble Custom; and it was resolved by all the Judges of England, that this Grant made in Restraint of the Landing of the same Wines was against the Laws and Statutes of this Realm, viz. Magna Charta, 29, 30. 9 E. 3. cap. 1. 14 E. 3. 25 E. 3. cap. 27. & 28 E. 3. Statute of the Staple. 2 R. 2. cap. 1. and others; And also that the Admission of Treble Custom was against Law, and merely void; And after at the Parliament held in Anno 5 Eliz. the Patent, as to Aliens, was by a private Act confirmed by Parliament, and not for English. 3 Int. 182. cap. 85.

§ 8. The Judges have hitherto allowed of Monopoly Patents, where any Man by his own Charge and Industry, or by his own Wit, or Invention, doth bring any new Trade into the Realm, or any Engine tending to the Furtherance of a Trade, that never was used before; And that for the Good of
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of the Realm; That in such Cafes the King may grant him a Monopoly Patent for some reasonable Time, until the Subjects may learn the fame, in consideration of the Good that he doth bring by his Invention to the Benefit of the Commonwealth; otherwife not. Nov 182. Arg. cites 9 El. Hatfield's Cafe.

9. A Patent was granted for sole making Friadades, upon Suggestion of bringing the Skill of making them into England, and a foriture was given of the Goods and of 100 l. one Monety to the King, the other to the Patentee, upon any Offender; Thereupon an Information was exhibited in the Exchequer against several, who demurred, For that it was against Law to have such Penalties of the Goods and 100 l. to be forfeited by Force of Letters Patents. And the Court being of Opinion against the Patentee, he exhibited his English Bill, in the Exchequer Chamber against them, where upon the Examination of the Cause, it appeared, that some Clothiers did make Baites very like to the Patentee's Friadades; And that they were not to make them before the Patentee's Patent for which Cause they were neither punished nor restrained from making the like Utensils beyond Seas; nevertheless, when the Warders of the Company of Cutlers forbad before some of the Council, and some learned in the Law, that they used to make the same before, they good in for such Liberty; and that such a Light Difference or Invention should be no Cause to restrain them: thereupon he could never have Benefit of this Patent, although he laboured very greatly therein. Nov 178. Mathay's Cafe.

The Difference is betweena Grant to particular Persons for the sole Use of a Trade between, and a New-invented Art, See Win's Rep. 189, by Lord Ch. J. Parker Hill. 1711. in the Case of Mitcell v. Reynolds—Where the New Invention, for which a Patent was granted, is only a Varying in the Form of making it, and not in Subsistence, the Patent was adjudged void. Arg. 2 Brown. 114. Mich. 9 Jac. in the Case of Gros v. Wellwood, Cites the Case of Hatfield and Johnstoun.

10. If a Man has brought in a New Invention, or a new Trade, within the Realm, the King, in Peril of his Life, and Consequence of his Estate or Stock &c. Or if a Man has made a new Discovery of any Thing, in such Cafes the King, of his Grace and Favour, in Recompence of his Costs and Travails, may grant by Charter to him, That he only shall use such a Trade, or Trade, for a certain Time; Because at first the People of the Kingdom are ignorant, or have not the Knowledge or Skill to use it; But when that Patent is expired, the King cannot make a new Grant thereof; For when the Trade is become common, and others have been bound Apprentices in the same Trade, there is no Reason that such should be forbidden to use it. Godb. 254. pl. 351. Patn. 12 Jac. B. R. in the cafe of Cloathworkers of Ipswich.

11. A Patent for Greenland is good, because it was found at great Peril of the Life of the first Finder. Arg. Roll. R. 5. in the Case of the Taylors of Ipswich and Shering.

12. The Patent to the College of Physicians, that none practifiee Phywick, but such as are allowed by them, had not been good, if not confirmed by Act of Parliament. Per Croke J. and agreed to by Coke Ch. J. Roll. R. 5. in the Taylors of Ipswich Cafe.

13. 21 Jac. 1. cap. 3. 8. 1. Enactts, That all Monopolies, Commissions, Grants, Licenses, Charters, and Letters Patents, granted to any Persons, Bodies Politick, or Corporations, for the sole Buying, Selling, Making, Working, or Using of any Thing within this Realm, or of any other Monopolies, or Privileges, or Liberty, to dispose with any others, or to give Licence to do, use, or exercise any Thing against the Interest of any Law or Statute, or to give any Warrant for such Dispensation or Licence; or to agree or compound with any others for any Penalty limited by any Statute, or of any Grant of the Benefit of any Fortune, or any Sum of Money, that shall be due by any Statute before Judgment thereupon had; And all Proclamations, Inhibitions, References, War-

being indulged for encouragement of invention; But the statute 21 Jac. 1. cap. 3. 8. 1. enacted, That all Monopolies, for the sole Buying, Selling, Making, Working, or Using of any Thing within this Realm, or of any other Monopolies, or Privileges, or Liberty, to dispose with any others, or to give Licence to do, use, or exercise any Thing against the Interest of any Law or Statute, or to give any Warrant for such Dispensation or Licence; or to agree or compound with any others for any Penalty limited by any Statute, or of any Grant of the Benefit of any Fortune, or any Sum of Money, that shall be due by any Statute before Judgment thereupon had; And all Proclamations, Inhibitions, References, War-

the exercise of privileges or monopolies be vested in the Crown, and that such privileges or monopolies be granted only by Act of Parliament. This Act is for the purpose of regulating and controlling the exercise of privileges or monopolies, and vests the power of granting such privileges or monopolies in the Crown. The Act provides that all privileges or monopolies granted to persons, bodies politic, or corporations for the sole buying, selling, making, working, or using of any thing within the realm or of any other privileges or monopolies, or privileges, or liberties, to dispose with any others, or to give licence to do, use, or exercise any thing against the interest of any law or statute, or to give any warrant for such dispensation or licence, or to agree or compound with any others for any penalty limited by any statute, or of any grant of the benefit of any fortune, or any sum of money, that shall be due by any statute before judgment thereupon had, and all proclamations, inhibitions, references, warrants granted for any privilege or monopoly be vested in the Crown, and that such privileges or monopolies be granted only by Act of Parliament.
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S. 3. All Persons shall be disabiled to have any Monopoly, or any such Grants as aforesaid.

S. 5. Letters Patents of new Manufactures heretofore granted for twenty-one Years or under, to the Inventors thereof; where they are not contrary to Law, or any way prejudicial to the Commonwealth, are fixed; so also are such as have been hertofore granted, for more than twenty-one Years, good for twenty-one Years from the Date of their Patent, notwithstanding this Statute.

S. 6. Neither shall this Act extend to Grants of new Manufactures hereafter to be made to the Inventors thereof for 14 Years or under, being not contrary to Law, or prejudicial to the Commonwealth, nor to Grants heretofore confirmed by Act of Parliament, so long as such Acts continue in Force.

S. 9. This Act shall not be prejudicial to London, or any other Corporation, for any Grant made them concerning their Customs; nor any Corporation, Concerning...
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Company, or Fellowship of any Act, Trade, or Mystery, nor to any Company or Society of Merchants, for the ordering of any Trade.

Grants, Charters, and Letters Patents, to any City or Town Corporate &c. But also the Customs used within the same, are excepted out of this Act, which, though more to be attended, because the first Clause of the Privilege of the Act doth extend but to Commissions, Grants, Licents, Charters, and Letters patent. 3 Hl. 183.

S. 10. Neither shall it extend to any Grant of Privilege for Printing, Digging, or Making or Compounding of Salt Petre, or Gunpowder, or Coal, or making of Ordnance, or Shot for Ordnance, nor to any Grant of any Office now in Being, other than such as are devided by the King's Proclamation.

S. 11. Nor to any Privilege of Digging, or Making of Allom. 4 Hl. 22.

S. 12. Nor to the Liberties of Newcastle concerning Sea Coals, nor to Liencing of Vessels, so as the King receiveth the Benefit. 5 Hl. 22.


S. 14. Nor that of Abraham Baker, for making of Snuff; Nor to that of Edward Lord Dudley, for making of Iron Ecey, and making the same into Cast Iron Works or Bars, with Sea or Pit Coals.

in respect of these Words (sole uring). 2. Offices are Duties, so called, to put the Office in murdr of his Duty.

That which is void and against Law, is no Duty, unless it be Not to use them. 4 Such as are erected against Law are Monopolies and Oppositions of the People, and no Offices. 3 In Acts of Parliament, Lawful Offices are intended, as in like Cases has been often adjudged; Therefore unlawful Offices are all taken away by this Act, and lawful Offices remain and continue; Secondly, That it be an Office hereafter erected; by this Act the Erection of all new Offices, which were not erected before this Act, are wholly taken away. Thirdly, That it be now in Being, and put in Execution. The Office was erected before this Act, yet if it were not in Being, and in Execution, the 19th Day of February, in the 21st Year of the Reign of King James (at which Time this Parliament began) it is clearly taken away by this Act. Fourthly, That it be such an Office as hath not been decribed, that is (for so is the Record of Parliament, and not (devided) as it is in the printed Book) by any of his Majesty's Proclamations; For all such Offices as be devided, that is, either forbidden or prohibited by any of his Majesty's Proclamations, or where the Party griev'd is left to the Relief of the Common Law by any Proclamation, they be also devided; for being contrary to the Laws of this Realm, as it is declared and enacted by this Act, they are also devided with a Writ, and can never be granted hereafter; The fifth Proviso, concerning the Making of * Allom, or Allom Mines, needed not; for they belong to the Subject in whose Ground forever the Ore is; And therefore any Privilege thereof cannot be granted, but in the King's own Ground. The sixth Proviso concerns the Holism of New-castle &c. This Clause was inserted in respect of these Words (sole uring) The rest of the Provisoes concern particular Perfons, and do exempt and except certain Suppod Privileges out of the Punishment and Penalty of the Law, but except them of like Force and Effect, as they were before the making of it; it is to be observed, that all the Provisoes, after the sixth, extend only to the Supposed Privileges therein particularly mentioned, already granted, and not to any to be granted hereafter. 3 Hl. 185.— * Hawk. Pl. C. 254. cap. 79. S. 25.

14. In Trefpas for seiling a Ship &c. whereby the Plaintiff left his Voyage, the Defendant justified under the Canony Patent granted by the King to such Perfons to have the sole Trade; But the Plaintiff had Judgment, For the King cannot grant that the Subject's Goods shall be forfeited for doing a Thing prohibited by Patent. S. 441. Hill. 21, & 22 Car. 2. Horn v. Ivy.

15. It has been often resolved, That Custom may create a Monopoly, as the Cafe in the Register is, that none should exercise the Trade of a Dyer in Rippon without the Archibishop of York's Licence. Vent. 196. Pach 24 Car. 2. in the Cafe of Broadnox.


16. The East-India Company brought a Bill in Chancery, setting forth their Letters Patents, and the great Charges they were at in making Leagues with Princes, and building Forts, and maintaining Forces in India; and the Defendants having traded thither, the Plaintiff alleged a Discovery what the Defendants had traded for, and that they might be compell'd to bear a proportionable Part of the said Charges. The Defendants pleaded, answered and demurr'd: They pleaded it by an Affidavit, and set forth the Statute of 21 Jac. against a suppos'd Act relating thereunto. 3 Hl. 185.
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restraining Trade, and 9 E. 3, that Merchants might trade anywhere not in
Family with the King's, and aver'd the Indians were not in Family. Lord
K. North held, that this was only a Charter for Regulating Trade, and
that there had been many Patents for that Purpose soon after the making
of the Statute of 21 Jac. which had never been thought illegal, nor com-
plained of in any subsequent Parliament, and therefore over-ruled the
Plea and Damarrer, and ordered the Defendants to answer the Plaintiff's

17. In a special Action on the Cape the Plaintiffs declared, that in
the Reign of H. 4. there was a Society of Merchants-Adventurers in
England, and that afterwards Queen Elizabeth did incorporate them by
Name of The Governor and Company of the Merchants Adventurers &c.,
with Privilege to trade to Holland, Zealand, Brabant, Flanders &c. pro-
hibiting all others not free of that Company &c. and that the Defendant,
not being free of the said Company, did trade there without their Au-
thority, and imported Goods from thence Ad damnum &c. The De-
fendant pleaded the Statute of Ed. 3. that the Seas shall be open to all Mer-
chants to pass with their Merchandise whether they please; and upon De-
marrer to the Plea, the Question was, Whether the King had a Pre-
rogative to restrain his Subjects from trading to particular Places? See
the Arguments on both Sides; but it does not appear that any Judgment
or Opinion of the Court was given. 3 Mod. 126. Trin. 2 Jac. 2. B. R.
The Company of Merchants-Adventurers v. Rebow.

18. In Trover of a Ship, the Jury found, That Cha. 2. granted to
the African Company all the Regions, Countries &c. from Saly inclu-
sive to Cape of Good Hope inclusive, with all Islands now adjoining to those
Coasts &c. and all Ports &c. to hold to them and their Successors for
1000 Years, with Licence for them and no others, to send Ships &c. and to
have all Mines of Gold and Silver there &c. and the entire and only Liberty
to trade there, any Law or Statute to the contrary notwithstanding, and
prohibiting any to trade there, unless by Licence first had, under Pain of
Imprisonment for Pleasure, and the Forfeiture of Ships and Goods
&c. with Power to search and seize &c. one Moiety to the King, and the
other to the Company; and created a Court of Judicature for hear-
ing and Determining all Cases of Forfeiture and Seisure for trading thither.
The Company by Virtue of this Grant authorised certain Persons
to seize the Ships &c. of such as should trade in an Infidel Country
within the Limits of that Company. Accordingly the Defendants
seiz'd the Plaintiff's Ship and Goods, and at the Defendant's Instance
there was a Process in the Admiralty against the said Ship; and none
appearing for her there, she was condemned; but whether the Defend-
ant be guilty, the Jury say they know not. Et il &c. pro Quer. Da-
mages to 4300 l. and Costs to 2 l. 3 s. 4d. Et il pro Defend &c. This
special Verdict was obtained at the Importunity of their Majesty's Coun-
sel for the Defendant. It was adjudged for the Plaintiff by the whole
Court. Show. 135 to 145. Hill. 1 W. & M. (where is a long Ar-
ument prepared by the Reporter) Nightingale v. Bridges.

19. 2 W. & M. S. 2. cap. 9. Enacts that Letters Patents for the sole
Making of Brandy or Spirits from Malted Corn &c. as a new Invention, are
declared void.
(E. c. 2) Monopolies. Tried where, and How.

1. 21 Jac. 1. 

2dly. This Remedy may be had * in the Court of the King’s Bench, Common Place and Exchequer, or any of them at the Election of the Party grieved. 3dly. The Party grieved shall recover double Damages and double Costs; in which Suit no Stay or other Delay shall be allowed, nor any more than one Imparlance.

21 Jac. 1. 

By this Party, that all Commissions, Grants, Licences, Chancery, Bill. This Act re- cap. 3. S. z. st. nearing, Warrants of Assis- ffrainant, Warrants of Affiance, and other Matters and Things tending to a Monopoly, shall be examined, heard, tried and determined by, and according to the Common Laws of the Realm, and not otherwise.

Common Law, hath provided by this Clause, that they shall be Examined, Heard, Tried and Determined in the Courts of the Common Law, according to the Common Law, and * not at the Council-Table, Star-Chamber, Chancery, Exchequer-Chamber, or any other Court of like Nature, but only according to the Common Laws of this Realm, with Words Negative, (and not otherwise;) for such Boldness the Monopolists took, that often at the Council-Table, Star Chamber, Chancery, and Exchequer Chamber, Petitions, Informations and Bills were preferred in the Star-Chamber &c. pretending a Consent for not obeying the Commissions and Clauses of the said Grants of Monopolies, and of the Proclamations &c. concerning the same; for the preventing of which Mitchell this Branch was added, 5 Inf. 182. 183. cap. 85.—7 Hawk. Pl. C. 323. cap. 79. S. 11.

(E. c. 3) Judgment. And recovered, what.

1. 21 Jac. 1. 

5. 4 If any Person or Persons shall, after Notice given &c. cause or procure any such Action to be stayed or delayed before Judgment, by Colour or Means of any Order, Warrant, Power, or Authority, save only the Privy Council, or any such Action shall be brought and depending, the Person or Persons so offending shall incur the Danger of Premunire &c.-Exchequer-Chamber, and the like; and likewise to those that shall procure any Warrant &c. from the King &c. And so it was resolved by a Committee of both Houses before this Bill passed, but it extended not to the Judges of the Court before whom any such Action shall be brought; nor before Judgments, Days shall be given by Orders of Court &c. 5 Inf. 182. cap. 85.

S. 4. Or after Judgment had upon such Action shall cause or procure Execution of, or upon any such Judgment to be stayed by Colour or Means of any Order, Warrant, Power or Authority, save only by Writ of Error, or Attaint, the Person or Persons so offending shall incur the Danger of Premunire &c.-Exchequer-Chamber, and the like; and likewise to those that shall procure any Warrant &c. from the King &c. And so it was resolved by a Committee of both Houses before this Bill passed, but it extended not to the Judges of the Court before whom any such Action shall be brought; nor before Judgments, Days shall be given by Orders of Court &c. 5 Inf. 182. cap. 85.—Hawk. Pl. C. 232. cap. 79. S. 15.
Prerogative of the King.

(F. c.) Intruder. In what Cases a Man shall be said an Intruder.

1. WHERE the Determination of the Lease appears of Record, the Revolution being in the King, the Lease shall be an Intruder, by continuing of the Possession after. $32. 33. El. B. R. Per Manwood.

2. If a Lease for Years of the King holds over his Term, he is not a Tenant at Quittance, but an Intruder. $32. 33. El. B. R. Per Manwood. Agreed.

3. If the King leases for Years rendering Rent at the Exchequer, or to his Receiver, upon Condition for Nonpayment, that his Estate shall be void, and the Lease doth not pay the Rent at the Day by which his Estate is void. If he continues his Possession of the Land after, yet he is not any Intruder till Office found, but is only Bailiff de non Tort, because it does not appear of Record that his Estate is determined; for he might pay the Rent in Pairs to the Hands of the Receiver. $32. 33. El. B. R. Per Manwood, in Sir Moses Finch's Case.

4. But if the Lease leas for Years upon Condition that if the Leafe does not surrender, the Leafe shall be void. If he does not surrender at the Time by which his Lease is void, he shall be an Intruder before Office found; because the Forfeiture appears of Record. $32. 33. El. B. R. Per Manwood.

5. Where the King grants the Causbody of Land and Heir of a Word, and a Stranger enters, this is an Intrusion upon the Possession of the King; for he remains in Possession, and shall make Livery at full Age. Contra of Entry upon Tenant for Term of Life, the Revolution to the King; for the one has Franktenement, and may have Alliffe, and the other not, and has only Chastel. Br. Intrusion, pl. 12. cites 4 H. 6. 11. Per Car.

6. Where Tenant of the King dies, his Heir may enter till Office be found; for he cannot intrude before Office, which finds the Dying feiled of the Anceflor; for the King has no Possession before Office, which finds his Title, but after Office he cannot enter but by Livery of the King; and upon Office found for the King of the Dying feiled of the Anceflor, there the Heir shall answer the Profits by him taken before; for the Office shall have Relation to the Death for the Profits, but he shall not be an Intruder but by Entry after Office. Br. Intrusion, pl. 18. cites 1 H. 7. 18. and M. 26 H. 8. accordingly.

7. If the King, having no Title by Matter of Record or otherwise, enters upon me, and puts me out, there, if I enter again, my Entry is lawful, and no Intrusion; so that there be a Record, if the Record gives him no Title. Fin. Law 8vo. 261.

8. The Queen by Letters Patents made a Lease of the Parsonage of D. for 21 Years; An Information of Intrusion does not lie for detaining the Tithes by a Parishioner, unless they were severed from the 9 Parts; Per Manwood Ch. B. And per Shute J. The Reason is, because the Queen has no Interest to sue for the Tithes during the Years; but the Lease may sue in the Spiritual Court, or in the Court of Pleas by Quo Minus, or, as he said, by English Bill. But if the Tithes are severed, and a Stranger takes them, the Queen may have Information, but not an Affize; for he is not out of Possession of her Franktenement, and therefore
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tis Intrusion to her, and Trespafs to the Party. And as a common Person Leitor may have Affile on an Outier made to the Tenant for Years, so may the Queen have Intrusion. Qued Curia concessit. Sulil. 68. pl. 142. Patch. 25 Eliz. Anon.

9. The King being feiled of the Manor of Beverley in the County of )b. Marg. S. York, in Fee, in Jurie Corona, a Stranger erected a Shop in a vacant Place, and took the Profit thereof without paying any rent in his Rent to the Queen for the Shop. The Queen granted the Manor in Fee Queries 381. to the E. of Leicester, and he never enter'd into the Shop nor took any Rent thereof. The Occupier of the Shop died in Possession of it, and his Son enter'd. It seem'd to Whidden, Saunders, Dyer, and Catlin, that Building has not gained any Estate in Possession.

— Ibid. cites Hill. 51 Eliz. R. B. Burp v. Goodman, that where A. intruded upon the King, who granted it over to B. and A. continued Possession, and that feiled ; the hill Opinion was, that this does not take away the Entry of B. For the Court gave Day to Coke, who argued that the Entry was told'd, to shew Coke why Judgment should not be given against him.

10. It was found by Office, that one F. Tenant of the Queen in Capite, died feiled of the Manor of D. in the County of Ellex; R. F. his Heir, being of full Age, tender'd his Livory ; but before it was fised out he made a Trufpaff in Fee, by Deed inroll'd, to J. B. and others, to the Ufe of himself for Life, and after of his Feme for Life, with other Limitations over. It was mov'd, if anyFine should be paid, inatmuch as the Feoffment feem'd to be void. Manwood said, It seem'd to him, that a Fine should be paid, and that the Feoffment is good. But Shute, Contr. For here he has intermeddled with the Land before his Livery due, which is an Intrusion. But otherwise it is of Bargain and Sale by Deed indented and inroll'd, or Fine levied, which is a Barr to the Party and his Heirs. Manwood and Clench said, There will be a Divinity between Feoffment and Fine and Deed inroll'd. Quere. Sav. 32. pl. 77. Mich. 24 & 25 Eliz. Franks's Case.

11. If one intrudes upon the Possession of the King, and another enters upon the Intruder, he thant's have Trespafs for that Entry; for Trespafs can't be brought but by one that has Possession. But in such Case he has no Possession; for every Intruder shall answer to the King for his own Time, and every Intrusion supposes the Possession to be in the King. Per omnes Just. prater Periam. And Rhodes Justice said, and cited 19 E. 4. to be, that he can't lay in an Action of Trespafs, Quare Cladmum fiam itegit. 4 Le. 184. pl. 234. Mich. 30 Eliz. C. B. Anon.

(F. e. 2) Statutes relating to Intrusion on the King.

1. 17 Eliz. Ch. 3. Prerog. Reg. When the King's Tenant in Chief dies, and Fine levied by his Heir enters into the Land before he hath done Homage to, or received Seisin of the King, he shall thereby gain no Freehold; and if he dies being during that Time, his Wife shall not be endowed thereof; As it fell out in the Case of Mancel the Marshall.

Godbl 129. pl. 153 S. C. If the Queen's Lefsee is crankt by a Stranger, yet, tht he is out of Possession, he may affign over his Term. For the Rev. version being in the Queen, he cannot be out of Possession but at his Pleasure. Cro. E. 27. Wingate v. Mark.
Prerogative of the King.

2. 21 Jac. 1. 14. When the King or any claiming under his Title, shall be out of Possession or not have received the Profits of the Land &c. within the Space of 23 Years before any Information of Infrusion be brought to recover the same; In this Case, the Defendant shall plead the general Issue if he think fit, and shall not be perused to plead specially, and shall also retain the Possession thereof 'till the Title be found for the King.

Where an Information of Infrusion may sufficiently be brought on the King's behalf, no Scire facias shall issue, whereupon the Subject shall be forced to special Pleading, and be deprived of the Grace intended by this Act.

(F. c. 3) Infrusion. Proceedings, Pleadings, Judgment &c.

1. An Information of Infrusion lies for the King in the Exchequer upon Office found, also the Record be not there but in Chancery, or with the Exchequer, or their Executors. It is sufficient, that there was such an Office found. By the Judges and the Counsel of the King. Jenk. 199. pl. 14.

2. Information of Infrusion was for intruding into a certain Portion of Territories of the Rejoyce of D. in the County of Lancaster. The Defendant pleaded Non intritus; whereupon a Commission was prayed to examine Witnesses who are not able to come to the Court. But Manwood denied it; for this Information is to prove a Title for the Queen, and is in the Nature of an Inquisition, and is not to try the Right; but had it been to try the Title of the Defendant upon a Bill whereto the Defendant had answered, and that they had proceeded to Issue, then he might either join in Commission or have Commission alone; and that it was in a Cafe of the Earl of Northampton, in Trinity Term, where certain Commissioners had certified a Chantry with certain Tenements; to which the Defendant answer'd, that it was a Chapel of Eate, and pray'd a Commission to prove it, and it was denied. Sav. 4. pl. 10. Patch. 22 Eliz. Norris v. Butler.

3. Information of Infrusion is exhibited by Name of Outground, New Midd. Marth, alias Marth. The Defendant pleads Not Guilty, and gives in Evidence the Letters Patents of Stowheath Marth. The Jury nor the Court is not to intend this to be the Marth contained in the Information, but the Defendant ought to have pleaded the Letters Patents Verbatim, and aver that the Marth was. Stowheath Marth contained in the Letters Patents, and the Marth contained in the Information are One and the Same &c. And if they will take Advantage of its being reputed or known to be so, they shall aid themselves by pleading the Patent, and saying, that they were reputed Time out of Mind &c. and not say, that at the Day of the Date of the Letters Patents they were so reputed; or otherwife, to prove how once they were Parcel, and how they were sever'd, and how they came to the King again; as it was in the Cafe of the Earl of Leicet. But to say, that the Jury or the Court shall seek the reputed Thing, is not Reason. Per Manwood, Ch. B. Sav. 48. Patch. 25 Eliz. Anon.

A. General
4. General Informations for Intrusion in certis Terris et Tenementis, are as good as Trespafts Quare Clausum requit, which is used in Trespafts at Common Law, which does not express a certain Quantity of Acres; and cited the Case of Minta in Powliden's Commentaries, which is Quod cum Domina Regina fuit feilfa de certis Terris, Valetis &c. Per Manwood Ch. B. Sav. 48. Palch. 25 Eliz. Anon.

5. Information was for Intrusion into 100 Acres of Land and 40 Acres of Wood &c. The Defendant pleading Not Guilty, the Jury found him Guilty in 20 Acres of Land and 12 Acres of Wood, and as to the rest Not Guilty. It was moved in Arrest of Judgment, that it is not certainly found in what 20 Acres of Land and 12 Acres of Wood the Defendant had intruded, So that the Court knew not into which to put the Queen in Possession. But, Per Manwood, Ch. B. This shall be at the Appomtment of him that prosecuted for the Queen; and if he enters into other Lands or Woods than those in which the Queen has Interesse, at his own Peril be it. And this he said was the Opinion of the Justices in the Star-Chamber. Sav. 28. pl. 67. Trin. 24 Eliz. Attorney-General v. Ayleworth.

6. Where Information of Intrusion is for intruding into Lands or Tenements, and taking the Profits &c. and the Defendant is found Guilty, the judgment shall be Quod convincacur without any Judgment for Damages. But where 'tis for Intrusion and cutting of Trees, or taking other Things which are valuable, the Judgment shall be Quod reddat Damna et &c. Per Manwood, Ch. B. and agreed by Fanhawe the Remembrancer. Quare. Savil 49. pl. 103. Palch. 25 Eliz. Anon.

7. Information was in the Exchequer for intruding into the Manor of D. in the County of E. The Defendant pleaded to Issue which was found for the Queen, and Judgment was pray'd for the Queen. Manwood, Ch. B. said, they need not be so hasty, for there was no Danger, for if the Defendant die there is no Prejudice to the Queen; for every Verdict is as Judgment for the Queen, Ad quod fit caveat. Sav. 57. pl. 123. Palch. 25 Eliz. Anon.

8. If in an Information of Intrusion the Defendant pleads a Gift in Tail, Lease for Life, or Years, it suffices for the Queen to deny the Lease without maintaining her Title; for the Defendant confess'd the Title in the Queen, if the Lease be not good; and therefore to deny the Lease is sufficient. Per Shute, Baron. To which Manwood and Clenche agreed. Sav. 64. pl. 136. Palch. 25 Eliz. in the Case of the Attorney-General v. Lord Berkley.

9. An Information was exhibited for intruding into certain lands called W. The Defendant said, That 16 H. 8. one M. L. the Defendant's Mother was seized of the Tenements in the Information in her Domain as of Fee, and so seized died thereof seized, and they descended to the Defendant &c. and found Hoc, and traversed the Intrusion. Shute said, This Defect shall not bind the Queen, and therefore it is no Plea. But Savil said, This Defect is made before the Queen had Possession, viz. 16 H. 8. and is therefore good. Manwood Ch. B. asked, If they would have a Defect 40 Years past and more to make a Title against the Queen, and said it was not reasonable; therefore bid them to amend their Plea. Sav. 45. pl. 97. Hill. 35 Eliz. Ex Relatione Becket v. Lacy.

10. Information of Intrusion is not Real but Personal, and to be resembled in all Points to Trespafts; for it supposes the King in Possession, as Action of Trespafts supposes a Subject, and the Land is not demanded nor recoverable, but Damages only as in Trespafts, and the Defendant is to be sued in convicatur de Intrusione as in Trespafts if he be found Guilty of Entry, Vi & Armis. Arg. Mo. 375, 376. Mich. 36 & 37 Eliz. in Perrior's Case.
Prerogative of the King.

(G. c) Office. In what Cases the Estate of the King shall be devested without Office.

1. If a Man by Deed inrolled lease Land to J. S. for Life, the Remainder in Fee to the King upon Condition, that if he pay a certain Sum of Money to the Lessee, that then he may re-enter, and after he pays the Money he may well re-enter upon the Lessee, and devest the Estate of the King without Office; for all the Ceremony of the Condition is to be done to the Lessee, and the Estate of the King depends upon it; between Hemypley and Brace, per Curiam.

2. But if Land be given to the King by Deed inrolled upon Condition, if the Condition be broken the Donor cannot enter without Office; for the Estate which commences by Matter of Record, ought to be devest by Matter of Record. 93. 40. 41. Ct. B. R. per Cook.

3. If a Feoffment or other Conveyance of Land be made to the Use of one for Life, with divers Remainders over, the Remainder in Fee to the King, with a Power to the Tenant for Life to revoke the said Uses, and to hunt new Uses. He may revoke the said Uses, and thereby devest the Estate of the King in Remainder, and limit new Uses, because the Estate is in the King, but Quouique &c. and limited. Dill. 11 Car. B. R. between Snape and Turton. Adjudged per Curiam. Intr. Ct. 11 Car. Rot. 1137.

4. If Exchequer seizes Ward for the King to which I have Title, and not the King, I may re-take him; Contrary if it be found by Office for the King; Quod Nota bene. Br. Prerogative, pl. 83. cites 4 H. 4. 15. Per Hank and Holl.

5. General Livery cannot be but upon Office found, but Special Livery may be without Office, and without proving of the Age; but there he shall be bound to a Rate and Sum certain to be paid to the King. Br. Livery, pl. 56. cites 28 H. 8.

(H. c) In what Cases the Estate shall be void without Office.

See (H. b) pl. 1.——S. P. And per Manwood Ch. B. The Leafe is merely void and determined in Right in Priviety, and in Tenure; for so is the Pleasure of the Prince expressed in the Letters Patents, That it shall be then void, and of no Effect. And Judgment was given according-ly against the Lessee 2 Le. 134 to 145. 33 Eliz. in the Exchequer Sir Moyle Finch's Case.

(H. e. 2)
(H. e. 2) Limitation. Statutes of Limitations as to the
Prerogative. Concealed Lands &c.

1. 21 Jac. 1. E

NACTS, that the King, his Heirs or Successors, shall, before the
aforesaid five, impeach &c. any Person &c. for any
concerning any Manors, Lands, Tenements, Rents, Taxes, or Hereditas-
ments, (other than Liberties and Franchises, or the fines and Profits which
concern the same) nor make any Right, Claim, or Demand of, in, or to the
Prerogative of any Right or Title accrued 60 Years past and more, and
now in Life;

currit Regni, the Titles of the King were not restrained to any Limitation of Time; for that no Stat-
tute of Limitation that ever was made, did ever limit the Title of the King to any Manors, Lands,
Tenements, or Heredities to any certain Time; and where many Records and other Monument, making good the Estate and Interest of a Subject, either by Abuse or Negligence of Officers by de-
vouring Time were not to be found; by Means whereof, certain Indignant and Indignant Persons prying into many ancient Titles of the Crown, and into some of later Time concerning the Possessions of
wards and Hereditary Bishops, Dean, and Chapters, and the Late Monasteries, Chanteries &c. of Persons attainted, and the like have raised the same by Letters Patent, oftentimes under obscure and
General Words, to Manors, Lands, Tenements and Herediments of long Time enjoyed by the Sub-
jects of this Realm, as well Ecclesiasticus as Temporal; Now to limit the Crown to some certain
time, to the End, that all the Subjects of this Realm, their Heirs and Successors, may quietly have,
hold and enjoy, all and singular Manors, Lands, Tenements and Herediments, which they, their
Ancestors, or Predecessors, or any other, by, from, or under whom they claim, have of long Time
enjoyed, this Act was made and moved from the House of Commons; The Body whereof consists of
three Parts, First, that Part, which above is part reheard, consists on three Branches; First, That
the King, his Heirs or Successors, shall not at any time hereafter Sue, Impaire, Quelion, or Imprest
any Person or Person, Bodies Politick or Corporate, for, or in any wise concerning any Manors &c.
2dly, Or for, or concerning the Revenues, Iffes, or Profits thereof. 3dly, Or make any Title,
Claim, Challenge, or Demand &c. This Part is exclusive and negative, and herein fix Things are
to be observed. 4th. This Clause extends to all Manner of Suits &c. either in Law or in Equity.
5dly. To all Manner of Courses whatsoever. 6dly. It extends not only to all Manner of Suits, but to all
Impeachments, Questionings, Impleadings, making of Title, Claim, Challenges, or Demands,
7dly. Under these Words (Right and Title) not only bare Rights and Titles are comprehended, but
Real Estates also. 8thly. Not only Suits &c. for or concerning any Manors &c. but for and concerning the
Revenues, Iffes or Profits &c. And this extends to the Ancient Demencies of the Crown, which are
mentioned to be restrained by an Act 11 H. 4. 6thly, So all Writs of Scire Facias, or other Process upon
any Record; all Informations of Intrusion, or charging any Man as Bailiff; all Finding and Office,
either entitling the King, or of Information are restrained, not only within these Words (Impaire or
Quelion) but also within these Words: (Or make any Title, Claim, Challenge or Demand) which are
large and beneficial Words, and all other Suits &c. of what Kind or Nature forever. But this Negative
Clause must have four Incidents; 1th. The King's Right and Title must accrue unto him above
60 Years past before the 10th Day of February in the 19th Year of King James, which was the
Day of the Beginning of this Parliament, the Reason hereof was, That it any Title of Estate,
forfeiture &c. to the Crown; and this Act was done for the Purpose of the Limitation to bar the King was 60 Years, but such Right or Title must now be in Ede; 5th Sub.
ass. 189. cap. 87.

Unles the King, or some of his Predecessors, or some other under whom his
claims, have been answered (by Force of such Right or Title) the Revenues, Iffes,
and Profits thereof within 60 Years next before the Beginning of this Par-
liament; — (The 3d. Incident is.)

Right or Title) were materially added, for otherwise if the King had been answered the Revenues, Re-
venues &c. by Reason or Pretend of Wardship, Prerogative, Sequein, Extent, or the like, it might have
made a Doubt, whether such an answer or of the Revenues &c. had been within this Act, which
Doubt is cleared, that it must be by Force or Virtue of any such Right or Title whereby the
King impeaches the State of the Subject. 5th Sub. 189. cap. 87.

Or that the Same have been duly in Charge to the King, or Queen Eli-
abeth within the Space of 60 Years. — (The 4th. Incident is.)

Charges in Judgments of
Law, is the Roll of the Pipe; For afoho' a Note before the Auditor, or any other may be a Mean
to bring it in Question, and to be put in Charge, yet that is not in Judgment of Law said to be duly
in Charge, unless it be in Charge in the Pipe. 5th Sub. 189. cap. 87.
Prerogative of the King.

It cannot

stand in Su-

per, unless the

Thing in Questión were before duly in Charge. 5 Inl. 189, cap. 8.

This is the second Part of the Body of the Act, and to the first Part is Negative and exclusive of the Right and Title of the King, so this Part is Affirmative, and establishing the State of the Subject. The Milité before this Stature were of two Sorts, viz. either when the King had an Estate vailéd, or continued in him; or where the King had but a bare Right; For Example, the King's Tenant feid of Lands &c. in Feo is attainted of Felony and dies, the King has a Real Estate in him: but if before the Felony, the King's Tenant were Deserted, and after is attainted and dies, now has the King but a Bare Right in both these Cakes, &c. in Similbus the Subject is provided for by this Act, both by the first Part and by this alfo; For where in this Part it is said, (according to their and every of their several Estates and Interests which they have or claim) If they have an Estate and the King but a bare Right or Title, then are they within these Words, (which they have) And if the King has a Real Estate in him, then are they within these Words (or claim) so that Remedy is applied to both the Milités; Against and towards this Part are further, (have held or enjoyed) that is where the Subject has an Estate, and the King but a bare Right or Title. 3 Inl. 190, cap. 8: Moreover, the Words of this Part are (against him, his Heirs or Successors) so as in admit the King's Tenant being deserted, as is aforesaid before this Attainder of Felony, that this Milité has been deserted, or had mortgaged the Land before this statute, this Act in this Cakes bars the King of his Right and Title, and to that end works upon the State of the Milité or Mortgagee; but yet the first Milité or the Mortgagee for the Condition performed or broken may re-enter; For the Words of this Part be (against the King, his Heirs and Successors) so as the Bar is only against them; and every Subject shall take Benefit of this Act, for the King's Right and Title is thereby utterly barred; and there is a Saving hereafter in this Act to all Persons &c. other than the King &c. as they ought to have had before this Act. 5 Inl. 192, cap. 8.

* These Words extend to all Cakes where the Real or Person, Bodies Politick or Corporate, by, from, or under whom their Majesty anything has, or lawfully claimeth, in the said Manors, Lands, Tenements, Rents, Titules or Hereditaments, by Force of any Right or Title, have been answered within 60 Years next before the Beginning of this present Seifion of Parliament, or that the same have been duly in Charge, or the Rents, or in the said Space of 60 Years, Issues, Revenues or Profits thereof by one that claims an Interest in the Land; for albeit the King may in Law charge him as Debtor, yet without Question De Fatro, he did take the Rents, Issues, Revenues and Profits, and suffices to answer the Letter and Meaning of this Act. 5 Inl. 193.

This Part secures the Subject against the Subject, viz. against Patentes and Granres of Concealments, defective Titules or Lands not in Charge, and all claiming under them. And furthermore, that every Person &c. their Heirs and Successors, and all claiming by or under them &c. shall quietly enjoy such Manors, Lands &c. (except Liberties and Franchises) as they now claim and enjoy, (whereof his Majesty, his Progenitors &c. by Force of some Right or Title, have not been answered the Rents &c. thereof, within 60 Years next before the Beginning of this present Seifion of Parliament) nor the same have been duly in Charge, or flood Insfuer of Record as aforesaid, within the Space of 60 Years, against all Persons, their Heirs &c. claiming any Estate or Right &c. in, or to the same, by any Letters Patents, or Grants upon Seifion of Conccalment, or wrongful dimaining, or not being in Charge, or defective Titules, or for which said Manors &c. or any of them, no Verdict, Judgment, Decree, Judicial Order upon hearing or Sentence now standing in Force, has been had or given in any Action &c. in any of his Majesty's Courts at Westminster, or in the Name of the King's Majesty, or of the late Queen Etc.
Prerogative of the King.

Eliz. or for any of the said Patentees or Grantees, or for their, or any of for the their Heirs or Assigns within 60 Years next before the Beginning of this Church and present Session of Parliament.

In respect of the Multitude of Letters Patent and Grants of the Nature and Qualities, and many of them of large Extents, and in general Words, and had passed through the Hands of many insignificant and needy Persons. This Part extends to Liberties and Franchises which the former two Parts did not. 5 Inst. 190. cap. 87.

This Act shall not extend to impeach the King's Right or Title to any Reversion or Remainder, nor to alter the Tenures or Services of Lands; and here also the Right of all others (free of the King) is saved.

Neither shall this Act extend to annul the Custom of 2d. paid for every Chaldron of Sea-Coals at Newcastle upon Tyne.

All Fee Farm Rents, and other Rents paid by the mere part of 60 Years, This was added for preferring of the King's Fee Farms and Rents out of such Manors and Rents &c. which are established and made sure by this Act; For Example, King E. 6. granted the Manor of D. which came to him by the Statue of Chancery to J. S. and his Heirs, referring a Fee Farm or any other Rent, which Grant for some Imperfection was insufficient in Law to pass the said Manor, and yet is established and made sure by this Act, and this Provifo makes good the Fee Farm or Rent to the King, if he has been answered the same by the greater Part of 60 Years. 5 Inst. 191. cap 87.

Provided, that no Putting in Charge, Standing Insipier, or Answering the They were Rents or Profits of any Lands or Hereditaments, by Force or Colour of any Letters Patent, Grants or Concealments.

of cause either they had a Clause before the Habeendum, Qua quidem Maneria super facreunt a nobis Conclata, Substructa, vel In insipierta, or the like Effect, or else a Provifo after the Habeendum, to the like Effect; Letters Patent of Concealment were granted in Queen Mary's Time, and the first, that I find, were granted to Sir George Howard; and in all succeeding Acts of Parliament of Confirmation of Letters Patent, Letters Patent of Concealments are excepted. 5 Inst. 189. cap 87.

Or defective Titles,

By Letters Patent, or the Warrant of certain Commissioners under the Great Seal for Compositions of defective Titles, pretending the same to be for the King's Benefit, and Safety of the Subject, in which Letters Patent no Words of Concealment &c. are mentioned, but yet upon the Matter they were supposed to be concealed &c. from the Crown. 3 Inst. 189. cap 87.

Or of Lands, Tenements or Hereditaments, out of Charge,

This was a new Device to have a Certificate that they were not in Charge, and then to take a Grant from the King for a very small Composition &c. and these were but Inventions and Subtle Devices to deceive the King; to rob him of his Tenures, and to the infinite Vexation and Trouble of the Subject, all which Mischief are now remedied by this Act. 3 Inst. 189 cap 87.

Or by Force or Colour of any Inquisitions, Presentments upon any Commiss. This was a neces.

sion, or other Authority to find out Concealments, defective Titles, or Lands to be Tenements, or Hereditaments, out of Charge, shall be deemed or taken to be added for of a putting in Charge, Standing Insipier, or Answering the Rents or Profits to the Kind of the King or his Predecessors, unless thereupon such Lands, Tenements, or Hereditaments have been upon any Information or Suit, (on the Behalf of the King or his Predecessors) upon any lawful Verdict given, or Demurrer in Law, adjudged, and upon hearing ordered or decreed to the King or his Predecessors, or those within the said time of 60 Years.

This Act shall not extend to Lands for which Composition is or shall be made before the End of this Parliament.

(I. e.)
(1. c) Ecclesiastical Laws. The Antiquity.

By the

Grant of W.

the Conquero,

the Bishops ori-


ginally had

an intire Ju-

ridiction to

judge all

Causes relat-

ing to Reli-

gion; For

before that

Time the

Bishop and

the Sheriff

kept their

Court together. So that before the Conquest there were no such Courts in England as we now call Courts Ecclesiastical or Spiritual; For anciently the Bishops sat in Judgement together with the secular Judges and Sheriffs on the same Tribunal, especially about EASTER and Michaelmas, as appears by Mr. Selden in his Notes on Eadmer, pag. 167, as also by the Laws of King Athelstan. And long after the Conquest, in the Reign of H. 2. 1164, by his Laws made at Clarendon, the Bishops might interest themselves with the King's secular Judges where the Matter in Judgments extended not to the Diminution of Members, or were Capital. Notwithstanding, at the same time the Bishops' Ecclesiastical Courts, as also the Arch-deacon's Courts were established in this Kingdom; and further ratified and confirmed by the very Laws of H. 2. made at Clarendon. In the 1 E. 6. it was enacted, That all Process out of the Ecclesiastical Courts should be from thenceforth be issued in the King's Name only, and under the King's Seal of Arms, contrary to the Usage of former Times. But this statute being repealed by Queen Mary, and not revived by Queen ELIZ. the Bishops and their Chancellors, Commissaries, and Officials, have ever since exerted all manner of Ecclesiastical Jurisdiction in their own Names, and under the distinct Seals of their several Offices effectually. Also by the Statute 25 H. 8 cap. 19. it is being enacted, That all former Canons and Constitutions not contrary to the Word of God, the King's Prerogative, or the Laws and Statutes of this Realm, should remain in Force till reviewed by 32 Commissioners to be appointed by the King, and that Review not being made in that King's time, nor any thing done therein by E. 6. (though he had also an Act of Parliament to the same Effect) the said ancient Canons and Constitutions remained in Force as before they were, whereby all Causes Tesseluntary, Matrimonial, Titles, Inconvenience, Notorious Crimes of Publick Scandal, wilful Abstinence from Divine Service, Irreverence, and other Misdemeanors in or relating to the Church &c. not punishable by the Temporal Laws of this Realm, were still reserved unto the Ecclesiastical Courts as a standing Rule whereby they were to proceed and regulate the Exercise of their Jurisdiction. Godolp. Rep. Introduction. pag. 22, 23, 24. But though the Bishop and a Temporal Judge, called Aldermannus were wont to sit together, yet the one for Matters of Spiritual, and the other of Temporal Cognizance. But that was altered by King W. by Attest of the Bishops, Abbots, and all the chief Persons of the Realm; For he ordained, That the Bishop or Arch-deacon should not hold Pleas of Ecclesiastical Laws, and None ad Regimen Animarum pertinent in the Hundred but by himself, and their Right should be done, not according to the Hundred, but according to the Ecclesiastical Laws and Canons. All this appears by the Charter of King William. Srot. 2 R. 2. Pro Decano & Cap. Eccles. Lincoln. Jan. Angl. 76, 77.

Prerogative of the King.

put any one to penitentiary Pain for such Offences, upon Pain of For-}

be to be adjudged on any Account, and has changed the Lords Spiritual thereof to ordain the Penalty, and if they do not, the King will have it well in Memory, and caused it to be heard, the Church has made many wholesome Orders concerning it. (1.) That there be no Commutation at all, but for very weighty Reasons, and in Cases very particular. (2.) That when Commutation is made, it be with the Privity and Advice of the Bishop, under his Hand and Seal; and not by the Chancellor, Commissary, or Official; or (in any Case to be done by him) that he give a just Account yearly to the Bishop of all Commutation Monies in that Year, on Pain of one Year's Suspension. (3.) That the Money be applied to pious and charitable Uses. (4.) That if the Crime be publick and notorious, the Satisfaction made to the Church shall be perform'd in the Congregation, where the Offender lives, with publick Proclamations of his Submission and Repentance. (5.) That the Favour of Commutation be not granted a second time to the same Person for the same Fault. Indeed none of these Regulations are in Force at this Day; but yet they may be useful Rules to go by till somewhat more authentic be framed upon this Head. Gibs. Cod. 1693.

Instead of regulating Commutations, and the Abuses of them, the Commons in Parliament petitioned (1 R. 2. & 1 H. 3.) that there might be no Commutations at all. Gibs. Cod. 1693.


3. Rot. Part. 45 Eliz. 3. M. 24. Complaint of the Orders, for giving Aquavittae to the Executors before full Account made 

4. In Case of Commutation of Penance it must be after Sentence. 3 Sec 2 Roll. Inl. 150.

5. Publick Penance is a Punishment imposed for a Crime, by standing in some publick Place, and making an Acknowledgment of it; to satisfy the Church for the Scandal given by an evil Example. In the Case of Incest, Adultery &c. the Sinner is usually enjoined to do publick Penance in the Cathedral or Parish Church, or publick Market, Bare-footed and Bare-headed, in a white Sheet, and to make an open Confession of his Crime in a prescribed Form of Words &c. For smaller Faults a publick Satisfaction or Penance is to be made in the Court, or before the Militier and Churchwardens, or some of the Parishioners, as in Caues of Detraction &c. Wood's Inl. 507.

6. Penance may be changed into a Fine or Sum of Money to be given to Pious Ues, which is called Commuting. But the Judge ought not directly or indirectly to take any thing hereof to his own Ues, or for the Affirmation thereon, or entering the Publick Act. If he doth, it is Exortion. Quare, It he takes only his customary Fees. Wood's Inl. 508.
Prerogative of the King.

(L. e) Prohibition. Ecclesiastical Jurisdiction. The Antiquity of their Jurisdiction.

1. 1 R. 2. cap. 14. The Clergy greatly complain for that the People of Holy Church pursuing in the Spiritual Court for the Tithes, and their other Causes which of Right ought, and of old Times were wont, to remain to the same Spiritual Court are indicted for this Cause.

(M. e) Administration. The Antiquity of Ecclesiastical Jurisdiction thereof.

The Books of Common Law observe that the Foundation of this Right which the Church has was by special Act of Parliament from the Secular Powers; which is so far from being deny'd, that it is in no other Doctrine than what Lyndwood himself has laid down. — Sed hic pollet queri, unde provenit haec Libertas; videtur namque quod primum, quod Ecclesia non haberet se intrinsecus de tali Approbatore Testamentorum, sed potius, pericentric ad Judices Ecclesiae. Dei, quod haec Libertas, quod Approbatorem hujusmodi, fundatur super contentu Regio & Suum Procerum, in talibus ab antiquo consilio. — And again, De constitutione tamen haec: Approbatio in Anglia pertinet ad Judices Ecclesiasticos, Episcopos, ex officio. Jus Cod. 560.

Lord Coke says, It is held in 2 R. 5. tit. Testament. 4. That it's only of late Time that the Church had the Probate of Testaments in this Land, 'till it was by an Act &c. For the People have Probate of Testaments in all other Places except England; and in several Places within England the Lords of Seignories have Probate of Testaments at this Day in their Temporal Courts. And Tremayre said, that he is Steward in his Country, and both Free and Bond Tenants prove their Testaments before him in the Court Baron, and so it has been used Time out of Mind. And so Fynaux and all the Justices in H. 7. 12. b agreed, That the Probate of Testaments did not belong to the Spiritual Court, but of late &c. that they have not this by the Law Spiritual. — And Liawood, who was Dean of the Arch; and wrote Anno Dom. 1222. in the Regia of H. 6. lib. 3. tit. de Testamentis. f. 122. confesses, that Probate of Testaments belongs to the Ordinaries De Consecrandae Angeli et non De communi jure, and that in other Realms the Ordinaries have it not: And in another Place he affirms the Power of the Bishop in Probate of Testaments, per Consequent Regni & Suum Procerum ab Antiquo. — And Lord Coke says, he has a Book publish'd in Latin Anno Dom. 1573. by the Right Revd. Prelate Matthew Parker, Archbishop of Canterbury, who was very expert in Matter of Antiquity; in which it is affirmed in these Words, Rex Anglie ohin erat Concilium Ecclesiae in Testamentis Praeclare, videlicet in Testamentis Romani, Propagatarum Religionum, non ipse sed Episcopii, iuxta leges Antiquae, cum omnibus Actibus pertinentibus, in omnibus Testamentis, probati non haberent, Administrationis potentiam et jure deligere non poterant. So that originally the Ecclesiastical Judge could not commit Administration to any, who might be, or be made as Administrator, but it was given to the Ordinary by an Act; that is to say, by the Act of 31 E. 5. cap. 11. And in ancient Time before this Statute, it appears by Record, that when a Man died intestate, and had made no Disposition of his Goods, nor committed his Treaty to any; in such Case, the King (who is Parent Partis) was wont by his Ministers to take the Goods of the Intestate, to the Intent that they should be preferred and disposed for the Benefit of the Deceased, for Payment of his Debts, for Advancement of his Wife and Children, if he had any, and if none, thefe of his Blood. And it appears in Rot. Claus. 6. H. 3. M. 16. Bono inforaturum capt
Praeconium est in manus Regis &c. And afterwards this Care and Trust was committed to the Ordinary: for none could be found more apt to have such Care and Charge of his titulary Goods after the Death of the Intendant than the Ordinary, whose Life had the Care and Charge of his immortal Soul, as it is laid, Ployd. Conn. &c., in Strev beck's Case, and therefore he was constitutid in Loco Parentis. 9 Rep. 52. &c. Trin. 43. in Henbloe's Case. But *Windham, I affirm'd, that the Jurisdiction of Tettamentary Causes belong originally to the Spiritual Court, and not to the King; For a Man by our Law cannot make a Gift after he is dead, but the Spiritual Law will Inforce the Executors to do it. And Where Lord Co. 7. b in Henbloe's Case; and Co. 5. t. 16. b. de Jur. Rep. Cercif. holds that they did not originally belong to the Ordinary, and cites a Record that Bona Tettators cap solamen &c., he thought that this Record proves only, that if the Dies Sutor to the King thole of the Exchequer will find Writ of Praeconium to settle all his Goods &c., till he has finish'd the King; and this Matter is now in Use, but the Writ (Solemnis) is not in the Record. But Twilden E. contra, that Tettamentary Causes belong not originally to the Spiritual Court, but to the Temporal Courts and Common Law, and were proved before Lords of Manor Co. 9. 57. b. as they now are in some Places, And there are several Precedents in our Books, especially in the old Books of Entries, where Actions upon the Case and some Actions for Debt were brought for Legacies in the Hundred Court, but this is now antiquated. But in my Time I know that it was usual'g'd here, that if one by his Tettament devises a Legacy to be paid out of his Land (as out of the Profits thereof,) that for such, Action upon the Case lies in this Court. And Lord Dyer said, that the proper Remedy for it is to sue in Chancery, which proves that it does not belong to the Spiritual Court: quod sunt concilium. Sid. 46. Mith. 13 Car. 2. B. R. in the Case of Nicholos v Shirmam. — S. P. Per Windham. J. 1 Lev. 158. Hill. 15. & 17. Car. 2. B. R. in the Case of Price v Parker. — Wills are proved by Precescription in some Manors before the Seward, that no Lands put by it as in the Manor of Mansfield, and in Cowley and Caverham Manors in Oxfìordshire; and its being proved in the Spiritual Court is but of later Time, and belongs not to it of Common Right, as Linwood owns, nor is it so in other Kingdoms. Went. Of. Es. 45. — But Noy affirmed, that the Ordinary might commit Administration in the Common Law before the Statutes 21 & 22. which is but an Affirmance of the Common Law. — Arg. Lat. 65. Pag. 4 Car. 4 Mayne's Case. — The Court held, that Administrations originally belonged to the Bishop, and the Inheritance of some Lands is not a Proof to the contrary; and denied the Opinion in 9 Rep. Henbloe's Case. 1 Salk. 57. Trin. W. & M. B. R. Manning v. Napp.

+ 2 Init. 485. cites this Constitution of John Stratford as made at a Synd in London, 1280, but in 5 Rep. 59. in Henbloe's Case it is 1350 as here. But in Cart. 13. Trin. 18 Car. 2. C.B. in the Case of Hughes v. Hughes, Dr. Walker, a Citizen, who argued in that Case, said, he admitted that John Stratford was Archbishop of Canterbury, and held a Synd in London, but not in 1280, but was dead 50 Years before. — And it appears in Chronicles W. Thorn, (among the Decem Scripторum) pag. 2506. that John Stratford, Bishop of Winchester, was made Archbishop in 1535. And Ibid. pag. 2175. it is said, that he died in 1548.


6. Mirror of Justices. Fol. 27. cap. 2. S. 13. * Whereas he * Orig. is (De neque) holds Plica against the * Prohibition of the King, and in Prejudice of the Dignity of his Crown, since to no Judge Ecclesiastical it does not belong to hold any Plica Secular but of Tettament and Harmony in Prejudice of the Power of the King.
(N. c) Ecclesiastical Law. Jurisdiction.


3. 4 E. 2. ibid. Parl. Fol. 86. Ad quærelam Communityg Regum Anglicæ conquer. de eo quod Praelect Regni lequeulent minus large in Causis & Contractionibus pertinentibus ad Coronam & Dignitatem Regnæ st. Ita Responsum, quæ tenebatur graduario quærat Remedium fobi in Cancellaria.


6. Prohibito formata de Statuto Articuli Cleri in Magna Charta. 2 part. fol. 70. b. Curr Cognitiones Placitum de Causis Pecuniae & de allis Catallis & Debitoris que non de Testamento del Matrimonio ad Coronam & Dignitatem nostram pertinent ad Conlinadin Regnum approbata & hanciens obserbata 3c.

7. It fiscus by the Statute of 2 H. 5. cap. 3. Quod vide 2 H. 5. Rot. Parl. N. 5. accordingly that Causes concerning * Testament and * Marriage appertain to the Consulanie of the Temporal Court; But Quære the Bill upon the File, if it be not making in the Court.

* Proof of Will, and the Validity of them belonging to the Ecclesiastical Court, if they adulate a Person capable of making a Will. B. R. will not intermeddle; for it is within their Jurisdiction to adjudge when a Person is of Age to make a Will. Per Car. 2 Mod. 315. Triv. 29 Car. 2. B. R. Smallwood v. Brickhouse —— The Ecclesiastical Court is the proper Judge whether a Will or no Will, and howsoever they determine is conclusive at Law. Comm. 244. Mich. 9. W. 5. H. R. Gray v. Trench.

† If any marry without Proclamation of Banns or Licence, they are citable for this to the Ecclesiastical Court, and no Prohibition lies Resolved. Jo. 219. Matingley v. Martin. — Wife or not Wife is triable at Common Law, but whether lawfully married or not is triable in the Spiritual Court. St. to. Pach. 15 Car. Betworth v. Betworth. —— Jenkins 290. pl. 26. says, the Spiritual Court has nothing to do with the Legality of the Marriage, but where the Temporal Court commands them to inquire and certify it, and this in Real Actions only.

8. Rot.
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8. Rot. Parl. 25 E. 3. 2 Part. N. 64. upon Petition of the Clergy, the King answered, If Title of Voidance be taken in Plea before Justices, whereas the Contraunce appertains to the Court Christin, let the Party have his Challenge, and the Justises do him Right.

9. These Pleas here ensuing are * mere Spiritual, whereas the Ecclesiastical Court may hold Plea, sicuter, De Correctionibus quas Praetati sunt, Pro Mortali Peccato, Sicuter, + Fornicatione, Adulterio & Hujusmodi, pro quibus aliquaque insinuatur Pena Corporalis, aliquando Pecuniaria, marini et conviccis fuitis sit de Hujusmodi Liber Dom. Item si Praetatus prius Pro Cemeterio non clauso, ** Ecclesia discoperta, vel non decenter ornata, in quibus capita alia pena non potest insinuari Pecuniaria. Item si Rector petat Warrachonis ++ Oblationes & Decimas debitas, vel con-

Partibus, vel si Rector agat contra Recitorem de Decimis Majoribus, vel Minoribus, dummodo non petatur quarta Pars valoris Ecclesie. Item si Rector petat Mortuaria in partibus ubi Mortuaria daretur con-

vit. Item si Praetatus alienius Ecclesie, vel Advocatus petat a Rorece ++ Pensionem ubi debiatar, Omnes Hujusmodi Petitiones sunt taciendae in foro Ecclesiastico. † Statutum de Circumpetcte agatis 14 E. 1. in Magna Charta, fol. 89. Rot. Part. 25 E. 3. 2 Part. N. 62.

It was prayed by the Clergy that this Statute might be confirmed, yet it is not done.

of granting Administration and Probate of Testaments, do not de Jure Communi belong to the Court Christian. 2 Inf. 488.

† The Contraunce of all Fornications, Adulteries, and Suicides living in Adultery, belongs to the Ecclesiastical Court. Jo. 259. Matingsley v. Martin — In ancient Time the King's Courts, and especia-

ly the Last, had Power to inquire of and punish Fornication and Adultery, by the Name Leprores or Lepercres, for which see Summer's Gloss. Verbo Legerentur &c. and it appears often in Doomsday-

Book, that the King had the Fines aedific'd for those Offences, and that they were aedific'd in the King's Courts, and could not be inflicted in Court Christian. 2 Inf. 488.

‡ This extends to Solicitation of Charity of any Woman, and to Iscelest, the first whereof is a Left, and the left a greater Offence than those mentioned of Fornication and Adultery. 2 Inf. 488. Cited per Vaughan Ch. J. Vaugh v. Burel.

Ancient Punishment must be intended by Way of Commination of Penance. 2 Inf. 489.

++ By the Words (Church Uncover'd) it is intended not only of the Body of the Church, which is Par-

rochial, but also of any Publick Chapel annex'd to it; but it extends not to the Private Chapel of any, of the fit to the Church, for that must be repaired by him that hath the proper Use of it; but as to the first the Parishes ought to do it Per Contenuninam Notarium & Approbum, and the Contraunce there-

of is allowed to them by this Act, but the Church is to be repaired by the Parson &c. 2 Inf. 489.

†† Oblationes dicuntur quaquesi a phis fidellibus Christii Ecclesiae, Oferuntur Deo & Ecclesie, five Res solidae. five Mobiles. 2 Inf. 489.

+++ In Case of a Penioni, & pro Rationibus parte Bonorum, both Temporal and Ecclesiastical Courts have Jurisdiction. Per Twidman, Rainford and Wild. 2 Ley. 125. Hill. 25 & 26. Car. 2. B. R. Trar-

ford v. Trafford.

This Statute of Circumpetcte Agatis was made in 3 E. 1. and is called by that Name, because it begins thus, viz. The King to his Judges fendeeth Greeting. Up ye severities circumsticularly in all Matters concerning the * Bishop of Norwich and his Clergy, not punishing them if they hold Plea in the Court Chris-

Church of such Things as be more Spiritual. — The Bishop of Norwich is put here only for an Ex-

ample, but it extends to all Bishops within this Realm 2 Inf. 487. — Pl. C. 56. b. in Plint's Cafe.

It is called Court Christian, because as in the Secular Courts the King's Laws determine Causes, so in Ecclesiastical Courts the Queen of Christ should rule and direct; and therefore the Judges in those Courts are Divines, as Archbishops, Bishops, Arch-deacons &c. And it may be found among the Laws published before the Council by King Edgar thus, viz. Celebriam volutum ex omnibus Saraphi Convenus bis quotidnls agitor, cui quidem ilius Diocesii Episcopii & Aldermanus interventus, quorum alter Jura Divina, alter Humana populam edocto 2 Inf. 488.

Till the Bishop's Jurisdiction was increas'd by Act of Parliament, he could hold Plea only in Mat-

ters Temporallary and Matrimonial, but by the Statute De Circumpetcte agatis, and of Articuli Cleri, he may now hold Plea in many other Cases. 2 Mod. 118. Mich. 23 Car. 2. C. B. in Cafe of Waterfield v the Bishop of Chichester. — 2 Inf. 487. 537.

Mm

(O. e.)
(O. e) Ecclesiastical Law. Sentence.

1. If a Sentence be given by the Ordinary or other Ecclesiastical Judge, it is to be presumed by the Judges of the Common Law, that it is according to the Ecclesiastical Law, and so they ought to allow it. Co. 5 Inst. 7. adjudged.

2. If the High Commission deprives a Man of his Benefice by Force of their Commission, and it is found by Special De cute that they deprived him Virtue Liter. Paten. they being authorized by a Statute. Virtute Commisionis, for divers Contraints to the Ordinary; tho' the particular Cause is not found, yet it is good, and the Court ought to presume the Sentence to be well given, as well as if it had been given by the Ordinary; because the King might before the Statute of 1 El. make Commissioners by his Letters Patents to proceed according to the Ecclesiastical Law; and here it appears that this Proceeding was against a Spiritual Person, and by Ecclesiastical Council, fail. Deprivation, and not against a Man according to the Statute of 1 El. and therefore the Court ought to give Credit to their Sentence, without showing the Cause in particular. Trin. 11 Car. 2. R. between Allen and Nase, adjudged upon a Special De cuite. This concerned one Huntley. Instruct. 9. Car. Rot. 564. and this agrees with Caudrey's Case. Co. 5. 7. and the Court bought the old Book of Entries, Cit. Add. 1. where it is pleaded to be made by Commission generally. But nota, that the Court seemed that if such Sentence had been grounded meerly upon the Statute of 1 El. against a Layman, that then the Cause of the Sentence ought to appear to the Court, by which it might appear to the Court, that the Matter for which the Sentence was given was within the Jurisdiction of the High Commission.

(P. e) Of what Effect it shall be in our Law.

1. If the Clerk of J. S. be admitted and instituted, and after the Clerk of J. D. is Admitted, Instituted and Inducted, which is good, because the Church was full before, and so this a Super Institution, and after the Institution of the Clerk of J. S. is sentenced to be Irrita & Nulla, (because he was instituted contrary to a Caveat entered, admitting this to be a good Cause) yet it shall not so relate to make the Institution and Induction of the Clerk of J. D. good. In that which was void before. Hill. 15 Jac. 6. R. S. C. * The Institution and Induction funds good, tho' a Caveat was entered, and the Ecclesiastical Court cannot meddle with it. Litt. R. 165. Stevens v. Crif."
(Q. c) Clergy: Privileges.

1. Rot. Parl. 15. The Clergy prayed that they ought not to be taken nor imprisoned without Cause or Process of Law by the Ministers of the King by his Commandment, against the Law and Blasphemy of the Land: To which the King answered, that his Intention is not to do contrary to the Law, but if any is taken by Command of the King, it is done for just Cause by the Ordinance made in the Parliament of Northampton. Such Petition by them made 15 E. 3. N. 21. against Imprisonments made of them by the Justices.

2. Rot. Parl. 15 E. 3. N. 22. 30. The Clergy complain, that when it is returned that a Clerk has no Lay-lee in his Dioces, immediately a Capias is awarded, where they ought to send a Writ to the Bishop his Ordinary, to cause him to come; and when any Clerks are condemned before them for any Sum for any Cause, the Justices command to levy the said Sum, without sending to the Bishop his Ordinary, by which Commandment the Lay Ministers enter the Fee of Holy Church, and the Goods and Chattels &c. To which the King answered, the Process aforesaid is allowable by the Law of the Land, and has been Time whereof Memory. And it is not the Intention of the King, that any Layman enter the Fee of Holy Church against the Privileges and Franchises thereof.

3. Rot. Parl. 45 E. 3. N. 15. Because in this present Parliament it was shown to the King, by all the Lords and Commons of England, that the Government of the Realm has long been made by People of Holy Church, which are not justifiable in all Cases, by which great Stockes and Damages have happened in Time past, and more might happen in Time to come, in Distortion of the Crown, and great Prejudice of the said Realm, by diverse Causes which one might declare, they pray that Lay-people and no other be chosen Chancellor, Treasurer, Clerk of the Privy Seal, Barons of the Exchequer, Chamberlains of the Exchequer, Comptroller, and all other Great Officers and Governors of the Realm. Answer, The King will ordain upon this Point as to him shall seem best by the Advice of his good Council.

4. Besides the many Confirmations of the Great Charter in Parliament, (which included a Confirmation of the Rights and Liberties of the Church and Clergy) and besides other general Confirmations of the Rights of the Clergy, in conjunction with those of the Laity, there have been divers Acts and Clauses, especially in favour of the Clergy. Accordingly divers of our Kings before the Conquest (particularly Edward the Elder, Edgar, Canutus, and Edward the Confessor) begin their Laws with special Provisions for the Liberties of the Clergy, of which therefore the Usage since has only a Continuance. And 'tis observable, that
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that many of the Confirmations were made at the special Request of the Commons in Parliament, whose Petitions frequently began with such a general Clause, in Favour of the Church and Clergy. Gib. Cod. 5. and see Ibid. to pag. 22.

(Q. e. 2) * Ordinary, and Power of the Ordinary.

1. The Ordinary himself, without any Canon or Custom, cannot command any Layman to observe any new Ceremony in the Church.

2. As if the Ordinary commands, that no Feme after she has had a Child, shall be Churched, if, when the comes within the Church-door, she does not kneel down, and make her Obrisons towards the Altar, and also come in a Habit, this Command is not lawful, because there is not any Custom since the Reformation, nor any Canon for it; and also the Manner of Churching is ordained by the Book of Common Prayer, which is confirmed by the Statute of 1 El. and the Ordinary of himself has not any such Power to impose such new Ceremonies upon the Laity. P. 20 J. B. R. in one Shipman's Case, the Wife of an Alderman of Norwich, who was communicated by the Chancellor there, Er. Dicri; resolved by Lee and Chamberlain, contra Houghton, and Day given why Prohibition should not be granted. But it was Denied, because it was certified by diverse Bishops to be the common Custom of the Church of England.

3. It was agreed that the Ordinary in his Visitations, shall make the Parishes refrain their Bells, Ornaments, &c. Br. Deposition, pl. 2. cites 11 H. 4. 12.

(R. e) * Deposition. And what shall be Cause to depose.

1. If an Abbot aliens his Land which he has in Right of the Houfe, he shall be depo'd as a Dilapidator Donnis. 20 H. 6. 46. 9 E. 4. 34. adjudged accordingly 29 E. 3. 16.

* Deposition

is an Ecclesiastical Censure, by which a Clergyman is deprived of his Benefice. Deprivation is an Ecclesiastical Censure, whereby a Clergyman is deprived of his Orders. It is otherwise called Deposition. A Sentence may not only be given for this Purpoze, but the Clerk may be solemnly tripp'd of his Clerical Habits. Wood's Inst. 48. C. cited 9 Rep. 83. b. Trin. 13. Jac. in Baggs's Case.—S. C. cited 11 Rep. 73. b. Pach. 13. Jac. in Baggs's Case. Wills's Coll. 4. 3. b. and 11 H. 4. 35. E. L. 1. 4. Br. Deposition &c. pl. 4. cites S. C.

Dilapidation, by the Opinion of Lord Coke 3 Inst. 254. is a good Cause of Deposition; but some think the Authorities they cite in the Margin do not prove it, viz. 29 H. 3. 16. Where it is true there is not one Word to that Purpoze. And 5 H. 4. 3. is only the Opinion of Serjeant Tyrwhit, where Thirning Ch. J. is of Opinion, that if a Bishop, Archdeacon &c. committed Waffe in curting Wode which they had in Right of the Church, they were not punifhable at Common Law; and then demands of the Bar how the Party could be punifh'd in the principal Case? Whereto Tyrwhit answers, He shall be depo'd as a Dilapidator of his Houfe; and Thirning replies, Let that be as it will, (i. e. by Common Law) yet by the Law of the Land he is not punifhable. Notwithstanding which I think clearly, that
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at Common Law an Action of Writs for Dilapidations in Ecclesiastical Houses and Buildings; and that wherein the Place was recoverable, which was tantamount to a Deprivation. {Watt. Clerg. Law c. 55.}

And in the 9 E. 4. 34. It is held per Moyle J. that if a Son gives an Action at Law, to pray for the Soul of his Father, and he spends the Money, he shall not be deprived, because he received the Gift in Jure Proprio (or in Jure Perfonam) but if he alienated any of the Abbey Lands, he might be deprived; for those he had in Jure Domus. And it seems to me there is the like Reason for a Deprivation, where Wffe is done in Houses or Lands held in Jure Ecclesiastic. {Watt. Clerg. Law 55.}

Tho' in Equity Deprivation may well belong to Dilapidators, yet that it hath ever been inflicted, appears not by any Thing that is alleged either out of the Books of Common or Canon Law, which speak only of Alienations. {Gibbs. Cod. 1116.}

2. Before the Statute 18 El. cap. 7., if an Incumbent had been convicted by Verdict of Homicide, and could not purge himself of it, this had been Cause of Deprivation. {Trin. 15 Ja. B. R. between Serle and Williams, PET. CURIAM, for he was, Criminosis.}

3. But otherwise it had been if he had purged himself thereof, as was agreed in the same Case. {Hob. 288 to 294 S. C. adjudged — Cro. J. 430.}

5. If a Parson speaks against the Book of Common Prayer established by the Statute of 1 El. This is good Cause of Deprivation by the Ecclesiastical Law, without any Aid of the said Statute; for he who speaks against the Peace and Quiet of the Church is not worthy to be a Governor of the Church. {Co. 5. Cawdry's Case 5. b. abd. d. And same Case, 37 El. B. R. Cawdry and Acton, tho' it was observed that it was but Malum Prohibitum: And this Power of Deprivation is not taken away by the said Act from the Ordinary for the first Offence being in the Affirmative. And also there is an express Privileg which excepts it. Co. 5. Cawdry 5. Adjudged.}

6. By the Common Law there are two Sorts of Degrading; on Summary, by Word or Sentence only; and the other Sellaem, by divesting the Party degarded of those Ornaments and Rights which are the Ensigns of his Order or Degree. {Gibs. Cod. 1104.}

7. The King without Parliament may make Orders and Constructions for the Government of the Clergy, and may deprive them if they obey not. {Cro. J. 37. at an Assembly of all the Judges, and of the Archbishop of Canterbury, Bishop of London, and divers of the Nobility.}

8. * Hereby, Schism, Inreligion, Perjury, and Excommunication are good Causes to deprive a Clerk; so of Homicide, if he be attainted and not pardoned; otherwise, if pardoned; for Pardon restores him to the Benefit of Law. {Jenk. 259. p. 55. cites Hob. Sarle's Case.}

9. It was resolved, that if Bishop, Archdeacon, Parson &c. abates all the Trees, this is good Cause of Deprivation. {11 Rep. 98. b. Trin. 13. Jac. B. R. in Bragg's Case; and cites 2 H. 4. 3. b. accordingly.}

10. Where a Statute makes it a Part of a Bishop's Office to tender Oaths on Ordination of any Perfon, if the Bishop disobeys it is good Cause of Deprivation; and then the Metropolitan may proceed against him for doing contrary to the Duty of his Office, but not to punish him as for a Temporal Offence. {12 Mod. 239, 240. Bishop of St. David's v. Lucy.}

Guardian of the Spiritualities. The Guardian of the Spiritualities. Who is of Common Right.

1. Of Common Right the Dean and Chapter is Guardian of the Spiritualities of the Metropolitan in Time ofVacation.

2. Of inferior Bishops in Time of Vacation the Dean and Chapter of the See of Common Right is Guardian of the Spiritualities, and not the Metropolitan. Contra, 31 H. 6, 10. Admitted. Dub. 17 C. 3, 23. b. And there it is said by Stout, That in Time of R. 1, and always before, the Metropolitan was Guardian till the Time of H. 3, and then by Default Composition was taken for it.

3. 5 S. 2, Nuare Impedir. 165, admitted, that during the Vacancy of the Bishoprick of Durham the Archbishop of York is Guardian of the Spiritualities.


5. Of the Archbishops of Canterbury the Dean and Chapter is Guardian of the Spiritualities in Time of Vacation.

6. Of the Archbishops of York the Dean and Chapter is Guardian of the Spiritualities in Time of Vacation, and not the Archbishop of Canterbury, because it is a distant Province, and not subordinate to the Archbishop of Canterbury. Contra, 31 H. 6, 10. Admitted; for there a Parson of the Province of York had Aid of the Metropolitan, Guardian of the Spiritualities of the Archbishop of York in Time of Vacancy of the Archbishops.
(T. c) Guardian of the Spiritualities. *What Thing he may do.*


2. 2 C. 1. Rot. Pat. Demb. 5. The King presented to the Guardian of the Spiritualities of the Archbishoprick of Dublin in Ireland, Sede vacante, for a Church in Ireland.


4. 22 C. 1. Rot. Clau. Demb. 11 Dorso. Letters directed to all the Bishops to make Orisons for the Journey of the King into France, and in the Vacancy to the Guardian of the Spiritualities.


7. The Guardian of the Spiritualities shall try the Issue of Able or Not Able in Quare Impetit between the Plaintiff and the Bishop, where the Archbishop is dead and the See void, and the Bishop refuted the Clerk. 40 E. 6. 258 b. pl. 32. Daubeney v. the Bishop of R.


9. 25 H. 8. cap. 21. S. 16. Enacts that if the Archbishoprick of Canterbury be void, then such Manner of Licences, Dispenfations, Faculties, Instruments, Reffcripts, and other Writing, which may be granted by Virtue and Authority of this Act, shall (during the Vacation of the same See) be had, done and granted under the Name and Seal of the Guardian of the Spiritualities of the said Archbishoprick for the Time being, and shall be of like Force and Effeit as if they had been granted under the Name and Seal of the Archbishop.

Dispenfations, Probate of Wills, Administrations &c. during such Vacancy, and of Admitting and Instituting Clerks presented to them; but they cannot (as such) Confer or Ordain, or Prefer to vacant Benefices. Wood's Inf. 27.—*S. P. Godolph. Rep. in the Introduction 9. 10.—S. P. Godolph. Rep. 39.*

40. cap. 4. S. 1. 2. 3.

S. 17. And if he shall refuse to grant such Licences &c. where by Law they ought to be granted, in every such Cafe the Lord Chancellor of England, or Lord Keeper of the Great Seal, upon Petition and Complaint thereof to him made, may issue his Majesty's Writ, directed to such Guardian of the Spiritualities, requiring him by Virtue of the said Writ, under a certain Penalty therein limited by the said Lord Chancellor or Lord Keeper, to grant the same in due Form of Law; otherwise (and no just and reasonable Cause shewen
Prerogative of the King.

shown for such refusal) the said Penalty may be inured to his Majesty, and a Commission under the Great Seal, signed or two such Prelates or Spiritual Persons as shall be nominated by his Majesty, empowering them by Virtue of the said Act to grant such Licences &c. as were so refused to be granted by the Guardian &c. as aforesaid.

10. The King presented to a Prebend then void, the Temporalities being in his Hands fede vacante, and before Institution the King repeals his Presentation; Notwithstanding which the Dean and Chapter being Guardians of the Spiritualities fede vacante, institute and infall the Presentee. Afterwards the King reciting that the Presentee was in Canonico institutis ex sua Præsentatione, ratified and confirmed him. He died Incumbent; in the mean Time a Bishop is created. The King shall have the Presentation again; for he was not in Ex Præsentatione Regis, and consequently the Confirmation void; and Judgment was given (ut deictur) for the King. But the Reporter says, Quere if it be necessary to allege that the Repeal was shown to the Guardians of the Spiritualities before the Institution &c. so as they might have Notice thereof, as of a new Commission &c. D. 292. pl. 70. Trin. 12 Eliz. Anon.

11. In a Quere Impedit the Plaintiff recovered, and had Writ to admit his Clerk directed to the Dean and Chapter, Guardians of the Spiritualities, the See of the Bishopric' being then vacant, which is not returnable; and before Execution of the Writ a Bishop is created. It was doubted whether the Authority to execute the Writ be casd in the Dean and Chapter; and it seems that upon a Suggestion made to the Court of this Matter, Eo quod nihil actum fuit in Breve prædicto, another Writ may be awarded to the Bishop, and may be returnable if it pleases the Party &c. D. 359. pl. 19. Patch. 18 Eliz. Anon.

12. In Case of Deprivation for not reading the Articles of Religion, as required by Statute, the Notice to the Patron, in Case of the See's being vacant, ought to be given by the Guardian of the Spiritualities, to make a Vacant accru. D. 379. b. pl. 54. Patch. 22 Eliz. Anon.

13. It was a great Question upon a Demurrer in Law, If a Vacant devolves to the Ordinary, and within those 6 Months, the Ordinary is translated to another Bishopric, If the King, or his Metropolitan, shall present to that Vacant, in default that the Patron does not present. Noy Attorney said, That the Warden of the Spiritualities shall present, whoever he be. Noy 69. Anon. cites Dyer 78. pl. 103.

14. When the Bishop is confirmed, then the Power of the Guardians of the Spiritualities ceases, and he may consecrate Electis, confer Orders &c. Lat. 246. in Case of Evans v. Avicough.

It ceases after he is chosen by the Conge a' Effire. 8

Rep. 69. in Trollopl's Case.—The Books of Common Law differ much concerning the Time when the Power of the Guardian of the Spiritualities ceases, and that of the Bishop commences. Some say, upon the Election of the Bishop, others not till Confirmation. And again others, as to all Ministerial Afts, upon Election; and as to Judicial, upon Confirmation. But as the Matter is understood and practised at this Day, the Power of the Guardian of the Spiritualities ceases not till Confirmation, Gibb. Cod. 132. 133.—Godolph. Rep. in the Introduction, pag. 9. says it ceases as soon as a new Bishop is consecrated to that See that was vacant, or otherwise translated, who needs no new Consecration.

(U. c) Ecclesiastical Courts. High Commission.

1. In the Diocess of Sarum, within the Hamlet of Hasserton, is a Chapel of Ease, which is within the Parish of Trowbridge, and in which Chapel the Parson of Trowbridge had used to find a Chaplain to say Divine Service for the Inhabitants of the Hamlet. The Parson of Trowbridge refused to find one to say Divine Service accordingly; he may be sued for this before the High Commission; for tho' it be not any of the great Corrupting Offences, yet this Offence is publick, and not Private; for he refused to celebrate Divine Service. P. 6. Ja. B. between Sir J. Uvedal and Paller. Contra P. 6. J. B.
2. A Patron may be sued in the High Commission Court for preaching against the Book of Common Prayer, and refusing to celebrate Divine Service according to it; for it is a Publick Offence. B. R. Cheaney and Franklin's Case adjudged. 9. 7. Ja. B. Parson Mantel's Case. Per Curiam adjudged.

3. A Man cannot sue a Contract of Marriage before the High Commissioners; because this is a Civil Cause, and from their Sentence no Appeal lies. 8. Ja. B. between Clifford and Hunter, Resolved, and Prohibition granted.

4. A Divorce cannot be sued before the High Commissioners, because it is a Civil Matter, and not criminal, and therefore a Divorce cannot be sued before them; because no Appeal can be had thereupon being the highest Court; but ought to be sued before the Ordinary. 8. 9. Ja. B. per Curiam, and Prohibition granted accordingly.

5. A Man cannot be sued in the High Commission for the Proclamation of the Sabbath, but ought to be sued for it before the Ordinary. 9. 8. Ja. B. before Curiam.

6. So a Man cannot be sued there for carrying of Wood upon a Holyday, as St. Luke's Day; but ought to be sued before the Ordinary. 9. 8. Ja. B. Almner's Case, per Cook.

7. So a Man shall not be sued there for Keeping of Open Shop upon a Holyday. 9. 8. Ja. B.

In Atmore's Case is defined, that the High Commissioners could not punish any Man for working on a Holyday, although it be a Matter of Ecclesiastical Conscience, but ought by the true Meaning of the Statute of 1 Eliz. to be punished by the Diocesan 4 Inf. 352.

8. The Vicar of the Church of D. cannot sue the Parson of the same Church (who has the Advowson appropriate) before the High Commissioners for a Penitent leaving out of the Barony, the Barony being late Parcel of the Properties of a Donality, because this Court was appointed for Corruptible Offenders, and not for Mummery, &c. &c. between Party and Party, and the Statute of 34 H. 8. has ordained that Suits may be for High Seditious in the Court of the Ordinary. 9. 5. Ja. B. between Roper and Bulkove. Adjudged per Curiam.

Roper's Case says it was resolved, That the said Commissioners had no Authority, nor Commission in the said Case.

9. If one Sues another in the High Commission, for not standing at the Rehearing of the Creed, but setting and saying that the Constitutions of the Bishop were not Legible Divina, [A Prohibition will be granted] because it is not any Enormous Offence. 8. 8. Ja. B. Jenner's Case. Per Curiam.


**Note:**

Prerogative of the King.

"The Statute of 1 Eliz. to which Crawley, Reeve, and Porter J. agreed: And they all agreed: That they may as well charge me Land with a Rent Charge, as Grant Alimony out of it." — 12. Pop. 38, 39, 60. Mich. 6 Jac. S. C. 11. The
Prerogative of the King.

The High Commission Court, which was erected in virtue of 1 E1. cap. 18, being abolished by Stat. 16. Car. 1. cap. 11. the Extent and Exercise of that Authority are now Matters of more Speculation, and Curiosity; and therefore it may only be observed, in general, that, while that Court stood, there were many and great Controversies between it and the Courts of Westminster-Hall concerning the Extent of the Jurisdiction assigned and limited by this Act; The Commissioners, on one hand, not confining themselves to such Crimes as might properly be called Enormous (Hereby, Schism, Polygamy, Incest, and Reculancy) but taking Cognizance of Adultery, Alimony, Defamation, Laying violent Hands on a Clerk. Misbehaviour of Clergymen in their Functions, and the like, the Cognizance of which, the Judges affirmed to belong, of right, to the standing Ecclesiastical Courts, and not to be enrolments within the Meaning of this Statute; alledging further, that the Exercise of Jurisdiction, in their and the like Cases, by the High Commissioners, would not only prejudice all the Bishops of England in their Ecclesiastical Jurisdiction, but would be also grievous to the Subject, who must be drawn up from all the remote Parts of the Realm, when, before their own Diocesan, they might receive Justice at their own Doors. Much of this kind is to be met with in the Reports of that Time, particularly in my Lord Coke; who strenuously refited the Encroachments of the High Commission; and he, and the other Judges, restrained them, in many Instances, by Prohibitions. Gib. Cod. 50.

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(X. e) Convocation of the Clergy. [Power of Convening.]

1. The Archbishop of Canterbury cannot hold a Council for his Province without the King's Licence; For such Council held by Hubert Archbishop of Canterbury was prohibited by Fitz Peter Chief Justice, because he had not the King's Licence; But he would not obey it. Speed. 487.

2. 13. El. 3. Rot. Parl. H. 1. There is a right for a Convocation of the Clergy of the Province of Canterbury * at Paul's, and another for the other of York. Vide Statute 25 H. 8. cap. 19. Where the Clergy of England acknowledge, that the Convocations of the same Clergy is, and always hath been, and ought to be assembled only by the King's Writ.

3. The Convocation is under the Power and Authority of the King.

4. 23 H. 8. cap. 19. Enacts that, The Convocation shall be assembled by the King's Writs.
5. The High Court of Convocation is called the Convocation of the Clergy, and is the highest Court Ecclesiastical, where the whole Clergy of both Provinces are either present in Person, or by their Representa-
tives. They commonly meet and sit in Parliament-time, consisting of the Laws of two Parts, viz. the Upper-House, where the Archbishops and Bishops do sit; and the Lower House where the inferior Clergy do sit. This Court has the Legislative Power of making Ecclesiastical Laws, is commonly called a National Synod, convened by the King's Writ directed to the Archbishop of each Province for summoning all Bishops, Deans, Arch-
deacons, Cathedrals, and College Churches, aligning them the Time and Place in the said Writ; But one Proctor sent for each Cathedral and College Church, and two for the Body of the inferior Clergy of each Diocese may suffice. The higher House of Convocation, or the two Houses of Lords Spiritual, for the Province of Canterbury consists of 22 Bishops, of the Archbishop is President; the Lower-House, or House of Commons Spiritual consisting of all the Deans, Archdeacons, one Pro-
ctor for every Chapter, and two for the Clergy of each Diocese, in all 166 Persons, viz. 22 Deans, 24 Prebendaries, 54 Archdeacons, and 44 Clerks, representing the Diocesan Clergy. Both Houses debate and transact on-
ly such Matters as his Majesty by Commission alleys concerning Reli-
gion and the Church. The Archibishop of York at the same time, and in the like Manner, holds a Convocation of all his Province at York, constantly corresponding, debating, and concluding the same Matters with the Provincial Synod of Canterbury. The Antiquity of this Court and the Power of Convocation is very great, for (according to Beda) St. Augustin An. 686, assembled in Council the British Bishops, and held a great Synod. The Clergy was never assembled or called together at a Convocation by other Authority than by the King's Writ. Vid. Parl. 18 E. 3. nu. 1. Inter Leges Inx. An. Dom. 727. Godolph. Rep. 93, 99. cap. 11. S. 2.

Houle; another in the Lower-House, chosen there and preferred to the Upper-House, the Archbishop is President, and previous and different at the Direction of the King. For the Convocation is under the Power and Authority of the King. Wood's Init. 500.

See (X. e) pl. 12 in Marq.

(The Convocation has not any Power to do anything to bind the Temporality. 20 P. 6, 13.

2. The Convocation has no Power to allow or disallow the Patents Br. Ordina-
ry, pl. 1.

2. 2 0. 4. Rot. Parl. N. 24. a Writ is granted by the Advice of the Lords Temporal in Parliament to the Sheriffs of London, and this is intituled per ipsum Regem & Concilium in Parliamento, by which the Sheriffs are commanded to burn William Sauré, who was before condemned.
Prerogative of the King.

condemned for a Relapsed Heretic by the Archbishop of Canterbury, 
Apostolica fides Legatum, and the other Suffragans, and all the Clergy 
of the said Province in Concilio suo Provinciali Congregat. Juris Or- 
dine.

4. 31 H. 8, cap. 14. The six Articles are resolved and agreed, (being 
Matter of Religion) by the Allent of the King, the Lords Spiritual 
and Temporal, and other learned Men of his Clergy in their Convoca- 
tion, and by the Allent of the Commons; but afterwards they are 
acted by the King, Lords Spiritual and Temporal, and Com- 
mons in Parliament, and No Mention of the Convocation.

5. 21 R. 2. cap. 2. 12. Enacted by Allent of the Lords Spiritual 
and Professors of the Clergy &c.

See Hereby 

6. 1 El. cap. 1. Provided that those who shall have Jurisdiction by 
Letters Patent shall not have Power to adjudge Heresy but in such 
Cases which have been before adjudged &c. Et such as hereafter shall 
be ordered, judged, and determined to be Heresy by the High Court 
of Parliament of this Realm, with the Allent of the Clergy in their 
Convocation.

7. The Convocation hath Power to make Holydays or Failing 
Days. 20 H. 4. 6. 13.

8. The Convocation hath Power to make Constitutions Provincial; 
Coke Ch. J. by which those of Holy Church shall be bound. 20 H. 5. 6. 
but they 
ought to be according to the Law and Custom of the Realm. Nov. 159. cites 22 H. 6. 14. and 21 E. 4 46.

See Presenta- 
tion (M. 
see 2.)

9. 13 El. cap. 12. Ordains, That the Articles agreed by the Arch- 
bishops and Bishops of both Provinces and all the Clergy in the Convocation 
held at London &c. shall be read by the Incumbent, or other- 
wise he shall be ipso facto deprived.

& Hugonis fil. Antonii Senfical. stipulis Regis Archiepiscopi 
Cantuar. de annibus Episcopis & alius Prelaris apud London Con- 
vocatis ad appellandum pro Rege, ne in Concilio & Congregacione 
illa contra Coronam & Dignitatem nostram aliquid statuere premantur; 
Hanc atque suis suarum vassarum (quas de nobis tenetis) 
dignitatis, nullum modo prestamant Clementiam tenere de aliquibus, qua- 
do Coronam vel Perbeniam nostram vel statuam Confum nostris 
permittat; & Statues pro certo, quod ille sectetur, nos inde ad bos & Vassar- 
um vassarum parentium, &e. He also commanded them to observe 
the Nation &c. Clerium heading, ut nos sit. Subventionem 
faciant libratam.

Their Ju- 

* Fol. 22.

ription 

wasted to deal 

with Here- 

resa, Schifrons, 

and cler- 

more Spiritual 

and Ecclesi- 

ostical Confes, and therein they did proceed Justa Legem Dictam & Canonum Sancto Ecclesi.; And as they could never assemble together of themselves, but were always called together by the King's Writ, so were they oftentimes commanded by the King's Writ to deal with nothing that concerned the King's Laws of the Land, his Crown and Dignity, his Person, or his State, or the State of his 
Council or Kingdom. 4 Ind. 322. cap. 74.

Parish 

11. 7 Rot. Pat. Semb. 6. Inhibicio Archiepiscopi et annuis 
Bus Episcopis & alius Prelaris apud Lambeth conventirus, ne aliquid 
statuat in Prejudicium Regis, Coronae et Dignitatis &c.

aligned to forbid in the Name of the King to all the Clergy ase 
sembled at London at this time, that they do not make nor ordain 
any Ordinance which may turn in Prejudice of the King or his Ministers, 
or those of his Peace.

13. In 44 C. 2. in a Symb. a Canon was made, that the Parish 
Clerks were of every Church in England should appoint the Clerk of the Parish. 

of whom every Minister had at least one to assist under him, in the Celebration of Divine Oofficy: And notwithstanding he was maintained by the Parishioners, he was appointed to the Office by the Minister, as 
well
Prerogative of the King.

well according to the Constitution of Archbishop Boniface 45 H. 3; in the Year 1261, as by the Constitutions of the Realm. Gisb. Cod. 240.

14. In another Synod held 1602, a Canon was made to the same Effect, and yet this does not take away any Custom where the Parishioners or Churchwardens have used to appoint the Clerk; because it is Temporal, which cannot be altered by a Canon. Rich. 24 Ed. B. R. Wolpole v. Gale, per Curiam, and by the Council a Petition and Prohibition granted by Consent to try the Custom. This Clerk has often been contested between Incumbents and Parishioners for maintaining the Authority of the Canon, in Favour of the Incumbent, against the Plea of Custom in Behalf of the Parishioners; and Prohibitions have been prayed and always obtained. Gisb. Cod. 240, 241.

[For more as to Clerks of Parishes, see Clerk of a Parish.]

15. Rot. Parl. 18 Ed. 3. N. 12. The Commons pray, That no Petition made by the Clergy, which may be in a Decrease or Damage of the People, or of the Commonality, be granted till it be tried by the King and all the Council, that without Damage of the Great Men, or of the Commons it may be well observed. Answer, it pleads the King and his Council that to shall be.

16. Rot. Parl. 18 Ed. 3. N. 23. The Petitions of the Clergy, and Answer of the King, and granted by him under his Seal.

17. 2 H. 4. cap. 5. It is recited that the Lollards preach &c. to the great Peril of the Souls of the People, and of all the Realm of England, as now plainly is found and sufficiently proved before the Reverend Father in God the Archbishops of Canterbury, the Bishops and other Prelates, Matters of Divinity, and Doctors of Canon and Civil Laws, and a great Part of the Clergy of the said Realm, especially assembled for this Cause. (It seems it was a Convocation in which the Civilians were, who are Laymen.)


in making Canons with the King's Licence and Assent, in Examining and Censuring Heretical or Schismatical Books or Persons. But then an Appeal lies to the King in Chambers, or to his Delegates, as hath been lately resolved. It is the Legislative Power in the Church, and the Canons that are made concerning the Church with the Royal Assent, bind the Clergy, but not the Laity. Wood's Int. 500.

19. Sergeant Hawkins says, It is certain that the Convocation may declare what Opinions are Heretical; but that it has been questioned of late, Whether they have Power at this Day to Convene and Conveni the Heretics. Hawk. Pl. C. 4. cap. 2. S. 3.

(Z. c) The Privileges of the Convocation.

1. 8 H. 6. All the Clergy from henceforth to be called to the Convocation by the King's Writ, and their Seats in the House of Lords, shall for ever hereafter Use and Enjoy such Liberty and Immunity in Coming, Carrying and Returning, as the Great Men and Commonalty of the Realm of England, called or to be called to the King's Parliament, have Used, or ought to Have and Enjoy. for Redress, in Cases where this Liberty of the Convocation-Clergy hath been invaded, which their Lordships have accordingly granted. Gisb. Cod. 97. 5.—* S. P. Godolph. Rep. 99. cap. 11. S. 2.
(A. f.) Bishop and * Temporalities. For what Causes the Temporalities shall be seised.

1. If a Bishop incurbe the Church after a Prohibition of Ne-Admittas, he shall be seised of the Things whereby the Bishop have by Livery of the King, as Castles, Mansions, Lands, Tenements, Parsonages, Tithe, and all other Eights whereby the King is answered during the Vacation. Savil 52. Patch. 25 Eliz. Anon.—t S. P. Br. Reésther, pl. 9. citeq 21 E. 3. 3.

2. If a Prior be attainted in an Attachment upon Contemner, for Not admitting a Varlet to his Corody, his Temporalities shall be seised. 38 Aff. adjudged.

3. If a Bishop be attainted in an Attachment upon a Prohibition, his Temporalities shall be seised. 21 E. 3. 3. 60. b. adjudged. S. P. Br. Reésther, pl. 9. cites S. C. 

4. If a Bishop be found a Disturber in a Quarrel, his Temporalities shall be seised, for he shall not be taken as another Han, because he is a Prelate. 29 E. 3. 42.

5. 10 E. 1. Rot. Pat. Hemb. 5 Bandantr quod omnnes Terre et Tenementa Episcopi London capitainitate in manuis Regis sit in faciendo prout Ker inuicem Occasiones caput amnorum Nobis per ipsum Episcopum factae.

6. If a Bishop be attainted in a Trepass against the Peace, his Temporalities shall be seised, for he shall not be taken as another Han, because he is a Prelate. See (E. f.) pl. 5. 21 E. 5. 60.


8. In Eipse against the Abbot of Welfminster of a Clerk attaint, it was prayed that the Temporalities should be seised; to which it was not answered, therefore quare. Br. Reésther, pl. 17. cites 21 Aff. 12. See (E. f.)

10. If the Ordinary challenge a Clerk who cannot read, he shall make Fine, and if he * refuses a Clerk who can read, he shall make Fine; and if he * refuses to be made by a Clerk contrary to the Common Law, this is an Eipse; but the Temporalities of the Ordinary shall not be seised in such Cases, because by this Statute the Justices shall affer a Fine without sealing. Br. Ordinary, pl. 12. cites 9 E. 4. 25.—S. P. Br. Clergy, pl. 12. cites 3 H. 4. 41.—S. P. And he is not Judge of the Pofessor, nor of his Reading, but is [only] Minister, and the Justices are as Judges. Br. Ordinary, pl. 16. cites 7 E. 4. 29.—Ibid. pl. 23. cites 7 H. 4. 41. S. P. But per Gacogin, if the Ordinary challenges a Clerk who is No Clerk, the Court shall seise his Temporalities. —And 2 H. 164 ft. says, that anciently his Temporalities were Hable to be seised for such Contempt. But since this Statute it is held to be inexcusable only. —And 2 H. Mob. cap. 33. S. 116. ft. says, It seems to be generally agreed that he shall now be only in such Case and the like, for defimitely persuing to return that a Pofessor reads a Clerk, or the contrary &c., against he declared Sense of the Court.

10. If the
Prerogative of the King.

10. If it was taken in Case of a Corody, if the King was Patron of a Priory, (where he had presented one to the Corody, by reason that his Progenitor founded a Chapel there before any Priory was there) or if the Bishop of E. and his Predecessors de tempore have been Patrons there? And the Jury found for the King; for which, Caiue, and because the Prior had made Elections of Priores there without Licence of the King, to the Dissolution of the King and his Crown, it was agreed, that the King recover the Patronage, and that the Temporalities be seised into the Hands of the King for the Dissolution and Contempt, 'till he had made Satisfaction to the King. Br. Presentation, pl. 39. cites 38 Aff. 22.

11. If the King presents and his Clerk is in, and after the King revokes his Presentation, if the Bishop does not remove the Incumbent, the King shall seise the Temporalities. Per Thorp. Br. Ordinary. pl. 23. cites 44 E. 3.

12. Where the King writes to the Bishop to assise a Man excommunicated for a Caufe which does not appear to the Bishop, and he does not do it, the King shall seise his Temporalities. Br. Reheifer. pl. 8. cites 14 H. 4. H. 4. 14 S.C.

14. An Archbishop is attainted of Treafon, the King shall have the Temporalities in Jure Coronae, not in Jure Vacaciones; for he remains Arch bishop until Degradation and Deprivation. Jenk. 210. pl. 44. cites D. 108.

(B. f.) What Profit the King shall have thereby.

[1] If the King has Judgment to seize the Temporalities of the Bishop for Contempt, he shall have the Presentation to the Pretend annexed to the Temporalities which shall become void after. 21 C. 3. 29. Anuyd. Thy' the King has the Temporalities as a Ditres till a Fine made to him by the Bishop. 21 C. 3. 29. 30. Adjudged.

Poffeffion, and not only the Profits. — Br. Seice facias. pl. 101. cites S. C. — Br. Seifn. pl. 9. cites S. C.

2. Quare Impedit by the King of the Advowson of B. and made Title by the Poffeffions of the Abbot of Reading in his Hands; and the Defendant said, that King H. Great Grandfather of King J. granted to the Abbot and his Monks, that he and his Heirs should not meddle with the Poffeffion of the House in the Time of Vacation, but that the Prior and Monks should have the Disposition of them for their Sufferance; and said, that they enjoyed it accordingly. And the best Opinion was, that the Grant is good, and that this Word (Poffeffions) shall be taken to be All which they shall have in Poffeffion. And Per Chel. Where a Man demands Franchise by Charters of the King before Time of Prescription, he shall not have it otherwise than it has been used, quod non negatur; and quare the Reafon of those Words (for their Sufferance); for Prescription to Advowson is not Sufferance to them. Br. Patents. pl. 22. cites 39 E. 3. 21.

3. The Matter and Fellows of Merton College in Oxford were Patrons of a Benefice within the Bifhoprick of Durham, and the Incumbent died, and the Church remained void by six Months; and afterwards the Bishop was deprived. Whether the Collation belong'd to the King or to the Archbishop of York, Metropolitan, or not. Quare. D. 87. b. pl. 105.

Patch. 7 E. 6. The Matter and Fellows of Merton College's Cale.

Marg. says, that in 18 Eliz. it was awarded, that it belonged to the Guardian of the Spirituailties. It seems that it is because that it comes by reason of the Spirituailties.
Prerogative of the King.

(E. f) What Person shall visit.

1. By the ancient Law of the Realm, the King has Power to visit, Reform, and Correct all Abuses and Innomities in the Church. Davys 1, Propos 4.

2. By the Statute in Time of H. 8. the Crown was but remitted and restored to its ancient Jurisdiction, which was usurped by the Bishop of Rome. Davys 1, Propos 4.
dum Domino Regi quare exercet jurisdictio nen in Capella Regia Sancta
Barianae in Cornub. &c. bene placat. ibidem. And Cr. 17. C. 3. 57. cit
Rot. 97. B. R.
4. The King himself shall visit his Free Chapels and Hospitals, and
not the Ordinary. Davis. 1. Peryves. 4. 27. E. 3. 85. F. N. B. 42.
a. The Lord Chancellor shall exercise it for the King.

5. The Donatives of the King are not visitable by the Ordinary
21 Mf. 29. 8 E. 3. Mf. 150.
6. The Donatives of the King are properly visitable by the Chan-
celler, Davis. 1. 46. F. 12. B. 42. A. And the King may make a Spe-
cial Commission to this Purpose. D. 1. 46.

7. The Abbey of St. Edmond's-Bury was of the Foundation of the
King, and exempt from every Jurisdiction of the Ordinary, that no
Ordinary shall visit there, and after ordained in Parliament, that if the
Bishop or his Successors visit against the Ordinance and Foundation, they
shall forfeit 30 Talents, and after the Bishop is sued upon a Contemp
for visiting contrary to this, and against the Prohibition of the King
to visit, and for this his Temporalties listed, and he forfeited the
Talents. 21 E. 3. 60.

quod non permittas Digornam. Episcopam del Dist. aut aliis Ministro-
ibus, Capellanos, Clericos, aut aliis Ministrobus Capellis de &c.
que de Heraldrice J. S. infra Aetatem, & in Calendia nostra existen-
tis visitare del Jurisdictionem Ordinariam in eadem libera Capella
cerecire, aut in ea aliud contra tenorem Inquisitionis, super de
Proeipeo nostro super hoc atc. appetamare ac. feo in eadem funu in
quis hic sit omnis Patria predicti J. S. manet. et ad 50 Talenti
breve durum Custod. & hoc nullo modo omittas ac.
King are exempt from the ordinary Jurisdiction, which the Dean
and Official of London compel them to pay ac. Prohibition. 6. E. 1.
Rot. Rot. B. 17. in Schedule amera. The King recites, Quo
sum Ecclesiae Omnium Sanctorum di Dei Deditum et Sancnti, ats
Permittunt, ne sit libera Capella Regis, & ab omni Ordinaria Jur-
dictione exempta, & Dominus Papae immediate Subi &c. & archi-
dianus Denvy Jurisdictionem suis ducet. Ser mandat quod prae-
tat Archidioecesan talen Jurisdictionem ducantur in nullo obti-

cipere.
10. If a Hospital be Spiritual, the Bishop shall visit. Co. 10. Sut-
11. If a Hospital be Lay, the Patron shall visit it. Co. 10. Sutton's
31. 8 Mf. 29. 8 E. 3. Mf. 150.

12. If a Hospital be Spiritual, or of the Law. If it be a * Lay one, the
Founder, or his Heirs; But if an Ec-
clesiastical one, then the Bishop of the Diocese is Per Holt Ch. J. Show. *4. Mich. 1 W. & M. Per-
Prerogative of the King.

After relating to Hospitals ought to be referred to Commentaries; But tho' the Rule of the Crown is that Hospitals, de jure Communit, were under the Inspection of the Bishop; And tho' also the Order of the Lords in Parliament implies plainly, that they understood the statute 2 H. 5. cap. 1. to be an Alteration of that general Right, without any Exception, but to those of Royal Foundation, since the Statute neither mentions nor implies any other, yet Lord Coke distinguisheth between Spiritual and Lay Hospitals; and said, the Exemptions from the Ordinary, in the Case of Sutton's Hospital, was but declaratory: For being a Lay Corporation, he neither could, nor ought to visit it. Gist, Cod. 1149. 1148.

Holt Ch. J. said, that in Defect of a particular Appointment of a Visitor by the Founder, the Common Law makes the Founder Visitor, and it is not at his Pleasure, whether there shall be a Visitor or not. But if he is silent during his own Time, the Right will descend to his Heirs. And his Lordship said that it to appears by the Case in Yelv. 75. and 2 Geo. 60. where it is admitted on all Hands, that the Founder deriveth Patronage, and as Founder is Visitor, if no particular Visitor be appointed, and that fo 8 H. 35. & 9 Aff. 29. to that Extent the Viscitation and Patronage were receivable Corporations, &c of each other: For this Viscitational Power was not introduced by any Cartons or Constitutions Ecclesiastical; it ariseth from the Property which the Founder had in the Lands assigned to support the Charity. Skin 48. Trim. 6. W. & M. B. R. in Case of Phillips, Bury—Shaw Parl. Cases 25. 45. Accordingly, and there it was further argued, That in our old Books (depressed by Patronage) and (depressed by Visitor) are all one: For this Authority to visit is a Benefit, that naturally springs out of the Foundation, and it was in his Power if he pleased to transfer it to another, and where he had so done, the other would have the same Right and Authority as the Founder had: That there is no Manner of Difference, between an Hospital and a College except only in Dover: An Hospital is for those that are Poor and Mean, or Sick &c. A College is for another Sort of Persons, and to another Intent; The former is to maintain and support them: This is to educate them; in Learning, that is not otherwise whatsevithal to do it; But still it is much within the same Reason of that as a Hospital; And if in an Hospital the Master and Poor are incorporated, it is a College under a Common Seal to all by, though he bears not that Name, because it is of an inferior Degree. And in both Cases there must be an Visitor, as berehe Eleemosnary. And 3 Mod. 404. Panch. 10 W. 3. The King is Eleuther, it was held per Cur. That all Eleemosnary Corporations, who are to receive the Charity of the Founder, whereas a particular Visitor is not appointed. If they are Ecclesiastical, then the Ordinary of the Place is Visitor: But if they are Lay Corporations, then the Founder and his Heirs are perpetual Visitors—12 Mod. 252. Mich 10 W. 3. Anon. Holt Ch. J. said he took it that the Corporation of a College being Lay, the Viscitation belongs to the Founder and his Heirs, and if the Founder is not without Heirs, that the Viscitation fall to the King, for which see 5 E. 4 Simon de Montfort's Case, and said that this was his Private Opinion; And that whereas a Right of Viscitation should escheat was a Point which divided the Court in Dr. Patrick's Case; And said that there is a great Diversity between Abbot and Convent, and Master and Fellows, Mayor and Commonalty, &c. For in Case of Abbot and Convent, there must be the major Part, and the Abbot besides, Because he acts only cum Comitatu of the major Part of the rest; But in Case of Master and Fellows, &c the Master himself is but Part of the Acting Part, and he is one of the Grantors as well as the Rest; And he said, That in case it be a Donative and a private Corporation, though it be Spiritual, yet he is of Opinion that the Viscitation belongs to the Founder, though he does not, by express Words, reserve it to himself; For why should it of Common Right belong to the Ordinary? And whether the King may grant the Inheritance of a Viscitation may be a Quetion; For it may be said to be Privy to his Person; But without doubt he may grant to whom he pleases to be Visitor for a Time.

12. If a Lay Hospital be erected, and no Visitor named, but Governors appointed, the Governors shall visit. Co. 10. Sutton 31.

If the Founder limits not who shall visit (says my Lord Coke) the Bishop of the Diocese shall, for which he refers to the Statute of 2 H. 5. cap. 1. and says nothing of his Distinction between Spiritual and Lay Hospitals. Gist, Cod. 1149. and Gilbert Ch. B. said the meaning must be, that when an Hospital is incorporated with a Lay Corporation, and Governors appointed; That (in point of Contraction) is then a Parling with the Viscitational Power; For there can be no End in selecting the Governors, but to make them Visitors where the Poor are the Corporation, and the Revenues are lodged in them as a Corporate Body. Hill. 12 Geo. 1. G. Eru. 185. Cafe of Birmingham Scllo. — S. C. 2 Wm's Rep. 252. Edin v. Follet.

13. All Abbes and Priories were visitable by the Ordinary, as to their Rule and Order of Common Right, if they had no Exception. D. bis Popes 3.

14. The Hospital of St. John of Jerusalem was visitable by the Ordinary of Common Right. Dav. Prories 1. admitted. For they were Religious.

15. In the Statute of 25 H. 8. which takes away the Pope's Supremacy, there is a Proviso, (v.5.) That the Archibishop of Canterbury, or any other Person or Persons, shall have no Power or Authority, by Reason of this Act, to Vistit or Vex any Monasteries, Abbeys, Priories, Colleges, Hospitals, Houses, or other Places Religious, which be, or were exempted before the Making of this Act, any Thing in this Act to the contrary thereof notwithstanding; but that Redress, Viscitation, and Confirmation, shall be had by the King's Highness, his Heirs.
Prerogative of the King.

Heirs and Successors, by Commission under the Great Seal to be directed to such Persons as shall be appointed requisite for the same, in such Monasteries, Colleges, Hospitals, Priories, Houses, and Places Religious exempt, so that no Visitation or Confirmation shall be from henceforth had or made in, or at any such Monasteries, Colleges, Hospitals, Priories, Houses, and Places Religious exempt by the said Bishop of Rome, nor by any of his Authority, nor by any out of the King's Dominions &c.

16. In the Statute of 31 H. 3. cap. 13. of the Dissolution of Monasteries, there is this Provision. (247.) That such of the late Monasteries, Abbies, Priories, Nunneries, Colleges, Hospitals, Houses of Priories, and other Religious and Ecclesiastical Houses and Places, and all Churches and Chapels to them, or of any of them belonging, which before the Dissolution, Supplication, Renouncing, Relinquishing, Forfeiting, Giving up, or Coming unto the King's Highness, were exempt from the Visitation or Visitations, and all other Jurisdiction of the Ordinary or Ordinaries, within whole Dioceses they were situate or set, shall from henceforth be within the Jurisdiction and Visitation of the Ordinary or Ordinaries within whole Dioceses they, or any of them, be situate and set, or within the Jurisdiction and Visitation of such Persons or Persons as by the King's Highness shall be limited or appointed, this Act or any other exempt Liberty or Jurisdiction to the contrary notwithstanding.

from the King, and the second by Commission from the Domesday such as the Crown exempted or shall exempt, pursuant to the Powers granted by this Statute. Gibb. Cod. 1018.

17. In the Statute of 1 & 2 P. & Mar. cap. 8. (which repeals the Statute of 25 H. 8. before mentioned here) there is this Provision (247.) Whereas by the Dissolution of Monasteries and other Religious Houses, certain Parish Churches and Chapels were before exempt from the Jurisdiction of the Archbishops and Bishop of the Dioceses, and by special Exemption and Privilege from Rome, were under the Government and Order of the Abbeys and Priories of those Religious Houses, which said Churches, by Colour of the said Exemptions, be now of special Grant from King H. 8. and King Edward, under the Rule and Government, and Jurisdiction of Laymen, who can no more enjoy that Supremacy over those particular Churches, than the King might over the whole Realm, be created, that all such Archbishops and Bishops in their Dioceses, and all other Spiritual Persons having Jurisdiction, and their Ministers and Officers, and no Lay Person or Persons, in every Church and Place within the Precept of the same, being exempt or not exempt, may freely and without Impediment execute their Spiritual Jurisdiction in all Points and Articles, as tho' no such Exemption or Grant had ever been made. But after there is a Provision, that this shall not extend to toll or diminish the Privilege of the University of Cambridge or Oxford, nor the Privileges or Prerogatives granted before to the Churches of Westminster and Windsor, nor the Tower of London, nor be prejudicial to such Temporal Lords and Possessors within the Realm, who by ancient Custom have enjoyed Prebends of Temporalities of their Tenants and others; but this Act is repealed by the Statute of 1 Eliz. cap. 1.

18. In the Statute of 1 Eliz. cap. 2. (which is an Act for Uniformity of Common Prayer) there is a Provision. (247.) That all and singular Archbishops and Bishops, and every of their Chancellors, Commissaries, Archdeacons and other Ordinaries, having any peculiar Ecclesiastical Jurisdiction, shall have full Power and Authority by Virtue of this Act, as well to inquire in their Visitations, Synods, and elsewhere within their Jurisdiction, at any other Time or Place, to take Occasions and Informations of all and every the Things above mentioned, done, committed

So that now there are no Places totally exempt from ordinary Jurisdiction, but either such as enjoy their Exemption upon the Foot of Common Law, as free Chapels and Dominions (the first visible only by Commission may have exempted or may be exempted from the Powers granted by this Statute.)
committed or perpetrated within the Limits of their Jurisdiction or Authority, and to punish the same by Admonition, Excommunication, Sequestration or Deprivation, and other Censures and Proceeds, in like Manner as heretofore hath been used by the Queen’s Ecclesiastical Laws.

19. In the said Statute 1 Eliz. cap. 2 it is enacted, That such Privileges, Jurisdictions, Superiors and Pre-eminences, Ecclesiastical and Spiritual, as have been by any Spiritual and Ecclesiastical Power or Authority exercised, or may lawfully be exercised or used for the Visitations of the Ecclesiastical State and Persons, and for Reformation, Order and Correction of the same, and of all Manner of Errors, Schifins, Abuses, Offences, Contempts, and Enormities, shall for ever, by Authority of this present Parliament, be united and annexed to the Imperial Crown of this Realm; and that the King, his Heirs and Successors, shall have full Power and Authority by Virtue of this Act, by Letters Patent under the Great Seal of England, to Adjuge &c. to Life, Exercise &c. under the King, his Heirs and Successors, all Manner of Jurisdiction &c.

20. The same Place may well be visitable by two different Powers. So it is in the Case of every Cathedral and every Deanery, which are visitable, as well by the Metropolis as by the Bishop. Giff. Cod. 1151.

21. The Archbishop of D. Ribell’d in the Spiritual Court against the Dean and Chapter there for denying to admit him to visit them. The Defendant suggested for a Prohibition, That the Chapel was of Royal Foundation, being first a Monastery of Royal Foundation, and afterwards translated into Dean and Chapter; and being a Donative, was exempted from the Visitations of the Ordinary. Upon a Prohibition the Plaintiff declared, That this Chapel was of Royal Foundation, and that the Ordinary had no Visitatorial Power there, but what he had by the Letters Patent of Creation 33 H. 8. which expressly provides, That the Archbishop shall have no Power over the Deanery, but such as he had over the Prior and Convent of the Holy Trinity Time out of Mind; which Priory was of Royal Foundation, and had Time out of Mind been visited by the King or his Chancellor. The Archbishop, after Oyer, pleaded That the King did further ordre and declare in the said Letters Patent, that the Church of the Holy Trinity should be the Archbishop’s seat of D. as it was before, and as it used to be; and the Archbishop should exercise no Jurisdiction there, but such as he used when it was a Priory; and that Time out of Mind the said Archbishop, and his Predecessors, Archbishops of Dublin, kept their Cathedral in this Church; and that the Prior and Convent before, and the Dean and Chapter since the Translation, were the Chapter of the said Archbishop, and Time out of Mind had been visited by them, as Occasion required, and transferred that the Priory was of Royal Foundation. Upon a special Demurrer Judgment was given in C. B. in Ireland for a Confutiation, and that Judgment affirmed in B. R. there. Upon Error brought in the House of Peers here, it was argued, That this being an Ecclesiastical Corporation, is by common Intendment subject to the Visitations of the Ordinary of the Place, unless by the Patent of Creation there had been a Vicar appointed by the Founder; for all such are Prima Facie subject to the Jurisdiction of the Ordinary, the founded by the Crown, and so is Carde’s Café, in D. 273. That the only material Point is, Whether this was of Royal Foundation, or not? which was not the Point of the Case between this Archbishop and Dr. Harrington some Years past, who was a Prebendary of this Church. For if the Priory was not of Royal Foundation, the Deanny, into which it was translated, cannot be so; but if it was of Royal Foundation, then the Translation into Dean and Chapter is no Prejudice to the Founder, he remaining Founder still; for nothing is alter’d but the Monastic Rule and Habits; and so it was held in the Dean and Chapter of Norwich’s Café. 3 Rep. 73. 39 H. 8. at which Time the Priory and Convent of the Cathedral Church of the Holy Trinity of Norwich, was translated into the Dean and Chapter. So that

*See (C.f)
Marg. pl. 2
Prerogative of the King. 249

if nothing is altered by the Translation, the Founder is not deprived of his Right of Patronage, neither is the Visitor of his Right of Visitation; because it is still the same Body Corporate, tho' by another Name. And Judgment was affirmed. 8 Mod. 183. Mich. 10 Geo. 1724. Trinity-Chapel in Dublin v. Archibishop of Dublin.

(F. f.) Exemptions. [Visitation.]

1. The King might exempt Abbots from the Visitation of the King the Ordinary; for the King is Supreme Ordinary. Dr. may erect a Free Chapel, and exempt it from the Jurisdiction of the Ordinary. This is agreed on all Hands; and our Law-Books add, That he may license any Subject to found such a Chapel, with such Exemptions; which however positively hold, seems not to be an infident Truth; and yet I find not any influences alleged to confirm it. That many Free Chells have been in the Hands of Subjects, is not denied; but it does not therefore follow, that those were not originally of Royal Foundation. Gibb Cod. 237. The King may erect a Free Chapel, and exempt it from the Ordinary. And I think he may do it without Confection, as in the Influence of Whitehall; but tho' the Codex is unwilling to grant it, yet our Books are very express, that the King may license a Subject to found a Free Chapel, and exempt the same from the Jurisdiction of the Ordinary. Walf. Clerg. Law 646.

(G. f.) Appeal. * Delegates.

1. By the Statute 25 H. 8. Appeals to Rome are prohibited, and Ordeind, that for Delinquents in any of the Courts of the Archbishops of this Realm &c. it shall be lawful to appeal to the King in his Court of Chancery, and thereupon a Commission shall be granted &c. And by a Proviso circa aetn Statutus, an Appeal is given to the King in Chancery, upon Sentences in Places exempt, in the same Manner as was used before to the See of Rome.

* The Court of Delegates is so called, because the Judges are delegates, and not by the Force of the King's Commission under the Great Seal, upon Appeals to the King in three Cases. 18. When a Decree or Sentence is given in an Ecclesiastical Cause by the Archibishop, or any of his Officials. 2dly. When any Decree or Sentence is given in any Ecclesiastical Cause in Places exempt, or Peculiars belonging to the King, or to an Archibishop. 3dly. When a Sentence is given in the Court of Admiralty according to the Civil Law. Woodward 3d. 

S. P. 24 H. 7. cons. 19—S. P. 25 Geo. 2. cons. 11. The Statute gives on and says, That a Commission shall be granted under the Great Seal, to certain Persons to be named by the King, who shall thereby have Power, as in Cases of Appeal from the Admiralty Court, to hear and determine to what such Appeals, and the Causes concerning the same, and from what Decree or Sentence no further Appeal shall be had. But note, in Cases where a Sentence is given by Commissioners delegated by the Prince, as by the late Visitors of Amus. Eliz. the Party proved appealing, such Appeal is out of the Orders preferred by the Statutes of 24 H. 8. and 25 H. 8. cap. 19. And the Prince in such Case may grant a new Commission to order to determine that Appeal. And this was done by the Opinion of several Judges in Goodman's Case, deprived of the Deanery of Wells. 4 Inf. 432. cap. 74. cites a Manuscript Report of Lord Dyer.

The Bishop of Winton is made Visitor of Magdalen College in Oxford by the Founder, and exempted from any Ordinary &c. Dr. Coweney President of the said College, was deprived by the Visitor; and from his Sentence appealed to the Queen in Chancery. It was referred by the Judges to whom this Appeal was referred, they having consulted with Civilians, That the Appeal doth not lie; for it is out of the Statutes 24 & 25 H. 8. cap. 12. For this Deprivation is a Matter merely Temporal, and as if done by a Law-Tagot. So that if he be excommunicated, he may have Altar, or such Suit at the Common Law. D. 209. pl. 25. Mich. 3 & 4 Eliz. Dr. Coweney's Case.—S. C. cited 4 Inf. 350. as Dr. Coweney's Case, President of New College in Oxford.—S. C. cited Arg. 4. Mod. 112. 116. And there the Case of Shirsay in the Year-book of E. 5. Fitch, Tit. Altar, pl. 100 is cited, that he being deprived by the Ordinary where the Foundation was Lay brought an Alitfun; and it was held good. And Ibid. 122. The Case said that Shirsay having a Donative, and being deprived by the Archibishop of York by the Ordinary and Visitor, and another being collated, the Question was, Who was Visitor? And it appeared plainly that it could not be the Archibishop, because the Matter was not Spiritual, it was in Case of a Lay Hospital, which had no Spiritual Possession, it was neither College nor Convent; and therefore the Alitfun was held good, which proves nothing in the Case of a Spiritual Corporation; for if the Deprivation had been
Prerogative of the King.

been by a proper Visitor, and one who had a lawful Jurisdiction, his Sentence would have been final, and no Affidavit could have been brought to examine it Trin. 4 W. & M. B. R. in Cafe of Phillips v. Bury.—Show Parl. Cases 4: Arg. in the Cafe of Phillips v. Bury, it was limited that this Cafe of Dr. Coweney in D 269, nor that of Bagge's Cafe in Rep. 59, of an Affidavit lying because of No Appeal, will not upon the face of it warrant the Dismissal of the parties. That the Party is as much concluded in the other Cafe as in the other, and that it is reasonable to suspect that Cafe not to be Law, because that is impracticable which it is brought to prove. The Head of the College cannot maintain an Affidavit for his Office of Headship; He hath not such an Estate as will maintain that Writ; He hath no such sole Seisin; The whole Body of the College has an Interest therein; He has no Title to the Monies in his own Right, till a Distribution thereof is made by Confect; He is the only visible Head indeed of the Body, but his no single Right. And that in a pufford's Cafe it was laid by Lord Hale, that it was impossible he could have an Affidavit.

Note. It is commonly said, there must be a Warrant or a Deed or a Document of the King, before the Lord Chancellor or Lord Keeper can make an Order for a Commission of Delegates, notwithstanding the Statute of the Year 22 H. 8. Wat. Clereg. Law 56.

2. But it is to be observed that this Appeal to the King in Chancery, is only by the Statute aforesaid, upon a Suit in the Archbishops's Court, or in a Peculiar exempt; for if there be a Suit upon a Commission general of the King, there no Appeal may be to the King in Chancery, within the Statute of the 28th by the Words aforesaid; and therefore there may be an Appeal to the King generally, as he is the Supreme Head of all Ecclesiastical Jurisdiction within the Realm; and this ought to be upon a Bill signed by him, before the Chancellor may make the Commission of Delegates to hear it. But upon Appeals upon the Statute, the Chancellor may grant the Commission of himself of Court, without any Bill signed. 5 C. 6. Stephen Gardiner was deprived upon a Commission of Delegates, and he appealed to the King generally, and not to the King in Chancery, and thereupon the Sentence repealed. 1 Mar. as I have heard by Report of Sir. Selten; and so was it done in the Lord Harford's Cafe about the 1 Jac.

Williams J. held, that the Court of Delegates cannot pronounce a Sentence of Excommunication; and said that they had lately adjudged that Point against the Court of Delegates. 2 Bull. 4. Mich. to Jac. B. R. in Cafe of Stevenson v. Wood. —But Wood's Bill 595. lays, That if the Delegates in Ecclesiastical Cases are Spiritual Persons, they may proceed to Excommunication; if they are all Laymen, the Fault is not in the Law, but in the Nomination. The Power of the Judges Delegates is Potestas delegata corvis, non exempt; they have Power there to examine, but not to correct. Per Williams J. 2 Bull. 4. in Cafe of Stevenson v. Wood.

The the Court of Delegates may revoke or confirm an Administration, yet it still remains a Quære, whether they may grant it originally; and in the first Instance this was a Point stated in the Cafe of 4 Suffolk v. Wood. 10 Jac. 1. and the better Opinion was, that they could not. Wat. Clerg. Law 58 — — 5. C. 2 Bull. 4 accordingly; but the Doctors of the Civil Law differing in Opinion among themselves, the Court pronounced no absolute Judgment, but it was adjourned, and not spoken to again. But Williams J. cited one Bracchbill's Cafe, where it was adjudged, That they could not grant Letters of Administration, they having no Power to do so.

In a Prohibition the Cafe was ; A. died Intestate. B. his Brother gets Administration in the Inferior Diocese; M. who pretended to be Wife of A. suggested Bona Notabilia, and procured a Prerogative Administration; B. appealed to the Delegates, and died; C. his Son and Heir gets the Prerogative Administration repealed, and Administration granted to himself. M prayed a Prohibition, supposing that by the Death of one of the Parties the Commission was determined; but the Court were of Opinion against the Prohibition, and that the Delegates Authority to proceed in that Cafe continued notwithstanding B's Death; for by the Words of their Commission, the Ecclesiastical Law is to be their Rule, and by that Law a Suit does not abate by the Death of the Parties. And Hale said, The Appeal is to the King in Chancery, and by Reason of his Original Jurisdiction, and thereupon he grants a Commission to hear it; now if he could hear it in Person, he may certainly determine the Case after the Death of the Parties, and consequently they to whom he has delegated his Authority, may do the same. But upon the Attorney General's declining to be heard, the Court gave further Time. Venr. 133: Trin. 25 Car. 2. B R. Pollesfen v. Pollesfen.—2 Lev. 6 Parch. 23 Car. 2. B R. lays, the Prohibition was denied.—2 Keb. 779. S. C. and that the Prohibition was discharged Nulf.

It was the better Opinion, and in a Manner agreed that B. R. may prohibit the Delegates from Committing Administration. 18. Because the Authority of the Delegates is given by 25 H. 8. and to their Jurisdiction does not commence by Spiritual Law; but as the Pope had an unfruitful Power, which is transferred to the King by Parliament, and the King gives it to the Commissioners Delegates. And adly Because they cannot be Judges in their own Cause. Lat. 86. in Cafe of Reeves v. Denby. 7. A
5. A Sentence in the Spiritual Court at L. was had against the Plain-
tiff, who afterwards appealed to the Arches, where the Sentence was
affirmed, and adjudged, ut supra, against the Plaintiff. Whereupon he
applied a Commission to the Delegates, and the Matter was re-examined,
and Sentence then given for the Plaintiff. Thereupon another Com-
misson was fixed out to re-examine this Matter. A Prohibition was
prayed to stay it, because the 25 H. 8 enacts, that a Sentence before the
Delegates shall be final, and consequently this second Commission is not
well awarded. But it was answered, That the Queen hath by Law an
Absolute Power to grant Commissions to re-examine, which is not re-
limited by the 25 H. 8. And that it hath been so ruled before these
Times; and of that Opinion was Popham; but because it was a new the Prohi-
bition was not

Pope used to review in such Cases after Sentence by the Legate; and whatever the Pope was wont to
do was ratified to the Crown by the Statute 25 H. 8 cap 20. [169] But they agreed that this Review
should be final without further Appeal. Pemar feem'd e contra, and that the Pope's Authority is abro-
gated and extinct, and that no Appeal is given by the Statute any further than to the Delegates; and
therefore it could not be lawful to go any further. But at another Day, by a Conference with all the
Justices, they agreed that the Commission was well granted, and that Consultation should be awarded;
but that if the Commissioners do not proceed to the Examination according to the Common Law, they
shall be restrained by Prohibition.

6. The Delegates cannot make a Division of Intelligates Goods. Per
Hubbard. Noy 24. in Tooke's Cafe.
in Tooke's Cafe.
8. The Court of Delegates have no Power to prove Wills; Per Williams
9. The Judges Delegates must judge according to the Ecclesiastical Law.
10. The Judges and Civilians ruled on Debate, that the Testimony of one N.
who was examined in Chancery between the same Parties, and Cross-ex-
amined there, should be read before the Delegates; though it was objected,
that the Appellant here should take the Advantage here which he had 
if he had been Cross-examined; For Cross-examining a Wit-
ness sets him Upright in Chancery but not here. 2 Chan. Cales 250.
Hill. 30 & 31 Car. 2. Gargrave alias Van. v. . . . . . . . . . . . . . . . . . [So the Book is.]
11. The Reformatio Legum, speaking of the Appeal to the King, adds
as follow, Quo eum fuerit Causa devoluta, eaum vel Concilio Provencali de-
finiti volumus, si graviss. Causa, vel a tribus Episcopis a nobis ad Con-
finiendas. But in modern Practise (viz. only from the Year 1639) there
are Temporal Judges and Temporal Lords appointed for the final Determi-
nation of Matters conteyled Spiritual. Gibb.Cod. pag. 106. —

The same Author says, That there are no footsteps of any of the Ne-
bility, or Common Law Judges in Commission till the Year 1604 (i.e.
for 90 Years after the erecting the said Court) nor from 1604 are they
found in above one Commission in forty till the Year 1639; From whence, with Ecce-
latts. (i.e. from the Downtall of Bishops and their Jurisdiction which ensued,) we may date the present Rule of Mixtures in that Court. Ibid. Intro.

Difcurie, pag. 21.
12. There lies no Appeal to the House of Lords from a Sentence in the Delegates; For they cannot have any original Jurisdiction; because it
is a Matter grounded upon an Act of Parliament, and the Act gives them
13. A Woman was suppos'd to be Married first to A. and afterwards to
B. Both A. and B. being then living; and upon a Dispute, the Spirit-
ual Court affirmed the first Marriage, but was disallowed on Appeal to the
Delegates, and the 2d held good; There was Issue by the 2d. but
none by the first. Upon A Petition for a Commission of Review to re-
verse
Prerogative of the King.

verfe the last Sentence, Ld. C. King said, That a Commission of Review is not a Matter of Right but purely in the Discretion of the Crown, and as such Commission tends to Buffardize the Judge he was against it, and should advise the Crown accordingly. 2 Wms's. Rep. 299. Trin. 1725. Franklyn's Case.

(H. 8) Appeals.

1. If a Sentence be given in the High Communion Court, no Appeal lies from it to Hero Jure. 9. 4. Inc. B. N. 8. Inc. B.

2. But upon such Sentence an Appeal may be, if the Party can acquire a special Commission to examine it. 9. 5. Inc. B.

3. H. 2. ordered, that Appeals should be from the Consigny to the Arch-deacon; from him to the Bishop; from him to the King. For. 265. Speed 43.

4. But Matthew Paris has further, that the King commanded the Archdeacon to make an End of the Suit, and that he proceed no further without Licence of the King. Speed 438. Jan. Anglor. 94. 53.

5. In Roger Hoveden, vol. 39, and Jan. Anglor. 94. It is, that Appeal shall be from the Archdeacon to the Bishop commencing with the Archdeacon without speaking of the Consigny, and so Cook in his 6. Epistle cites it, and there he observes the Power of the King upon Ecclesiastical Jurisdiction to be ancient and now.

6. Among the Petitions in Parliament 18 E. 1. there is such Petition, William de Nottingham Clericus petit, quod poitic profesque Appellationem suam in Curia Romana &c. Rex non concedit, quod Priviligium suum infringat, sed impremet intra Regnum, ut sibi viderex expedire.

7. 24. H. 8. cap. 12. S. 5. Enacts, that Appeals in Causes Testamentary, Causes of Matrimony and Divorcios, Right of Tithe, Omissions and Omissions, shall be filed from the Archdeacon or his Official, if the Matter be there commenced, to the Bishop of the Diocese.

A Parson of a Church in the Diocese of Winchester was deprived, and he appealed to the Archdeacon of C. in Curia Praeagratassa. fia de Arundins. the Question was, Whether this Appeal was well brought? because the Statute mentions only the Archdeacon of the Province where &c. without limiting any Court in certain. It was the Opinion of all the Judges of B. R. that the said Words in the Appeal, viz. (in Curia Praeagratassa. de Arundins) were void and superfluous, and that the Words, viz. (to the Archdeacon of C.) were sufficient to have the Benefit of the Appeal by the Equity and Intendment of this Statute. D. 247. pl. 46. Trin. 7. Eliz. Anon

In Trin. 3 W. 1. the Court agreed, that no Appeal could be made from the Dean of the Arches to the Archdeacon, because it was one and the same. Carth. 122. in Lee's Case. But Ibid. in Marg. the Reporter says, that the Statute 24 H. 8. is expressly to the contrary, but that this Statute was not mentioned.

S. 7. If the Matter be commenced before the Archdeacon of any Archdeacon, or his Conscript, the Appeal may be within 15 Days &c. to the Audience or Arches of the said Archdeacon, and from thence within other 15 Days &c. to the Archdeacon himself, and no further.
(I. 1) The Effect of Appeal.

1. If after Sentence the Party appeals the Sentence is utterly suspended during the Appeal. 2 R. 2. Quotim Impedit. 143.

The very Appeals bringing an Appeal is in a Sufpenfion of the first Judgment in the Spiritual Court for the principal Matter, but not for the Costs; Per Lord Keeper Egerton. Golsb. 119. pl. 4. Hill. 43 Eliz. in the Case of Willoughby v. Willoughby.

2. If a Man appeals from a Sentence of Excommunication he may celebrate Mals. 20 H. 6. 25. b.

Sff

3. So
3. So after Appeal be may bring Actions at Common Law, and ought to be answered. Dub. 20 D. 6. 25.

4. If an inferior Spiritual Court commits Administration, and an Appeal is made from thence to the Arches and there the first Administration is affirmed, the Use is to revert the Cause; but when the first Sentence is reversed the first Court shall be ousted of Jurisdiction, and the Court that reverses it &c. shall count de Novo. Lat. 85. Reeve v. Denny.

5. If a Church be only voidable by Deprivation, and the Ecclesiastical Judge hath actually pronounced a Sentence of Deprivation against the Incumbent, yet if the Person deprived appeals, the Church is not actually void so long as the Appeal dependeth; and if the Sentence of Deprivation upon the Appeal be declared void, the Clerk is perfect Incumbent as before, without any new Institution. Watf. Comp. Inc. svo. 95. cap. 6. cites Fitzherb. Abr. 2 K. 2. Quare Impedit. 143. 27 H. 7. Gard. 118. Trin. 7 Eliz. Dyer. f. 249. and Mich. 33 & 34 Eliz. Gayton's Case. Owen 12. Packman's Calc. 6 Co. 18.

6. If the Appeal be to the King in Chancery, and the Deprivation be affirmed by the King's Delegates, or if the Deprivation be immediately made by the Lord Chancellor, or Keeper, for that the Incumbent is visitable immediately by the King, I conceive that no Appeal lies, and that the only Remedy, that the Person deprived hath, is to get a Commission of Revise, which is only grantable of Grace by the King, and not of Right; nor is there any Remedy at Common Law if the Cause of the Deprivation was Ecclesiastical; for there the Sentence is binding, and not thereby examinable; and therefore, if a Person be deprived by the Authority aforesaid, and another be instituted to his Benefice, the new Incumbent's Title stands good till it be reversed upon the Commission of Review; for this was laid in the Case of a Clerk deprived by the High Commissioners. Watf. Comp. Inc. Svo. 95. cites Trin. 4 Jac. Bird v. Smith. Moor 781.

See Commendam.

Cro. E. 542. 1. THE King by his Prerogative Royal may grant Licence to an Incumbent to hold his Benefice in Commendam with a Bishoprick. H. 39. El. 2. R. Armiger and Holland.

2. 9 El. 1. Rot. Claust. 9. 4. Dorf. Rex Episcopo Cisti. a, Cum nos &jrogentures nostra hoc privilegio uni iuris a Tempore quo non eunt Senoriter quod Clerici nostrir ad ordines Subfcripnones

3. 8 El. 3. B. R. Rot. 23. The Archbishop of York summontus per breve de Vena. fac. ad respondend. Domino Regi pro Confirmacione Epif. Durham elected a Bishop without the Allent of the King; the Defendant comes and says, that he is a Peer of the Realm, and ought not to be compelled to answer by Attachment and Distress etc. To which it is answered, Quod Contemptus, Excussus & Transgrefio praedicta tantum usurpationem Juris Regii Contra Coronam per quod Prudicitum Breve de Venire fac. fict invent. per Constihi, Regis, qua in Novo eatu Novum Remedium est Apponendum, dies datus ad Audia, Judicium.

4. The
Prerogative of the King.

4. The Kings of England from Time to Time in every Age before the Time of H. 8. have used to grant Dispenstations in Canons Ecclesiastical; for where the Law of the Church is, that every Spiritual Person is visitable by the Ordinary, King William the Conqueror by his Charter excepted the Abbot of Bath from Visitation and Jurisdiction of the Ordinary in those express Words (Sicque dilla Ecclesiae libera et Quaestia imperpetuum ab omni Subjectione Episcoporum et quarantulat Perseveriam Dominatium, licet Ecclesia Christi Cantuarensis &c.) by which he dispensed with the Law of the Church in this Case. Dav. Rep. 72. b. 73. a. Pauch. 9 Jac. C. B. in Ireland, in the Cafe of Commedina.

5. The King may dispense with a Priest to Hold two Benefices, and with a Baillard that be shall be a Priest, notwithstanding the Ecclesiastical Laws which are to the contrary, and as he may dispense with those Laws, so he may Pardon all Offences against them. Dav Rep. 73. a. Pauch. 9 Jac. C. B. in Ireland, in the Cafe of Commedina.

6. The Ecclesiastical Court cannot proceed to punish a Person for a Crime, according to the Canons, for which he is pardoned, or at Common Law excused. Arg. Skin. 500. trim. 6 W. M. B. R. in the Cafe of Philips and Bury.

(L. 1) Prerogative of the King in Ecclesiastical Courts, by Writs of the King.

1. If Parishioners of a Parish have used Time out of Mind to elect two Churchwardens Annually, and to present them to the Archdeacon to be sworn, and he has used to swear them, and now upon such Election and Presentation to him to be sworn, he relisheth to swear them, a Writ may be directed out of B. R. to the Archdeacon commanding him to swear them. B. 17 Jac. B. R. Such Writ granted for the Churchwarden of Sutton Valence in Kent. For tho' a Canon he made 1 Jac. to the contrary, it cannot take away the Cust. T. 15 Car. B. R. Such Writ granted for the Churchwardens of the Parishes of * Ethelborough and St. Thomas Apostle's * in London, after diverse Motions and upon hearing of Council on both Sides. B. 4 Car. B. R. Rot. 429. || Draper and Son's, the Writ granted. -- For the Churchwardens of Holiton in Devon, like Writ granted.

|| Prohibition (F) pl 31. S. C. — — 3 Mar. 66. pl. 104. Mich. 15 Car. S. C. and cites the Cases of Sutton Valence in Kent, and of St. Ethelborough in London. — S. P. Raym. 429. Pauch. 22 Car. 2. Carpenter's Cafe. — If the Party elected after Time, and the Ecclesiastical Judge refers to under the Oath to Law, a Mandamus from the Temporal Court will be granted, and will not be revoked upon a Return that he is no Habita Person; because they say, that in this the Ecclesiastical Court are not to judge of the Qualifications of the Person any more than of an Executor or an Administrator; but the Parishioners who chuse him are the most proper Judges of his Fitness for the Office. And it must be owned, with regard to the Goods of the Church, that the Parishioners who are to repair what is lost or spoild, ought to be Judges in what Hands they shall be lodged, because they may well be profaned to chuse such Hands as are false. But with regard to the Duty of preserving Order, and precluding Vice, the Presumption does not hold so strongly that the Parishioners will always chuse such as shall be zealous in that Work, which yet is a very considerable Branch of the Office of Churchwarden. Gibb. Cod. 243.

2. 36 C. 3. The King commanded the Bishop of Cran to send Christine to the Parish of St. Birien in Cornwall.

3. F. N. B. 63. A Writ de Cautione admittenda directed to the Ordinary.

4. F. N. B. 200. A Writ directed to the Mayor of Dran to inrol a Testament and to prove it.
Prescription.

5. If a Clerk of a Parish in London has been used Time out of Mind to be elected by the Vestry, and after admitted and sworn before the Archdeacon, and he refuses to swear such Clerk so elected, but another elected by the Parson, a Writ may be awarded to him, commanding to swear him. 22 Jac. B. R. Wapole's Case. Mich. 16 car. B. R. between * Orme and Pemberton, for the Clerk of the Parish of St. Fosher's London such Writ granted.

For more of Prerogative in General, See Aid of the King, Canons, Commendation, Presentation, and other proper Titles.

* Prescription.

(A) [Who. And] by what Names they may prescribe, [though they hold only at Will &c.]

1. A Serjeant at Law may prescribe, that he and all Serjeants have used &c. to be impeded only by Original. 11 E. 4. 2. b. though they are not a Corporation.

Br Prescription, pl. 72. cites S. C. &c. &c. in Trefpass for trampling his Grals, the Defendent said, that the Place &c. is &c. and that the City of Coventry is an ancient City Time out of Mind, and all the Citizens and Inhabitants of the same City have had Common in the said Place for all their Beasts Levant and Couchant in the same City Time out of Mind from such a Day to such a Day, and that the Defendent is an Inhabitant in the same City, by which he put in his Beasts as in his Common. And it was agreed, that the Mayor and Citizens of C. may prescribe for them and their Inhabitants &c. and not otherwise. Br Prescription pl. 28. cites 15 E. 4. 29 — S. P. Br. Guillans, pl. 42. cites 18 E. 4. 3. — So Prescription may be, that the Usage of the Vill of D. has been Time out of Mind, that the Inhabitants &c. have had * Way over the Land of the Plaintiff to the Church &c. or that they have been quit of Till at the Mill &c. Br Prescription, pl. 76. cites 18 E. 4. 5. — S. C. cited D. 1. pl. 72. * S. P. and that Inhabitants may prescribe in Easement, centers in Profit Appreender out of another's Land; Per Pigot, which was not contradicted. Br. Prescription, pl. 28. cites 15 E. 4. 29. — Inhabitants, unless they are incorporated, cannot prescribe to have Profit in the Soil of another, but in Matters of Easement only, as in a Way to a Church; So in Matters of Discharge; As to be discharged of Tall or Tithes, or in a * Modus decamandit; But not in Matters of Interest. Cro. J. 142. Hill & Jac. B. R. Smith v. Gatewood. — 6 Rep. 59. b. S. C. — S. C. cited Arg. 2 Law. 1346. in Case of Johnson v. Wyard. — S. C. cited 2 Bull. 526. in Case of Turner v. Denning. — 7 S. P. Cro. E. 449 Mich. 57 & 58 Eliz. C. B. in Case of Auffey v. Pawkener.

Brooke makes a Quere, if Houholders may prescribe. Br. Prescription, pl. 98 cites 11 H. 6. 10.

4. A
Prescription.

4. A Man may allege a Custom Quod quilibet Capitalis J uificiarii-But under 17.
us de Banco pro tempore etiens has sued Dame quilibet Officium of 20 H. 6. 8.—
the Court c. D. 2. 3. 114. 63.

5. A Sheriff cannot prescribe, that he and all those who have
been Sheriffs have been tried of a certain Gift at every Tourn held
for, For Sheriff is choice by the King every Year, and removable at
the King's Will. 42 E. 3. 5. adjudged.

he and all Under-Sheriffs of the County have used to have so
for Barr Fees, and admitted good.

See Fees)

7. Scire facias to repeal Letters Patents of the King of an Office in Ire-
land against J. N. because the Plaintiff has other Letters Patents of it of
der Date, &c. the Defendant said, That the Land of Ireland is, and
Time out of Mind, has been a Land seceded from the Realm of England, and
ruled and governed by the Cyns and Lacs there, and that the Lords there
of the King's Council have used in the Absence of the King to choose a Justice,
who has Power to pardon and punish all Felonies and Treasons, and to a-
semble a Parliament by Advice of the Lords and Commonalty, and make
Statutes, and alleged how a Parliament was summoned, by which it was en-
dacted, that those who have Offices there shall be resident upon it by a Day &c.
or otherwise shall forfeit his Office, and that the Plaintiff was Officer &c.
and did not come by the Day, by which the Office was void, and the King
granted to the Defendant &c. The other demurred upon the Plea;
and by some the Prescription is contrary to Reason, and * may bind
the King, and therefore ill; But per Fortunae, the Prescription is void,
and is in the King, and not in those of Ireland; as * Chancellor of Eng-
land who is only at Will prescribes to have Presentation to all Benefits of
the King if under a certain Sum, and that Statutes of England, as of 10th
15th &c. do not bind Ireland, because it is fevered, and does not come to
Parliament; therefore Quaere Legem. Br. Prescription, pl. 4. cites
20 H. 6. 8.

8. In Debt it was awarded, that the Sexton of an Abbey cannot pre-
scribe that he and his Predecessors, Sextons of the Abbey of B. have been
Parons of St. A. in B. and have impounded and been impounded Time out
of Mind; For Sexton cannot prescribe; and grant to him by the King
shall not serve to his Successor; for he has no Succession, quære of himself;
For it feems that he is a Monk, and therefore a dead Person in

9. Prior datrie and removable prescribed to impound and to be impounded,
and to answer, and to be answered Time out of Mind, and a good
4. accordingly.

10. My very Tenant may prescribe in his own Right; per Choke; Br. And so may
Preparation, pl. 23. cites 15 E. 4. 29.

Choke; Quod nullit Concessa. Ibid.—But Tenants at Will cannot prescribe in their own Rights, but
in Right of their Lord; Per Cor. Br. Precription, pl. 76 cites 18 E. 4. 3. — S. P. by Choke. Br.
Prepiration, pl. 28. cites 15 E. 4. 29 They cannot prescribe in a Thing which shall endure for ever
&c. but in the Usage and Custom of the Vill they may; and do note the Diversity. Br. Precription, pl.
76. cites 18 E. 4. 3. — Tenants for Life cannot prescribe, nor a Man cannot prescribe against Tenant
for Life, and where there is no Succession nor Perpetuity there can be no Prescription. Br. Precription, pl.
77. cites 22 E. 4. 17.

T
t

11. In
Precription.

11. In Case for disturbing the Plaintiff in using his Common Plain-tiff's forth, that A. was letted of certain Lands to which Common was appendant for Life, Remainder in Tail to B., and that they demised the Lands to the Plaintiff for Years; It was objected against this Declaration, that Leese for Life, and he in Remainder cannot prescrib together, and cited 20 E. 4. 10. But per Popham and Gawdy, it is well enough; For all it is but one Estate. 1 Leon. 177. Patch. 31. El. B. R. Hauxwood v. Husbands.

12. A Copyholder prescrib'd, that every Copyholder of such a Parcel of Wood had used to cut down Trees there growing; and held good; and a Difference was taken between a Prescription for Freehold and for Copyhold Land; for Custom which concerns Freehold ought to be throughout the County, and cannot be in a particular Place; But a Prescription concerning Copyhold Land is good in a particular Place; for De Minimus non curat Lex, and the Law is not altered thereby, and it may be there is but one Copyholder there for which he might preferibe. And Custom to have Profit Appendere, Privilege or Discharge, may well be in a Particular. Cro. E. 353. Mich. 36 & 37 Eliz. C. B. Taverne v. Ld. Cromwell.

It is true, That Tenants in Antecedence may join in a Claim for a Common &c. because King cannot claim for them; But [as to] other Men, if [they are] Copyholders, they only must join that are Tenants to one Lord, and the Lord must presume for him and his Tenants; But the Lord of a Manor cannot prescrib for any of his Freeholders, but every of them must put in several Claims; For the Reason why the Lord may prescrib for his Copyholders, is, because the Freehold of the Land is in Law in him. Jo. 275, 276. 8 Car. in Itin. Windfor, The Inhabitants of Egham’s Case.

13. The Inhabitants of Egham, and all the Towns in Surrey, joined in a Claim to cut down all the Coppices at their Pleasure, and to have Common for all Cattle Commonable, and Common of Turbaries, and made Title by Prescription. Noy, the Attorney General said, That they ought not to have joined in One Claim. Jo. 275, 276. 8 Car. in Itin. Windfor, The Inhabitants of Egham’s Case.

14. Prescription for a Thing Appurtenant to a Manor (as Liberty of Foldage of the Tenant’s Sheep) was laid in a Body Aggregate by a One Estate, and was held to be well enough. 2 Vent. 139. Hill. 1 W. & M. C. B. Dickman v. Allen —— cites Keilw. 140 b. Co. Litt. 121. a. Cro. J. 673.

15. In Trespass of breaking his Clofe called Jenning’s Key, the Defendant prescrib’d, that Omnes ligii Domino Regis, Time out of Mind &c. used to land Goods of too great Burden in the Lands adjoining; The Plaintiff had Verdict; But upon Exception in Arrest of Judgment, the Court held the Prescription good enough, and a Nil Capital was awarded. 3 Keb. 179. Trin. 25 Car. 2 B. R. Jennings v. Clerical.

(A. 2) Against whom.


2. A Man prescrib’d in the Bishop of C. and his Predecessors, that they had prescrib’d to such a Priory, as Patrons, Time out of Mind; Skipe said he cannot prescrib against the King; But Kirk said that he may as well against the King as another Person; For otherwise the Lords shall lose their Franchise in Quo Warranto. Br. Prescription pl. 52. cites 38. Alf. 22.

3. Debt
Prescription.

3. Debt of 3 l. for Pound Breach, because the Custome of his Manor of C. is that the Lord for the Time being has had 3 l. for Pound Breach Time out of Mind, and that the Defendant was Diltrained, and thowed by whom, and for what Cause, and he broke the Pound, for which he brought his Action; and by all the Justices the Custome is not good to bind a Stranger; for it cannot have Lawful Commencement, But such Custome upon the Tenants of the Manor may be good: For it may be that it was referred upon their Tenures in Principio. Br. Prescription pl. 106.

cites 11 H. 7, 13, 14.

4. As where the Tenants grant to the Lord, that when their Rents are Arient, they shall render 20 s. Ibid.

5. In Replevin, the Defendant avowed for Damage-feasant; The Plaintiff justifies, For that he had a Close adjoining to the Defendant's Close, and that the Defendant, and all the Occupiers of the said Close, Time out of Mind, had yed to repair the Fences between the said Cloes, and for not sufficient inclining his Beasts entered &c. Issue was taken upon the Prescription, and found for the Avowant; It was moved in Arrest of Judgment, that the Prescription, That every Occupier &c. is too general, for Tenant at Will, Tenant at Sullerance, or a Diffesior and are Occupiers, and for this Reason it was held, That the Prescription of was not good, though being after Verdict, it is aided by the Statute.


all Occupiers of the Defendant's Close did use to shut the Gates; This was found for the Plaintiff, and it was moved in Arrest of Judgment, That Omnes Occupators is not good; But it was adjudged, that notwithstanding this Exception, without alleging any [thing more] than that all the Occupiers had used to do it, it was good. Cited by Bridgman Ch. J. Cat. 52. Mich. 17. Cat. 2. C. B. as the Case of Gunter v. Serre, and that it was by the Advice of all the Judges.

(B) Of what Thing it may be. [And shall be said a good Prescription.]

1. A Man may prescribe to be Tenant in Common with another 8. H. 6. 16. b.

At if one and his Ancestors, or those whose Estate he has in a Moistry have held the same in common with the other Tenant or his Ancestors, or with those whose Estate he has Pro-Indivisio Time out of Mind &c. But Joint Tenants cannot be by Prescription; Because there is Survivor between them, which there is not between Tenants in Common. Co. Litt. 5. 190, 195. b.

2. But a Man cannot make Title to Land by Prescription. Br. He cannot make Title to the Lord himself [as] that he and his Ancestors, or those whose Estate &c. have been held Time out of Mind &c. Br. Prescription. pl. 19 cites S.H. 6. 16. and cites Tit. Trespass, pl. 122. There are not so many Pleas in Prescription, but it seems it should be (pl. 19) and that the (122) is a Mistake occasioned by the Plea out of (Trespass 122) which Brooke cites.

3. It seems, That a Dean and Chapter may prescribe to make Indulgence and Installation, as to them belonging, Time out of Mind. Vide 9 H. 4.


6. It is a good Custome to Prescribe That where a Swan comes upon the Land of any adjoining to the River Thames, and makes a Nest there, and has three Cygnets, that the Owner of the Swan shall have two of the left, and the
Prescription.

7. If it is a good Prescription to have a Halfpenny of every one who goes Tellthorgal over his Land; For this is Toll Traverce. Br. Precesription. pl. 57. cites 9. 11. 7. 9.

And Kingmell J. thought this Cafe, not like the Cafe of 14. H. 4. fol. 2. Recorders de Gloucester Fee, for there the Lord of the Honour shall have Relief Herit, and other catus Profit for every Alienation, and there Unity of Possession in the Lord shall not hurt the Cuthum, because the Cuthum runs in a Generality, that is, throughout the whole Honor; and where the Cuthum runs in such Generality throughout all and every Part of a Place, as Goswellkind, Borough Engish, and the like, in those Cafes, Unity of Possession is not material, but in the Cafe above, the Cuthum cannot run in such Generality, and for this Reason the Prescription is not good. And also because every *Prescription ought to depend on a Thing which may have perpetual Continuance, whereas between Lessor and Lesseree for Term of Life, or Years, or at Will, the Lesseres have only an Estate determinable within a Time certain, Keilw. 80. 21. H. 7. Talbot's Cafe. But Br. Frowise Ch. J. Contra. Keilw. 79. b. Mich. 21. H. 7. Talbot's Cafe.

de Gloucester Fee, for there the Lord of the Honour shall have Relief Herit, and other catus Profit for every Alienation, and there Unity of Possession in the Lord shall not hurt the Cuthum, because the Cuthum runs in a Generality, that is, throughout the whole Honor; and where the Cuthum runs in such Generality throughout all and every Part of a Place, as Goswellkind, Borough Engish, and the like, in those Cafes, Unity of Possession is not material, but in the Cafe above, the Cuthum cannot run in such Generality, and for this Reason the Prescription is not good. And also because every *Prescription ought to depend on a Thing which may have perpetual Continuance, whereas between Lessor and Lesseree for Term of Life, or Years, or at Will, the Lesseres have only an Estate determinable within a Time certain, Keilw. 80. 21. H. 7. Talbot's Cafe. But Br. Frowise Ch. J. Contra. Keilw. 79. b. Mich. 21. H. 7. Talbot's Cafe.

The Owner of the Land the third; For otherwife the Owner of the Land may Chace them; quod nota; and here in a Particular Country. Br. Prescription pl. 100. cites 2. R. 3. 15.

Parfon, and may. Genrality., Contra. 15. Parfon, For Man 15. void; whereot dies Jnd _ lawful _ that 9. the: where a Man and have wiil, 10. , 52x676 Wild Tin IhiU i.EVf.. 52x694 Iii.iU fcribe (luidproquo. 53x685 ^r"''''''r"ovcr hate ^ rot dc Caco!4 the caufe Leffec Time Cafe S Eftate Sec CY)pl.27. Consideration, Prescription, and may Lord Ch. 26o o. In Cuftoms. Hke whole scrcu. Replevin, it cites and there is above, it cites between the whole Honors, and to makes it fquare with the Cafe of a Goods Fee cited by Kingsmill J. Keilw. 5. Talbot's Cafe. But Br. Prescription pl. 56. cites 21. H. 7. S. C.—Br. Caftoms pl. 50. cites S. C. — It is an infallible Rule, that if a Man has a Thing of Common Right, and by Prescription, he has Eftate in Fee Simple in the fame Thing. Dav. 9. 6.

In Replevin, the Defendant avow'd, that J.S. held of him by Homage, Fealty and Rent, and at every Alienation of his Tenant, that the Ancestor's have used to have the left Beauf, if the Allower does not give Notice to the Lord in the Life of the Allower, and that his Tenant alluded to the Plaintiff and died, and the Plaintiff did not give any Notice in the Life of the other. And the bell Opinion was, that this is a good Prescription; for it may have lawful Commencement, as by Condition or Referration at the Making of the Tenure. Br. Prescription. pl. 58. cites 8 H. 7. 10.

Sec(Y) pl.27. S.Cat large.


My Lord Ch. 11. Where a Man prescribes to go quit of Tithes for his Lands in D. J. Hobart, said, that in particular, but ought to be through a Country or Vill: Br. Prescription, pl. 93. cites Doct. & Stud. lib. 2. cap. 55.

Tithes differ from other Cafes in Law; For whereas Prescription and Antiquity of Time fortifies all other Titles, and supposeth the bell Beginning that Law can give them, yet in Cafe of Tithes it is clear contrary; for thus the Grant of a Parson, Patron, and Ordinary, is good in itself without any Recom pense or Confirmation, yet it is a bad Plaintiff to say that in such a Title, whereas no other Relation is given but under Books law, that a Man may prescribe In modo Decedanc, but not in Nov Decemands, and this is in favour of exfees, left Laymen should spoil the Church. But he gives another Reason, That the Law violently presumes that a Layman cannot be discharged absolutely, and so will not allow the Prescription.
Prescription.

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A Man can't prescribe in Things which touch the Crown. Br. Lea.


13. In Trespas of taking his Goods, the Defendant set forth, That the City of York was an ancient City, and that there were Mayor, Bailiffs, and Citizens in the City; and that Time out of Mind till r R. 2. who then incor-

14. A Body Politick or Incorporate may commence and be establis-

15. In Action upon the Cafe the Plaintiff claimed such a Custom in

16. In Trespas for entring and cutting down the Plaintiff's Wood, the Defendants alledged a Precipitation &c. to take the Underwood growing on the Lands of the Plaintiff adjoining to their Land, to make the Hedges of that Land on which the Wood did grow. It was argued, that this Precipitation is not good; because it founds in Charge, and is not for the Benefit of him who prescribes; For if the Defendants did not repair the Wood, they would receive no Damage. Sed Adjournatur. 1 Leon. 313. Mich. 32 Eliz. B. R. Leigh v. Okeley.

17. One cannot have a Court by Precipitation, unless where he cannot have it otherwise. Per Walmley J. Cro. E. 792. Mich. 42 & 43 Eliz. C. B. in the Cafe of Pilk v. Towers.

18. In Replevin &c. if the Issue was upon a Precipitation for every Yard- Lim within such a Vill as to have Common for 12 Cows, and for a Quar-

and as Half a Quarter for a Cow and an Half, and a Verdict for the Plaintiff. It was objected, that a Man could not prescribe to have Common for a Cow and an Half; but that this being on a Verdict it shal be intended so as it can be (i. e.) Common for Half a Year, or that the two Men had use of it, and so each of them had Half a Cow. Sid. 226. Mich. 6 Car. 2. B. R. Ellard v. Hill.

Replevin was brought for one Cow only, and the Plaintiff pleading a Precipitation for four Cows and an Half is a good Jutilication for putting in of one Cow. Per Windham and Twilden Catheris Abentibus, and they gave Judgement for the Plaintiff. Lev. 141. Hill v. Ellard — It was urg'd in the Arreit
Prescription.

Arrest of Judgment, that it should have been said, for the Half-Feeding of a Cow; but the said Justice held, that the Averry being but for one Cow, it was sufficient, whether it was good for the Half Cow or not. Keb. 193 & C. by Name of Hill v. Allen.

They must 19. Prescriptions must have a lawful Beginning. Vent. 387: Potter have a rea- v. North.

Caution of Commencement. Dav. 9. b. — Every Prescription to charge a Subject with a Duty, must impart a Benefit or Recompence to him, or else some Reason must be shewn 'Why a Duty is claimed.' Per Cur. 4 Mod. 223. Mich. 6 W. & M. B. R. in the Case of Warrington v. Moickey.— Prescription must be in a Thing done. Per Anderson Ch. J. Godb. 16. Patch. 25. Ellis C. B. in Skipwith's Case.

20. In Trespass for taking &c. his Beasts, the Defendant justified, for that he had a Drift of Common, to see that it was not surcharged, and that the Beasts were there surcharging the Common; and therefore he took and detain'd them 'till 5 l. paid in Satisfaction of the Trespass.' Upon Demurrer it was objected, That a Prescription for Drift of Common doth not warrant a Distress unless he had prescribed to distrain also; but adjudg'd, that 'tis a Thing of Common Right for the Preservation of the Common. 2 Lev. 87. Patch. 25. Cur. 2. R. Bromfield v. Teigh. 25 One prescribed, that by Reason of Repairing a Church of Ease he had been Time out of Mind exempted from contributing towards the Repairs of the Church, and this was held a good Prescription. Freem. Rep. 463. pl. 644. Mich. 1678. Wife v. Green.

22. A Vicar libell'd in the Spiritual Court for a Stipend of 4 l. per Annum, claiming it by Prescription, and Prohibition moved for upon Suggestion that none can claim a Stipend by Prescription but a Corporation or Body Politick; And so said Holt, and that a Sheriff, tho' removable at the Will of the King, may claim a Fee as incident to his Office. But against the Prohibition was cited Litt. Rep. 19. 51. 12 Mod. 249. Mich. 10 W. 3. Birch v. Wood.

(C) Who may be bound by a Prescription.

1. A Prescription does not run against the King there where he has Right. 38 Ait. 22.

2. As if the King was Patron of Right of a Chapel, another cannot have it by Prescription, and to bind the King. 38 Ait. 22.

3. A Corporation cannot prescribe to be discharged of the ancient Grand Custom, nor to receive it, because it is an annual Revenue of the Crown, and a Casualty, as Wait and Stray &c. 99. 6 Ja. Sta- tario. Resolved.


5. It is said that a Vill may be bound by Prescription to provide a Pil- lory and Tumbrel, and that every Vill is bound of Common Right to provide a Pair of Stocks. Quære. 2 Hawk. Pl. C. 73. cap. 11. S. 5.

(D) What
Prescription.

(D.) What shall be a good Prescription. Where it is uncertain.

1. If Tenants of a Manor prescribe, that they ought not to pay a fine for renewing their Copyhold Eftates more than two Years Rent, but ought to pay the Rent of two Years, or less; this is not a good Prescription for the uncertainty; for sometimes they are to pay two Years Rent, and sometimes less. 57 El. B. R between Greene and Bury. Per Curiam.

2. If a Man prescribes to pay a Penny or Thereabouts, for Tithes of every Acre of arable Land, this is not good Prescription for the uncertainty. 7 Ja. 2. Allen's Case. Per Curiam.

3. Prescription for Common sans Number appertaining to Land, without laying Levant and Couchant, is ill; you can put in no more than is S. C—2 proportional to your Land. Per Twifelden J. who cited the Case of Miftiden v. Stonby in Glyn's Time, where such Prescription without Levant and Couchant was held good alter a Verdict; but if it had been upon a Demurrer, it had been otherwise. Mod. 7. Mich. 21 Car.


5. Trespasses for digging Turf; the Defendant pleaded that he failed of an ancient Houfe, and prescribed to have as much Turf in one Year as two Men could dig in one Day, as belonging to his Meophilia. The Plaintiff demurred, because he did not shew that the Turf was to be burnt in the Houfe; and as it is laid here, it may be told, tho' he claims it as appertaining to his Houfe, but it was anwered and resoluted. That when the Thing is uncertain, as Entovers, it ought to be applied to the Houfe to ascertain it; but here it is certain enough in itself, as much as two Men can dig in a Day; and for Authorities were cited Ratt. Ent. 539, and 1 Cro. Spooner v. Day; and Judgment was given for the Plaintiff. Lev. 231. Hill. 19 & 20 Car. 2. Hayward v. Cunnington.

(E.) Against the Publick Good.

1. A Man cannot prescribe to do a Thing which is a Nuance; for it is against the Publick Good. Hill. 15 Ja. B. R. adjudged Trin. 1. 2. R. in the Case of the Dowager. Resolved per team Curiam.


2. As he cannot prescribe to lay Logs of Wood in a common High-way scambling about, and suffer them to continue there for a long Time; for this is a Nuance, and is against the Publick Good. Hill. 15 Ja. B. R. adjudged between

3. If a Man prescribes that he and his Predecessors who have been seized of the Manor of Colekerker, have been exempt from the Government of the Mayor of the City of London, and of all his Officers, this is not a good Prescription; for by this Means they of this Liberty shall be without Government, which is against Law, and therefore hold. 53 El. B. R. The Count of Shrewsbury's Case. Adjudged per Curiam in Duo Warrantae.

4. So it is not a good Prescription, that he and his Predecessors, held of the land Hanor, have used to have Allfre of Bread and Ale, and
and also to have the Search of Weights and Measures, and to have the Punishment of them; for this belongs properly to a Court Lect to punish; and also he has not any Court to punish such Offences by Prelentment or otherwise. Hill. 43 El. S. R. The Count of Shrewsbury's Case. Indicted per Curiam in Due Warrant.

5. It is a good Prescription for the Corporation of Dublin, that they are Owners of the Port, and that they maintain Precches in the said River, and direct the Ships in the deep Channel, and that they maintain the Key and Crane; and that in Consideration of this they prescribe to receive of all Merchandizes in the said Port 3 d. of the Pound; for here is Nihil pro Duo. B. 6 Fa. Decem. Resolved.

To repair a Arv, and to have Tall of all Goods brought within the River, is ill; but to have Tall of all Goods put to Land within the Manor, tho' not at the Key, is good. 2 Lev. 96. Hill. 25 & 26 Car. 2. in Case of Priory v. Warne, cites Trin. 7 W. 3. C. B. * Crisp v. Belwood—

6. A Man cannot prescribe to be discharged of his Appearance at the Lect, by being sworn before the Constable and Portreeve, nor such like. Br. Prescription, pl. 10. cites S. C.

7. For Inhabitants to dance in another's Soil Omni tempore Anni is a good Custom; and tho' pleaded by Way of Prescription, yet Judgment was given on a Verdict for Defendant in Trespass, tho' the Plaintiff moved this in Arrest of Judgment, and a Cafe cited where it was adjudged upon a Demurrer, that it ought to have been pleaded by Way of Custom. But per Cur. Tho' perhaps it had been ill upon Demurrer, yet Issue being taken and found by Verdict, it is good; and Defendant had Judgment. 1 Lev. 176. Trin. 17 Car. 2. B. R. Abbot v. Weekly at Oxford.

(F.) Against the Law of God.

Br. Prescription. pl. 91. cites S. C.

A MAN may prescribe to have a Way over a Church-yard, tho' it be Sanctuary. 18 E. 4. 8.

2. So to have a Way th'o' a Church. 18 E. 4. 8. Brook Prescription 91.

3. It is no good Prescription that the Lord of a Vill shall have Fine of every Tenant who marries his Daughter without his Licence; For it is against the Law of Matrimony. Br. Prescription, pl. 101. cites Littleton, tit. Villeinage.

(G) Against the Law of Reason.

Br. Prescription, pl. 89. cites S. C.

1. A Prescription against Reason is not good.

A Vill cannot prescribe to keep fished Precches for themselves, and imprison him for three Days, and then to carry him to the next Gaol, and this is against Reason. 22 E. 4. 43.

2. A Corporation prescribes to arrest a Man for Suspicion of Felony, and imprison him for three Days, and then to carry him to the next Gaol, and this is against Reason. 22 E. 4. 43.

3. A Man cannot prescribe to have a * Chance or Warren in any Land but in his Demeanes, or in Land within his Fee and Seigniory. 3 D. 6. 13. b.

* In Trespass for Hunting in his Warren, and taking away 50 Hares
4. If Lord of a Vill prescribes to have a Warren in all the Land with-  
the in Vill held of him, this is not good; For Comes big Holes in  
In Quo War-  

3. In Epelvin for taking a Sail of a Ship; the Defendant avowed, Another Evi-  
for that he was seized in Fee in the Manor of Padlow, where there is a Com-  
mon Key extending from such a Place &c. for unlading Salt, and that  
he and all those &c. have used to repair the said Key, and have kept  
(a) Hel for measuring Salt, and have had at every Ship, arriving at  
the tides with Salt, one Bulked of Salt, and because a Bulked of Salt was  
(a) Hel paid according to the Prescription, he avows the taking the Say.  

The Plaintiff pleads in Bar to the Avovent, that the River on which this  
Key is pretended, is a great River of ten Miles in Breadth, and that the  
Key extends but half a Mile, and that the Ship arrived seven Miles distant  
and traveller that it arrived at the Key within the said Manor. Upon  
Demurrer it was insulted for the Avovent, that it is not material whether  
the Ship arrived at the Key, be cause it might come thither when the  
Mariners pleased; But per Hale Ch. J. This Prescription is only  
(a) Hel for a Wharf, and not for a Port, and here ought to be reasonable Re-  
compense for the Prescription, and he who has a Port ought to provide  
the Weights, Measures, and other Things; And in this Cate the Avovent  
might as well prescribe to the Confinse of France as to seven Miles dif-  
ferent from the Key, and therefore it is not a good Prescription; And it  
might not be paid that Salt was in the Ship, and there might not be more than  
two Bulkeds, and therefore Judgment was given for the Plaintiff.  


X x x  

(H)
(H) Prescription. Against the Law of the Land.

1. A Sheriff of a County cannot prescribe to have Gifts, or to take anything to his own Use as Sheriff; for he ought to take nothing for doing his Office. 42 C. 3. 5.

2. The Mayor of London may prescribe to have a Court of Chancery in London of Matters tried in the Court of the Sheriffs of London, though such Court cannot be granted by the Letters Patents of the King, B. 5 Jt. between Andrews and Webb, per Curiam.

3. The Mayor and Citizens of York cannot prescribe to have a Chan

cery there, and to award such Process as the Court of Chancery at Westminster awards; Because it is greatly dangerous that such

Petty Corporations should have such Courts. B. 13 Ja. 2. per Curiam, prater Warderton, between Martin and Maybole. Vide the same Cale Hobart's Reports, 86.

(I) Against a Statute.

1. A Man cannot prescribe or allege a Custom against a Statute;

Because it is Matter of Record, and the most high Proof and Matter of Record in Law. Co. Litt. 115.

2. A Man may prescribe or allege a Custom against an Act of Parliament, when the Prescription or Custom is saved or preferred by another Act. Co. Litt. 115.

3. A Statute in the Affirmative does not toll a Custom or Prescription. Co. Litt. 115.

4. [As] a Man may prescribe to cut his own Wood within a Forest without the View of the Forester, though the Statute of 34 E. 1. pro

tive; For if a Man in the Negative be declarative of the ancient Law, that is in Affirmance of the Common Law, there a Man may as well prescribe or allege a Custom against such as he may against the Common Law Co. Litt. 115. 3. —- But Lord Richarison denied this Diversity, and said, That in neither of the Cases a Prescription can be against a Negative Statute, which Mr. Attorney also affirmed, and therefore held it very strong, that a Prescription could not be to fell and fell Wood without View of Foresters, unless it were with the Help of an Allowance and then we must intend that there was a Charter upon which the first Allowance was made, because the Words are expressly negative, ['w:] Nei pone illud aliqui dare vel Vendere fine Licentia Do

mini Regis. Jo. 22. 5. 5. 8 Car. 1st. Windin in Lord Lowlelace's Cale —- But Ibid. 289. The Coun

tel said, They took Ed. Coke's Difference to be a good Difference between a Statute which is only declarative of the Common Law, and a Negative Statute which is introductive of a new Law; that against the
Precription.

the last no Precription is good, but in the other Case no Alteration is made. — — And 2
Bulls. 56. Mich. 10 Jac. 1 Case of 33. 5 u. Smith, it is said Arg. that a Man may precrire
91, and 30 All. 58.

A Man may precrire to hold a Leet of more than twice a Year, and at other Days than are set forth
in the Statute of Magna Charta, cap. 55. Because the Statute is in the Affirmative. 2 Le. 28. The Queen
v. Partridge —— Cro. E. 125. Hill. 51 Eliz. B. R. S. C. —— S. P. but if it was a Leet by Grant, the Defendant
in Anvowry, and the Amicent in the Leet must have shewn that it was held within a Month after

2 Le 179. Lawton v. Hare.

Precription for the Inhabitants of the Forest in Sarity to cut down Wood in the Forest is not good; For
per any Attorney General, there can be no Precription since the Statute of Charta de Forefa cap. 4.
which is, That all Hasts &c done after that time without the King's Licence should be punishable; Now, a
Precription to fell Wood per vijam forfcariorum vel Verdariorum is not good, but it must be per vijam
& Allocationem Forecariorum & Verdariorum; For if it be per Vifam only, then if the Forester or
Verderor be required to come and do it, and do not come, you may cut it down without View. Jo.
275. 8 Car. In Fore, Windsor. The Inhabitants of Egham's Cale. —— But Ibid. 276. in a Memorandum
the Statute cites Sir Tho. Palmer's Case 5 Rep. 25. a. that there is no Diversity where the Wood is to
be taken per Vifam, or per Vifum & Allocationem; For that in both Cases upon Request made and Rejus-
fol, the Party may take them without View or Delivery —— Noy cited a Case to be resolved 6 Jac.
in that a Clause a Man might precrire to cut down Wood, because they are not within the Statute of
Charta de Forca; whence it was strongly inferred, that it could not be precrib'd for within a Forest.
Jo. 276.

5. Trespafs, because the Defendant precrib'd to drains for * Rent upon
the Land held, and to carry the Ditrres to D in another County, therefore
he was condemned; For a Man cannot precrib'e against a Statute, and
the 7 Statute is, that a Man shall not drain in one County and carry
* Orig. is
( Term) but
it eminent should be
(Term) ——

6. Attachment upon a Prohibition against the Defendant, who caused
him to be cited for Tithes de Silva Cadian, and the Defendant precrib'd
to have Tithes de Silva Cadian, and by the Reporter he cannot precrib'e
against a Statute made after Time of Memory, and that Precrib'e
cannot make it to be impleaded in the Spiritual Court, by which the

(K)

What shall be a good Precription. Against Rea-
son or Common Right.

1. It is not a good Precription to have a Heriot of every Stranger
dying within his Manor 41 El. B. between Perkins
and Cumberford, adjudged. cited 9. 3 Ja. 2. R.

2. If a Sheriff precrib'e to have a certain Gift at every Turne &c.
This is against Common Right, For a Gift is at the Will of the
Donor. 42. G. C. 3. 5. adjudged.

3. If there be a Lord of a Vill, and another has a Leet, but no Land
beside the Leet, and he claims by Caufe of the Leet to be Lord of the
* Waits of the said Vill by Precription. This is a void Precription.

4. A Man may precrib'e to have a Fair in the Frankentenemen of an-
other Man. 11 D. 6. 23.

5. A Man may precrib'e, That if his Beast^{es escape into the Land of B.
that B. cannot drain them, nor have Action, and a good Precription, by
all the Justices. Quare of the Reason. Br. Precription, pl. 71. cites 8
E. 4. 5.

6. In Trespafs; by the Court, where a Man precrib'e that in such a
Vill has been a Market such a Day Time out of Mind, and justified for
buying
Prescription.

Prcfription. 

buying the Goods there, this is a good Prescription, and a good Custum, tho' he does not flow to whom the Market belougs; For per Littleton it goes with the Land. Br. Customes, pl. 43. cites 12. E. 4. 8.

7. If a Man prescribes, that it he finds Goods within his Manor, that he shall have them, this is a void Prescription; For it is contrary to Reason, and a Thing which cannot have Lawfull Commencement. Br. Prescription, pl. 93. cites Doct. & Stud. lib. 2. cap. 51.

8. It is no good Prescription to disperse for Damage feasant, and to retain the Dittrels till he has Fine at his Will; For it is contrary to Common Right and Reason, and a Man shall not be his own Judge. Br. Prescription, pl. 101. cites Littleton tit. Villainage.

9. Prescription to cut Greaf in another's Land to flyew the Church is good. Per Cur. Mar. 17. Patch. 15 Car. in Bond's Cale.

10. In Cafe the Plaintiff declared, that he was seised of an ancient Meliange &c. in T. and that he had all his Ancestors, whose Heir he is, Owners of the said &c. had used Time out of Mind to set up Hurdles in Aperta Platea at T. near the said Meliange every Market Day, to make Penns for Keep, for which he &c. have used for such Penning to receive Money, and further, that the Defendant Brooke cut down his Hurdles, Per quod Prohibition nume inde animit. It was objected upon a Demurrer, That this Prescription was too general, it being to set up Hurdles in Aperta Platea, not flowing whether on his own Lands, or on the Lands of another; For though Fishermen may prescribe to set Stakes on other Men's Lands adjoining to the Sea to dry their Nets, that is for the Commonwealth; but this is only for a private Gain, which cannot be on the Lands of another; but it was answered that the Prescription was good; for a Market is as well for the Benefit of the Publick as Fising; And afterwards Judgment was given for the Plaintiff, 1 Le. 108. pl. 147. Patch. 30 Eliz. B. R. Ferrers's Cale.

11. The Plaintiff prescribed for Toll of Goods bought within his Manor, viz. 2d. For every Pack of Manchester Wares bought in Manchester, except of the Burgelies there; And the Question upon the Pleasions was, Whether a Toll Independent of all Markets and Fairs can be good, without flowing that the Subject hath some Benefit. The Court was not fatished with this Prescription, because there was no Recompence for it; And every Prescription to charge the Subject with a Duty, must impart some Benefit or Recompence to him who pays it, or else some Reason must be offered why the Duty is claimed. 4 Mod. 319. 323. Mich. 6. W. & M. B. R. Warrington v. Mofley.

In arguing for the Reasons of this Prescription were cited 8. E. 3. 37. b. where the Defendant justified in Trepids for pulling down of a Fold as Servants to the Lady of the Manor of Haftings, who by reason of her Seigniory had a Frankfeld throughout the said Vill, so that no other could sell there without his Leave; And it was held that tho' this extended as well to Strangers as to those of that Vill, it was good. And[D. 352. b. Trim. 18. Eliz. Anon a Custom called Granage where the Lord Mayor of London brought an Action on the Cafe, grounded on a Custom to have the 20th Part of that Salt of every Stranger who brought it to the Port of London; And though no Reason was alleged why he should have that Part, yet it was adjudged for the Mayor. But per Cur The Cafe in Dyre feems to be very Hard to have the 20th Part, without giving any Reason why. But as for the Foldage, it was upon the Lands of the Manor of Haftings, whereof the Tenants had the Feedings, and that may have a Reasonable Commencement. 4 Mod. 352. 353. 355.

[The Cafe of the Foldage was adjourned over, and was that of Jefferay at Hay v. Ford & Gray. Vide the Year Book.]

(L) Against the Law of the Land and Common Right.

1. T

HE Tenants of a Manor may prescribe to have the sole Common for their Horses in a Meadow after the Gras's cut, and made
made into Grass Cocks, to yere and keep their Horses there, so that they do not meddle with the Hay, till Lammas Day and after Lammas Day for all Commonable Beasts Levant and Coughant upon their Tenements at large, without any keeping till Lady Day in Lent actually, as to their Tenements appertaining, excluding the Lord of the Meadow and Manor from having any Common or Pasture there for this Time, he having the Soil of the Meadow throughout the Year, and the whole Herbage till Lammas, or till the Cutting, if he keep it for hay. Vide 12. Car. 3. R. between Westhead and Sir Thomas Paune, by Bramston Chief Justice; he only being in Court upon Evidence at a Trial at Barre, in an Action upon the Case for eating of the Common of a Commons; but he agreed that the Defendant should have thereat a Special Verdict if he would, but after he would not have a Special Verdict for the Cleanness of it, and upon this a General Verdict was given for the Plaintiff: For here the Lord is only excluded for a Time; and it is a Common, in so much as divers several Persons have Pasture there in respect of their several Tenements.

2. But P. 10. Ia. B. & Tr. 10 Ia. B. between Kenrick and Pargeter per Curiam it is not a good Prescription, that the Lord from Lammas to Coddlewas ought not to put in more than 3 Horses during this Time, because the Lord cannot be hindered.  

S C. — Nov. 130. S. C. adjudged. — 2 Brownl. 60. S. C. The Pleading. — Cro. I. 258 S. C. [but that is only upon the Point of the Commons disfranchising the Cattle of the Lord Damage subject.]

3. If a Man prescribes to have Common of Pasture in such Water, and thereby to exclude the Lord of the Soil. Co. Lit. 122.

4. A Man may prescribe to have Separable Posthum in such Water, and thereby to exclude the Lord of the Soil. Co. Lit. 122.

5. But a Man cannot prescribe to have Common of Posthumary or Libera Posthumary in such Water, and to exclude the Owner of the Soil; for it is against the Nature of a Common of Libera Posthumary. Co. Lit. 122. And there laid that it was to recover in Bank between Commony and Filten. And P. 29, 30. El. between White and Sherrard, and between Tressen and Croot, breake the same Petition.

6. A Man may prescribe to have Solam Veitlum of certain Lands in Perpetuity from such a Day to such a Day, and by this to exclude the Owner of the Soil from Pasturing or Feedinge there; by such Grant this is not any Common, nor implies any Intercommingling by the Owner of the Soil, but that the Tenant shall have the sole Pasture. Co. Lit. 122.

7. So a Man may prescribe to have Separable Pasture of such Land, and to exclude the Owner of the Soil. Co. Lit. 122.
8. Attachment upon a Prohibition, the Defendant prescribed that the Clerks of Oxford have Privilege to have the principal * Hoies, which were wont to be let to Clerks before any other, and especially where Clerks were abiding before; and after Hufe was taken, if Clerks were abiding there at the Commencement of the Suit, or not; and therefore in a Manner confèst'd that this is a good Prescription. Quære; for they are not Incorporate, nor People which have had Continuance. And per Finch, The Merchants of the Staple have the like Custom, and those of the King's Marshallëa and the King's Jullices; quære if the Inns of Court are not in the like Plight. Br. Pre subscrip. pl. 8. cites 48 E. 3. 16.

9. Trefpaß &c. for Taking and Carrying away 30 Loads of Thorns, by him cut down and lying on his Land at C. in a Place called the Common Whate. Defendant justified, That he was feïted in Fee of a Meffuage and three Acres of Land &c. and to preïsures to cut down and take All the Thorns growing in the said Place, to plant in the said Hoïse, or about the said Lands as appertinent thereunto. The Plaintiff replied, That R. S. was feïted in Fee of the Manor of C. whereof the said Esque was Parcel, and gave him Leave to take the Thorns. Adjudged that this Prescription by the Defendant excludes the Lord; so that he can neither cut or licenï any other to cut Thorns. Cro. J. 256. Mich. 8 Ja. B. R. Duglaff e. Kendal.
Prescription.

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Record of a Deed, in the name of the Defendant's dicunt, quod ipso & Antecedent
fui ac eorum Feudatorem & eorum Antecedentiam tenebantur tenere, quae
ipso nunc tenent in Earls-street, a tempore quo non extant Memoriam ac
testam tempore præstiti Comitis & Antecedentiam florum florum includi-
ique in Domibus & Selds suis in ipso loco constructis Omnium florum
Memoria vendiderunt &. But the Defendants were demanded by the
Justices, Si ipso porrexerint præstitas Chartas pro Titulo aut pro
Evidentia sit dui præstiti & sic tenere velit ad Chartas illas pro
Titulo an ad Confectudinem præstitam. Qui dicit quod protulerint
Chartas illas ad Evidentiam, & upon this Issue was taken upon
the Prescription. 2 C. 2.

2. In Writ of Amenity by a Prior, if he counts upon a Prescrip-
tion, it is good for the Defendant to say the Priory was founded
since the Time of King Richard. 24 D. 6. 37.

3. In An Amenity by Prescription the Defendant pleaded, that it was
granted upon a Composition, and so he ought to count upon the Com-
position. But there is laid by Newton, that if he shall count upon
this Composition, then it shall come in Issue whether it was made
before Time of Memory, (and) then it cannot be tried; but if the
Title had commenced with the Peculiar since Time of Memory, this
may be known by the Issues; and if they cannot find it, then the
Prescription is good. 19 H. 6. 75.

4. A Man shall not have any Advantage by Allegation of a Founda-
tion, or other Matter in Fact to be done before Time of Memory; be-
cause this cannot be tried. 1 E. 4. 6. 6.

5. So a Man shall not have any Advantage by Allegation of a Deed
or Specialty made before Time of Memory, because this cannot be
tried. 1 E. 4. 6. b. 14 H. 7. 1. of a Deed of a Rent-charge whereof
he had not Seisin within Time of Memory.

6. So a Man shall not have any Advantage of a Record before
Time of Memory, because it cannot be tried. As he shall not have
Execution of a Fine. 1 E. 4. 6. b. And yet Bingham there laid, that
he never saw any Record of the King before the Time of D. 3. of
this Opinion; for there was held a Diversity between a Record and
Deeds, and Matters in Fact. 19 H. 6. 73. b.

shall not have Advantage either in one Case or the
other. Ibid.

7. If the King before Time of Memory had made a Grant, this is
not of any Effect as a Patent after Time of Memory, unless it had been
allowed in Eier within Time of Memory. 19 H. 6. 75. b. 9 H.
7. 11. b. Per Curiam, of Conuance of Pleas. 2 E. 4. 23. ac-

8. If a Vili be incorporated by Letters Patents before Time of
Memory, and those Franchisees never were allowed since Time of Memor
they have lost their Franchisees. 14 H. 7. 1.

9. Such Things as do not lie in Point of Prescription, but ought to be
created and supported by Charter, and the Charters thereof were made
before Time of Memory, they are not pleadable nor of any Adial, if
they have not been allowed within Time of Memory. Co. 9. Ab.

Fol. 269. Ref. Fran-
chie, pl. 10.
C. Per
Vavilol.

10. It is clear enough, that there was a certain Time which was
called the Time of Memory in Prescription. 19 H. 6. 75. Per New-
ton. 1 E. 4. 6. b. 9 H. 7. 11. 14 H. 7. 1.

11. The said Time of Memory in a Prescription was from the

The Time of King John [18] within Memory. Lit. S. 170. 34
H. 6. 36. b. 37.

12. The said Time of Memory was from the Commencement of the
Reign of King R. i. for all the Time of King Richard i. was
within

But Bingley said That now they are
Not all one as
to this In-
tent, viz.
That he
Prescription.

within the Time of Memory. 20 P. 6. 3. Per Newton. 13 P. 4.
9. b. Where the Seilin of King R. 1. was allowed for good Title, and to a Warrant in his Time.

13. It seems that by the Words (a tempore cujus Contrarii Memo-
ria; Hominum non exstilis) properly and generally is intended, and all
Times before this and before the Statute of Limitation was in-
tended; whereas no Proof could be made to the contrary, either by
Testimony or Evidence, in any Time before, without any Limitation of
Time. 34 P. 6. 36. b. 37. It seems will prove it.

14. But when by the Statute of Limitations the Seilin in a Writ
of Right was limited to the Time of R. 1. so that none could count of
a more ancient Seilin; and this Writ being the most High Writ
was taken within the Equity of the Statute; also, that tho' a Man
might prove to the contrary of a Thing whereof the Precription
was made, yet this should not destroy the Precription if the Proof
was of a Thing before the said Time of Limitation; for it was Reason
that the Inquries in a Precription should be limited as well as in a
Writ of Right, being more base than that; for it would be hard
to put Juries to inquire of Things so ancient. And therefore it is
said in 13 P. 4. 9. b. that the Limitation in Writ of Right is too
long Time for a Precription; and yet this Limitation is not changed, nor
can be without Statute.

15. Rot. Parl. 43 C. 3. No. 16. Pray the Commons, because all
the Time of R. 1. is held for Time of Memory, from which Time
no Man may have true Cognisance, that it please to limit in certain
the Time of Memory, so that it doth not pass the Coronation of
King Edward Grandfather of our Lord the King, who now is; and
like Petition was for diverse Opinions and Methods which happen'd
46 C. 5. No. 28. but no Answer to them. But the Answer to the last
Petition is. Let the Law stand as it has done heretofore till it be
otherwise ordained.

16. It seems that as the Time of Memory in a Precription was
limited to the Time of R. 1. * a Seilin in a Writ of Right
within the Equity of the Statute of W. 1. so that by the fame Rea-
on, the Time of Memory at this Day shall be limited to 60 Years,
as a Writ of Right within the Equity of the Statute of 32 H. 8.
cap. 2. for this is within the fame Method mentioned in the Prefcri-
ble of the Statute. But I well know, that the Practice is e contra.

Nov 2. S. C. 17. A Vicar endow'd De Minutis Decimus Anno Domini 1310. files adjudg'd. — the Parson appropriate for them; the Parson cannot prebife against
this Endowment, tho' it was 300 Years past; for the Prebition
ought to commence since the Endowment, which was since the
and Child. Adjudg'd.

18. Common Law admits of no Prebitions but what are Time out of
Mind &c. tho' the Spiritual Court allows of Prebitions sometimes of

* Orig. is (Solemne &c.)
Prescription.


* (Q.) How it may be made. [Affirmatively or Negatively.]

1. 
P.

Prescription in in the affirmative is good. 11 E. 4. 2. 18 E. 4. * See H. 6.

\( \text{cites } \) S E. 4. 5.


\( \text{cites } \) S E. 4. 5.

3. A Prescription in the affirmative mix'd with the Negative, where Br. Prescription, the affirmative is of effect and material, is good. 11 E. 4. 2. b.

\( \text{cites } \) S E. 4. 5.

4. It is a good Prescription, that he and his Ancestors, and all those whose Estate he has in such a manner have used time &c. to buy in such a market or Fair &c. and not to pay any Toll; for this is Negative mix'd with the affirmative, which affirmative proves it to be in Affirmative. 8 D. 6. 4.

5. It is not a good Prescription, that he has not paid Toll Time &c. for this is merely in the Negative. 8 D. 6. 4.

S. P. But it shall be in the affirmative as to say, that he and his Ancestors have been quit of Toll Time out of Mind. Br. Prescription. pl. 76. cites 15 E. 4. 5.

6. In Allt the Defendant pleaded Hors de son Fee (for it was of Rent) By which he and the Plaintiff said, that he and his Ancestor, and those whose Estate he has, that he &c. have been seized of the Rent Time out of Mind, and held no plea with, as Lord of the Manor of. The out Debt of the Conveyance of the Eve Estate. Br. Prescription. pl. 51. cites 31 Aff. 23.

7. The Plaintiff premised, that he and his Predecessors have had a Br. Action Mill in D. and no others had a Mill there. Per Pr. It. This Prescription is in the Negative, and therefore not good. But Per Patton, Preced. S. C.

8. Trefpasa upon the Case for stopping of a Sewer, by which 12 Acres of Land of the Plaintiff are surrounded in A. The Defendant premised, that the Lease of N.W. his Lease, and all those whose Estate he has in a Mill in A. he was pleased to stop when the Mill wanted Water, and to repair a Bay and Gutter, and repaired the Sewer &c. and the other said, that the said Trespass Damage, and reconvey'd the Preservation to stop. Br. Prescription. pl. 44. cites 39.

11. 6. 32.

and does not prescribe that the Owners and their Leases may destroy the Gutter, and yet no Challenge taken to it. Ibid.

Z. 2. 7. 9. 12.
9. In the Cinque Ports they prescribe, that Wit of the King does not run there, and well, and yet it is in the Negative; the Reason seems to be, because it is a Negative with an Affirmative. Br. Precept. pl. 65. cites 2 E. 4. 18.

10. In Trepasses the Defendant justifi'd for Damage setting; the Plaintiff said, that he had certain Land in D. and that D. and S. ajoining, and that all the Inhabitants of the Vills aforesaid have used to intercommunicate because of Vicinage Time out of Mind. Per Choke, You ought to allege the Precept in the Tenant of the Franksenement; for Tenant for Term of Years, nor at Will, cannot prescribe or allege Corporation by Name of Inhabitants; But Per Danby and Littleton, if the Usages be as above, this is good Pleading; Brook says, there, for the Law seems to be with Choke. Br. Precept. pl. 69. cites 7 E. 4. 26.


12. Where a Charge is on the Defendant of Common Right, which by Law he is Subject to, the Plaintiff need not prescribe in his Declaration. 1 Salk. 22. Mich. 3 Ann. B. R. Tenant v. Golding.

(R) Liberties. What Liberties a Man may have by Prescription.

1. SUCH Franchises and Liberties, which cannot be seised as forfeited before the Cause of Forfeiture appears of Record, cannot be claimed by Precept; because Precept being but an Usage in Pais, cannot extend to such Things which cannot be seised or had without Matter of Record. Co. Litt. 114. Co. 5. Foxley 109. b.


3. So a Man cannot have Goods and Chattels of those who are put in Exigent by Precept. Co. Litt. 114.

22, 25, 25. — Goods of Outlaws cannot be forfeited by Precept, because they are not forfeited till the Outlawry appears of Record. Co. Litt. 258. b.

4. So a Man cannot have Deodands by Precept. Co. Litt. 114.

5. So a Man cannot have Conunance of Pleas by Precept. Co. Litt. 114.

S. P. without flowing Charter before Time of Memory, and Allowne in Eyre after Time of Memory. Br. Precept. pl. 56. cites 1 H. 7. 23. — Br. Corone. pl. 128. cites S. C. — But Per Knivet Ch. J. a Man cannot prescribe in Bona Felonum & Fugitivorum; for this belongs to the King's Crown, and cannot pass but by Grant. Br. Precept. 16. cites 46 E. 5. 16. — S. P. Br. Efray. pl. 2. cites 44 E. 5. 19. — S. P. And this seems to be of the proper Goods of the felon, but a Man may prescribe in Goods stolen and wasted; for a Felon has no Property. Br. Efray. pl. 15. cites 46 E. 5. 16. — Tho' a Man can't prescribe in the said Franchise to have Bona & Catalla Prodictorum, Felorum &c. yet may they or the like be had Obiately, or by a Mean by Precept; for a County Palatine may be claimed by Precept, and by reason thereof to have Bona & Catalla Prodictorum, Felorum &c. Co. Litt. 114. b.


22, 25, 25. — Goods of Outlaws cannot be forfeited by Precept, because they are not forfeited till the Outlawry appears of Record. Co. Litt. 258. b.

5. So a Man cannot have Conunance of Pleas by Precept. Co. Litt. 114.


The Citizens of London, being a Corporation, in Usuage, that Guild or Fraternity may make another Guild and Fraternity; and the Custom was condemned by Award, for none may do it but the King, or he who has the King's Charter to do it by express Words. Br. Customs. pl. 40. cites 49 Aff. 8. — Br. Prescription. pl. 55. cites 8 C.

7. So a Man cannot have a Sanctuary by Prescription. Co. Litt. S. P. without Special Charter of the King before Time of Memory, and Allowance in Eyre after Time of Memory. Br. Prescription. pl. 56. cites 1 H. 3. 25. — Br. Corone. pl. 128. cites S. C. — Br. Sanctuary. pl. 15. cites S. C. — S. P. Br. Sanctuary. pl. 8. cites 1 H. 7. 6. — S. P. Hawk. Pl. C. 356. S. 5. — S. P. But if he has an ancient Charter and Usage, he may prescribe. Br. Prescription. pl. 61. cites 2 E. 4. 18. Per Choke. But Br. cites fol. 25, where the Opinion was, That it was not good, tho' a Grant of the King, before Memory was sworn and Usuage after; because it is against Common Right, and cannot have a lawful Beginning.


Serjeant Hawkins says, It is clearly supposed by the Statute of 23 Eliz. 6. that not only the King but also other Lords have the Franchise of making Coroners; From whence it seems reasonable to infer, That the King may lawfully claim such Franchise by Prescription, and that other Lords may claim it by Grant from the Crown; but it is a Privilege of so high a Nature, that no Subject can well intitle himself to it by Prescription only. 2 Hawk. Pl. C. 44. cap. 9. S. 11.


Serjeant Hawkins says, It is questioned by some, Whether such Power can be claimed by Usuage? Yet if the Power of holding Pleas, and even Courts of Record, which are of so high a Nature, and imply a Power of keeping the Peace within their own Precincts, may be claimed by Usuage, as it seems to be certain that they may; it seems strange, that the bare Authority of keeping the Peace in a certain District may not as well be claimed by such Usuage. 2 Hawk. Pl. C. 54. cap. 8. S. 10.

10. In Treafps, the Mayor of L. justified because it had been used Time out of Mind, that the Mayors have been Conservators of the Peace, and have used, for Affrays done in their Presence, to commit the Offenders to Prison till they have found Surety of the Peace. Brian said, You have no such Power, but to commit him to Ward till he has made Fine; and by him and Pi- got, The Power of the Mayor cannot rest upon the Usuage. Br. Prescription. pl. 79. cites 21 E. 4. 67.

11. A Man can't prescribe to levy Fines in his Court of Lands within his Manor, because Fine is a Record which no Man shall have by Prescription, and the King upon every Concord is Donor, which a Man can't be by Prescription. Denih. R. of Fines 3.

12. It was held by Hale Ch. B. that Return of Writs may be claimed by Prescription, as appertaining to a Manor. And so it appears in * Quo Warranto 2. in 42 Eliz. where the Law is admitted to be so; tho' the Prescription there was not well laid to intitle the Party to it; but more especially may it be claimed as appertaining to an Honour, as it was could not be held in 19 Jac. in Howard's Cafe, in the Cafe of the Honour of Clun, for Honours have more Incidents than Manors have. Hard. 423. Trin. 17 Car. 2. in Scacc. Countes of Pembroke v. The Earl of Burton.

42 Eliz. B. R. in Cornwall's Cafe. — S. C. Cited per Hale Ch. B. Vent. 455, as the Earl of Shrewsbury's Cafe; and says you will find the Pleadings in the New Entries Quo Warranto, pl. 2. Mich. 43 & 42 Eliz. B. R.

(8.) What Things a Man may have by Prescription.

1. A Man may have Treasure Trove by Prescription. Co. [114. b.]

2. So
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Prescription.

S. P. Br.

2 So he may have Waifs and EArays by Prescription. Co. Lit.,
Ebury, pl. 2. cites 44 E. 5. 114. b. Co. 5. Forely 109. b.

pl. 10. cites 46 E. 3. 16. — pl. 63. cites H. 7. 23. — And a Man may prescribfe in Waifs and Leets,
without Permance of Allowance within Time of Memory, because it stands with Common Right. Br. Ibid.
pl. 63. cites 2 E. 4. 25.


cites S. C. — S. P. Per Thynm; but per Hank, he ought to have Charter thereof, or Allowance in Eyrn.
Quere of Allowance, for per Thynm. Several Frankfolds are enjoyed in England without Allowance in

See (R.)

4. So he may hold Pleas by Prescription. Co. Lit. 114. b.
pl. 9.

And a Man may prefer
fear to dis

furb a Lecf.

See Br. Action for Cae, pl. 75. cites 35 H. 6. 16.

5. So he may have a Court Leet or Hundred by Prescription. Co.

Lit. 114. b.

6. So he may have Infangthief and Outfangthief by Prescription.

Co. Lit. 114. b.

Br. Prescription, pl. 10. cites 46 E. 3. 16.

A Man may
prefer

* that he and

all those whom Ehror he has in the Manor of D. have had Park in the same Manor as attendant &c. and


18. b Trin.

46 Elia in

the Cafe of Swam, cites 59 E. 3. 50. — A Man may allege a Parcher to be attendant to House and Land,
and may preferibe in it. Br. Prescription, pl. 66. cites 4 E. 4. 29.

9. So he may have Fairs and Markets by Prescription. Co. Lit.

114. b.

10. So he may have the Custody of a Gaol by Prescription. Co.

Lit. 114. b.

11. So he may have a Frankfoldage by Prescription. Co. Lit.

Frankfoldage can

not be lost of

Frankfoldage, and a Man may preferibe that he and his Ancelors Time out of Mind have had
Frankfold of the Beasts of his Tenants in C. and his Tencnor for Years need not show Dced, for he does

In Trepslf's Defendant jufified under a Prescription, that the Lords of the Manor of H. have, and
always used to have Free-folders throughont the Fill of H. and to have the Penning of the Sheep; fo that the
Fill of H. ought not to have Free-foldage without Consent of the Lord; and if any levied a Fold without
such Consent, the Lord had u'd to abide it. It was urg'd that this Prescription is void, being against
Common Right, which gives evory one Foldage in his own Land. See non allocatur: for every Prescribfe
is against Common Right. 8 Rep. 125. cites 8 E. 3. 37. 3 b. Jeffery at Hay's Cae, and cites 3 E. 3. 3 a
porter observes upon this Cafe, that the Foldage of Sheep is for the Maintenance of Agriculture (which
is to much lauourde in Law) yet by Comm one may be bar'd of it upon his own Land, and he of whom
the Land is holde may have it. S. Rep. 125. b.

S. P. and it was obje& that this Prescribfe was not good, it being against Law and Common Right:
to abridge the Subject of the Profits of his Lands; but adjudged, that the Prescription was good; for it
did not extend to deprive the Subject of the whole Utrench and Profits of his Lands, which would not
have been good, but only restrained him to fet up Hindles, which is a reasonable Prescribfe, and re-

12. In Affile of Rent the Affile found that the Plaintiff, and those whose
Estate he has in the Rent, were thereof Feiled Time out of Mind, and the
Prescription.

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the Plaintiff Setting'd and Difie'd, and Recover'd; and to note Rent recover'd by Prescription. Br Prescription, pl. 46. cites 13 Atl. 4.

13. The Defendant preseved in Toll-through; Thorp, Justice, said, This is to go through the Highway, which every one may lawfully do, and therefore it is a void Prescription; but a Man may preseve in Toll-rovers; For this is to pass over my Land; Note the Diversity; For none denied it, and Iluse was taken that it was not a High Street. Br. Prescription, pl. 83. cites 22 Atl. 58.

14. If a Man be impleaded within the Precinct of the Monastery of St. Stephen's, or Land in London, he may say, that Time out of Mind Lands in London have been impleaded in London in the Hings before the Mayor &c. Per Lacton; Quod Dannby concilis. Br. Prescription, pl. 65. cites 1 E. 4. 18.

15. Trespass of Sheep taken, the Defendant said, That the Land where the Trespass is suppos'd is His Frankament, where he has Fodage, and that he and all those whose Estate he has have used that if any depasture his Sheep with the Sheep of the Defendant in the Dry that the Defendant shall have them in the Night for their Dung, for their Pasure in the Dry, by which he took and folded them in the Night because they pastured with his Sheep the Day before, and in the Morning he put them out again; and a good Prescription, per Fairtax and Tremail; For it may have benevolent Commencement, and the Plaintiff has Quod pro Quo, feliciter, the Pasure for the Dung. Br. Prescription, pl. 57. cites 5 H. 7. 9.

16. In a Lece the Lord may preseve to have of every one, who makes an Affray or Bloodshed, 20 s. and may preseve to disbrain for it, and fell the Distrefs; For this is the Court of the King, and he derives his Interest from the King. Br. Prescription, pl. 40. cites 21 H. 7. 49.


18. To have Pasure for two Horses in a Meadow of 1000 Acres till the Grass is mowed was held well enough; For being in to great a Quantity of Land cannot destroy or debrue the Grass to, but that the Hay may well be made thereof. Cro. J. 27. Patch. 2 Jac. B. R. Thornell v. Laffels.

19. A Man cannot preseve to have Fines pro Licentia Concordandia; because they are Prerogatives of the Crown, and an ancient Flower of it. Arg. Lat. 46, 47. Trin. 2 Car. in Sir Edmond Bacon's Café. ——Cites Glanvil 7. cap. i. & D. 202.

20. For Matters of Interest it is a Rule, that nothing may be prescribed for, that cannot at this Day be raised by Grant; Per Sir Francis North. Arg. Vent. 387. Porter v. North.

21. Prescription to have all the Loppings of all Trees called Pollards in such a Place seems good. Per Raymond Ch. J. Gibb. 87. Trin. 2 & 3 Geo. 2. B. R. Dickins v. Hampstead.

(T) Destruction. What may destroy it.

1. If a Lease for Years of a Copyhold Manor leaves a Copyhold by Indenture for Years, yet this shall not destroy the Copyhold against him in Reversion; Because he has not the absolute Estate in the Seigniory. P. 38 B. R. between Rusley and Colesby, per Curnam upon Evidence at Sar.

2. So
Precription.

CRO. EL. 439. (bis) S. C.
2. So if Lessee for Life of such a Manor grants a Lease for Years by Indenture of a Copyhold, this shall not destroy the Copyhold as to him in Redemption for the Caute aforesaid. P. 38 EL. B. R. between Ruffley and Caroby, per Curiam upon Evidence.


4. So if Baron settled in Right of his Feme of a Copyhold Manor leases a Copyhold for Years by Indenture, this shall not destroy the Copyhold after the Death of the Baron as to the Feme and her Heirs. P. 38 EL. B. R. between Ruffley and Caroby, per Curiam upon Evidence at Bar.

5. If a Court by Precription be granted and confirmed by the King by his Letters Patents, This does not destroy the Precription; But the Seile of the Court may be by Precription as before. P. 10 Ja. B. R. between Goodson and Biffeld. Abjudged.

S. C. Cro. 315. It was in Error brought up on a Judgment in a Court of Pec. powders, and the Error affarged was in the Stile of the Court, which mentioned it to be held by Culfon, and by Charter of the King granted and confirmed &c. which was urged to be repealed. For that the Charter determines the Precription; ifd non allocatur; For they may use their Charters either as Confirmations of or as Granters, they may claim dude Liberties by Precription not withstanding such Charters. For, as Fleming said, Lectures were given in every King's Time to take a new Confirmation of their Liberties, or otherwise they ought to plead to plead upon a Charter which brought for the using their Liberties, or in Eyre, Allowance of them, else they are not justifiable.

Mo 82. pl. 1116. S. C. and the Court held, that the Precription remains, unless it be altered by the Charter. — S. C. 2 Bull. 21. and there 24. per Williams J. If the Charter be not contrary to the Precription, it shall be good by way of Confirmation. And by Crook J. As to the holding the Court by Precription and by Charter, it may be good if it be only by way of Confirmation. And Ibid. 25. S. P. but if the Style had been with a (Ve) viz. by Precription (or) by Charter, this had been clearly void. But where the Charter is in Augmentation of the Custom by way of Addition this is good, and may well be as a Grant and Confirmation, viz. a good Grant to hold as before, with an Addition thereunto as in the Charter is expressed, and in this Manner the Charter, Culfon, and Precription, may well stand together. S. P. agreed by the Court in a Precription for Common of Turbury.


The King by his Charter conveyeth the common People of their Right of Inheritance which they have in the Common Law. Br. Precription, pl. 52. cites 8 H. 4, 19. per Gagoffo. — As where the Mayor and Burgesses of Oxford have used Time out of Mind to have Consuince of Affises before them, and of other Places, and to hold Plea by Writ of Right before them, and after the King grants them to Consent Place of Plea by Charter, this is void for the Caute aforesaid. Ibid. — And it was said, That because they in Court of Record had accepted the Franchise by Charter of Consuince of Places, they had left the Advantage to hold Plea by Writ of Right by their Usage. — S. P. that if a Manor has Liberties by Precription, and after takes thereof Grant of the King by Patent, this shall determine the Precription; For Writing shall determine Contract and Matters in Fact. Br. Precription, pl. 102. cites 33 H. 8. — S. P. Br. Left. Sta. Lim. 39. S. P. Palm. 494.

Action against an Abbot, where the Abbot and his Predecessors Time out of Mind have used to find a Chaplain in the Church of J.-N. and after by Deed inducted him, and when it was sanctified, whereas there was between them, for the finding of the said Chaplains, and because the Abbot had used as before, the Abbot and Cecem granted that they would find a Priest &c. and for not doing it the Action was brought, and made Title in the Court upon the Precription; per Browne Ch. J. and Fiffer, and Vavilor J. the Precription remains, because the Deed is in Affirmation of the Precription, and of the same thing, and not Contrary, and the Deed recites the Precription, feit that it appears that the Intent of the Deed is to perform the Precription, and not to take away the Precription. Br. Precription, pl. 35. cites 21 H. 7. — Center is that the Grant had been contrary to the Precription. Ibid. — As where the Precription had been for one Day, and the Grant had been for 2 Days in a Week. Ibid. — But per Browne, it the Precription had been the Wednesday and the Grant had been the Friday, the Grants should have both. Ibid. Br. Elloppl. pl. 210. cites S. C. — Br. Grants, pl. 56. cites S. C. — Fin. Law 59. cites S. C. — Palm. 494. cites S. C. — Composition by Deed does not determine Precription, if it agrees with the Precription; and yet if A. has lost Common &c. and takes Grant by Patent of it of the King, or of any other by Deed, this determines the Precription by Elloppl. D. 155. b. Marg pl. 115. cites Palm. 58 Eliz. C. B. Sheldon v. Hodges. — And Br. N. C. pl. 206. 21 H. 7. — 5.

D. 114. marginal pl. 61. cites 28 Aff. pl. 4.

6. A Tithe gained by Precription cannot be destroyed by Inter- ruption of the Possession for 10 or 20 Years. CO. L. 114. b.

7. But Unity of Possession of as high and perdurable Estate of the Thing claimed, and of the Land out of which it is claimed by Precription, will destroy the Precription; Because it is in the Right.

CO. LITT. 114.
Prescription.

8. In Writ of Mene, if upon Issue joined upon the Acquittal, Time out of Mind $c$. the Jury find that the Grandfather of the Plaintiff was intioled by one Agnes, and that Agnes and her Ancestors were acquired by the Ancestors of the Defendant, Time out of Mind, but no Acquittal had been after this, yet the Plaintiff shall have Judgment upon this Verdict, because the Title of Acquittal being once vested by Prescription, cannot be taken away by a tortious Celler of late Time. 15. C. 3. Judgment. 133. 14. C. 3. ibidem 155. Co. Litt. 114. b.

9. If a Man, and all those whole Estate $c$. have paid a Modus Decimandii in lieu of certain Tithes, and after by 20 Years last past he pays those Tithes in Kind; yet this does not destroy the Prescription; For it is not any Waiver of the Prescription; and notwithstanding the Payment of Tithes in Kind for this Time, yet the Prescription continues in Right. B. R. between Newell Plaintiff, and Hicks, Prior of Edmonton, adjudged in Prohibition. Co. Litt. 114. b.

10. If a Man has had a Common by Prescription, and takes a Lease; and when a of the Land, in which it is to be taken, for twenty Years, by which the Prescription or Custom is suspended, yet after the Years ended he may claim the Common generally by Prescription; Because the Suspension was only to the ancient, and not to the Right, and the Inheritance of the Common always continued. Co. Litt. 114. b.

(U) In what Cases.

1. A Man shall never prescribe for what the Law gives him of Common Right; For Ulage is only where there is a Deed of Common Right, Cro. E. 792. Mich. 42 & 43 Eliz. C. B. Pill v. Towers.

2. A Vill cannot prescribe that Part of the Vill, or such a House in the Vill is Devisable, or Crowned, where the rent is Guildable. Br. Prescription, pl. 33. cites 40 Aff. 27.

3. A Parson prescribed, that he and his Predecessors have been seised of the Tithes in such a Place; Time out of Mind; and admitted for a good Prescription, quod nota; and this where the Place was not in his Parish; For where it is in his Parish he need not prescribe. Br. Prescription, pl. 85. cites 14. H. 4. 17.

4. A Man may prescribe in Rent-charge, and to distress for it when it is Arrear, which appears in the Case of Alize of the Abbey of Stratford, the Parson of Lapton, for certain Thread of Cotton, Wax, Oil, Incense &c. to make Taper, and the Lamp in the Church of L. And there per Danby and Priftet it shall be intended Rent Service. Brooke says quere inde, where no Tenure is alleged. Br. Prescription, pl. 84. cites 25 H. 6. 6, 7.

5. Where a Man Justifies, or Intitutes himself to Common Appendant, or to a Common Way, he need not to prescribe Time out of Mind; For these Words Common Way and Appendant imply Prescription Time out of Mind. Br. Prescription, pl. 39. cites 21 H. 7. 53. Per Coningsby and Brudell Justices.

6. Nothing can be precribed for, that cannot at this Day be raised by Grant; For the Law allows Prescriptions, only in Supply of the Lofs of a Grant. Antient Grants happen to be lost many Times, and it would be Patch hard that no Title could be made to Things that are in Grant, but by flowing of a Grant. Therefore upon Ulage Tempus don't &c. the Law presumes a Grant, and a lawful Beginning, and allows such Ulage for a good 1 Jac. 2. B R.
Prescription.

per Herbert; a good Title; but still it is but in Supply of the Loss of a Grant; And Ch. J. in the Cafe of James Trolop.

Supply of the Loss of any Things as can have no lawful Beginning, nor be created at this Day by any Manner of Grant, or Reservation, or Deed that can be supposed, no prescription is good. Arg. Vent. 387. cites 11 H. 7.


4, 5, and that Prescription cannot be to drain for a Rent-Service So a Man cannot prescribe for Herit. Caution; because it is for his own Goods. Br. Lect. Stat. Limit. 43.

But he may by prescription enable his Antony, to hold Plea above 49 s. and the like Ibid. And that the prescription was laid to hold it before the Steward of the Manor, which is against Common Right; yet it is not good. Ibid.

(V) Failer of Prescription.

1. A Writ of Mene was brought by the Tenant against his Lord upon an Aquittal by Prescription; Illue was joined upon the Prescription, and the Jury found, that the Defendant and his Ancestors, and they whole Estate the Defendant has, have acquitted the Ancestors of the Plaintiff, and those whole Estate he has, from Time whereof Memory &c. but not in the Time of the Plaintiff, nor of his Grandfather; the Plaintiff recovered by this Verdict; For the Effect of the Prescription is found. This Judgment was affirmed in Error. Qui habeat in Literis, iavis in Cortice. Jenk. 12. pl. 21. cites 14 E. 3. Fitzh. Judgment 155.

5. Upon a Prescription for a Modus decimandi, Way or Common, if the Verdict finds no Modus, Way, or Common for twenty or forty Years; but that before that, from Time beyond Memory, there was such Modus, Way, or Common; This Verdict finds for the Prescription. Jenk. 12. pl. 21.

3. A. has Common for 100 Sheep, as appurtenant to a Houfe and 200 Acres of Land, and he purchases other Land, and has Common as appurtenant to that Land for 100 Sheep more; there are two distinct Commons, and in intitling himself, if he pleads Prescription entirely for a Common appurtenant to both Houfes and Lands together for 100 Sheep, he has fail’d of his Prescription; for he must make two several Titles, and Prescription for 200 Sheep, and not join both in one. D. 164. pl. 59. 4 & 5 Mar. Basket v. Lord Mordaunt.

4. One prescribed to have Pot-water out of such a River &c. and the Jury found, that he ought to have it, paying 6 d. every Year. It was adjudged, That he had failed in his Prescription; cited by Popham Ch. J. 5 Rep. 78. in Grey’s Café, as a Devonshire Café.

S. C. cited by Popham, Cro. E. 97. in Cafe of Grap v. Fletcher, where Popham said he was of Council in the Café —— S. C. cited by Popham, Win. 22. in Cafe of Emptom v. Bathurst.—So in Trefpaff Quare clausum fregit, the Defendant prescribes to have Com- mon in the Place &c. and it was found that the Defendant had used to have the Common, paying a Penny yearly to the Plaintiff; and if that Illue is found for or against the Defendant, was the Question; and adjudged against the Defendant. The Prescription is entire, and the Payment of the Penny is Parcel of that, and shall be intended as ancient as the Common is. Nay 59. Lovelace v. Reynolds.

5. A
Prescription.

5. A. if prescript to grant an Office Ailicut personæ, or Civitanei personaæ, Idoneae veluti; this Prescription will not warrant a Grant to two Persons. Per Dyer. 2 Le. 33. Mich. 15 El. in C. B.

6. In Trepsas the Defendant justified as in his Freehold; the Plaintiff made Title that the Locus in quo &c. was Parcel of the Manor of D. and demisibile Time out of Mind &c. by Copy either in Fee, Tail, or for Lives &c. and that it was granted to the Plaintiff by Copy in Fee. This Prescription was travers'd. It was found, That the Lands had been Time out of Mind granted in Fee, but never in Tail; the whole Court held, that it was found for the Plaintiff; for the alleging that it had been demisibile in Fee, in Tail, or for Lives, was but the Conveyance to his Title, and being found that it was demisibile in Fee, and that it was demised in Fee, that is the Effect and Substance of his Title, which is sufficient; wherefore the Plaintiff had Judgment. Cro. E. 431. Mich. 37 & 38 Eliz. B. R. Doyle v. Wood.

7. Where one prescribes to have Common appurtenant to his House and in Replevin 20 Acres of Land, and it appears upon Evidence that he has but 18 Acres, or a less Parcel, yet he has not failed of his Prescription; but if he had 20 Acres, and 10 Acres are Freehold, and 10 Copyhold, he there fails of his Prescription; for he cannot make one Prescription for both. So it is if Part was Copyhold 100 Years since, but now is Freehold. Cro. E. 531. Mich. 38 & 39 Eliz. C. B. Gregory v. Hill.

8. If A prescribes for Common for 100 Sheep, and the Jury find that he S. P. Show has Common for 100 Sheep and 6 Cows; this is no Failure of Prescription; Per Cur. But Per Walmley, if the Jury had found Common for 120 Sheep, and so more of the same Kind than he had alleged, he had failed. Cro. E. 722. Mich. 41 & 42 Eliz. B. R. Buthwood v. Bend.


Beasts Leant and Couciant upon a Meilenge 200 Acres of Land, 50 of Meadow, and 50 of Pasture in 4 Years. The Jury found, that the said M. was leant of the same House, Land, Meadow and Pasture in the same Time, that the Plaintiff had his Common, as belonging only to the Meilenge, and 200 Acres of Land, 50 of Meadow, and 50 of Pasture in two of the Years, and not to the whole, whereupon Judgment was given against the Plaintiff, as failing in his Prescription. Hob. 209. Mich. 15 Jac. Mitchell v. Mortimer.

So if a Man prescribes that he has Common for Sheep only, and the Jury find Common for Sheep and Great Cattle, the Common is found for the Plaintiff. Per Nicholls. Brownl. 178. Trin. 12 Jac. in Case of Johnson v. Thorowgood. So if one claims Common all the Times of the Year, except the Lands in Levee, and when it is in such from such a Day unto &c. and his Cattle are taken in the Year when it is sown, or lies fallow, it is sufficient for the Plaintiff to prescribe for Common, either in the Year when it is sown, or when it lies fallow; and if the Jury find all the Year, it is sufficiently found for the Plaintiff. Ibid. So if a Man hath Common from such a Day to such a Day, and the Cattle are taken at a Day between the Days, and he prescribes that he hath Common in the said Time, quo &c. and the Jury find he had Common before that Time the same Day and after, the Verdict is found for the Plaintiff; Per Nicholls, guid Warburton & Wm. Nicoll. Ibid. So where a Man prescribed for Common of Sheep for all his Sheep Leant and Couciant, &c. it was found by Verdict that he had Common for Sheep and for all other Cattle &c. The Court held that the Action being only for Impounding Sheep, the Plaintiff might well make the Prescription, as to them only, since nothing else was in Dispute; and the finding that he had Common for other Cattle, does not falsify his Prescription, but stands with it; and the Plaintiff had Judgment. Carth. 219. Patch 4 W. & M. B. R. Burgesv. Searle. But if a Man prescribe for Common for All Cattle &c. at all Times in the Year, when it appears by the Evidence that Sheep were excused from some Time of the Year, this is a Failure of the Prescription therefore the Prescription must be travers'd specially pleaded with this Exception. Resolved per Cur. Carth 241. Patch 4 W. & M. The King v. Inhabitants of Hemingby—So where the Defendant had prescribed for Common for All Sheep Leant and Couciant &c. and the Evidence was, that he had Common for his own Sheep only; it was objected that the Evidence did not maintain the Prescription; and of this Opinion was all the Court, because as the Prescription was laid, Sheep stilled or otherwise Leant and Couciant ought to have Common, which is not warranted by the Evidence; for that is, that he has Common for his own Sheep only. Palm. 562. Earl of Devon v. Eyre.

9. Lord prescribes to disstrain the Beasts of his Tenant for not doing Suit to his Court; if he disstrains the Beasts of his Undertenant, this is not within the Prescription. Cro. E. 792. Mich. 42 & 43 Eliz. C. B. Pill v. Towers.
Prescription.

10. In Replevin for taking the Horse, one Gelding, and two Cows &c. the Defendant avow'd for Damage lessee; Plaintiff in Bar prefcribed in the Place where &c. for Common Appurtenant Pro omnibus Equis, Vacis &c. Defendant demurr'd, because this Prefcription did not maintain the Declaration; for nothing is said as to Geldings. And of that Opinion was Anderfon; but the other Offenders contra, and that the Prefcription was good; for Equus is a general Term, and comprizes both Horses and Geldings, but not Cows. And the Court said, that all the Offenders of Serjeant's-Inn, with whom they had conferre'd about it, except one, were of the fame Opinion: Wherefore it was adjudged for the Plaintiff. Cro. E. 798. Mich. 42 & 43 Eliz. B. R. Stapleton v. Morfe.

Suggestion 11. A Surniffe for a prohibition was, that Time out of Mind he had in a prohibition was, that the Plaintiff was due to the Parfon, as he fined for, but that it's a Modus, the Time out of Mind had not in such Manner as the Plaintiff furnished, a Confutation could not be granted. Cro. E. 819. Patch. 43 Eliz. B. R. Beal v. Webb.

12. In an Action of Trespass against G. he justifies by Reason of a Common appendant by Prefcription in 500 Acres. And it was found by Verdict, that the Aetor had releas'd his Common in five of these Acres. And by the Court he had failed in Prefcription. The Common by that is not extinct, because it is discharg'd to be Common by Act of Parliament for Failure of Prefcription. Noy 67. Rotheram v. Green. — Cit. D. 164. a. 284.

13. If a Man prefcribes, that every one who has 7 Lambs, or under, shall pay to the Parson a Halfpenny for every Lamb; and it is found according to the Wool, he had fail'd in all. But per Cur. There is a Difference between a Suggestion to Face Preliminary, and a Prefcription compriz'd in it, and a Prefcription made in Defence, or by Way of Plea in any Original Affi; for in the last Cafe a Joint Prefcription made of two Things, and Failure in one drives all, because it is by Way of Title; but otherwise here, because this Prefcription is only to give Jurisdiction to the Court of King's Bench. Yelv. 55. Mich. 2 Jac. B. R. The Case of Prohibition.

14. In Cafe the Plaintiff declared that he was feiz'd of a Clofe called Haye next the River O. and that the Defendant was possi'd of another called Grove-Mead-Clofe on the other Side of the River, and that he and all the Possi'sors of Grove-Mead-Clofe Time out of Mind have used to make a Hedge on the Bank of the said River against the Water, which the Defendant had not done, by Reafon whereof the Cattle paiz'd over into the Plaintiff's Land from the other Side Ad damnum &c. After a Verdict for the Plaintiff, it was mov'd in Appeal of Judgment that the Prefcription is ill, because it ought to have been either by Way of Cuf- ton in a Vill; or in a Person who may prefcribe and aver Continuance, by Reafon of his Eftate; but Possi'sors or Occupiers are no such Per- sons; for that may be Possi'son for an Hour or less, which is no Ground for a Prefcription; and for this Reafon the Prefcription was thought to be ill by Doederidge, Haughton and Chamberlain Juflices, but Ley Ch. J. thought, that when Damages are only demand'd by the Wir, it suffices to fay, That the Possi'sor feiz'd; but otherwise, where the Land itself is de-
Prescription.

15. In Trespass for Feeding his Pasture Ground &c. the Defendant And Ley Ch. prescribed, that he and all those whole Estate he had in the Manor of Harloup, had Common for all Sheep Leantu and Conoants on the Said Manor; upon the Trial the Evidence was, that this Manor was purchased by the Plaintiff of two Coparceners, and that he bought the Fee of one Moity first, and at the same Time had a Lease of the other Moity for Years, and afterwards purchased the Fee of that Moity. It was mov'd that he had failed in his Prescription, because the Purchase of the Manor was by Parcells, and he has made one entire Prescription for the Common to the whole Manor, whereas he ought to have made a spacial Prescription, because the Parcells were once sever'd. And Ley Ch. and Doderidge J. were of this Opinion; for when by Act of the Party the Manor is once sever'd, there, tho' it be re-united, yet he ought to make a spacial Prescription to the Common; Otherwise, he had been sever'd by Act of Law, as Partition. Palm. 361. Hill. 20 Jac. B. R. Earl of Devon v. Eyre.

may be intire; otherwise if it were by Meets and Rents. Ibid.—And Doderidge J. held the Prescription ill, because it is uncertain whether it be Common Appendant or Accessory; but as to this Haughton held the Prescription good; for he held the Manor intire and re-united, and the Prescription shall be accordingly. Ibid.

16. In Trespass the Defendant justified for Common from the carrying away of the Corn till it was rewasted with Grain. The Plaintiff replies that at the Time of the Trespass supposed it was wasted with T投机s. The Opinion of the Court was, that it was not such Grain as was intended in the Prescription. Freem. Rep. 51. pl. 63. Mich. 1672. Bruerton v. Right. in C. B.

17. Trespass. The Defendant justified by a Prescription for a Way to a certain Clofe; the Plaintiff replied, that he brought a Load of Hay along that Way that grew upon another Clofe; and the Defendant demurred, and adjudged against him; for if a Man hath a private Way to a Clofe, he shall not enlarge it to other Purposes. Freem. Rep. 247. pl. 259 Hill. 1677.

Webster v. Bach.

denied that he was in Fece of a Clofe a Lane, and of a Meadow called G. and so prescribed for a Way leading third, a Place called B. Lane to a Place called L. Lane, and thence to his said Clofe called L. and that the Defendant had copied B. Lane, with his Carts and Carriages; so that the Way used of no Use to the Plaintiff &c. The Defendant pleaded that W. V. was in Fece of a Clofe called B. Clofe, and then lays a Prescription in the said W. V. for a Way through B. Lane to the said Clofe, and so back again, and justified as Servant, the going thither with his Carts &c. the Plaintiff in his Replication contented that W. V. was in Fece &c. and had a Way from the Lane to the Clofe, but that the Defendant, in using the said Way, did go beyond that Clofe to another Clofe called Wortn Langes, and so back again, the Defendant repented as Before, without alleging any new Matter; and upon Demurrer to the Rejoinder, the whole Court resolved that the Defendant having prescribed to a Way only to B. Clofe, he cannot justify the going beyond it into the other Clofe of W. V. called W. L. Judgment was given, but not entered upon the Roll. Lutw. 111. 112. Trin. 7. W. 3. Laughton v. Wind. —— So where A. had a Way over B.'s Ground to Bl. Acre, and drove his Cowel over B.'s Ground to Bl. Acre, and thence to another Clofe lying beyond, it was urg'd, that when the Beasts were at Bl. Acre, the Defendant might drive them whether he would. But it was answered, That by this Means the Defendant might purchase 100 Acres adjoining to Bl. Acre, and so the Plaintiff would lose the Benefit of his Land, and that a Prescription presupposes a Grant, and ought to be continued according to its Original Creation. And to this the whole Court agreed, and Judgment was given accordingly for the Plaintiff. Mod. 192. Mich. 20 Car. 2. C. B. Howell v. King.

18. In Re@ours of 300 Sheep the Defendants pleaded, That the late Bishop of N. was in Fece of the Manor of N. and that the said Bishop, and his Predecessors, Time out of Mind, had Liberty of Pasture and a Build-Courts for 300 Sheep in and upon the Plaintiff's Clofes at certain


Pleading a Prescription against a Prescription.

1. One Prescription may be pleaded against another, where the one may stand with the other, as for Instanace, Where a Copyholder of a Bishop premitted, that all Copyholders within the Manor had been discharged of Tithes. But not where one Prescription is against another, as where one prebribes to have lights to his House and the other prebribes to stop them up. Per Coke Ch. J. in the Case of Hughes v. Little Godb. 183. pl. 262. cites the first Point as adjudged in the Case of Wright v. Wright.

2. If A. has a Way over B's Land to his Franement by Prescription Time out of Mind &c. B. cannot allege a Prescription or Custom to stop the said Way; For it is a lawful Easement, and one Custom is as ancient as the other. 9 Rep. 58. b. Mich. 7 Jac. Aldred's Case.

3. The Plaintiff precluded for a Foulde-course for 300 Sheep, in 70 Acres of Land in B. every Year, from 14 Days after the Corn carried away till Lady-Day, within the Lands not fowen against. The Defendant precluded, that there is a Custom within the said Town of B. that any one may take any Part of his Lands lying in the common Field. But the Plea in Bar was adjudged not good, because he does not traverse the Prescription in the Declaration; For a Prescription cannot be pleaded against a Prescription. But the Prescription alleged in the Count ought to be answere. Cro. C. 412. Hill. 11 Car. B. R. Spooner v. Day and Mason.

4. The Defendant avows for Damage-tenant in Freehold. The Plaintiff replies, that he was feited of a Houfe and two Acres of Land in B.
Prescription.

and that he prescribes for Common belonging to the said House, and two Acres of Land in the Field of D, whereas the Locus in quo was Parcel, 23 Sir. 2. S. C. fays, That Atkins J. The Defendant rejoins, that there was a Cafe in the said Fields, that any Owner of Lands might inclose any Parcel of Land lying together in the said Field, and exclude the Commoners in the said Field. The Plaintiff demurs and objects, that this Rejoinder is naught; because here is a Pre- Prescription pleaded against a Prescription, without traversing the first Prescription which is not good, according to † Aldred's Cae. 58. 1 Cro. 43. 2. But the Court seemed to incline, that it may be well enough for a particular Prescription may be controlled by a general Cafe, though it cannot by another Prescription; For where a Cafe is, which is of a greater Extent and Latitude than the Prescription, there it may be good without traversing the Prescription; for if one or two Men inclose, yet the Party has his Common in the Field, and to it may hand with Prescription. The Defendant contended to pay Costs and amend. Freq. Rep. 216. pl. 217. Mich. 1676. Sir William Hickman v. Thorny.


(Y) Pleadings.

1. It was presented, that J. S. by reason of his Tenure, had used to repair a Bridge, and did not say, that he and those whose Flatake he has &c. have used &c. And per Cur. the Prefentment is good when he says, That by reason of his Tenure &c. he ought to repair &c. For this im- plies tiitle of Prescription. Sulliard said, It is not good to say that he and his Ancestors have used &c. And per Fairlax, this is true; For he cannot be charged by the Act of his Ancestor without Profit to be taken by it: Contra of such Prescription against an Abbot; For the House and the Thing continues, but by reason of Tenure as above this implies a Profit. And this by the Justices. Br. Prescription. pl. 78. cites 21 E. 4. 38.

2. In Trespa the Us & Prescription of Common appurtenance was put in Issue, and yet this is in the Right, and the Action is, in the Pref- ession. Br. Prescription, pl 89. cites 22 All. 63. and 36 All. 42. and 40 E. 3. 31. and 22 H. 6. 51. and 7 E. 4. 26. accordingly; and yet 40 E. 3. 10. he was put out of this Plea. And fo by Finch in Replevin, where the Plaintiff justified for Common appurtenance. And he said, that the Prescription shall be traversed in Quo fœren, which is in the Right. Br. Prescription, pl. 89. cites 22 All. 63.

3. In Trespa, for trampling and feeding his Grafs. The Defen- dant pleads in Bar, that the Borough of D. is an ancient Borough, and that the Defendant Tempore quo & diu ante was a Burgus of the said Borough; that the Mayor and Burgesses for themselves, and for every Burgus of the said Corporation, bad Common in the Place where, for all their Commonable Cattle, and that he put in said Cattle to use his Common. Upon Demurrer it was objected by the Court, That the Defendant has prescribed for Common in Grofs Sims Nomebr, when there is no such Common; for if it should, then the Corporation might surcharge the Common, there being no Restraint to the Number of their Cattle; therefore he should have prescribed for all Cattle leasant and conquest within the Vill; To which it was answered, That there is no Danger of such Common being surcharged, for in such Cafe the Lord or Owner of the Soil may detain, but that this being Claim of Common in Grofs, and not Appendant or Appurtenant, it had been improper to pre-
Cattle Levant and Couchant. But it was adjudged, that the Plea was ill, because the Defendant in his Prescripition did not aver, that the Cattle were Levant and Couchant within the Vill, and that it had been good, if those Words had been put in; but Kelynge Ch, J. said positively, that there could not be any * Common in Grofs Sans Nombre. 1 Sound. 544. Mich. 21 Car. 2. B. R. Niello v. Spateman.


For it seems, that Gift in Frankalmoignon After Time of Memory, and Prescripition shall be double. Br. Double, pl. 83. cites 59 H. 6. 29.

5. In Writ of Mesue, the Plaintiff counted, that Land is held of the Defendant by the Plaintiff Abbot of E. in Frankalmoignon, and that the Defendant and his Anceffors whose Heir &c. have acquittted the Plaintiff and his Predecessors Time out of &c. and Issue taken upon the Prescripition; Exception was taken, that it was Jeafoil byreason of the Doublens, viz. the Frankalmoignon, and the Prescripition, where each of them is a good Cause of Acquittal. And per Choke, it is not double, because the Issue is taken upon the one, viz. the Prescripition, and is he relies upon one to avoid the Doublens. But per Prioriit, it is not double, because the Frankalmoignon is not sufficient Cause by itself; For he doth not show the Gift in Frankalmoignon, and therefore it shall be taken a Gift given before Time of Memory, and then he ought to prescribe in the Manner of Acquittal, and then the Prescripition is the Effective &c. and to single, and after it was awarded good, and the Plaintiff recovered the Acquittal. Br. Double, pl 83. cites 39 H. 6. 29.

6. If a Copyholder lays a Prescripition in the Bishop of W. Lord of the Manor for himself and his Tenants to be discharged of Tithes, and then prescripizes for the Copyhold. Though here is a Prescripition one in the Copyholder to make his Estate good, and the other in the Lord to make his Discharge good, yet it was held that a Prohibition lay for the Copyholder. Yelv. 2 Patuch. 44 Eliz. B. R. Croucher v. Fryar.

7. In Trespass the Defendant claimed Eflowers appendent in the Places where &c. and prescribed that he and all those whole Estate &c. have had Eflowers in the Place &c. appendent to such a House Time out of Mind, and admitted for good, viz. the Appendency and Prescripition. Br. Prescripition. pl. 87. cites 21 E. 3. 40, 41. But by 11 H. 6. 11. this is * Double, and with this agrees 4 H. 6. 13. Ibid.

8. Prescripition in the Defendant, that he and all others Tenants and others * Tenquam illius prins habebant augeb and sued to cleanse such a Ditch, and therefore the Writ was abated; But it should be, that he and his Predecessors Time out of Mind, whose Estate the Defendant has &c. and because not &c. therefore the Writ was abated. Br. Prescripition. pl. 16. cites 22 H. 4. 7.

9. In
Prescription.

Littleton said, That Anno 18 H. 6. in Annuity the Plaintiff counted by Prescription; the Defendant said, that it was done by Coercion of Distress, because the Rent had been continued Time out of Mind, and cannot be avoided by Coercion, tho' it commenced by Tort; by all the Justices. Br. Prescription, pl. 75. cites 13 E. 4. 6.

13. If a Man prescribes to have Rent with Distress, it is no Plea, that the Rent had been paid at all Times by Coercion of Distress, because the Rent has been continued Time out of Mind, and cannot be avoided by Coercion, tho' it commenced by Tort; by all the Justices. Br. Prescription, pl. 75. cites 13 E. 4. 6.

14. The Sheriff of W. is not entitled to have the Rent for all Time, and the Prescription shall be that the King and his Predecessors had, since the Tenant was put in Use within Time of Memory. Br. Prescription, pl. 28. cites 15 E. 4. 29.

15. If a Man will allege a Prescription or Custom, he ought to set forth, That it was paid in Use within Time of Memory. Per Godfrey Godb. 55. Mich. 28 & 29 Eliz. in Joyce's Cafe.
16. If one prescribes to have the Dying of the Cattle in such a Place; he ought here of Necessity especially to aver, that he is sufficient for to dye them; as the Custom which one hath at Torcester, to have a Common Bakehouse, he ought to aver, that his Oven there is sufficient to serve them all; and this was Sir George Farmer's Case v. Brook. Per Coke Ch. Jult. 3 Bult. 61. Mich. 32 & 33 Eliz. in B. R. Ball v. Collins. Prec. Mo. 461. Hill. 39 Eliz. Anon.

17. A Copyholder shall prescribe by an Usuration oft against his Lord. But against a Stranger he shall prescribe in Name of the Lord himself. Per to
Prescription.

ing was adjudg'd good. Lev. 268, 269. Trin. 21 Car. 2. B. R. Potter v. North.

20. In Trespass for breaking his Close in L. in D. on the first of April, 21 Car. 2., the Defendant pleaded a Prescription for Common, and justified the putting in his Cattle on the First of August, 20 Car. 2. quia eadem Transgressio &c. and upon Demurrer it was objected to this Plea, that the Plaintiff had laid the Trespass to be done on the First of April 21 Car. 2. and the Defendant justified on the First of August 20 Car. which varies from the Time in which the Trespass was laid in the Declaration, whereas he ought to justify on that very Time; but it was adjudg'd, that the Plea was good in Substance, because the Defendant had averr'd, that it is Eadem Transgressio of which the Plaintiff complained; and the Plaintiff having demurred generally to it, this is but Matter of Form, and not Substance, of which no Advantage can be taken upon a general Demurrer. And the Defendant had Judgment. 2 Saund. 4. Hill. 21 & 22 Car. 2. B. R. Mellor v. Walker.

21. Where one pleaded, that Seftitas satis of an Horse and 20 Acres of Land, this, it was said, must be intended of a Fee Simple; and when he afterwards says, De jure habeere debuit Common, those Words amount to a Prescription. Arg. 4. Mod. 420. in the Case of Secode v. Byrt. cites Pach. 33 Car. 2. B. R. Rot. 109. Brooking v. Bond.

22. The Plaintiff's intitle themselves to each of them a Mill, and declare that they had used to repair the said Mills, and preserve, that all the Inhabitants within the Manor had used to grind ane Frumentum that they spent &c. at their Mills, or at the Mill of one of them. Two Exceptions were taken on the Declaration by the Court; for as this Prescription is alleged, possibly one of the Plaintiffs might have no Cause for Action; for if A. has an ancient Mill where the Inhabitants used to grind, and B. erects a new Mill in the same Town, it may be truly said, that the Inhabitants are to grind at the Mills of A. and B. or the Mill of one of them, altho' they were not oblig'd at all to grind at the Mill of B. per Hale Ch. J. but to intitle them both it ought to be alleg'd, that all the Corn not ground at the Mill of A. used to be ground at the Mill of B. and that all the Corn not ground at the Mill of B. used to be ground at the Mill of A. and then both had been intitled. (2d Exception) They prefer to grind ane Frumentum spent in their Houles, which is not good; for it may be, they spent Corn and never ground it all; as what they give their Pigs and Hens, and make Frumenty with, which they shall not be oblig'd to grind; but it should have been laid, Omnia Gra- ma molendina; and Twifden cited Apine & Chertleworth's Cafe; where the Prescription was adjudg'd bad for this Point. Judgment for the Defendant. Freem. Rep. 20. pl. 22. Mich. 1671. Harvey and Corydon v. Willoughby, in C. B.

23. A Man hath an Acre of Freelhold in a Great Field, to which Common doth belong, now he cannot in his Prescription lay it, that he hath Common in the whole Field, but in such a Part of the Field, as in that towards the East Part or West Part of the Field; because, if otherwise, he should then extend his Prescription to his own Land, which would not be good; and because he had here laid his Prescription to the whole Field, he was nonsuit'd &c. Clayt. 19. pl. 32. Conyers v. Jackson.

24. In Trespass for Breaking his Close, and Fishing in his severalフィサリ; the Defendant, as to the Close, pleaded that the Earl of Warwick was seized in Fee of the Manor of H. whereas one Acre covered with Water was Parcel and contiguous to the said Close, and so pres-cribes to have a necessary Element to catch Fish in the said Water, and for that Purpose to enter into the said Close and spread Nets &c. That the

4 D
Prescription.

Earl granted this Manor and Close to King E. 6. from whom it came to Queen Mary, who granted it to T. Lucy in Fee, with all Ways, Emoluments, Commodities and Hereditaments &c. and so derives a Title to himself from the said T. Lucy, and justifies the Entry in his own Right &c. Upon Demurrer it was objected, That this Plea was ill, because the Defendant has prescribed for a necessary Easement, but does not say that it was necessary for Catching Fish; It was answered, That the Word Easement is known in Law; it is a Genius to several Species of Liberties, which one may have in the Soil of another, without claiming any Interest in the Land itself. And per Cur. it is a known Term in Law; But here the Thing itself is set forth, (viz.) to Catch Fish &c. and certainly no Infringe can be given of a Prescription for such a Liberty, by such a Word or Name; therefore a Rule was made to set the Prescription right, and try the Merits. 4 Mod. 362. Mich. 6 W. & M. B. R. Peers v. Lucy.


26. Where one intitles himself to a Duty and Remedy by Prescription, he must set out his Remedy wholly; Indeed if you prescribe to a Duty, you may have Debt for it without Prescription, but you cannot distress without it; And if you prescribe for a Duty and Distress, you cannot by virtue thereof sell, without a Prescription for selling too; because a Prescription may be to distress without selling. Per Holt. 12 Mod. 329.

27. A Man, in Replevin, prescribed that the Plaintiff and his Ancestors, and those whole Estate he has, have had Common in his Land where &c. and that the Plaintiff and his Ancestors have used to pay 10s. Rent per Ann., to him and his Ancestors for the same Common, and so assessed for 10s. and good, Notwithstanding that he did not prescribe that he and his Ancestors &c. have had the Rent, but that the other has paid it, and is all one, per Cur. quod nota, and this is not Rent, but Annuity; For he cannot have Asile; Because he cannot have Rent out of his own Land, and yet a good Prescription per Cur. But he ought to allege Steify per Cur. and to fee Prescription to distress in his own Land. Br. Prescription, pl. 1. cites 26 H. 8. 5.

28. Action upon the Cafe, That whereas betwixt the Plaintiff's House and the Defendant's, there was a little Piece of Ground, called a Twitchell, upon which be, and all those whose Estate be hath, had used to set their Ladders to repair their House, and says, that he Profitatatus of the said House &c. and that the Defendant erected a Wall there, Per quod he could not set his Ladder; And per Curiam, the Plaintiff hath not well prescribed, for he hath laid the Prescription in himself, and those whose Estate he hath, and says, that he Profitatatus, which cannot be intended but of a particular Estate, as a Leaf for Years, and a Lease ought not to prescribe in his own Name: Rainsford said If he had said Seiitus, it might have been well enough. Wylde said, It must have been Seiitus in Feudo, or else it might have been but an Estate for Life; But if he had laid it in the Occupiers, perhaps it might have been good, being but an Easement. Freem. Rep. 357. pl. 453. Mich. 1673. Matches v. Broughton.

29. Plaintiff declared, That he was seised of a Tenement, and that he and all those whose &c. had used to fetch Pot-Water from the Defendant's Close; Ifise was taken upon the Prescription; and found for the Plaintiff; But the Court held the Declaration was ill, because the Plaintiff did not set forth that he was seised in Fee. For a Prescription cannot be annexed to any thing but to an Estate in Fee; therefore this is a Defect in Substance, and not aided by a Verdict. And the Judgment was arrested. 2 Mod. 318. Tr. 30 Car. 2. B. R. Scoble v. Skelton.
Prescription.

for not shewing How seised; For unless he was seised in Fee, he could not prescrib. And upon being moved again by Tremain, the Court held their former Opinion. Skim. 36. pl. 5. Patch 34. Car. 2. B. R.

30. In case the Plaintiff declared, That the Office of Post-mater was an ancient Office, to which several Fees were belonging for carrying Letters; but did not say they had belonged Time out of Mind; And it was well enough, for being alluded to be an ancient Office, and that such Fees did belong to it, he need not prescribe for them. Latch. 87. Lord Stanhope, v. Equefier.

31. One prescribed, That all the Occupiers of B Halbernon & behore confournon Common in such a Town in C. Ratione Vicinage, but did not allege Time out of Mind; which the Court held to be ill, because the Prescription is the Foundation for Common of Vicinage; but 'tis otherwise, where a Man claims Common Appendant; for in such Cafe the Plea would be double, if the Defendant prescribed to it. Latch. 161. Jenkins's Cafe.

32. Trespass for taking and carrying away his Cheeles, Defendant justified for that he was seised in Fee of Chipping Sudbury, and of an ancient Market; there held every Thursday, and that he and all those whose Estates he hath, had used to have a Penny for every Hundred of Cheese exposed to Sale in the Market, in the Name of the Pitching Penny; And upon Demurrer, to disfain &c. And that a Hundred of Cheese being exposed to Sale, and d. being demanded and not paid, he distrained. Upon Demurrer it was objected, That the Defendant had not made a sufficient Title, not having laid an Ufage Time out of Mind, but only by the Estate he hath, and the whole Court was of that Opinion. And Judgment for the Plaintiff. 2 Jo. 227. Mich. 34 Car. 2. B. R. Goodwin v. Brooks.

33. Cafe, and declared, That he was seised of such Lands &c. And that he and all thefe, whose Estate he had Simul cum quibusdam aliis tenentibus, Tenants by Copy of Court-Roll, de Manorio in f. Time out of Mind have had John Dafinman in such a Clofe, and the Defendant had disturbed him; and upon Demurrer, it was objected, to the Prescription, that (cum aliis Tenentibus) is uncertain, both as to their Kind and Number; And that de Manerio in J. is uncertain also what Manor is intended, and every Manor has a Name, and there may be several Manors in one Vill; For which Reafons the Court held the Declaration ill, and gave Judgment for the Defendant. 2. Lev. 178. Mich. 29 Car. 2. B. R. Underwood v. Saunders.

34. The Declaration was, That he was seised of a Meflague or Tenement, and that He and All &c. by Himfelf or Servants had fetched Water &c. Exception was taken that Meflague (Or) Tenement is uncertain, and fo (by himfelf or Servants) but Non Allocatur. Skim. 36. pl. 3. Patch 34 Car.


well enough; Because every Meflague is a Tenement. And that the other Exception was, because it was for Him and his Servants, whereas his Servants had no Estate; but held well enough.

35. In an Action for Toll, a Prescription was laid to have a Quart de quotidet Saco, Angl, a Sack of Corn, for Toll; and moved in Arreft of Judgment, because a Sack was a Meflague not known in Law; and therefore it ought to have been explained, or otherwise it is uncertain; But Dolbym laid, a Sack was a Meflague very well known in that County, and was there as certain as a Bushel; and fo he and Jones difallowed the Exception, Caeteris alientibus. Freem. Rep. 483. pl. 662. Mich. 1680. Wincombe v. Colborne.

36. Cafe &c. wherein the Plaintiff declared, That the Provoft and Scholars of King's College in Cambridge were seised in Fee of a Meflague in Gracesfer in C. and 260 Acres of arable Land, lying in the Common Fields of Gracesfer aforefaid, and that they, and all those whose Estates they had in the said Tenements, have Time out of Mind &c. for themselves, their Farmers.
Farmers &c. had Libertatem Faldagii of all Sheep (except &c. going and
depasturing on the Common Fields &c.) Territoria of Granceller upon the said
160 Acres, and sets forth a Title under the said Provolt &c. and that the
Defendant did put in 200 Sheep into the said Common Fields of G. and
depastured them there for a certain Time, but them, or upon the said 160
Acres or any Part thereof, Minime faldavit iniat ipsi debite, nec permisit
ipsum querentem habere Beneficiam Faldagii earundem, and shows how the
Defendant was not within the Exception. The Court held the Declaration
ininsufficient, for the Uncertainty of the Word Faldagium; And if the
Word did imply as the Plaintiff had inferred, it should have been set forth,
viz. That the Plaintiff had set up a Fold where the Sheep were to have been folded,
he being todo the first Act; And fiant debite is not sufficient
here for the Obseurity of the Word (Faldavit) so that it appears not to
the Court what ought to have been done on the Defendant's Part; And
to say, Non permisit the Plaintiff Habere Beneficiam Faldagii was not goot,
without thewning how he disturbed him as 8 Co. in Francis's Case. But
Nota that was upon Demurrer, but here it is not said Non permisit the
Plaintiff Habere Faldagium, or Non permisit eos faldare, but Non habere Beneficiam Faldagii; So that it was not certain what was meant for the
Sheep might be Folded, and yet he might be Deprived of the Benefit of the
Foldage; And for these Reasons the Judgment was stay'd by the Opini-
on of the whole Court. 2 Vent. 138. Hill. 1 W. & M. C. B. Dickman
v. Allen.

37. In Trespafs, the Defendant justified in F. because &c. and all his
Predecessors, and all their Tenants at Will of the Manor of D. have had
Common of Hirbury in the Place where &c. Time out of Mind, and no Pre-
scription. Per Cur. For the Lord cannot prescribe in himself and his Tenants
at Will; For Tenants at Will cannot prescribe; but the Lord shall pre-
scribe in himself and his Predecessors, or his Ancestors, or those whose Estate
&c. for them and their Tenants at Will; and this is well. Note the Diver-

38. Trespas against several, supposing the Trespafs to be done in B. and the
Bailiff of G. demanded Consubane of the Pleas, because they and their Prede-
cessors Time out of Mind have had Consubane of Pleas in B. by which &c.
and the Title of the Prescription traversed. 7 H. 6. 45. b. pl. 287.

39. In Trespafs, the Defendant prescribed in him and his Ancestors,
and in those whose Estate he has in such a House and Land in D. to be
Keeper of the Wood of D. taking yearly of every Commoner there 12d. The
Defendant pleaded Grant to him for a certain Time expired, and traversed the
Prescription, and well, tho' it was in Trespafs, and the Prescription
admitted in him and his Ancestors, and in those whose Estate, therefore
it is not double, as it seems. Br. Prescription, pl. 95. cites 11 H. 6. 2.

40. In Trespafs the Defendant in Ture Useris prescribed, that she and
her Ancestor, whose Heir &c. have had Rent of 22 s. per Annum Time out
of Mind of the Premisses, and that they have used to deflexion for it when
it was Arrear, by which he took as Diffreys for so much Arrear. The
Plaintiff said, that the Feme and her Ancestors have not been seized of this
Rent Time out of Mind; Prift; and the others contra &c. and to see
Prescription traversed in Trespafs, and yet this goes to the Right, but there
are severall Cases of this in the Book of Entry of Pleas. Br. Prescription,
pl. 20. cites 19 H. 6. 34.

41. Premiament was, that the Prior of D. ought to suffer such a Way
in D. by reason of his Land in D. and that he and his Predecessors &c.
were used to fecurnit, and it is not held double, and therefore the De-
42. Where Prescription is alleged in a Rent or Common, and the other alleges Unity of Possession of the Rent or Common, and the Land out of which &c. this is a good Plea without traversing the Continuance of the Prescription; Per Hulsey. Br. Traverfe per &c. pl. 185. cites 5 H. 7, 11, 12.

43. In Trespass Quare Clausum regit in C. the Defendant pleaded, that the Manor of C. is an ancient Manor, and that within the laid Manor is a Custom, that every Tenant belongeth a Way over the Place where &c. Upon which the Plaintiff demurred; and Judgment was given for the Plaintiff that the Plea is ill. Sid. 237. Hill. 16 & 17 Car. 2. B. R. Cornelius v. Taylor.

44. In Affise of Rent, he who prescribes in him and his Ancestors, and in those whose Estate he has, ought to shew Deed of the Rent; for Que Estate cannot be of a Rent without Deed, by which the Plaintiff proved Deed of Grant of the Rent to his Ancestor, but did not shew Deed of Commencement of the Rent, and therefore ill by the best Opinion; For a Man may prescribe in him and his Ancestors &c. without shewing Deed, but not in a Que Estate of a Thing which cannot be granted without Deed, unless he shews Deed thereof; Contra of Acquittal in him and those whose Estate the Lord has in the Seigniory, or of Common Appendant, or Eftovers appellant &c. there he may prescribe by Que Estate without shewing Deed. Br. Prescription, pl. 29. cites 24 E. 3, 23. 39.

Prescription, pl. 37 —— And in Rent referred for equality of Partition. Br. Prescription, pl. 47. —— And the Reason why Rent may be prescribed for without shewing Deed, where it is Parcel or Appendant to the Manor or Land, 17, because the Manor or Land may pass by Livery without Deed, and then the Rent paffes with it as annexed to it. Br. Prescription, pl. 47. cites 22 Aff. 5. —— He Monifram, pl. 91. cites S. C. —— But Br. Prescription, pl. 48. cites 25 Aff. 6. Contra that in Affise of Rent the Plaintiff prescribed in him and his Ancestor, and in those whose Estate his Ancestors had Time out of Mind, and it was adjudged a good Title without shewing Specialty of the Que Estate or otherwise, and the same Judgment affirmed in B. R. in Writ of Error. Br. Prescription, pl. 48. cites 23 Aff. 6. —— Br. Monifram, pl. 94. cites S. C.

45. A Man cannot prescribe in him and his Predecessors, and in all those whose Estate he has in a Hundred, without shewing Deed of the Que Estate; Per Hill. Br. Prescription, pl. 15. cites 11 H. 4. 15.

(Z) Equity.

1. The Contable of the Castle of Gloucester exhibited a Bill against a Brewer, setting forth, that he and all his Predecessors Contables &c. have used to have 12s. of every Brewer within the City of Gloucester, and that the Defendant refused to pay it. And Noy demurred because no Consideration was laid in the Bill, by which it might arise and commence. But the Bill was ruled by the Court to be good. Litt. R. 103. Trim. 4 Car. in the Exchequer. The Contable of the Castle of Gloucester v. A Brewer.

2. The Lieutenant of the Tower of London exhibited a Bill as to certain Wine claimed by him of every Ship laden with it, and he was relieved. And it is sufficient to maintain the Prescription, that it might have a lawful Commencement though now the Castle and Consideration is not known. For in many Cases the Consideration is truantory, as Payment of such a Sum &c. Litt. R. 103.

3. It is a common Case in Chancery, where a Man has used to have a Rent out of such a Manor Time out of Mind, but knows not by what he has it, or what Rent it is, whether Rent-service, Rent-charge &c. or
for what he has it, but only that he has used to have it, if it be detained, to sue there for it: Per Walters. Litt. R. 103. in the Case of the Contable of the Castle of Gloucester v. A Brewer.

For more of Prescription in General, See Chinnin or Ways, Common, Custom, Due Estate, and other proper Titles.

(A) Vicarage. [Who might create a Vicarage.]

Watf Comp. 1. The Ordinary cannot create a Vicarage without the Assent of the Patron. 16 C. 3. Quaere Impedit 145. 5 C. 2. Quaere Impedit 195. per Part. 16 C. 3. Nontrans be lates 166. per Part.

be created without the Assent of the Patron; per Dodderidge: Roll. R. 464. Trin. 14 Jac. in Cam. Scacc. in Cause of Colt v. Glover.

2. The Parson, Patron, and Ordinary, may create a Vicarage without the Assent of the King, though the Vicar shall be a Corporation; For this is a Corporation by the Common Law. Contr. 17 C. 3. 51. Admitted.

Watf Comp. 3. A Parson appropriate and the Ordinary might, before the Statute of Distributions, create a Vicarage; For the Parson was Parson and Patron. 8 R. 2. Annuity 53. 17 C. 3. 51.

Lyis. If the Appropriation be duly made when the Church is full, he supposes a Vicarage may then be created, at least if the Incumbent consent; But not so as to bind or lessen the Profits of the present Incumbent; However, it is clear, that the Patron and Ordinary alone may create a Vicarage. Cites 8 R. 2. Annuity 53.

Watf Comp. 4. If a Dean and Chapter, or other such Corporation, as Nuns &c. had Parsons appropriate, they might with the Ordinary create a Vicarage, though they themselves had not the Cure of Souls. Com. Erendon. 497.

5. In Time of Vacation, the Patron of the Parsonage and the Ordinary may create a Vicarage. 8 R. 2. Annuity 53. per Bell.

6. The Patron by Laple, tho' it be the King himself, is not sufficient Patron to assent; for the Patron by Laple has no Interest, but a necessary Function to present one to serve the Cure. Per Hobart Ch. J. Mo. 903. pl. 1262. Mich. 10 Jac. in Cause of Colt v. Glover.

[B.] Vicarage. Endowment. [By colom &c.]

1. 49 C. 3. 28. A N Endowment is pleaded to be by Parson and Ordinary.


* (C.)
If a Vicar had used by Prescription, Time whereof Memory to have all Tithes within the Parish, (except Corn, which the Parson appropriate used to have) viz., of Hay, and also of Hops from the Time that they came into England, likewise, in the Time of P. S. and of Woods, (which is a Young Plant) and now Rape seed is sown within the Parish, there never having been any such Seed sown there before, nor in England till of late Time, yet the Vicar shall have Tithes of this Rape seed, and not the Parson appropriate, because this is within the Prescription, tho' it be a New Thing, for which he cannot pretend truly, much as the Parson is excluded of all, except Corn, and this is within the general Prescription to have all Tithes, except Corn. P. 7 Car. B. R. between

Resolved per Curiam, upon Evidence at Bar in a Case which concerns the Parson and Vicar of the Parish of

both which Livings, as they are commonly called the Church, so both such as serve in them are called the Parson's Clerks. The Vicar is usually appointed and allowed to serve the Cure, by him who hath the Impropriation of the Parochial Tithes; for at the Original of such Impropriations a certain Portion of the Parsonage was allotted and set apart from the rest, to maintain the Vicar who was to serve the Cure; so that now the Priest of a Parochial Church, where the Predial Tithes are appropriated, is called the Vicar, i.e. Vicar Rectoris. And it seems anciently they did sometimes fill themselves of Perpetual Vicars, because every Vicarage, Corporation-like, hath a confiant Succession. Gogdlph. Rep. 106. cap 18. S. 1. —— S. P. Per Davenport Arg. Palm. 117. Mich. 18 Jac. B. R. In Britton and Ward's Cal. cites Com. 497. —— Vicar is but non profis vicem Perseque, to supply his Place in his Absence. Per Popham Arg. Le. 182. Trim. 31 Elis. B. R. in Calce of Slug v. The Bishop of Landaff.

Vicarages were not at Common Law in Churches appropriated, but they commenced in 20 H. 3. by the Constitution of Pope Othobon, which provided that from thenceforward in Churches appropriated, a Vicar should be endowed under a Penalty, but at Common Law they were Removeable, and not Perpetual; and since this Constitution Vicars are Spiritual in their Institution and Indowment, and not of Temporal Consequence. Per Davenport Arg. 2 Roll Rep. 98. in Calce of Britton v. Ward. —— S. P. Arg. 4 Mod. 184. in Calce of Wharton v. Lisle.

At the Common Law no Juris Utrum lay for their Possessions, but their Possessions might be increased and decreased at the Will of the Ordinary. And there was no Endowments of Vicar

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At the Common Law no Juris Utrum lay for their Possessions, but their Possessions might be increased and decreased at the Will of the Ordinary. And there was no Endowments of Vicar
4. If a Compromise be between Parson and Vicar, that the Parson shall have all the Corn and Hay, and the Vicar all other Tithes, and after the Parishioners low certain arable Land with Saffron or &c. the Parson shall not have the Tithes of the Safron, but the Vicar, Trim. 7a. B. Per Coke said to be adjudged.

C. R. E. 467. (bix.) S. C. - Mo. 929. pl. 12. S. C. - Goldsb. pl. 5. S. C. - S. C. Gied. Hutt 78. as adjudged Patch, 2 Jac. in B. and says that the Field, planted with Saffron, contained 40 Acres. And in the principal Cave there, which was Uppall in Hindale Hill, 1 Car. It was said that all these New Things, as Saffron, Hay &c. if it does not appear by material Circumstances to the contrary, shall be taken as Minute Decimes; and accordingly Judgment in that Cave was given for the Defendant. - Cro. C. 28. S. C. and there cites the principal Cave of Bodingfield and Folesby, by Name of The Dean and Chapter of Norwich's Cave Patch 45. Eliz. adjudged.

6. If a Vicar be endowed of a third Part of all the Tithes growing, and coming within the Manor of D. he shall have the Tithes of the Frankenants, as well as of the Coppholders, for all make the Manor. - P. 38 Eliz. B. R. between Bodingfield and Folesby adjudged.

A Vicar was endowed by these Words, (viz. Hukin's Testament) - "Per Decimam Fladum & Frat, quamdecusque perservientem de Manetia de B. &c. The Question was, If by this Indowment the Vicar should have the third Part of the Tithes growing upon the Land of the Freeholders within the Manor. The Court said that a Manor cannot consist within Freeholders, and since they are to be charged with the Payment of Tithes, one, and the other together shall be said to be the Tithes of the Manor: And so it was adjudged that the Vicar should have Tithes of the third Part of the Land. Ow. 52. 59. Trim. 16. Eliz. Higham v. Besi. — Ow. 74. S. C. by Name of Higham v. Besi; and Tanfield said, That the Word Manor extends to the Precincts of the Manor, and not to the Demesnes and Services only. S. C. Cro. E. 462. (bix.) Patch. 35 Eliz. B. R. Higham v. Besi. Adjudged by Totham and Penner, the other Justices not being in Court. That the Vicar should have all the Tithes, as well of the Freeholders as of the Demesnes; for this does not create a New Charge, but is disposing of the Ancient, which was due by the Tenants, and runs thro' the Limit of the Manor; but if this had been made before the Council of Lateran, it would not have charged the Freeholders but the Demesnes only; and adjudged accordingly for the Vicar.

C. R. E. 63. S. C. - The Vi Termyni Tite Hay is not included in the Words Deceimus Garbamum at this Day, yet for the continual Use it shall be taken that then they used this Word to such Intent. Palm. 115.

7. If a Vicar was endowed in Time of H. 3. by the Parson appropriate, among other Things Decimus Garbamum, growing within a Hundred within the Parish, and always after this Endowment, the Vicar had used to have the Tithes as well of Hay as of Corn; yet now at this Day Garba signifies a Sheaf of Corn, and as the English Hay Garba signifies such Thing as is bound together by a Band, and in their Books is used for Corn and not for Hay, yet because it is an Ancient Endowment, and the Horse always after has been such as is aborecal, the Vicar shall have Tithes of Hay, for it shall be presumed that in the Time of D. 3. Day might be comprised within the Word Garba, and that at this Time the Use was to bind Hay in Bundles: for such Ancient Grants are not to be expounded according to the Law used at this Day, but as may be intended that it was initial at the Time of the Grant. - Mich. 42. 4 Eliz. Birkdale v. Smith and Bluco adjudged.
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8. If a Vicar be endowed De Minulis Decimis, and he has used by Force of this Endowment by a long Time to have Tithes of Wood, which is but of the annual Value of 6 s. 8 d. By Reason of the small Value of the Wood and the Ease, the Wood shall pass by Words of Minulis Decimis. Mitch. 10 Ja. B. R. between Reynolds and Green. Per Curiam. Adjourned upon Evidence at the Bar, the Wood in its Nature be great Tithes.

Ufage, Tithe Wood may well pass; and so hath the Opinion of all the Civilians been. But per Williams J. by the Word Aheragia, without Ufage, it shall not; but if the Vicar Time out of Mind has used to have the same, then it is good, and shall pass by the Words of Minute Decline. And per Fleming Ch. J. accordingly, the Tithe Wood being of small Value; and that by those Words Tithe Wood may pass, the Law be against it.—S. P. Hct. 135. Wood v. Green.—Litt. R. 245 S.C.

9. Tho' the Tithes of a Field have been paid to a Parson, yet it being converted to another Use, whereof no Great Tithes do come, the Vicar shall have the Tithes. And so if arbable Land be converted into an Orchard, the Vicar shall have the Tithes of the Apples; and so if the Orchard be changed into Arbable, the Parson shall have Tithes. Per Popham, quod Fenner concedit. Owen 74. Pauch. 38 Eliz. B. R. Dean and Chapter of Norwich's Cafe.


In an Injunction was granted the Vicar, to stay the Suits of the Parson for the Tithes limited to the Vicar on the Composition.—Mo. 191. S. C. by Name of Spring's Cafe.


13. As long as the Vicar conveys his Glebe Land in his own Hand, he shall pay no Tithes, but if he demit it, the Læffe shall pay Tithes to the Parson that is improper. Brownl. 69. Harris v. Cotton.

14. If a Vicar be endowed with certain Glebe out of the Parsonage, the same Glebe so all'g'd shall be discharge of Tithes of Corn, in Consideration that the Vicar is bound to serve the Cure; but if a Parson leaves Parcel of his Glebe to another for Years, Life, or makes Feoffment in Fee, the Læffe or Feoffees shall pay the Tithes, unless some Consideration discharges them of Tithes. Per Mountow Ch B. Shute Farrow, and Gerard Attorney-General. Sizy 3 pl. 8. Mich. 22 & 23 Eliz. in the Exchequer Chamber. Vicar v. Sturton v. Gresley.

15. Vicar has the Land and dies; his Executor takes away the Corn, and lets not forth the Tithe; the Parson brought Debt on the 2d Ed. 6. and the Court seemed to incline it would lie. Brownl. 69. Harris v. Cotton.

16. On a Question about a Piece of Land, parcel of the Glebe, it was offered in Evidence that Endowment was of this Church in H. the III's time, and in that No Land was mention'd, but it was unmurthered that always in those Endowments Liberty was referred to increase the Maintenance of the Church; And it was urged farther, That No Land was in the Valuation of this Church in Time of H. S. when the Churches were valued, but it was unmurthered that Lands were not in those Valuations, and Omissions also of many Particulars were, and the Vicarage House in this Case was omitted, and yet never questioned but it did belong to the Vicarage. Claryt. 9. 8 Car. Coyne's Cafe.

17. The King cannot make a Licence of Appropriation without a Matter of Record, and it ought to be with a Condition to endow a Vicar, and the Endowment may be by a distinct Instrument from the Appropriation, f. 4 f. that
that it be made at the same Time that the Appropriation was. Sty. 156. Mich. 1649. Per Cur. in a Trial on the Caffe of Cae v. Orby.

17. Bill for Vicarage Tithes in some Towns in Kent, and the Plaintiff did not set forth how they became due to him, whether by Prescription or Endowment; And after an Answer, and Depositions taken, this was objected, at the Hearing the Cause; But the Exception was over-ruled, because the Defendant, by his Answer, admits him to be Vicar, and that the Tithes in question are his Due, but infcribed only upon Payment and Satisfaction; Quod not; For it has been often ruled contrary, it being the Ground and Foundation of the Plaintiff's Title; But the Bill was afterwards dismist upon the Merits with 40 s. Costs. Hard. 130. Mich. 1658. in the Exchequer. Button v. Honey.

18. The Vicar of G. brought Bill for Tithes of the Manor of Uxbridge and other Lands belonging to the Inappropriate Recitory of G.—C. demanded them for 8 Years last past, and ending in 1661. It appeared upon the Hearing, that several Vicars of G. his Predecessors had enjoy'd these Tithes; But an Endowment was now produced, dated 7 March 1662, made by Archbishops Hill, and preferred in his Register, by which it did not appear that the Vicar was endowed with any Tithes of Corn or Grain, neither was there any Liberty therein reserved (as usual) to augment or diminish; Whereupon it was inferted that the Vicar ought not to have these Tithes; But the Court held, That where the Vicars had took Tithes for a long Time he shall not be concluded by their not being expressed in the Endowment, and that it had been often so held and ruled; And that by such long Prescription it shall be presumed, that the Vicarage hath at some Time or other been augmented therewith; And the not referring such Power is not material; For an Augmentation may have been notwithstanding, with Allent of, or citing all Parties, but not without Notice or Citation. Hardr. 328. Trin. 15. Car. 2. in the Exchequer. Twille v. Brazen-nofe College & al.

19. A Vicar may pay Tithes; As where an Abbot or other had a Portion of Tithes out of a Vicarage, which is now come to the Plaintiff. Lev. 141. Mich. 16 Car. 2. B. R. Wright v. Beal.

20. Vicar libell'd in the Spiritual Court for Tithe Hops. It was suggested for a Prohibition, that they had paid Time out of Mind to the Parson so much an Acre for all Tithe Hops; But the Prohibition was denied; For no such Composition could be Time out of Mind, Hops not being known in England till Q. Elizabeth's Time, when they were first brought out of Holland; But the Court said, that perhaps the Vicarage was endowed Time out of Mind of the small Tithes, of which Nature Hops were; and then the Prescription of paying a Modus to the Parson shall not take them from him; For it shall be taken to have commenced since the Endowment. Vent. 61. Hill. 21. & 22. Car. 2. B. R. Crouch v. Riffen.

21. The Tithe of Clover Grass belongs to the Vicar who has the Tithe Hay, except only only such Clover as was necessarily cut amongst the Corn where it did grow. Cited by Gregory J. as adjudged in the Exchequer when he was Baron. Carth. 264. Hill. 4 W. & M. B. R. in the Caffe of Wharton v. Lillie.

22. If the Endowment of the Vicarage be left, the Tithes must be paid according to Custom. Per Cur. 3 Salk. 379. Anon.
(D) Vicarage. Patron. Who shall be Patron of Common Right.

1. The Patron, and not the Patron of the Patronage of Common Right is Patron of the Vicarage; because it is derived out of the Patronage. Distant. i. E. 3. 51. b. Contra 5. E. 2. Square Imped. 165. per Paff.

and leaves the Patronage to another, the Patronage of the Vicarage shall pass as Incident thereto unto., Wat. Comp. Inc. Svo. 415. cap. 7. cites: Roll. Ablr. 59. And says, That upon the same Account the Rector of Common Right is ever Patron of the Vicarage, tho' by some Ordinance or Composition it may be appointed and settled otherwise. — Wat. Comp. Inc. Svo. 545. cites S. C. But says Quare, How one PERSON can be Patron, viz. Appropriate, and another paid to be Patron of the Patronage Appropriated, seeing, as is shewed, the Inheritance of the Advowson of a Church appropriated must be in the Spiritual Corporation, to whom the Appropriation is made; in which Case it is clear, that the Patron Appropriate, creating a Vicarage, is Patron thereof, and cites: 1. E. 3. 51. and it is said that a Patron Appropriate is Patron of the Vicarage and cites: 1. E. 3. 51. b. 11 H. 6. 18. b. As where an Abbot or Prior is Patron Appropriate, cites 19. E. 2. Square impedit. 178.

2. If a Patron Appropriate creates a Vicarage, he shall be Patron of it. 17. E. 3. 51. (He is Patron and Patron) Where Appropria and made, and Vicar endowed, the first Patron shall be Patron of it, and not the Ordinary. Quod nam. Br. Presentation. pl. 10. cites 50. E. 5. 25. Square Imped. 165. per Paff.

3. The Churing of a Vicar belongs de Jure to the Priest, viz. to the Patron; but if the Parishioners can preferve to elect him, it then belongs to them. 2 Roll. R. 304. by Name of Code and Halmed. [But that seems not to be the Name of the Cafe. It was in a Prohibition.]

It was denied by the Lord Chancellor, that the Patron De Jure has the Nomination of the Curate, and more especially where the Patron is of a Lay Fee. Vern. 42. pl. 42. Pach. 1682. Maller v. Trigg. Lites the

Corps of his Prebend, which consisted of two Impropriations, and so now by the Statute were become Lay Fee; In the Lease were as General Words as was possible, and particularly that the said Leafe should find two Vicars for the afore named Impropriations, and pay to one to much, and to another so much; but the Lord Chancellor said, That by finding; was meant maintaining only, and not electing or Churing; and he said there was a great Difference as to the Patron's Right of naming or Churing his Vicar, where the Patron was of Lay Fee, and where he had a Care of Souls; For in the later Cate there was Realon he should approve of the Man who was to act under him in so high a Truth. And the Curate, that came in by Opposition to the Leafe, was established by the Lord Chancellor, and the Charity decreed to him. 1 Vern. 42. Pach 1632. Maller v. Trigg. — This Cafe came before the Chancellor, upon Exceptions to a Decree of the Commissioners of Charitable Uses. One Exception was, That by the Statute of the 29th of this King, none but Ecclesiastical Persons could augment poor Vicarages, so as to be established as a Considerable Use within that Statute, And that the Leafe, in this Cafe, who was only a Prebendary, was not within that Statute. Sed non allocatur. Ibid.

(E) Parson. Vicar. Who may be Patron. [And of their being Appendant. pl. 5.]


2. A Layman may be Patron of the Patronage, and also of the Vicarage. 11. H. 6. 19.


4. The King may be Patron of a Vicarage. 11. H. 6. 18. b.

Warf. Comp. Inc. Svo. 544, 545. cites S. C. 545 cites S. C.


5 The Vicarage may be appendant to a Manor by Prescription, though of Common Right it appertains to the Parsonage: For it might be granted over by the Parson before Time of Memory, or by Composition. By Reports 13 Ja. between the King and buckle. Adjudged, Mich. 14 Ja. 2. between the Dean and Chapter of Exeter and Corinth. Adjudged.

See (T)

(E. 2) Patron.  

Who shall be said to be a Patron.

For this is a Grant of the Patronage and the Grantee shall have Qua. Imp. upon it. Br. Grants, pl. 121. cites 24 E. 5. 69.

He that names the Clerk is Patron, and not he who is to precint him. Br. Qua. Imped. pl. 52. cites 4 H. 4. 10. 11. (but it is misprint, and should be as in the other Editions, 14. H. 4.)

2. Grantee of the next Presentation is Patron, Pro Illa Vice. Br. Grants, pl. 112. cites 7 H. 4. 2.

(F) Vicar. Endowment. The Interest of the Vicar in the Things whereof he is Endowed.

In Raphael this is 14 E. 2. 3 Stat. 1. cap. 17. which expresses, That Parson, Vicars, Wardens of Chapels, and Provost Wardens, and Priests of perpetual Chantries shall have their Rights of Juris Utrium, of Lands and Tenements, Rents and Possessions, annexed and given perpetually in Arns to Vicarages, Chapels, or Chantries, and recover by other Ways in their Cases, as far forth as Persons of Churches and Proctors.

In Juris Utrium it was agreed, that for Land between Parson and Vicar, of which the Vicar is endowed by the Ordinary, Action did not lie at Common Law between them, but the Defendant would plead to the Jurisdiction in an Action brought against him by the Vicar, but of all other Lands the Vicar might impeach the Parson at Common Law, but not of the Endowment; for of that the Franktenement remained in the Parson; for it is done only by the Ordinary by Assent of the Parson, and therefore no Franktenement passed as is held there; and yet by Endowment of a Feme Ex allendi Patris Franktenement palles, and some said there, that a Vicar of his Ancient Endowment may have Action at Common Law against the Parson; quare; for Fynche said, Thall in ancient Time it was the Opinion, that as Vicar should not have Action against the Parson at Common Law, But contra by him at this Day, which is the best Order as he said. Quare. Br. Jurisdiction, pl. 5. cites 40 E. 5. 28. Br. Dean and Chapter, pl. 2. cites 40 E. 3. 27. Br. Juris Utrium, pl. 2. cites 5 C. 4. Br. Precinct, pl. 12. cites 4. 4. Br. Brooke; more nown the Staute 14 E. 2. cap. 17. which gives Action to the Vicar. Godolph. Rep. 19. cap. 18. S. 2. says, That now it lies in the Freehold of the Glebe of the Vicarage is in the Vicar himself, and not in the Parson; For that the Possessions of the Parson and Vicar are severed, and each of them shall have several Ways.
3. A Precise could not be brought for the Glebe of the Vicarage against the Vicar without Naming of the Parson. He was not such a Tenant of the Frankten- 
ment, against whom the Land of the Vicarage might be demanded. Br. Dem. &c. pl. 12. cites 8 Aff. 256. and that it was said 9 Aff. 2 that the Vicar was not Tenant of the Frankten- 
ment, and so it seems that the Franktenment thereof was in the Parson. Quod Nota bene.

4. The Vicar shall have Aid of the Parson, Patron, and Ordinary. See (H. 2) pl. 3.

5. The Plaintiff being inducted to a Parsonage, [Vicarage] the De- 
defendant notwithstanding kept the Possession by Force, whereupon the Plain- 
tiff [the Vicar] was forced to file his Bill in Chancery but the Defend- 
dant demurred, because the Vicarage is his Freehold and Inheritance, and 
so properly determinable at Law; yet the Demurrer was over-ruled. Toth. 
171. cites 5 Jac. Webb v. Smart.

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(G) Parson. The Interest of the Parson in the Church and Church-yard.

1. The Parson may lease the Church and Church-yard by Lease of the Parsonage. 3 H. 6. 9. Admitted.

the Possession of the Church and Glebe, having the Freehold in himself, and may receive the Profits, 
Tithes, Obligations, Obteiments and Offerings to his own Use, without the Patron’s or Ordinary’s Con- 
sent, who, without his Consent and Agreement, can do nothing during his Vicariny to charge the 
Church or his Succeedors; And not only is the Freehold of the Church in the Parson, but he his also the Right of the Church-yard and Glebe therein, whereby if he put out of Possession or distriffed, he may have an Affr. or if he be ejected he may have Trespass, and so may the Vicar have against 
a Stranger, if he be distrifed of the Church-yard, but not against the Parson himself. For the Parson 
shall have an Affr. or Action of Trespass of such Things as are annexed to the Church or Glebe, or 
for cutting down of the Trees, or doing of Trespass in the Church-yard or Glebe, the Right and Inter- 
test thereof being in the Parson. But if the Bells in the Steeple, the Ornament of the Church, or 
the like be taken away, in that Cafe the Action does not belong to the Parson, but to the Churchward- 
en. Notwithstanding the Parson’s Right and Interest is abolished, yet he cannot cut down the Trees growing in the Church-yard of his Parson, save for the Repair of the Church. Or if a mere Stranger 
cut them down, no Suit can be brought in the Spiritual Court for Damages; For if Suit be there 
commenced in the Cafe for Damages, no Conffutation shall be. Nor can the Parson have Actions for 
Suits in the Church taken away by a Stranger, because they are not fixed to the Freehold; But the Churchwardens may have Action in that Cafe. Godolph. Rep. 186. 187. cap. 17. § 5.

2. 8 H. 6. 9. The Lefce of Will of the Parson brought Trespass of Br. Dean 
and his Clee and Houle broke, which was of the Church and Church- 
yard, and adjutted maintainable. (It seems by the Book that it 
was for coming there not in Time of Service, or such like, but at 
another Time.)

3. If there be a Parson Appropriate of a Church, and also a Vicar Roll. R. 215. 
edowed therof, the Trees in the Church-yard belong to the Vicar, 
and not to the Parson; For it seems that the Vicar ought to repair 
the Church, and he who ought to repair the Church shall have the 

4. Where there is a perpetual Vicarage endowed, and the Vicar comes 
in by Admission, Institution and Induction, performs Divine Service, part

the Synodals and Procurements, and repairs the Chancel, it has been adjudged, that such a Vicar shall have the Trees in the Church-yard. Arg. Vent. 15. Patch. 21 Car. 2. B.R. in Cade of Heath v. Prim.

(G. 2) Actions. What Actions he may have for Trespass &c. done.

... And he may 1. If a Man Elea a Parson without Colour, he shall have Trespass. Br. have eflfe of his Repry, Church-yard and Globe, against a Stranger who has not Colour, or who is a Tort-feblo for therein; For it is his Frankentenent. Ibid.—And he shall have Trespass of taking its Tests. Ibid.

2. A Parson may have Juris utrum after Recovery by Action tried against his Predecessor; and he may have Coven, Writ of Ejectment, and Quod permett. Br. Dean and Chapter, pl. 27. cites F. N. B. tit. Juris Uttrum.

3. A Parson shall not have Ingressus ad terminum qui pretirix, but Juris Utrum; for he has not properly Fee-Simple, and this Writ of Entry ought to be brought only by him who has Fee Simple. But Writ of Entry fur Dificelin is otherwise. Br. Dean and Chapter, pl. 28. cites F. N. B. tit. Ingressus ad terminum.


Ley. 14 S. C.—For if the Ordinary doth unite, annex, and confolidate the Vicarage to the Rectory or Parsonage out of which it was endow'd, to be hidden by the Corporation Spiritual, and his or their Successors, that were Parsons of the appropriated Church, together with that where-in it was endow'd, to his or their proper Use, so that the Appropriator should have and take Care of the Souls which the Vicar had, and the Patron who is the Appropriator doth concur therein. This is said to be a Diffolution and Restitution of the Vicarage to the Parsonage, and good, and it is not such an Appropriation of the Vicarage as is made void by the Statute of 4 H.4 cap. 12. as was admitted by the Jus-tices upon Reference out of the Court of Wards. Mich. 7 Jac. B. R. Stafford's Case upon Reference out of the Court of Wards. Ad-mitted by the Justices.

But this Reinstiution must be made upon the Reason, that the Appropriator is become Poor, and doth want such Resti-tution. 40 E. 5. 28. And such Diffolution and Reinstiution of the Vicarage may be as well made when such Vicarage is full, if it be said, that it shall be after the Death of the Incumbent, as when it is void; and such Vicarages as were held by the Time that the Reinstiution was to take Effect by the respective Appropriators with the Parsonage, at one entire Church without any Vicar, until such Time as they came to the Crown by the Diffolution of the Monasteries, cannot now be presentable, but the King or his Patenoles shall enjoy them as free as the Appropriators had or held the same; and although that such like Reinstiutions or Unions had been any Way defective at the Time of the making the same; yet being good in Resti-tution, the Statute of Diffolution of Monasteries hath fully settled them in the Crown. Warr Comp. Inc. 8vo 549, 353. cap. 17. cites Ley 12. Mich. 1609. Stafford's Case, and 4 E. 5. 27. and Cro. J. 517. in Britton and Wade's Case, and Cro. E. 8753. Hill. 44. Eliz. Robinson's Bedel, and Palm. 113, 219. Mich. 18 Jac. Britton and Ward's Case. But there was a Difference taken (by Monbray) when a Layman gave Land to one that is a Vicar, and when the Vicar is endowed by the Ordinary of the Parish's Land &c. For in the first Case, the Ordinary hath no Power to divide the Vicarage to the Land, tho' he hath in the other. Warr. Comp. Inc. 8vo. 551. cap. 17. cites 4 E. 5. 27. See 20 E. 1. Amenity 22. 16 E. 5. Amenity 24. and 42 E. 5. 28 b. —— * S. P. Or after Reinstiution. Br. Appropriation. pl. 2. cites 52 E. 5. 26. —— If Parson and Vicar are in one Church, and the Vicarage voids, and A B. presents C. is it as Parson, this makes C. Parson, and Writ lies against him accordingly. Br. Done &c. pl. 24. cites 11 H. 6. 18.

2. If
2. If there be a Parsonage appropriate in an Ecclesiastical Peron, which never came to the King by the Statute of Monkery, and a Vicarage endowed there also, and the Parson makes a Lease of the Parsonage for Lives, according to the Statute of 32 H. 8, the Vicar may well sue in the Ecclesiastical Court against the Parson and his Lessee, who comes in by the Statute, for Addition of Maintenance, and the Ordinary may well compel them to increase his Maintenance, or, upon all Appropriations, such Power to increase the Maintenance of the Vicar was referred to the Ordinary; and the Lessee comes in subject to this Charge. Hill. 9 Car. V. R. between Hitchcot Plaintiff, and Thornboroughe and Hitchcot Defendants; The Plaintiff being Vicar of the Parish of Preston in Conington Wilts, and Thornborough Parson, the Church being appropriated to the Master of the Choristers in the Cathedral Church of Sarum, he being Master, and the other Defendant being his Lessee. And upon such Suit against the Defendants by the Vicar in the Ecclesiastical Court, a Prohibition denied being moved by Master Bacon.

3. If an Advowson be appropriated to the Adlbat, and A. B. brings Writ of Brook fees, Right of Advowson by elder Title than the Appropriation is, and recovers the The Reason Advowson of the Parsonage, where a Vicar is endowed, there, he shall recover both the Vicarage and the Parsonage. Br. Judgment. pl. 133. cites 16 E. 3. And Fitzh. Grants 56.

Vicarage, for the Vicar was made and endowed when the Appropriation was made; and by the entry by elder Title than the Appropriation was, it is now made a Parsonage again alone, and the Vicarage suffered by this Judgment. Br. Judgment. pl. 138.

4. In Trepass for taking certain Loads of Wood set out for Tithes, the Defendant pleaded Not Guilty. The Plaintiff for Evidence is said, that in the Time of King E. 3. the Rectory was appropriated, and the Vicarage then endowed; and (inter alia) the Tithes of Wood were allotted to the Vicar. The Defendant pleads, that for 160 Years past there had not been any Vicar presented there, until the Plaintiff obtained a Presentation from the Queen by Colour of Lappe; And so pretended, that in regard it had continued so long in this Manner, that it was united again to the Rectory. But the Court informed the Jury, that although a Vicarage is always taken out of the Parsonage, and for the Necessity thereof may be re-united to supply the Parsonage, yet, by Continuance of Time in not presenting a Vicar, which is the Default of the Parson himself, it ought not to be adjusted to be a Discontinuance of the Vicarage, but somewhat ought to be flown of the re-uniting thereof. Wherefore, by the Court's Direction, the Jury found for the Plaintiff. Cro. E. 873. Hill. 44 Eliz. C. B. Robinson Vicar of the Church of Kimbolton v. Bedel.

5. A Parsonage was appropriated to the Deanry of St. A. in 24 H. 8. S. C. cited and a Vicarage endowed; and afterwards the Bishop, in 24 Eliz. dissolved the Vicarage, and Parry pretending that this Vicarage was not dissolved, but that it was in the King's Hands by Lappe, obtained a Presentation. And 'twas resolved by the Barons of the Exchequer, 2 Term 56— that after the Statute of 31 H. 8. which made Parsonages Lay-Fees, the Ordinary may not dissolve the Vicarage when the Parsonage is in a Temporal Hand, for that should be to destroy the Care. But being in this Case, appropriated to the Dean of St. A. it to remaining, in his Hands may very well be dissolved. And according thereto was the Opinion of Bodderidge J. Cro.
**Presentation.] Parson. Patron.


S. C. 2 Roll Rep. 127. Mich. 15. Jac. B. R. and the Court declared their opinion, That the Statutes of 11 H. 4. and 17. S. 4. do not extend to Appropriations made afterwards; for the Words of the Statute are in the future Tents (That from henceforth &c.) and further, that the Instrument of the Pope had dissolved the Vicarage; for the constant Ufage and Repuration subsequent (which are the bell Expositors of the Act) declare the Validity, Intention and Force of the Instrument made by the Pope, viz. That it amounts to a Dissolution; And Montague Ch. J. grounded a 2d Reason thereon, For much as always after 29 H. 6. till 51 H. 8. it remained in Repuration to be an Impropriation without Vicarage, because the Statute of 29 H. 6. gave it to the King in the Time Manner as then it was; and all the Judges said, that great Inconveniences would follow, if such fleeing Vicarages should revive after so long a Time; for there are several Impropriations in England, for which Men have given valuable Considerations to the King, discharged of Vicarages. But Doderidge and Haughton L. held, that admitting the Impropriation had been within the Statute of 15 H. 2. and 4 H. 4. then the Bishop is released, and the Pope also from dissolving the Vicarage, for otherwise the said Statutes might be easily eluded; for when the Impropriations are made, and the Vicarage endued, according to the Words of the Statute, the Bishop will immediately dissolve it, which would be contrary to the Intent of the Statute. — Godolph. Rep. 202. cap. 18. S. 11. cites S. C. that the Vicarage was not dissolved S. C. cited Watt. Comp. Inc. 350. cap. 17. And lays, that the Words are not sufficient to make a Dissolution, nor do amount to such; nor do they so much as give the Prior Power to take the Profits.

* (H. 2) Parson. Vicar.

1. If the Vicarage be diminished, it shall have more of the Parfonage, if the Remnant be not sufficient. 31 D. 6. 14.

2. If the Parfonage be impoverislied and so much decay'd that the Parfonage by itself, nor the Vicarage, have sufficient to sustain them, then the Vicarage shall be determined and restored to the Parfonage, and the Doctors agreed thereon. 31 D. 6. 14.

3. If a Charge be arising upon the Vicarage, it shall be recompense out of the Parfonage. 31 D. 6. 14.

4. If a Parson appropriate, who is Patron of the Vicarage of the same Church, by Agreement between him and the Ordinary, presents the

See (H).

* There is no Letter to this in Roll.

Br. Dean &c. pl. 25. cites S. C. by Henington and Velerton. — Godolph. Rep. 199. cap. 18. S. 11. cites S. C. — Watt. Comp. Inc. 357. cap. 17. cites S. C. and 46 E. 5. 28. [Infra pl. 8.] But this now to be understood of a Parfonage in an Ecclesiastical Parish, which never came to the King by the Statue of Monasteries; and if the Parson had made a Lease for Lives, according to the Statue 22 H. 8. the Vicar may well sue in the Ecclesiastical Court against the Parson and his Lessee that comes in by the Statue for Addition of Maintenance; and the Ordinary mav consent them to increase his Maintenance; for upon all Appropriations such Power of increasing the Maintenance of the Vicar was reserved to the Ordinary by the Common Law. March. 87. 3 E. 2. 24. — Mar. 87. pl. 142. 145. That this Power Augend vel Minuendi was for the general Cure of Souls.

For being originally endow'd out of the Parsonage, the Vicar was to have Aid of the Parson if he were implicated for any Thing touching the Vicarage, and the Parson was subject to every Charge of the Vicarage. Godolph. Rep. 197. cap. 18. S. 2. cites 31 H. 6. 15. by Velerton.

See pl. 10. in the Notes.
the Vicar to the Parsonage, this unites the Parsonage and Vicarage together. 44 E. 3. 33. b. Admitted 44. 37.

cites S. C.—Watf. Comp. Inc. 551. 8vo. cap. 17. cites S. C. And says, So that the Prebend shall have all the Titles and Profits of the Church.

5. But if the Leesee of the Parsonage presents the Vicar to the Parsonage, this union shall not bind the Leesee. 44 E. 3. 33. b.

44. 37.

6. And if they are united the Endowment is come to the Parson again. 20 E. 4. 6. b.

7. If the Parsonage become much impoverished, the Ordinary may ordain, that the Parson shall be restored to that whereof he endow'd the Vicar. 40 E. 3. 28. b.

8. But he cannot do this, unless for the Poverty of the Parsonage. But it was said by Compton

Doctor of the Civil Law, That Union made upon a suppos'd and pretended Poverty, which appears to be false, is void. Cro E. 591. Mich. 58 & 59 Eliz. B. R. in Cafe of Austin v. Twine.

9. But if Stranger gives Land to the Vicar and his Successors, the Ordinary cannot meddle therewith. 40 E. 3. 28. b.

cites S. C. Per Monbray.

10. If an Abbot, being a Parson appropriate, be Patron of the Vicarage, and presents to the Vicarage by Name of a Parsonage, this disappropriates the Parsonage, and makes it and the Vicarage but one Parsonage, and reunites them. 11 H. 6. 18. b. 3.

S. C.—Watf. Comp Inc 551. cap. 17. says this is a Disappropriation of the Church, that there be no precedent Agreement between the Parson and the Ordinary to that Purpose, and it shall be pre-faltable after. Cites 44 E. 3. 33. b.

11. If a Patron of a Vicarage, another being Patron of the Parsonage, presents thereto by Name of a Parsonage, and his Clerk inducted, yet it continues a Vicarage. Dubitat. 11 H. 6. 19. 32. b.

12. The same Law, if the King presents by such Name to such Vicarage. Dubitat. 11 H. 6. 18. b.

13. If there be a Vicarage and Parsonage (and both be void) and one presents his Clerk as Parson, and he is induct, this shall unite the Parsonage and Vicarage again. 11 H. 6. 33.

All Appropriations are Preternatural, and the Church during such Time is in Rendage; and therefore by Prebendation is made Prebentative. Per Windham. J. Keb. 99-6. pl. 8. Trin. 17 Car 2. B. R. in Cafe of Wilkinson v. Richardson.—Watf. Comp. Inc. 590 352. cites S. C. and says, it appears by this, that a Layman having an Appropriation, may disappropriate it by Prebendation, if he be Patron of the Vicarage of the same Church, as well as an Ecclesiastical Person may, if Institution and Induction be had upon it; and it is even said, that such Patron by his Act of Prebendation only to the Vicarage by the Name of a Parsonage, does disappropriate the Church, and unite the Parsonage and Vicarage into one; and cites 11 H. 6. 18 b. 3. 58 H. 6. 20. F. N. B. 25—And therefore Hobart says he is of Opinion, that if Parson appropriate presents, and his Clerk is refused for just Cause, and Notice given, Lapse shall incur; for the Appropriation gives him a Choice [The Word in Hob. is (Charge) ] to hold or not, as appears by the Form of an Appropriation in Gremson's Cafe, which by his Prebendment he has renounced. Hob 152. in Cafe of Col and Glover v. Bishop of Coventry &c. But Wotton makes a Quære whether a Disappropriation be perfected by Prebendation, before Institution and Induction had thereupon?

14. If a Parson appropriate creates a Vicarage, and after the Advowson of the Church is recovered by Writ of Right; the Vicarage is defeated thereby, because the Plaintiff recovers of a higher Right than the making of the Vicarage. 17 E. 3. 51 b. 76.

15. But otherwise it is, if he recovers of a later Right than the Creation of the Vicarage. 17 E. 3.
16. If Vicar be of the Documen[t of the Ordinary and Patron, all thc
Fractmentum is in the Parson; and otherwise in the Vicar; if it be by
other Title. Br. Dean and Chapter, pl 34. cites 4o E. 3. 27.

17. 15 R. 2. cap. 6. Enacts that in every Licence made in Chancery of
the Application of any Church, this shall be contained (viz. That the Di-
ocesan shall ordain (according to the Value of such Churches) a convenient Sum
be yearly distributed out of the Profits thereof, to the Poor of the Parish, by the
Appropriators and their Successors for ever; and also that the Vicar shall
be sufficiently endowed.

18. 4 H. 4. cap. 12. Enacts that the Statute of 15 R. 2. 6. shall be only
executed, and Appropriations made since that Statute contrary thereto, shall
be reformed before Easter, or else be void, except Haddenham in the Isle
of Ely.

All Vicarages annexed or appropriated since 1 R. 2. shall be void.
In every Church so appropriate, a Secular Person shall be ordained Vicar,
Canonically instituted and inditted in the same, and conveniently endowed (by
the Discretion of the Ordinary) to do Divine Services, inform the People, and
keep Hospitality there, (except Haddenham aforesaid) and no Religious shall
be hereafter made Vicar in any Church so appropriate.

19. If Vicarage be Erected and Established, if No Endowment be De
Fiño of the Vicarage, the Vicar can't claim any Thing. Per tot. Car.

20. A Vicar cannot have Tithes but by Gift, Composition or Prescrip-
tion; for all Tithes De Jure do appertain to the Parson. Mar. 11. pl.

21. A Vicar libell'd for Tithe of Wood; the Defendant suggested for a
Prohibition, that Time out of Mind they had paid no small Tithes to the
Vicar, but that by the Custom of the Parish they were paid to the
Parson. Per Twisden. If the Endowment of the Vicarage is left, small
Tithes must be paid according to Prescripition. Mod. 50. Hill. 21 &

(whieh is a Dye-Stuff) and that as to the Wood it was suggested that the Tithe thereof belonged to
the Parson and not to the Vicar; but this was doubted of, because it is reckon'd among small Tithes,
like Hops &c.

22. Libel for Tithes by a Parson, the Defendant suggested for a Pro-
hibition a Modus to the Vicar, and that the Vicarage had been endowed Time
out of Mind and it was granted. Vent. 107. Hill. 22 & 23 Car. 2.
B. R. Robson's Cafe.

23. 29 Car. 2. cap. 8. Sec. 2. Enacts, That Every Augmentation, re-
served, or agreed to be made payable since the first of June, in the 12th Year
of his Majesty's Reign, or which shall be made payable to any Vicar or Curate,
or referred by way of Increase of Rent to the Lessor, but intended for the Re-
befit of any Vicar or Curate, by any Archbishop, Bishop, or any other Eccle-
siastical Persons out of any Refory improper, or Portion of Tithes, shall
continue for ever, as well during the Continuance of the Estate, upon which
the Augmentations were reserved, as afterwards; and the said Reforries, or
Portion of Tithes, shall be chargeable therewith, whether the same be reserved
again or not, and the said Vicars and Curates are hereby adjudged to be in the
actual Possession thereof for the Use of themselves and their Successors; and
shall have Remedy for the same either by Diffrecs upon the Reforries improp-
riate, or Portions of Tithes, or by Action of Debt against that Person who
ought to have paid the same.

Provided that no future Augmentation be confirmed by this Act, which shall
exceed one Moity of the yearly Value of the Refory Impropricate.

Every
Every Archbishop, Bishop, Dean and Chapter, shall cause every Leaf or Grant, wherein any such Augmentation is made, to be entered in a Book of Parchment, to be kept by their Registers; And every Dean, or other Ecclesiastical Person, shall cause every Leaf or Grant, wherein any such Augmentation had been made by himself or his Predecessors, to be entered in the said Book, which Entry being examined by the Archbishop, Bishop, or Dean, and attested in the Book to be a True Copy of the Original Leaf or Grant, and that the Augmentation in the same was intended for such Use, shall be as a Record, a Copy whereof proved by Writs shall be Evidence in Law, whereupon the Vicars and Curates may recover the Benefit of such Augmentation.

Where any Archbishop, Bishop, or other Ecclesiastical Person, upon the renewing or granting any Leaf, have made any Agreement for an Augmentation for the Vicar or Curate, and such Augmentation hath for any Time been paid, altho' the Agreement is not mentioned in the Leaf, such Ecclesiastical Person shall cause the Substance of such Agreement to be entered in the Book.

Such Augmentation so entered shall likewise continue for ever in the same Manner, as if the same had been referred by the Leaf.

If any Question arise concerning any thing in this Act, such favourable Constructions, and such further Remedy, shall be had for the Benefit of the Vicars and Curates, as may be had upon the Statutes for Charitable Uses.

If upon the Surrender or Determination of any Leaf, wherein any such Augmentation hath been granted, any new Leaf of the Predecessors shall be made without express Continuance of the Augmentation, such new Leaf shall be void.

24. Where the Vicar is endowed, and comes in by Institution and Indulgence, he hath Curam Animarum Actualiter, and is not to be removed at the Pleasure of the Reector, who in this Case hath only Curam Animarum Habitualiter; but vice versa, the Reector has Curam Animarum Actualiter, and may remove the Vicar at Pleasure. 3 Salk. 378. Smith v. Walker.

I. Parson, Patron, and Ordinary. Their Power jointly in the Time of the Parson.

1. Parson, Patron and Ordinary may create a Vicarage 8 R. 2. Annuity. 53.


Heb. 297. per Robert Ch. J. in the Case of Slade v. Drake.


1. If a Man recovers an Annuity against a Parson, and after releases See(L) pl. to the Patron during the Time of this Parson, this shall extin-

guish the Annuity. 8. P. 9. 23. b. there it is put generally 8. 41. C. 20.
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20. without mention whether it was in Time of the Parson, or in Vacation: But the Sceur facias is brought against the Successor. See this.

2. During the Time of the Parson the Patron has not any Reversion in the Glebe. 8. D. 6. 24. b.

3. In time of the Parson the Patron has nothing to do in the Church. 11. D. 6. 4. b.

Godolph.
Recp. 191
cap. 17 S 12
 cites S. C.

4. If the Patron grants a Rent by Fine out of the Church it being full, and after the Incumbent dies this Charge shall not bind the Successor; Because the Parson and Ordinary were not Parties thereto. 38. E. 3. 4.

5. If the Patron grants a Rent out of the Church it is void against himself; Because he has nothing in the Church. 38. E. 3. 4. b.

6. If there be a Dean of the Free Chapel of the King of the Collation of the King, and he has an Advowson appropriate to him, another who has Right to the Patronage of the Advowson may release all his Right to the King, and this shall be good Release in the Patronage of the King. 33. E. 3. "Ad of the King 101.

7. In Sceur facias upon a Fine, it was agreed per Kniver and Kirton, That a Fine levied by the Patron alone of a Rent out of the Land of the Glebe without the Parson, is not good to bind the Parson, and this seems to be where a Parson was at the Time of the Charge. Br. Charge. pl. 11. cites 38. E. 3.

Note,
That it appears the same Year fol. 41: that the Grant was by one Deed, and not in such Year in the Year Books.

8. Debt against the Successor of the Parson upon a Grant of an Annuity by his Predecessor by Affent of the Patron and Ordinary, and for Non-payment to forfeit 40s. Nomine Pensa, and Debt was brought of the Penalty, and to see that a Grant by Affent of the Patron and Ordinary, is as good as if the Patron and Ordinary had confirmed it. Br. Charge. pl. 13. cites 7 H. 6.

19. And herewith agrees Littleton tit. ----

Patron and Ordinary made another Deed, but it is not expressed if it be a Confirmation, nor what Form it contains; but see the same Cafe Anno 8 H. 6. 23. it appears that it was a Confirmation. Br. Charge. pl. 13.

9. Note for Law. That the Parson cannot charge without the Patron and Ordinary, [or] Dean and Chapter, where the Bishop is Patron, & c. contra it seems where the Bishop is only Ordinary and not Patron; & 'tis' said elsewhere also that the Patron ought to have Fee Simple, and this in his proper Right, as appears here by the and Chapter with the Bishop, where the Bishop is Patron, and in the Cafe of Hill for the Patronage and Glebe of Stowe upon Tyerne in the County of Salop. 33 H. 9. where the Parson, Patron, Dean and Chapter made the Alluance; Quod nota, and therefore it seems, That the Bishop was Patron there; And the Diversity is, That where the Bishop is Patron be both Interest in it, but where he is only Ordinary he has Judicial Power, but no Interest. Note the Diversity. Br. Charge. pl. 40. cites 11 H. 6. 9.

10. It was agreed by 3 of the 4 Justices, that Parson has Fee Simple in Jure Ecclesiæ, and that Wifh lies not for the Patron against the Parson. Br. Faux. Recov. pl. 51. cites 12. H. 8. 7.

11. If Patron confesses Affent of the Land, a Juris Utrum lies for the Successor; per Brook. But this seems to be, where no Aid was prayed. Br. Faux. Recov. pl. 51. cites 12 H. 8. 7.


But Brooke says, That this seems not to be Law; For it is given to the Successor, and the Patron has not the Franktenement nor Reversion, but the Franktenement is in Abeyance. Ibid.
[Presentation.] Parson. Patron. 309


1. During the Vacation, the Franktenement of the Glebe is not in the Patron. 8 H. 6. 24 b. The Ordinary shall have the Profits of the Glebe in the Time of Vacation, because it is Sanctitary, Et Non Negatur; but where the Church is dissoluted, the Patron shall have it. Br. Dean &c. pl 55. cites 9 H. 5. 9.

2. But it is in Abeyance. Litt. 144. And a Freehold can be in Abeyance in no other Case, but only in the Case of the Patron of a Church. D. 71 pl. 45 in Case of Withers v. Ilmam. It is the same in Case of a Bishop, Abbot, Dean, Archdeacon &c. Co. Litt. 5. 647. 748 b. —See Abeyance.

3. The Patron has the Franktenement in Right during the Vacation. 8 H. 6. 24 b. The Patron has but just Patronage, and has no Interest. Arg. Cro. J. 55. Mich. 2 Jac. C. B. in Case of the King v. the Bishop of Winton and Campton.

4. The Patron shall not take any Benefit of the Glebe during the Vacation. 8 H. 6. 24 b. Though the Profits of the Church during the Vacation are in the Incumbent upon his Induction, and not due to the Patron or Ordinary; For if the Patron enters upon the Church in Time of Vacation, he thereby is not any Director, nor gains any Right. Sav. 18. [pl. 40. Patch 22 Eliz.] yet the Patron and Ordinary have such an Interest in the Revenues of the Church as that at Common Law they might have charged the same in Time of Vacation, which would have bound all succeeding Incumbents, because no other had any Interest at that Time, but they only. Want Comp. Inc. Svo 748. cap. 48.

5. If the Parson leaves at Will the Parsonage and reigns, (by Trespass of a House and Glebe broken; Chant said, That the Church-yard of D. and the House where the Church of D. and the Defendant is Patron, and A. the Parson there leased the Parsonage to the Plaintiff at Will, and after the Parson reigns, and the Defendant as Patron presented, and the Bishop imposed of the Right of Patronage in the Church, and the Defendant as Patron entered to pay his Expenditure to the Patronage, and the Plaintiff by the Lease above held himself in &c. which is the same Trespass &c. Judgment of Actio; And by some it is no Plea for want of Colour. But Strange and Martin Justices, laid clearly, that it is a good Plea. And the Reason seems to be, because Lay Gents cannot know the Law that the Lease is void by the Resignation. Br. Trespa. pl. 121, cites 8 H. 6. 9.

6. The Patron shall not have any Action for Trespass done in the Time of Vacation. 11 H. 6. 4 b. After the Death of a Prebendary, the Dean and Chapter shall have the Profits. 33 C. 3. Aid of the King 103. per Thorpe. After the Death of a Dean of a Free Chapel of the King, the King shall have the Profits of his Deanny; For it is at the Election of the King, whether he will collate a New Dean. 33 C. 3. Aid of the King 103. per Thorpe.

9. But if the Dean had a Parsonage appropriated to him, the King shall not have the Tithes and Profits thereof. 33 C. 3. aitordained, per Thorpe. Want Comp. Inc. Svo. 48. cap. 49. cites 8 C.

10. If a Dean has an Annuity, out of a Parsonage, and he releaves to the Patron in Time of Vacation, this shall extinguish the Annuity. Br. Dean &c. pl. 11. cites 8 C. - Br. Releaves, 11 pl. 55. cites
[Presentation.] Parson. Patron.


11. If a judgment in Annuity was against a Parson, and after Time of Vacation he releases to the Patron, this shall extinguish the Annuity. 8 H. 6. 23. b. (But it does not appear whether the Release was in Time of Vacation or of Plenary) Dice 7 H. 6. 38. b. 41 E. 3. 20.

12. But if a Man who has Right to the Glebe Land releases to the Patron in Time of Vacation all his Right it is not good, because the Patron has not any Estate in the Land. 8 H. 6. 24. b. may be collected.

(M) Ordinary. [His Power in Time of Vacation.]

1. In Time of Vacation, the Ordinary may give Liberty to any to hold the Parsonage for a certain Time (before a new Incumbent be) 8 H. 6. 9. (This was before the Statute of * H. 8. cap. which ordains, that the Ordinary shall sequestrate.)

2. The Ordinary shall have the Esplees and Profits during the Avoidance. 7 H. 6. 39. 11 H. 6. 4. b.

3. In Time of Vacation, if a Man has the first Possession of the Parsonage, yet the Ordinary may give Power to another to inquire of the Right of the Patron in the Church, upon a Presentment to him, and the Commissioner, and they who go there to shew their Right to the Commissioner, shall not be Trespassers. 8 H. 6. 9.


4. If the King be Patron, and does not present to the Church, which is void, within six Months, the Ordinary shall not present, but shall sequestrate the Profits, and find one to serve the Cure till the King will present one. Per Keble. 14 H. 6. 21.


(N.) Provision.

1. If the Provisions of the Pope has Possession of the Church before the Presentee of the King, he shall be preferred; but if the Presentee of the King has the first Possession, he shall be preferred. * 8 P. 4. 21.

As to Matters of Provisions &c. made heretofore by the Pope, it may be of little Use to insert any Thing more here than only to refer to the Statute 25 E. 3. and other Ancient Statutes made to restrain them.——— * Be Presentation, pl. 12. cites S. C.

(O.) Adrowfon.
(O.) Advowson. * 

1. A Advowson is Jus Mixtum, because the Commencement of every Prebend commences by an Act, as by Prebend of the Lay Patron; and by the Law of the Church takes Effect, as by Ability, Non-ability, or Criminalus, which appertains to the Deans. 1 34 H. 6. 40. Per Alston.

clefs simples & vacant; and of other Recepta, the Causes and Incidents of Advowson, is described more amply in such Manner, Jus Patronatus, et Jus Honoriificum, Onorosum, & Urile. In Effect this; A Patronage or an Advowson, is a Right to prefer to the Bishops or Ordinary a fit Person, by him to be admitted and instituted into a Spiritual Benefice when it becometh void; and that he that has such Right to prefer is called Patron, who is thus described; Patronus eiidreffor Ecclelsia, qui habet jus praebendi di Episcopo aliquem vel aliquem in aliquis Ecclesias, & hic ab eo institutur. And he is to called, De Patronato, of Defence; because he should defend the Church, or a Simultaneum Patri, qui fiscit Pater filium, fie Patronus Ecclesiasticus, de non effe, deducet ad effe. He is called of Old Grandville Advocate; as that he should say, an Advocate of the Causes of the Church, and therefore the Inheritance is called Advocatio, or Advowson, or is devised De Vecando; because the Patron hath Power for the Prebendment of a fit Person, by the Name of his Prebendation. 

---1. Ded. of Adv. 3. cites S. C.

(P) Chapel.

1. A Chapel of Ease is where there is a Church Parochial in the same Parish, and the Sacraments administered in the Parochial Church, and not in the Chapel. 8 D. 6. 32.

2. A Church Parochial cannot be a Chapel. 8 D. 6. 37.

3. The Chapel of Ease belongs to the Church Parochial, and Patron thereof. 8 D. 6. 32.


6. The Nominee to a Chapel of Ease must have the Bishop's Licence, but who shall nominate whether the Patron and Rector of the Mother Church, or the Builders, was not determined. Gibb. 158. The Case of the Chapel of St. John's in Holborn Parish.

(Q) Advowson. Spiritual Promotion. What shall be said a Spiritual Promotion.


Jac. in the Parliaments of St. Alphage's Café.— In Café of Fairfield and Gaver, Williams said that Knights have been Deans, and have had Deaneries, but 'tis by the Special Dispensation of the Archbishop, and that he hath seen such Licences. D. 273. 53. in Marg. — Yelv. 61 Patch, 5. Jac. B. R. In the said Café of Fairfield v. Gaver, 'tis held by all the Justices, That Deans may be Laymen, because the Function is Temporal. And yet Williams 463, That Laymen, who have Deaneries, ought and always have had Dispensation from the Archbishop.—Brownl. 253. S. C. and P. — Dean and Chapter are a Body Spiritual, and annexed to the Bishop throughout all England. Per Hebrdt Ch. 1 but Whyns doubted, and said that a Dean may be a Layman, which Eton confirmed, and said that he was the Dean of Durham, by special Licence and Dispensation of the King, but that is a rare and a special
2. If the Nomination and Patronage of a Deanship be appointed to the King, his Heirs and Successors, and he appoints a Dean, yet this is a Spiritual Promotion. D. 10 Cl. 273. 37.


4. Church-Warden are not. 13 Rep. 70. in the Parishioners of St. Alphage’s Cafe.


(R) Advowson. Donative.

A Donative of the Gift of the King may be with Care of Souls, as the Church of the Tower of London is a Donative of the Gift of the King with Care. Bch. 9. Can. B. R. between Fletcher and Mackaller, per Curiam, where Information was brought upon the Statute of 31. Eliz. of Simonpy, for procuring him to be promoted to the said Church of the Tower for Money. per Curiam it lies.

2. A Church Parochial may be a Donative, and exempt from ordinary Jurisdiction, and the Incumbent may resign to the Patron, and not to the Ordinary; Nor can the Ordinary will, but the Patron by Commissioners be appointed by him. Co. Litt. 144. Cites 0. 1.

3. But in such Case of a Donative Parochial a Man, who is merely a Layman, is not capable thereof, but a Clerk Infra Sacros Ordines is; For tho’ he comes in by Lay Donation, and not by Admission and Institution, yet his Function is Spiritual. Co. Litt. 601.

S. C. cited

Wats Comp. Inc. Svo. 520. cap. 14

— Wats Comp. Inc. Svo. 571.

375. cap. 13. cites S. C.—Popham Ch. J. said, That tho’ a Church Donative in the Execution of the Charge be Spiritual, yet the Patron may appoint a mere Layman as well as the King may make a Temporal Man a Dean, Quod supra accidit: Bur Gaudy, Fenner, Yelverton, and Williams contra Yelv. 61. Patch 3. Jac. in the Cafe of Fairchild v. Gaier
The Church of Well.

Adwason. Church with Cure. What was a Church with Cure. [And who shall be said to have the Curam Animarum.]

1. A Prebend is not with Cure of Souls. 29. C. 3. 44. Admitted.

2. If there be a Vicar endowed, who is Presentative, and a Parson Presentative, it seems that the Parson has not the Cure of Souls but the Vicar. 5. C. 2. Square Impediment 165. per Patron.

3. If an Abbot, or such like Spiritual Man had been Parson Appropriate before the Statute of Monasteries, he should have the Cure of Souls; for he differs from another Parson only in this, that he shall be Patron perpetual, and the other but for Life. Com. Grendon. 496. b.

4. A Donative of the King may be with the Cure of Souls, as the (R) pl. 1. Church of the Tower of London; this is a Donative with Cure, and of the Gift of the King; for till the Time of King John all Gift- donates in England were Donatives, and so they are at this Day in Ireland. B. 6. Car. 2 R. between Fletcher and Meckneller, per s. p. There are also another Kind of Churches, which are neither Presentative or Donative, but Sisteniary, and yet have Cure of Souls; as there be an Improprition, and it has no Imprager, but only a certain Sisteniary is given yearly to him that serves the Cure, and that is merely Duties, and as the Pleasure of the Impropritioner. 6 Mod. 230. in Case of Jacob v. Dallow.

4 K (T)
(T) Patron of an Advowson, who; and how considered. Where one has the Nomination, and another the Presentation.

1. In Quare Impedit, the Plaintiff counted upon Fine, by which J. N. granted to W. P. and his Heirs, that as often as the Chapel of B. voids, they shall present a Clerk to the Grantor, or his Heirs, and that they shall present him over to the Bishop; and per Curiam this is a Grant of the Presentation, but because it came to the King by Elcheat, and he counted as above, but did not show if he presented to the Grantor, and he refused to accept it, or if he accepted it, and would not present over to the Bishop, therefore it was uncertain, and was Amended; and so fee that the Grantee was Patron, and therefore he shall not be put to Writ of Covenant against him, who ought to present over, but shall have Quare Impedit. pl. 99. cites 24. E. 3. 69.

2. In Quare Impedit the Plaintiff counted, that the Abbot of B. Time out of Mind, and his Heirs, have used to elect one of their Monks to be Prior of C. which is a Cell to the Monastery of B. and present him to the Abbot of the Plaintiff whose Heirs &c. and that they have used to present him over to the Ordinary, and alleged Presumption therein, and also Seisin, by Presentation of one T. B. who was admitted, and that their Presentee so admitted is dead, by whose Death the Church voided, and now the Abbot has presented immediately to the Bishop, without presenting him to the Plaintiff, and so disturb'd him, to the Damage &c. And it is laid there that Presentation is sufficient Title of itself; for it suffices to say, he is Lord of the Manor of C. and that all the Lords of the said Manor Time out of Mind, have presented. And per Skip, Diverse Presentments in Quare Impedit are double; and the Defendant said that Time out of Mind the Abbeys have presented immediately to the Ordinary, and after have used by their Letters to certify it to the Earls of H. whole Heir the Plaintiff is, requiring them to be favourable to them, by which T. B. was so presented by the Abbot to the Ordinary, and intimated and received Abique hoc, that he was received and intimated at the Presentment of the Earl Aebctor of the Plaintiff; Priti and the Plaintiff contra; and so it seems here, that if the Count is true, the Plaintiff is Patron, and not the Abbot; quare. Br. Quare Impedit, pl. 101. cites 24 E. 3. 77.

3. Quare Impedit the Plaintiff made Title, because Fine was levied between J. N. and the Abbot of B. of the Advowson, and the same Abbot granted by the same Fine, that J. N. and his Heirs, at every Assize, shall name to him his Clerk, and he should present him over to the Bishop, and alleged Seisin accordingly, and that the Church is void, and he named a Clerk to the * Abbot, and he would not present him to the Bishop, by which he brought Quare Impedit, and it was Quod permittis ipsum Nomine Clericum &c. where it should be Presentare Clericum; and therefore the Writ was abated. Br. Quare Impedit, pl. 56. cites 14 H. 4. 10. 11.

The Writ ought to be Quod Permitterat ipsum praesenterat; but his Declaration shall be Special, viz. That the Plaintiff ought to nominate one,
and that he ought to present him over to the Bishop, and the Writ to the Bishop upon a Recovery by the Plaintiff shall be, Quod Episcopus admissit Ordinationem a Dono nominatam &c. Dod. of Adv. 65. Lect. 12. 

All the Editions of Brooke are (Eveleque) but it seems it should be (Abbey).—[† It should be 14 H. 4. 10. 11.]  
4. If a Man grants to me, that I shall name a Clerk, and he shall present S. C. cited him to the Ordinary, I am Patron; but if he grants to me, that I shall name two, and be shall present the one, I am not Patron, by reason that he but misprints has the Election; and Grant of Nomination and Presentation is all one. ed. as 13 E. Per Juristicns. Brooke says, Quere in whose Name the Letters of 4. (26) Presentation shall be made. Br. Quare Impedit. pl. 133. cites 14 E. 4. 2. 2. there are not so many Folio's in that Year; but it should be 14 E. 4. 2. b. and the Midlade seems to be by turning the (b) into (6) —— [Bar] if a Man grants to me, that I and my Heirs shall name the Clerk to the Church of D. as often as it works, and that the Grantor shall present the same Clerke to the Ordinary; In this Case I am Patron, and shall have Quare Impedit. Br. Quare Impedit. pl. 144. cites 14 H. 4. 11. 5. If he that hath the Nomination presents to him that hath the Presentation, he that hath the Presentation may disturb in two Manners, either by refusing the Patron nominated, or by presentning some other himself that is not nominated. If he * refuses to present him that is nominated to * If the Prelim, and Suit be commenced without any actual Presentation made by bisfessor refuses self, then the Writ to the Bishop of him that hath the Nomination shall be, That he shall recover his Nomination, and that the Bishop shall admit such as the other hath nominated to the Prelator, according to his Grant of Nomination; but if the Disturbance, upon which the Suit is granted, be, because the Prelator, that should present the Patron nominated, hath presentned some other himself without Nomination, then the Nominator shall immediately, without any Nomination at all to be made to the other that hath the Presentation, [have Writ] to remove the other Incumbent. Dod. of Adv. 68, 69. Lect. 12. 6. If one hath the Nomination, and another the Presentation, if such Right of Presentation accresses to the King, he that has the Nomination shall nominate to the Chancellor fill, who in the Name of the King shall present to the Ordinary. And if the King presents without any such Nomination, the Nominator shall bring his [Quare Impedit against the Incumbent only, because the King cannot be termed as an Usurer. Dod. of Adv. 69. Lect. 12. 7. If a Stranger presents, he that hath the Nomination and he that hath the Presentation shall join in [Quare Impedit; the Book says, that each of them shall have Quare Impedit. D. 48. pl. 17. Marg. cites P. 5 Eliz.  

(U) Incumbent. Who.  

See (Q. a) pl. 23.  

2. Where there is an Avoidance de facto, and the King, supposing he hath a Title to present by Laple, doth accordingly present, when in Truth he hath no such Title, and a Recovery is had against him by one who had no Title; tho' he which comes in by such Laple is not Incumbent, nor gains the Patronage, yet he is an Incumbent as to all Ecclesiatical Things (viz.) To have Offering, Tithes &c. Hutt. 66. Mich. 21 Jac. The second Revolution in the Case of Rudd v. Bishop of Lincoln.  

But where such Presentation in the Principal Cafe fail'd for Dilapidation, the Court denied a Prohibition, because that he was now Incumbent, and they would not take Notice of the ill Presentation of the King. But in Case of Simons, the Statute makes the Church void, and then the Judges may take Notice of that, and grant a Prohibition if the Patron uses for Tithes. Hutt 51. Thomson's Case.—— Litt. Rep. 62. S. C.  

4. Possession
Presentation.

(A. a) To what Thing a Presentation may be.

1. Before the time of King John, the King and others, Founders and Patrons of Priorities or Abbeys, were wont to present Priors or Abbots. 11 H. 4. 68. b.

2. But if a free Election was granted by King John to the Priors. 11 D. 4. 68. b.

3. It is good usage, that the Abbot shall name a Monk to the Patron of the Prior, which is a Cell of the Abbey, and the Patron shall present him over to the Bishop, and so shall be instituted. 11 D. 4. 68. b.

4. So it is a good usage, that the Coadjutor or a SubPrior shall elect a Prior; and shall nominate him to the Patron, and he shall present him over; and if they do not choose within five Months, that the Patron may present whom he pleases. 50 C. 3. 21. b.

5. A Presentation may be to a Deanship. 17 E. 3. 40. Adjudged.

6. A Presentation may be to an Hospital. 21 E. 3. 6. b.

7. A Presentation may be to a Chapel. 14 H. 3. Dvare Impedit.

See Brevium, 181. Adjudged.

If the one by Grant of the King to make it Donative, and the other to make it Precentative to the Ordinary, and then the Ordinary may meddle, and may present by Lapse; Contra, Where it is Donative by the Founder and his Heirs, and there the Ordinary cannot void it; and when Free Chapel Donative is sold, the Founder may re-take it, and not appoint any other Incumbent. Contra, of a Precentative. Br. Precentation. pl. 42 cites 6 H. 7. 14. Per Keble.

(B. a) What Act or Thing will make a Church Presentation, which is not Precentative of itself.

See Donative.

2. But if a Stranger presents therto, and his Clerk is admitted and instituted, yet this shall not make it Presentation, because it is merely void. Co. Litt. 344.

3. If the King presents to a Chapel by Name of a Church, it shall lose the Name of the Chapel; quod nota, Br. Presentation. pl. 9. cites 47 E. 3. 4.

4. Tho' usually a Free Chapel is Donative, yet by the Foundation, or after by Composition, it may be Presentation. Watf. Comp. Inc. 8vo. cap. 12.

(Ca.) Presentation to the Church. What Persons may present, and who shall have the Presentation. The King or others.

1. If a Prebendary of a Prebend be elected Bishop, and after the King grants the Temporalities to him, and afterwards he is consecrated, the Bishop shall have the Presentation to the Prebend, and not the King, because it is not made void till Consecration, at which Time he was Patron; for the [Bishop in Respect of the] Bishoprick was Patron. 41 E. 3. 5. b. adjudged. 46 E. 3. 34. accordingly, where the Incumbent of an Hospital is created a Bishop, Ceflion. The Question was, Who should present to the Prebend the King, or the Bishop to whom it did belong, if this Ceflion had not intitled the King? The Judges seemed to incline for the King, but it was adjudged for further Argument. Freme. Rep. 259. pl. 272. Trin. 1678. The King v. Bishop of Ely.

2. But if the Incumbent be made Bishop by the Pope, and after the Temporalities are granted to him, the King shall present therto, tho' the Bishop be Patron 49 E. 3. 32.

3. If the King creates an Incumbent of a Common Person a Bishop, the Patron shall present, and not the King. 41 E. 3. 5. b. admitted, and 44 E. 3. 5. b. admitted. 46 E. 3. 32. admitted. 7 D. 4. 23. 26. admitted. 11 H. 4. 38. 21 E. 3. 42. admitted. For the King made Title to it as Guardian in Chivalry of the Patron. D. of other Patron may present to his Ancestor Benefices. Quære of the Patron.

Where an Incumbent is created a Bishop, the King shall present not only Hac Vice, but Tutelae Quæritur. 5 Lev. 527. Mich 5 W. & M. C. B. The King v. The Bishop of London.--The King has the same Prerogative in Churches newly created, as in old Churches, to present on Presentation of a Patron to a Bishoprick. 5 Lev. 532. Mich 5 W. & M. C. B. The King v. The Bishop of London. It should be 44 E. 3. 35. b. pl. 34. 7 Mo. 599. Wright's Case. S. P.

4. If a Church voids, to which the Bishop has Title to present 48 For it was Patron, in Respect of the Temporalities, if he dies before Presentation, then D.V. the
Presentation.

that the King shall have the Præsentment, and not his Executors. * 50

3. Presentation. Br. Prefentation, pl. 4. cites 44 E. 3. 5. Per Thorp & Balnap. — The Truth of the Case was, that the Bishop Prefented his Clerk, who was Admitted, Instructed, and Inducted before Di¬ ners, and he died the same Day after Dinner; but the Præsentment was a Provifor, and not a Cural Poatif¬ ferion in Life of the Bishop. Ibid. [But quære as to the Induction, that it is so mentioned in the Year-Book and in Brook; and tomok says sic vide, that it is no Præsentment against the King till Induction.]

Br. Plenary, pl. 5. cites S. C. — And where the King has the Temporalities in Time of Vacation, and dies, the next King shall have them, and not the Executors, and yet it is but a Châtel. Br. Pre¬ rogative, pl. 83. cites 24 E. 3. 42. — Where the King is invited to the Poaffiexion, and from the Church void, he shall have the Præsentment, and it appears often in F. N. B. Br. Prefentation, pl. 29.

In Quare Impediment the Bishop of D. was Patron of C. the Church voided, and the Bishop gave the Pre¬ sentment, scilicet, made Collation to W. C. and after the Bishop died the same Day that he gave it, and before Indication and Indiction, by which the King had Rights to the Bishop, and the Gift void. Br. Prefentation, pl. 29. cites 24 E. 3. 50. — Ibid. pl. 10. cites S. C. — Br. Quære Impediment, pl. 43. cites S. C.

5. And if Abbot or Bishop be Patron, and the Church voids, and the Abbey dies, by which the Temporalities come into the Hands of the King, and after Livery is fified by the Successor out of the Hands of the King; the King shall have the Præsentment. 7 D. 4. 25. b. 13 E. 3. 1. 20. 24 E. 3. 26 b. Title.

6. If during the Vacancy of the Arch bishop of York, and the Temporalities being in the Hands of the King, the Deacy voids, the King shall have the Præsentment thereto, tho’ by Composition between the Arch bishop and the Chapter, the Chapter is to elect him; for De¬ fere the Patronage thereof belongs to the Arch bishop, and the Composition cannot bind the King who comes in Paramount, as Supreme Patron. 17 E. 3. 45. adjudged.

7. If the youngest Daughter Coparcener be in Ward to the King, and the Church voids; the King shall have the Præsentment alone, and not the other Coparceners. 47 E. 3. 14 b. admitted.

In Quare Impediment it is alleged, that the Plaintiff said that the Manor of D. and the Advowfon appentant and presented, and after gave the Manor to the Grandfather of the Plaintiff in Full, who was feified, and had five Daughters, and died, and that he is Here to the Eldest, and the Tenant in Tail died, and the four Daughters entered into the Manor and into other Lands, and made Partry of the Land and Manor, except the Advowfon, and the Advowfon remained to them in Common, the Eldest Daughter died, the Church voided, and they could not agree in the Pre¬ sentment, by which the Præsentment belonged to the Plaintiff as Son and Heir of the Eldest Daughter, who presented and the Defendant disturb’d him; the Defendant said that the Land was held of the King, and he was seified, and the three others held Livery of their Parts (See they three were of full Age) and the Plaintiff, Son of the Eldest Sister, was within Age, and in Ward of the King, and the Church voided and the King presented, and at full Age the Plaintiff held Livery of his Part, and all in Common held Livery of the Ad¬ vowfon, and now the Church is void again, by which it belonged to the Defendant, as Heir to the Sec¬ ond Daughter, to present. Laiiceon said the Præsentment of the King shall be paid in the Right of all the Pendencers, and not in Right of the Eldest only; and therefore now, because they cannot agree in Præsentment, it belongs to the Eldest; which Choice denied, and said that it shall be paid the Share of the Eldest only, which the King took; but the Court was against him; quod nom.; by which the De¬ fendant pleaded Partition to present by Quære. Br. Prefentation, pl. 53. cites 38 H. 6. 9. — Br. Prærogative, pl. 44. cites S. C. — Br. Livery, pl. 25. cites S. C.

In Quare Impediment is it agreed, That where an * Incumbent is creat¬ ed a Bishop, his Ancient Benefices be become void in Full, and the Patron may present; but † where a Parson takes several Benefices incompatible with¬ out Licence or Plurality, this is a Voidance in Laxo, and he ought to be de¬ prived of one of them before the Patron can present, and the Patron may use the Deprivation to the Ordinary. Br. Prefentation, pl. 14. cites 11 H. 4. 37.

8. In Quare Impediment it is agreed, That where an * Incumbent is creat¬ ed a Bishop, his Ancient Benefices be become void in Full, and the Patron may present; but † where a Parson takes several Benefices incompatible with¬ out Licence or Plurality, this is a Voidance in Laxo, and he ought to be de¬ prived of one of them before the Patron can present, and the Patron may use the Deprivation to the Ordinary. Br. Prefentation, pl. 14. cites 11 H. 4. 37.

9. Conufee was of a Statute upon which a Manor is extended, to which Advowfon is appendant. Per Cur. The Advowfon may be extended; and if it become void during the Conufee’s Life, the Conufee may pre¬ sent. * Ow. 49. Mich. 32 & 33 Eliz. Arundell v. Bishop of Gloucester.

10. It
Presentation.

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10. It was adjudged that Trustees of a Term for 500 Years, for the
raising 6000 l. should present. See Lutw. 902 b. 
Patch. II W. 3. B. K.
In the Pleadings of the Replevin. Bishop of Exon and Hesketh v. Freke.

11. If A. sells an Advowson to B. but before the Conveyance to B. and
during the Seisin of A. the Church becomes void, tho' it remains vacant till
after the Conveyance to B. yet B. can't present. 2 Lutw. 1641. Trin. 2
Ann. C. B. Crane v. the Bishop of Norwich.

12. Excommunicated Persons were found Per Keble to have no Ability.
It is said that
Perfons Out.
it was and
Excommunicated may present to their Churches, and their Presentations shall stand good till such Time
as they be avoided. Wart. Comp. Inc. Svo. 249 cap. 12. cites Parton's Law, cap. 13. But needs a
Quere whether the Bishop may not refuse the Presentee of such Persons, and so suffer the Churches to
lapse to himself.

13. If an Alien born purchases an Advowson, and the Church becomes
void after Office found that he is an Alien, the King shall present. Wart.
Comp. Inc. Svo. 179. cap. 11. cites Parton's Law, fol. 7. cap. 10.

(Da.) In what Cases the King shall present.

1. If A. be found in Ward by Office, for Land held in Capite, and
that he is seized of an Advowson in fee, or that he is of full Age, and
after his full Age, the King being intrusted to a Liberry, A. tenders
his Liberry, and after the Church voids before Liberry used, but
after Liberry is void without any Default made after the Tender, yet
the King shall present, for tho' the Liberry is discharged if he dies be-
fore Liberry used, as Hals's Case is, yet the Possession of his Land
and of the Advowson is not * out of the King till the Liberry used out.

This is the Course of the Court of Wards.

2. Tho' it be admitted, that if the Incumbent of a common Person
is created a Bishop, that the King shall have the Precedence to the
Church for this Term by his Prerogative, yet it seems if the King
grants to the Incumbent before he is created Bishop, a Dispensation
removed the Church with his Bishoprick, and after he is created Bishop,
and dies Incumbent, it seems the King shall * not present to his
Church by his Prerogative, because the Church is not void by his
making him Bishop, in which Case the Prerogative gives the Pre-
cedence to the King, but by Death of the Incumbent, in which no
Presbyterial holds Place. Co. Ent. 474. Hals's Case, there pleaded
that in such Case the Church bowed by Death, and admitted that
it appertains to the Patron to present upon his Death.

3. If the King seizes an Advowson without Caule Ignorant tituli
The Case
full, and after the Advowson voids, and he, who Right has, comes and
has Outier le Main cum exitibus, yet he shall lose the Precedence
Hac Vice, for nothing passes by the Word (Exitibus) but Rents and
Profits of a Thing, and not the Precedence; for it is not Profit
to the Patron, but Prerogative, and the Profit is to the Patron,
and if the Patron takes the Profits it is Simony. 24 E. 3. 29. and

the Receiuation to 7. N. and dy'd, the King seized all, and the Advowson voided, and he in Receiuation sued to
the King, and obtained Outier le Main cum exitibus of the Manor, (and it is found there, that the King
has Right in this Case to seize, but not to retain.) He in Receiuation sued, and the King brought Service
of Pledge, learned Date before the Outier le Main, and the King recovered the Precedence; For by the
Evidence the Presentation was vested in the King by seisin of his late and Seisin of the Land of his Tenant,
Ad quod 6c., and the Outier le Main cum exitibus does not give the Presentation; For this is nothing for
Profits or Profits, but was a Thing vested in the King, and yet by Liberry of the Land to him who Right has.
For Fees and Advowson shall pass, but not Precedences vested before. Br. Presentation, pl. 29. cites
24 E. 3. 39. — Br. Prerogative, pl. 31. cites S. C. [And both Roll and Brooks are Right; that in
Page 29 in pl. 16. and the other in Page 59. it pl. 48.]
Where the Church failed after the Temporalties came into the Hands of the King, and the King died, and they came to the Affer-King, the Successor King shall not present by reason of the Statute 25 E. 3. Pro Clero, cap. 1. [which see Rait. 112] That the King should not present in another's Right of any Abundance but in his own Time. Br. Presentation, pl. 15, cites 11 H. 4.

It is no Plea that it did not void during its being in the Hands of the King, by reason of the Death of R. late Bishop; For if the Temporalties were in the King's Hands by Death of any other, or by other Means, yet the King shall present. Br. Quaere Impedit, pl. 94, cites 24 E. 3 26 — So if an Advowson be void by 6 Months, at which Time the King is tired of the Temporalties of the Bishoprick, the King shall present to this Advowson as the Bishop should do. F. N. 5. 24 (G) — Where it is awarded, that the Temporalties of a Bishop be filed into the King's Hands, the King shall take Conscience of them, and shall present to an Advowson without Office; For the Temporalties of a Bishop are always of Record in the Exchequer. Br. Office devo- vance &c. pl. 17, cites Fizth tit. S迫切 tab. 113: 21 E. 3: 32.

The King shall not have Pre- sentment to the Advow- son for Greats by the Ward of an Infant who is in Ward for other Lands; per Brian. But all the King's Serjeants contra; for, because the King has the Body, therefore he shall have the Prefentment. Br. Presentation, pl. 42, cites 5 H. 7: 5.

If the Tenant of the King dies, and after, before Seisure of his Heir in Ward, a Church voids, the King shall have then Presentment. 12 E. 3. Quaere Impedit 56.

If the Tenant of the King has Title to present to an Advowson which is void by six Months, and after the Tenant of the King dies before the Bishop presents by Lapte, his Heir within Age and in Ward of the King. Now the Bishop shall not present by Lapte, but the King shall present. Fitz. Nat. 35. a. and there vouches 18 E. 3.

If there are three Coparceners of an Advowson, whereof one is within Age, and in Ward to the King, and the other two of full Age the Livery with partition, saving the Prerogative of the King, to present to the Advowsons during the Minority of the Ward, and after the Church voids during the Minority, the King shall present. 31 E. 3. Quaere Impedit 1. Adjudged.

If there are three Coparceners of an Advowson, whereof one is in Ward to the King, who grants her over to another with Knightes Fees and Advowsons, and after the other two being of full Age the Livery of the King with Partition to present by Turn, scilicet, the eldest first, the 2d. in the 2d. Place, and the Ward last, saving the Prerogative of the King for Cause of the Pursuay of the Ward to present Priua Vice & Ecclesia vacare cumbere during her Minority, and after the Church voids during the Minority of the Ward, the King shall present, because the Partition was after the Grant of the Wardship over & to the Prerogative remains in the King. 31 E. 3. Quaere Impedit 1. Adjudged,

Quaere Impedit by the King; the Tenant of the King, who had large three Doweries and died, and the Temporalties came to the King by the Prerogative, and Partition was made in Chancery, and this Ad- vowson allotted to the one who took Bar- ren, and had large before and end.

If there is within Age and in Ward of the King, and the Prebend voided, and the King presented, the Defendant said, That after this the three Daughters made Partition to present by Turn, and that the first had her Turn, then the Second, and the third took the Defendants to Baron, and had large, and died, and it is evident he belongs to him as Tenant by the Curtesy, and viewed the Coparcen, and because by the first Partition in Chancery the King was disannulled of his Tenement of Record, and his new Partition without Licence of the King is an Advowson in Law without Licence, therefore Judgment pro Regis: For it was agreed, that though Partition be made between Parcecers, they are yet in by the common Ancestral and now vouch as Heir, and every one shall have Advantage as Heir, yet by the Partition in Chancery, the one was sole Tenant to the King of the Adowson, and by the last Partition to present by Turn all are Tenants thereof, and Writ of Right of Adowson shall be brought against all, and before against every one alone, and to the King was a Stranger to his Tenant [by the Composition which could not be without Licence.] Quod Non; and therefore the King reco-
1. If the Tenant of the King has an Advowson which voids, and after dies his Heir in Ward to the King, the King shall have the Presentation, and not the Executor of the Father. 18 E. 3. 21.

2. The Law would be the same though Lapie had incurred to the Ordinary in time of the Father, if the Ordinary had not collated before his Death. 18 E. 3. 21.

3. If the Tenant of the King has an Advowson which voids, and the Tenant presents, and his Clerk is admitted and instituted, and before Induction the Patron dies, and the Advowson comes by Wardship to the King, he shall present; For the Church is not fit till against him before Induction. 38 E. 3. 9. by Thorpe. 21 E. 4. 34. d. and the abjudged in the 40 of E. 3.

4. If a Church of the Patronage of a Bishop voids in Time of the Bishop, and after the Bishop dies, the King shall have the Presentation by reason of the Temporalities, and not his Executor. 21 E. 3. 26. b. 29 E. 3. 44. 24 E. 3. 32. Abjudged.

5. If a Church of the Patronage of a Bishop, Abbot, or Prior voids, and the Bishop, Abbot, or Prior presents, and after dies before Institution, the King shall have this Presentation by his Prerogative. Liber Parliamentorum, 21 E. 1. The Prior of Bermondsey's Cate, abjudged in Parliament. 24 E. 3. 30. Abjudged.

6. So if the Bishop, Abbot, or Prior dies after Institution of the Clerk, and before Induction, the King shall have this Presentation by his Prerogative. 11 B. 4. 9. by all the Judges. Byr. Pat. 34. B. 36 B. 38 E. 3. 4. Dobart's Reports 208.

the Temporalities come to the King. Br. Presentation, pl. 15. cites 11 H. 1. 2. 7. per Cur


8. If the King has an Advowson by Cause of a Wardship, and grants it to another during the Minority of the Ward, and after the Church voids
Presentation.

voits, and continues void till the full Age of the Ward, by which the
Ende of the Grantee is determined, yet the Grantee shall have the
Prebend, and not the King. Contra 29 E. 3. 8. b. Admitted
by Hel.

An Avoid-
ance belonging
to a Bis-
shop who
died, by
which the
Temporal-
ities came into the Hands of the King, belongs now to the King. Br. Quare Impedit. pl. 42. cites 50
E. 3. 26 — Br. Presentation, pl. 10. cites S. C.

See (C) pl.4.

10. If a Bishop has Title to present to a Prebend, and presents his
Clerk, who is instituted and inducted in the Morning, and after Dinn-
er the same Day the Bishop dies, by which the Temporalities come
into the Hands of the King, yet the King shall have this Pre-
fentment. * 43 E. 3. 3.

(F a) Presentment to the Church. Whose shall present.

1. Of Common Right the Patronage of the Deanry of the Arch-
bishoprick appertains to the Archbishop, and he shall present
to the Avoidance. 17 E. 3. 40. b.

2. But by Composition it may be Elective by the Chapter, and yet
the Patronage shall remain in the Archbishop. 17 E. 3. 40. b.

3. The Patronage of a Prebend appertains to the Bishop, and he
shall present thereto. 17 E. 3. 40. b.

4. If the Patron ought to present to the Vicarage, yet if the Vicar-
age becomes void during the Vacancy of the Patronage, the Patron of
the Patronage shall present. * 19 E. 2. Quare Impedit. 178.

5. If the King grants to an Abbot and his Successors, that the Monks
shall have the Temporalities during the Vacation; now if the Advowson
happen void during the Vacation, the Monks shall present to the same.
F. N. B. 33. (U) cites Mich. 30 E. 3.

See Recus-
ant.

(F. a. 2) Who shall present in respect of Estate.

S. P. If he

presents

within the

6 Months.

Br. Quare

Impedit. pl. 67. cites 58 E. 3. 35. S. C. — So of Tenant pur Ante cive, or Tenor, where their Interest

determines after Violence and before Presentation. Ibid. Per Finch. — Br. Quare Impedit. pl. 67. cites S. C. and P. — S. P. Br. Presentation pl. 22. cites it as said elsewhere — if it should be 158 E. 3. 36.

Where a

Man grants

the next Pre-

1. WHERE a Man has a Ward, and Advowson voids, and the Heir

comes to full Age before Presentation, yet the Guardian shall have
the Presentation. Br. Presentation. pl. 18. cites 18 E. 3. 36.

2. Where a Man grants Proximam Presentationem, and dies, his Heir

being in Ward of the King, and the Church voids, the King shall have the
Presentation,

Presentation.
Prezentation.

Prezentation, and not the Grantee; Per Wilby. Brooke says, Quære, assuming of
inde, because it seems to be contrary to Law. Br. Prezentation. pl. 19.
cites 21 E. 3. 38.
and the Church voids, the Grantee shall have the Prezentation, and not the Lord in Chivalry, of whom
the Land and Advowson is held, by reason of the Confin of the Heir within Age; for the Lord shall
not quit the Grantee, Tenor, nor such like. Br. Quære Impedit. pl. 121. cites 5 H. 7. 36. by the best
Opinion.

3. It is good Title for the Lord to present where the Heir enters for
Condition descended, he being within Age; for he is in as Heir, and shall
be in Ward; and the Lord shall present. Admitted without Argument.

4. In Quære Impedit, if Baron is seised of an Advowson in June Usuris, S.P. Per
as in Dozer; and the Church voids, the Feme dies before Disturbance, and
after the Baron is disturbed, he shall have this Prezentation. Per Thirm,

Lit. 112. — S. P. That if the Feme dies without Issue, so that the Baron is not intituled to be Tenant
by the County, yet he shall have the Prezentation. Per Newton. Br. Prezentation. pl. 52. cites 21 H.
6. 56. — Watl. Comp. Inc. Sco. 121. cap. 9. says, that tho’ the Wife never did prezent to the Church,
but died before it voided; the Right of prezenting during the Husband’s Life is lodged in him as Tenant
by the County, tho’ his Wife had but a Seizin in Law, because he could by no Industry attain to any
other Seizin, cites 1 Inf. 29. a.

5. Where two Churches are united, there each Patron in his Turn shall
have Quære Impedit, De mediate Advocations; for the Advowson is fev-
‘er’d in Right and in Possession there; but contrary between Coparceners,
Tenants in Common, and the like; for there the Advowson is not fev-
’er’d, and therefore the Right shall be there De Advocationes Mediatissi.
Br. Quære Impedit. pl. 107. cites 14 H. 6. 15.

6. If a Parson be outlaw’d in Writ of Trespa’s, the Church being void,
the King shall have the Prezentation; which is adjudg’d Anno 22. inter

7. In Quære Impedit the Case was, That a Prior seised of 3 Acres and
Advowson Appendant, and the Master of the College seised of 2 Chambers,
he exchanged by Indenture, and the Prior entered into the Chambers; but
the Master died, and did not enter into the 3 Acres, and his Successor brought
Quære Impedit at the Avoidance. And Per Danby clearly, a Man cannot
prezent to the Advowson Appendant, if he has not the Land to which &c.
But Per Moyle, the Seizin Tempore Vacationis is not traversable.
And so Littleton and Moyle against Danby and Needham &c. Br. Pre-
zentation. pl. 30. cites 9 E. 4. 38.

8. In Quære Impedit it was agreed, That if a Man be seised of an Ad-
rovson in Fee, and the Church voids, and he dies, the Executor shall have
the Prezentation and not the Heir. Br. Prezentation pl. 34. cites 21 H.
7. 22.

Descent to the Heir, and the Falling of the Avoidance to the Executor; And where two Titles can,
cur in an Infant the most ancient shall be preferred, As in Case of Jointenants, the one devolves his Part,
the Title of the Devisee, and of the Survivor still in one Infant, the Title of the Survivor being the
most ancient Right shall be preferred. Mich. 33 Car. 2. C. B. Holt vs. the Bishop of Winton.

For all is done in one
Infant, the

* In forbe should be 21 H. 7. 21.

9. A Manor, to which an Advowson was appendant came to Queen Mary
by an Attainer of the Patron the Earl of Northampton, who had only
an Estrate for Life in it, and the made a Leafe thereof to R. & W. for
forty Years, if the Earl should so long live. The Church became void,
and two Twinko, who claimed not under the Leafe to R. & W. presented
M. who was intituled and indicted, all which was pleaded, but the
Manor being settled in Remainder in Fee to H. 8. Queen Eliz. as Heir to
him, presented upon his Avoidance; But adjudged against her, because
there is not a bare Ufurpation pleaded against the Queen, but also an E-
Who shall present in respect of Estate Mortgagor or Mortgagee.

1. Mortgagor to A. the Manor of C. to which an Advowson is app., A., brings Bill to Foreclose. The Church voids. Mortgagor (B) moved for Injunction to stay Proceedings in a Quare Impedit brought by A. Per Cur. Tho. B. has No Bill, yet being ready, and offering to pay the Principal, Interest and Costs, if A. will not accept his Money, Interest shall cease, and an Injunction shall be granted as to the Quare Impedit; For A. can make no Profit by preferring, nor Account for any Value in respect thereof to link his Debs, and A. therefore in that Cafe, until a Foreclosure be, is but in Nature of a Trustee for B. 2 Vern. R. 401. Mich. 1700. Amhurst v. Dawling.

2. A Mortgagee of an Advowson held for Years, without any other Thing joined with it in the Mortgage, by virtue of an Agreement expressed in the Mortgage Deed for that Purpose presented a Clerk on an Avoidance; The Mortgagor brought a Bill in Chancery seven Months after the Institution to compel the Clerk to resign; But Lord C. King dismissed the Bill, declaring, That as a Quare Impedit was confined to six Months after the last Incumbent's Death, it ought & Bill
to be limited to the same Time: But had a Quare Impedit been brought within the 6 Months, and the Bill been preferred after the 6 Months, the Court might, on a proper Case, give Directions in Aid of the Quare Impedit, that the Mortgage should not given in Evidence. 2 Wms's Rep. 494. Hill 726. Gardiner v. Griffith.

3. It seems, That if one, who is seated in Fee of an Advowson, mortgages the same for a Sum of Money, and the Money not being paid, the Grant becomes Absolute, and then the Church ends; if during the Avoidance the Money being paid, and the Advowson reconvey'd, the Mortgagor gets the Clerk instituted to the void Church, the Mortgage is without all Rendy, tho' the void Turn was in him, and could not pass by his Reconveyance of the Advowson. Wats. Comp. Inc. 8vo. 437, cap. 22.

(G.a) Presentment to the Church. By Coparceners, Tenants in Common or Jointenants. Who shall present of Common Right.


Person only, but as it is annexed to her Estate; For as it is agreed 5 H. 5. 10. her Baron, who is Tenant by the Courtesy shall have it. — * Br. Prefentation, pl. 19, cites S.C. — S. P. Br. Prefentation, pl. 52, cites F. N. B. 54 — S. P. ibid, pl. 59, cites Doct. & Stud. law. cap. 26 — S. P. Br. Quare Impedit, pl. 12.

2. Also this Privilege given to the Eldest shall go to her * Illue and Quare as to alligne. Co. Litt. 166. b. (f) 186. b. (f)

Preseantation by the Eldest. Hill, 18. H. 7. Fell. 49 — * See S. P. admitted Br. Prefentation, pl. 35. cites 38. H. 6. 9. — There is a Diversitv betweem the Cafe of a Partition by Act of the Party, For there the Privilege of the Election of the Eldest Daughter shall not attend to her Illue, and Where, the Law gives the Eldest any Privilege without her Act, there, that Privilege shall defend. Co. Litt. 166. b. — * Br. Prefentation, pl. 27. cites 24. E. 3. 52. & Mondrans de Fais. pl. 65. cites S. C.

3. So Tenant by the Courtesy of the Eldest Sister shall have the same. See pl. 1. in the Notes. Br. Quare Impedit, pl. 62. S. P. cites 5. H. 5. 10.

4. If three Johtenants are of an Advowson, and the one presents, the Ordinary is not bound to receive him; but if he does, the other has no Remedy; For two cannot have Quare Impedit against the third; Contra of Coparceners. Br. Quare Impedit. pl. 128. cites 6. E. 4. 10.

5. A Fine was levied of a Manor, unto which an Advowson was ap—Br. Fines pl. pendadant, wherein a third Part was rendered back to A. for Life with di—cites 43. E. 5. 12. Vers Remainders over, and of the other two Parts, with the Advowson of every 3d Part as before said; If they cannot agree to present, a Laple shall incur. They are all Tenants in common, and being first named, or last named, is of no Privilege or Prejudice; For being by one Deed it shall pass Uno Platu. Arg. Godb. 16. cites 34. E. 3.

6. A Grant was made of the next Presentment to Sir Godfrey Foliambe, And pl. 2. and to others, & eorum cunlibet conjunctum & divivum, Haredibus, Executoribus & Allegnaris suis, and afterwards the Church became void, and Sir Godfrey presented one of the other four Grantees; and adjudged, That the Presentment by one alone was good. Mod. 4. Trin. 31. S. C. ad—judged accordingly by the Name of Sir William Hollis's Cafe.— Bendl. 24. pl. 40. S. C. but mentions no Judgment — See (M. a.) pl. 2. S. C.— In Case of Berry v. Perry 5 B. a. 66. Coke Ch. J. Arg. 86 it was resolved, that this Grant was not good, because an Interest cannot be divided, and says that with this agrees 14. Eliz. D. 304. pl. 34.

4 N 6. Two
7. Two Sistors Coparceners of an Advowson, married; the younger Siter died, and her Husband was Tenant by the Curtesy. The Church voided; the Clerk of the Husband of the eldest Siter was received; and afterwards, the Church became void again, and the said Husband of the youngest Siter presented, but being disturbed, brought a Quare Impedit, as Tenant by the Curtesy in Torno secundo, and had Judgment. Moor. 224. pl. 304. Pack. 28. Eliz. Beverley v. Arch bishop of Canterbury.

8. The next Presentation was granted to 2 and before the next Assistance one gave a Release to the other; then the Incumbent died, and one of them presented alone, and being disturbed, brought a Quare Impedit, and had Judgment; it was aligned for Error, because one of the Grantees had brought this Quare Impedit in his own Name alone; but adjudged maintainable, because the Release was made before the Church was void, and this Judgment was affirmed in Error. Moor 467. pl. 664. Trin. 9 Eliz. Rot. 1038. Lewes v. Bennet.

(Ha.) Presentment to the Church. By Coparceners by Composition. How the Composition being.

If the Composition be against Common Right it shall not bind without Deed. 17. Eliz. 3. 38. b. Adjudged.

2. As after the Clerk has presented it the Composition be that the Eldest shall present again and then the 2d, and to the others in Turn, This shall not bind without Deed being against Common Right: For to Jure the 2d is to present. 17. Eliz. 3. 38. b. Adjudged.

3. In Quare Impedit; the Plaintiff makes Title; That Composition was had between the Defendant and A. B. to present by Turn, and the Defendant preferred, and A. B. granted to us, our Heirs, and Alligns, the next Presentation by the Deed, which he shewed, and so it belonged to him to present, the other prayed that the [*Plaintiff*] shall shew the Composition; and because he does not claim but one Presentation, and to the [Deed of] Composition belongs to the Granor, and not to the Plaintiff, therefore the Opinion was, That he shall not be compelled to shew it, by which the Defendant passed over, and pleaded a Release of A. B. Br. Morning, pl. 72. cites 39 Eliz. 3. 37.

4. Error in Quare Impedit; Plaintiff counts that A & B. feised as Jointenants of the Advowson in Grefs by Indenture agreed to hold as Tenants in Common, and that they and their respective Heirs should present by Turns, and shews several Presentations alternately, and that A. died, and his Moity descended to C. and made Title by grant of the next Presentation by C. to D. his Executors, Administrators, and Alligns, in whose Life the Church became void, and that D. made M. Executor, and died, and it belonged to him as Executor to present &c. The Bishop claimed Title by Lapse; The Plaintiff replied, That D. his Testator preferred one Symms within six Months, and the Bishop refused him; Defendant rejoined, that he gave him 3 Days to prepare for Examination, and he never came; and traversed, that he refused Symms at the Presentation of the Testator; and upon Issue taken upon this Traveller, Verdix and Judgment was for the Plaintiff; and now it was inquired, that Plaintiff had made no Title, because the Agreement to present by Turns did not operate as a Partition, and sever the Right, but merely as a Composition.
tion or Agreement, which being broken, the Plaintiff has a proper Re- other is not, medy by Action; But adjudged, That it sever'd the Right of Presentation, by the Un- furcation, put to a Quia

imped; and this, whether the Presentation be by one privy to the Agreement, or by a Stranger. —

adly, If either Privies in Blood (as Parceners) or Strangers (as Tenants in Common of Jointtenants) a- gree by Deed to present by Turns the Composition is good, and the Plaintiff need not in Quire Impediment, mention the Composition, it being once executed; And this thaws that the Inheritance is severed, and that a separate Interest is vested in each of them to present by Turns. 3dly, by Part, for so a Composition may be between Parceners; But between Strangers in Blood Composition cannot be without Deed, 1 Saik. 43, in the Case of the Bishop of Salisbury v. Phillips. — Ca. 565 S. C. and there held that by the Agreement to present by Turns, being executed on both Sides, there was a Partition of the Inheritance of the Advo'ison — So if 5 Tenants in Common agree to present by Turn, and every one has once to present, it is not necessary in Quire Impediment, for any of them to flew the Com- position, because it has been executed once; Otherwise, if not executed, as was held by Shelly, Fitch- herbert, and many of the Sergeants, Dy. 29. pl. 194. Hill. 22 S. 8.—Wats. Comp. Inc. 8vo. 117. cap. 8. cites S. C.

5. 7 Ann. cap. 18. Enacts that if Parceners or Jointtenants, or Tenants in Common be seised of any Estate of Inheritance in the Advowson of any Church or Vicarage, or other Ecclesiastical Promotion, and Partition is or shall be made between them to present by Turns, thereupon every one shall be taken and adjudged to be seised of his or her separate Part of the Advowson to present in his or her Turn; As if there be two, and they make such Partition, each shall be seised to present, the one of the one Mocny to present in the first Turn, and the other of the other Mocny to present in the second Turn; in like manner if there be three, four, or more, every one shall be seised to present of his or her Part, and to present in his or her Turn. This Statute does not extend where the Plaintiff has but one Turn; for then the stranger had usurp'd it in his Turn, they should present to the next A- vailability in Prejudice to the others Right; therefore the Statute intends such Partes only at have a con- tining Right of Patronage, and to remedy the Cases not within the Stat. W. 2 Gibb. 253. in the Case of the Bishop of London and Lewen v. the Mercers Company.

(I. a) By Affiance.

1. If an Advowson be allotted in Chancery to the youngest Copar- cener, the shall present and maintain Quire Impediment against the others 'till it be defeated. 17 E. 3. 38.

Sir Richard Talbot v. the Bishop of Hereford. F. 5. 38 a. at the first Line &c. of the Page, and in pl. 10. And it is solid per Seton. That if the Advo'ison was allotted to the youngest &c. in Chancery, non est Dubium, that the shall not deserve, by force of this Aignment, the right Prentent against the others by Quire Impediment.

2. If three Coparceners of a Manor, to which an Advowson is Ap- pendant, make Composition to present by Turns, and the Eldest usurps in the Turns of the Middlemost and Youngest, and after usurps again in the Turn of the Middlemost, yet the youngest may present in her next Turn. 30 E. 3. 14 b.

3. So if Coparceners make Composition to present by Turn, and the one usurps in the Turn of the other, yet the upon whom the Usur- pation was may present upon the Composition in her next Turn. For the Usurpation between the Coparceners is an Usurpation but for the fame Turn usurp'd, and does not put the other to her Writ of Right. F. N. 34. 3. 4. 9. See the Statute W. 2. cap. 5. cited accordingly. — 4 Le. 221, 225; pl. 356 cites S. C. Per. Brian.

4. If a Partition be made to one Coparcener, and an Advowson af- sign'd to her in Chancery, the others being within Age, yet at their full Age they may present by Composition, or present by Turn as it no Partition had been made. 17 E. 3. 37 b. 30 b. Adjudged.
5 Two Coparceners and a Stranger, who pretended a Right to the Estate and an Advowson, agreed by Indentures mutually executed, that each of them should present by Turnes until such Time as a Partition could be made. An Act of Parliament confirms the Indenture, and enjoins, That every Agreement therein contained shall stand, and that all the Rest of the Lands not particularly named, and otherwise disposed of by the said Indenture, should be held by these three in Common; The first in Turn grants the next Advowse (the Church being full) to the Plaintiff, and Judgment for him; for 'twas agreed, that there should be a Presentation by Turnes, and therefore for one Turn each had a Right to the whole Advowson by reason of the Act of Parliament which confirmed the Agreement, and thereby an Interest is settled in each of them 'till Partition made; but this Agreement would have vested no Interest in either of them without an Act of Parliament to corroborate it; therefore there had been no Remedy upon it but by Action of Covenant. 2 Mod. 97. Trin. 28 Car. 2. Croftman v. Churchhill.

(K. a) Presentment to the Church. By Coparceners or others, where it is to be made by Turn: What Presentment shall serve for a Turn.

See (C a) pl. 1. If an Advowson descends to two Coparceners, the one being within Age and in Ward, and the Guardian marries with the Eldest, and after the Church voids, and the Guardian presents in the Name of both SISTERS; This shall not serve for any Turn to the Eldest; but at the next Avoidance, if they cannot agree in Presentment, the Eldest shall present alone, as if no Presentment had been made after the Deceit to them. D. 35. H. 8. 55. 5. Althe.

* As for Incontinency or other such Causes, Cro. 41 Eliz. C. B. S. C. by Name of Windsor v. Archbishop of Canterbury, Loveday and Fletcher. S. C. Mo 538. pl. 65. 69. Petch. 49 Eliz. So if Grantee of the next Avoidance presents one who is admitted and instituted &c. and after is deprived for Crime or Heresy, or any other Cause, yet he shall not present again; but this shall serve for a Turn, because the Church was full, till the Sentence Declaratory comes. Co. 5. Windsor 102.

See (L. a) pl. 6. S. P. by Bromley J. Boll. R. 46. cites 5 Rep.

3. So if a Man, who has a Turn, presents one who is merely a Lay Peron, and he is admitted and instituted &c. and is declared by Sentence, that he is incapable, and therefore void ab initio; yet because the Church was full, till the Sentence Declaratory comes, the's shall relate to some Purposes, it shall be for a Turn. Co. 5. Windsor 102.

4. So if A. who has one Turn, presents B. who is admitted and instituted &c. and after he is deprived by Sentence; whereupon C. who has the 2d Turn, presents D. who is admitted and instituted &c. and after he is deprived, and the first Sentence of Depetration of B. declared to be void, and he restored, and after D. dies, and then B. dies
Preseation.

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des, C. shall present in his Turn; for tho' D. was Parson for the
time to all purposes during the first Deprivation, and B. was not
Incumbent, yet when the 2d Sentence comes, B. was Incumbent
again by Force of the first Presentation, Institution, and Induction,
and needed not a new Institution &c. And so B. died Incumbent by
Force of the first Presentation in the first Turn. Co. 5. Wind."'
102. Adjudged.

of B. and so utterly defeats the Incumbency of D. as if he never had been
presented.

5. But in the said Case, if D. had died Incumbent before the second
Sentence, or if the first Sentence had not been reversed; then this should
serve for the Turn of C. who presented him. Co. 5. Wind. for 102 b.

6. If a Man presents B. who is admitted, instituted, and inducted,
but he has not subscribed the Articles &c. according to the Statute
of 13 Ed. by which the Admission, Institution, and Induction are
void, it shall not serve for a Turn; because the Admission, Institution,
and Induction, are merely void by the Statute. Co. 5. Wind.

7. Where the one loses his Turn by Lapse, this shall stand for his Turn; & in Quar
and at the next Avoidance, the other shall have his Turn again; Quod

8. A Man feied of a Minor with Advowson Appendant had sixe
Daughters and died, and they made Partition, and that each present by
Turn in Degrees as their Age was, by which the eldest commenced &c.
and her Clerk was in, and after the eldest died, her Heir within Age, and
found by Office for the King, and he seid the Ward, and after the Church
made void, and the King presented in the Turn of the second Daughter;
And per Catesby, the King presented in Right of the Heir, and therefor
his Preseation in the Turn of the second Daughter does not put
her to her Writ of Right of Advowson. But to this Brian and Choice
were strongly Contra, and that this is Urpanation; For there is no Priv
ity of the Partition in the King, and this Preseation is in Jure Regis
Propris as Lord, and never shall make Title to the Heir in Quar Prese

9. Where one Parceoner presents in the Turn of her Coparcener, this does So of Grants
not put her to her Writ of Right of Advowson as Urpanation done by a of Coparcen-
Stranger shall do, by reason of the Privity, so that she loses nothing by
this Turn, and shall have her Turn again when it comes to her Turn
again; Per Catesby and Brian. Br. Quar Preseation. pl. 132. cites 22
E. 4. 8.

another, that other shall not present to the next Avoidance, but must wait till his Turn comes round.
Gibb. 553. Patch. 4 Geo. 2. B. R. held fo in the Case of the Bishop of London and Lawen v. the
Mercer's Company.

10. In Quar Preseation, four Minors descended to four Daughters, and an
Advowson was appendant to one Manor, and they made Partition; &c.
Presentation.

except the Avoidance, and so that each Daughter had a Manor, and nothing determined of the Avoidance by Composition or otherwise, and after the Church voided, and the eldest Daughter presented, and at another Voidance the second Daughter presented, and at a third Avoidance the Stranger presented, and after the Incumbent died, and the fourth presented, and well, by the Opinion of the Court; for the Fourth shall not lose her Turn by the Upholding of a Stranger suffered by the third Daughter. Br. Quare Impedit, pl. 118. cites 2 H. 7. 4.

11. If the King upon his Promotion of the Incumbent to a Bishopric does not take Benefit of the first Avoidance, but suffers a Stranger to present, and the Incumenee dies, he shall not have his Prerogative to present to the second Avoidance. Cro. E. 790. Mich. 42 & 43 Eliz. C. B. Baffet v. Gee.


12. A. and B. seised in Fee of every other Turn; A. presented; then B. presented in his Turn, and after Induction his Clerk is deprived, but no Notice is given. The Bishop collates. A grants his Fee to J. S. The Collatee is It now B's Turn. For A. before his Grant to J. S. might have removed the Collatee for want of Notice; but he dying, Incumbent, A's Turn is served. But after A's Grant to J. S. neither A. nor J. S. could present, and the Collation was good against all but the very Patron, who, after the Grant, could not have Action, but he has destroyed it by his Grant, and so none can have it. Cro. E. 811. Hill. 43 Eliz. C. B. Leak v. the Bishop of Coventry and Bambington.

13. Where the King has Title by Lafe and presents, and his Precentee is instituted, yet the King may revoke his Presentation and present another, his Turn not being forfeit by Institution only before Induction. Watf. Comp. Inc. 197. cap. 12. cites 1 Le. 156. Trin. 32 Eliz. Wright v. the Bishop of Norwich.

(L. a) Prefentment to the Church. What Persons may be Present.

Br. Presentation, pl. 2. cites S. C. — Br. Abbe, pl. 22. cites S. C. — Br. Incumbent, pl. 2. cites S. C.

2. A Master of a College is not presentable to a Patronage. 34 H. 6. 15.

Br. Presentation, pl. 2. cites S. C. — Br. Abbe, pl. 22. cites S. C. — Br. Incumbent, pl. 2. cites S. C. — If a Corporation consists of Master and Confreres, and the Master and Confreres present the Master, it is void; For the Precentor and Precentee are one and the same Person. Br. Presentation, pl. 23. cites 14 H. 8. 2. per Fire James. — And per Moore J. The Master or Head of the Corporation cannot be severed from the Corporation, but other of the Commonalty may; For the Master and Confreres, or the Dean and Chapter, may present one of the Confreres, or one of the Chapter; For he is not a perfect Body without the Head; But he is a perfect Body if the Master, or Head, and the greater Part of the Commonalty assent. Br. Presentation, pl. 23. cites 14 H. 8. 2. — Br. Quare Impedit, pl. 86. cites 14 H. 8. 2. 29. — Watf. Comp. Inc. Svo. 205. 226. cap. 15. cites S. C. — Watf. Comp. Inc. Svo. 392. cap. 20. cites S. C. and adds, Quare, whether the Institution and Induction in such Case be merely void, so that Lafe may run from the Time that the Church became first void? And says, he conceives it is not so, but the Deand Chapter may well present one of their Chapter, or any Corporation, one of their Members, and cites 3 Bulf. 45. Trin. 13 Jac. Harris v. Aslin. — It has been held, that when the Masters and Brothers of an Hospital did present the Master, and the Master and Brothers did bring a Quare Impedit against the Master by a strange Name, that the Writ did well lie, and that they should recover, the Presentment being void. Watf. Comp. Inc. Svo. 515. cap. 26. cites 12 H. 8. 12.
3. The same Law of a Dean and Chapter, (though by Corruption they were capable of an Appropriation, and a Dict to make to have the Curiam Annunimam for them. Com. 497.) 34. P. 6. 15.

4. It seems, that an Alien, who is a Minister, may be presented to a Church, though an Alien cannot have Possessions of Frankenie, misunderstand here, because by Intendment they will adhere to their Country and against us in Time of War, and transport the Treasurer of the Realm out of the Realm, yet this is not intended of Spirituals; and this was the Realm that anciently it was usual for Aliens to have Spiritual Promiscuous here, and Priores Aliens had many Possessions here, and were Parsons appropriate.

Nation by other Aliens, if they were allowed to enjoy Estate here, was the Reason they were suffered to enjoy Ecclesiastical Benefits here, could not be the Realm, but rather the Pope's Veneration, and a Submission to his pretended Authority in Church Matters, and his providing many Ecclesiastical Preferments here to Aliens, his Friends and Creatures, was the chief Reason Aliens enjoyed Benefits in England, tho' other Reasons probable might be fancied to distinguish it from the Cae of Laymen who had a Freehold in their own Right; but the Practice I believe has always continued to allow Aliens to enjoy Ecclesiastical Benefits here. Wat. Comp. Inc. 257. cap. 20.

5. By the Statute of 13 R. 2. and 1 H. 5. Frenchmen, are disabled They are to have Benefits in England, and Frenchmen endeavours; But is not this act to be null, whether they continue in force at this Day?

6. If a Layman be presented, instituted, and indited, he is a Person de facto. See also 16 Edw. Hobart's Reports 209. pl. 54 Pach. 32 Eliz. Benefielk v. Pickering. —Bendil. 195. S. C. —D. 292. b. pl. 1. Mich. 13 & 14 Eliz. S. C. —Watt. Comp. Inc. Svo. 52. cap. 5. cites S. C. —S. P. per Popham Ch. J. Crew. B. 315. Hill. 56. Eliz. B. R. in Case of Pratt v. Stocke. —At Common Law a mere Layman was incapable. By a Statute in Q. Elizabeth's Time, a Dean was made capable; By the Statute 15 Car. 2. 3. none but a Priest is for; and this Statute is declarative of the Common Law, and the Benefice not his forced void, but that there shall be a Deprivation; and it is not like the Case of a Woman presented, which is a perfect Nullity; but when a mere Lalicus is in, the Church is full; per Scruggs Ch. J. 2. Show. 54. Pach. 51. Car. 2. B. R. in Case of Hill v. Boomer. A Layman is capable of a Prebend, for non habet Curam Annuniram. Cro. E. 79. Mich. 25 & 50 Eliz. B. R. Island v. Madoc.

A Doctor of the Civil Law was admitted, instituted and inducted to a Living, being but a Layman, and made a Leafe for Years of the Rectory; and if it was good was the Question. The Leafe was confirmed before 15 Eliz. by the Patron and Ordinary. Per Gawdy J. such Acts where he was not capable to do shall not bind the Succesor, because upon the Matter he was never incumbent, and cited 4. H. 7. and 28 H. 8. D. But Popham and Fenner contra For in regard he was Parson de facto, and such an one whereof the Law takes Cognizance by his Induction, and the People cannot take Notice of any other, All Acts done by him during that time shall bind as well as if he had been Rightful Parson. For it would be mischievous if all the Acts by such Administrators should be drawn in Question. And all agreed, that all Spiritual Acts, as Marriage, Administration of the sacraments &c. by such a one during the time that he is Parson are good, and therefore a Leafe made by such an one, and confirmed by the Patron and Ordinary, shall well bind the Incumbent Succesor; and resolved to have adjudged it accordingly by Confort of Gawdy J. But for other Defects the Judgment was stayed. Cro. E. 77. pl. 5. Mich. 43 & 45 Eliz. B. R. Coffard v. Winder. —Mo. 6:6: pl. 5:6: S. C. and says, that the succesor became bound in an Obligation after the 14 Eliz. that the Leafe should enjoy the Term; after which Obligation the Succesor was abten, more than 80 Days in a Year; And the Question was, if the Obligation was void by the Statute of 14 Eliz. and adjudged that it was not; because the Leafe was good, and so was the Obligation made for enjoining the Leafe which the Succesor for could not avoid. And note, they agreed, that the Parson being a Layman ought to have been deprived; For otherwise all his Acts will be good as lawful Patron till Deprivation. —And the Deprivation shall not have such Relation to make him no Parson ab initio, though it be declaratory; For the Succesor shall not have like Income Profits. D. 292. b. Marg. pl. 72. cites S. C. —Watt. Comp. Inc. Svo 319. cap. 5. cites S. C. The a Layman, being admitted and instituted to a Benefice, has a Freehold, yet he may be fined in the Spiritual Court and deprived for that Cause; but if he has wrong done him, he may, peradventure, try it by Affit. Cro. C. 65. Hilis 2. Car. C. B. in Suttons Cafe.

7. If a Man utterly illiterate be presented, instituted, and indited, this is not a mere Nullity, but he is Parson de facto.

8. If a Woman be presented, instituted, and indited, it is a mere S. per Nullity, because her Incapacity is apparent. Hobart 259.

Scruggs 2.

Show 54.

Patch. 51 Car. 2. in Cafe of Hill v. Boomer.

(N. a)
(M. a) What Persons may be presented for a collateral Respect.

1. If a Grant of the next Avoidance be granted to three, and after the Church votes, and two of the three present, the third Grantee being a Clerk, this is a good Presentment, and the Bishop cannot refute him, though all three were Fourteneants thereof by the Grant, and only two of them joined in the Presentment; because the third Person cannot present himself. D. 13, 14 El. 304, 54.

Perhaps that one could not maintain Quare Impedit; For the Habendum was E. & E. vol comm. Conjunction & Division, and so the Severance in the Habendum seems void in Law. D. 304, b. pl. 54. — Wat. Comp. Inc. 8vo. 402. cap. 20. cites S. C.

Presentment of the third by one alone was held good, the Grant being to the three Ecclesiastical Corporations & Division. No 2. 31 H. 8. Sir Godfrey Pelliamb's Case. — Wat. Comp. Inc. 8vo. 402. cap. 20. cites S. C. — And 2. S. C. — 4. Le. 119. S. C. by the Name of Sir William Hollis's Cafe. — Bend. 24. S. C. by Name of Hollis v. Holland, where the Deed of Grant is certified Verbatim, and no Habendum in it. — Mo. 849. pl. 1154. Coke Ch. J. cited this Cafe out of Bendloe, and takes a Difference between a Joint Interest & a Joint Authority, and that one alone could not present, because it was a Joint Interest, but that had it been a Joint Authority it had been otherwise.

If three are setled of a Manor with Allocaiton appendant, whereof the one is a Priests, and they three present the Priests by a strange Name, who is admitted, instituted, and induced, this is a good Presentment, and a good Seisin for them; and if the Priest dies, and the other two survive, this is good Title for them in another Quare Impedit; by the Justices. Br. Presentatio. pl. 45. cites 21 E. 4. 66.

Watf. Comp. Inc. 8vo. 404. cap. 20. cites S. C. — And 2. S. C. — 4. Le. 119. S. C. by the Name of Sir William Hollis's Cafe. — Bend. 24. S. C. by Name of Hollis v. Holland, where the Deed of Grant is certified Verbatim, and no Habendum in it. — Mo. 849. pl. 1154. Coke Ch. J. cited this Cafe out of Bendloe, and takes a Difference between a Joint Interest & a Joint Authority, and that one alone could not present, because it was a Joint Interest, but that had it been a Joint Authority it had been otherwise.

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(N. a) To whom it shall be made.

Hunt. 22, in 1. A FTER Lapse incurred to the Metropolitan, and before Colla

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clear, that though the six Months pass, yet if the Patron presents, the Bishop ought to admit, though it be after the Title devolved to the Metropolitan. ——Watt. Comp. Inc. Svo. 265. cap. 13. cites S. C. ——Watt. Comp. Inc. Svo. 199. cap. 12. cites S. C.

(O. a) At what Time [a Man] may present.

1. If a Man presents his Clerk to the Bishop, who dies before he is received, he may present another. 38 C. 3. 36. b. And the Bishop shall receive him; for the Writ which was first presented to the Bishop does not mention that the Bishop shall receive the same Person that was first presented to him. Per Finch. Br. Quare Impedit, pl. 67. cites S. C. ——Br. Precentation, pl. 18. cites 18 E. 5. 56. but it should be (38.)

2. If a Man presents his Clerk to the Bishop, per homn, may present another before the Bishop has received his Clerk. 38 C. 3. 36. b. There is an analogy here with the case of a Clerk in the church (if &c.), who may present a Clerk to the Bishop before the present Clerk is received and he may present another before the Bishop has received this new Clerk. 38 C. 3. 36. b. Without the word Loga.

3. 3 E. 1. cap. 28. Enactts, that no Clerk of the King or other Justice shall receive the Precentation of any Church, whereas Plea is pending in the King's Court, without special Leave of the King, in pain to lose the Church and his Service. And the Bishop shall receive him; for the Writ which was first presented to the Bishop does not mention that the Bishop shall receive the same Person that was first presented to him. Per Finch. Br. Quare Impedit, pl. 67. cites S. C. ——Br. Precentation, pl. 18. cites 18 E. 5. 56. but it should be (38.)

4. Where a Man presents to the Bishop, and he will not receive him, he may present as many as he will till the Bishop will receive him. Br. Quare Impedit, pl. 67. cites S. C. If not received, the Patron may present another immediately; for these are Voidances in Law and in Fact. Br. Precentation, pl. 49. cites 2 H. 4. 5.

5. If an Incumbent changes his Benefice for another, or resigns it, the Patron may present immediately; for these are Voidances in Law and in Fact. Br. Precentation, pl. 49. cites 2 H. 4. 5.

6. In Quare Impedit, the Defendant said, that the Incumbent was present, living the other Incumbent, and he is in by Spoliation &c. Br. Quare Impedit, pl. 13. cites 33 H. 6. 26. in a Nota.

7. When one having good Title to present, and an Incumbent by Spoliation is admitted, instituted, and indited, and after the Patron presents, and the Bishop refutes, and after the Patron recovers, and then he, which had this Precentation, exhibits it to the Bishop, this is now a Good Precentation; and the Patron cannot revoke or give him a new Precentation; but if the Patron, before the Death of the Incumbent, makes Letters of Precentation, that is void; because he had no Title to present. Hutt. 67. Mich. 21. Iac. Rud v. the Bishop of Lincoln.

8. If the Patron presents his Clerk a Week before the 6 Months passed, and the Ordinary refuses the Clerk for Inability, because he is unlearned, and then the 6 Months passes before he presents another after the 6 Months after the Death of the Incumbent; in such Case, the Bishop shall have the Collation of the Clerk, because it was the Folly of the Patron, that he did not present his Clerk before, so as the Ordinary might examine him; and that thereupon if he be found to be unable, that he might present another Clerk to the Ordinary within convenient Time, and for that Cause is the 6 Months given to the Patron, that he provide another Clerk in the mean Time; per Ld. Dyer. 3 Le. 46. Mich. 15. E. liz. in the Common Pleas.

9. Quare Impedit to the Vicarage of Hutton in Suffex, by the King against the Bishop; the Case was such, the King had the Advowson of the Vicarage belonging to such a Manor, by reason of the Wardship of the which became void during the Minority of the Heir; the Heir sues Livery; the King presents therein under the Great Seal; and afterwards (without mentioning this first Precentation) presents therein another under the Seal of the Court of Wardps; the second Precentee is admitted, instituted and induced by the Bishop before any Notice of the first Precentation; The King brings a Quare Impedit against the first Precentee, and adjudged, that it lay not; for by Coke and Warburton, it was within the ditpoling of the Court of Wardps, al ——
(Q. a) At what Time it may be; where the Church is full.

* S. C. Roll 1. If I. S. presents, and his Clerk is Admitted and Instituted, J. D. cannot present his Clerk before Induction; for the Church is full against a common Person before; for by the Institution he has a Curam Animaciun. 38 E. 3. 4. By Reports. 13 Jd. B. between

— Admition and Institution, without more, is good Plenarly and Poifec-


— S. P. Br. Quare Impedit, pl. 65 cites S. C. — S. P. Watf. Comp Inc. Svo. 504. cap. 26. cites Kellw. 88. Hill. 22. H. 7. — S. P. Watf. Comp Inc. Svo. 50. cap. 4. And Ibid. 51 it is said, that by Admission and Institution the Church is full as to the Cure of Souls, and against himself and all other Persons, unless the King.

Against the King there is no Plenarly without Indebtedness or Insubordination; round nota. Br. Plenarly, pl. 5 cites 32 H. 6.

2. But if a Common Person presents, and his Clerk is admitted and instituted before Induction, the King, if he has Right, may present, and his Clerk shall be instituted; for the Church is not full against the King before Induction. 38 E. 3. 4. 9. 19. adjudged. By Reports. 13 Jd. B. between Hitching and Glover. And 15 Jd. B. in the same Case so adjudged. D. 4, 217, 62, 22 H. 6. 27. 33 H. 6. 24. Ch. 7. 26. Ch. 6. 49. b. D. 82. b.

Presentacion.


In Quare Impedit it was agreed, That where a Bishop presents to the Prebend, and dies before Induction, by which the Temporalities come into the Hands of the King, that the King shall present to the Prebend; for there is no Plenaritv against the King without Induction. Br. Plentiy, p. 5, cites 11 H. 4, 5.—So where the Bishop makes Collation, and dies before Induction. And from hence it seems that Collation with Induction is good Plenariti against a common Person, as well as Presentacion with Admission and Induction. Ibid.

3. But if the King has not any Right to the Church, the Church is full by Admission and Indition of the Clerk of a Common Person, without Induction against the King also, so that he cannot present. By Reports 13 Ia. B. between Hitching and Glover. Andhill. 13 Ia. S. R. in the same Case agreed.

4. If a Man usurps upon the King, and his Clerk is instituted and Induced, tho' the Patronage be not out of the King, and the King may remove the Incumbent by a Quare Impedit, yet * till Removal the Church is full against the King; and so during this time he cannot present any other to the Church; for by the usurpation the Plenarity Hac Vice is out of the King. 99. 13 Ia. B. R. between the King and Sacker agreed. Ftr. Ma. 36. K. 1 H. 7, 19, Co. 6. 30. and 49. 1.

Before Remotion by Quare Impedit, the Plenarity shall bind him Quoad the Possession; for Reason requires that the Church be served; and one being in by Presentment, and according to the Ceremonies of the Church cannot be put out without Action. Cro. J. 123, Trin. 4 Jac. B. R. The King v. Champion — Before a Presentacion can be made to a Church, it must be actually void, and its being voidable only is not sufficient. Roll. Rep. 212, Per Coke, who cited 1 E. 3, Smales, Case. If a Prebend happen void, and the Bishop collates thereunto, and before Induction the Bishop dies, and the Temporalities come into the King, and after he is induced, and afterward the King gives the same by his Letters Patent unto another Clerk who is instituted and Induced, the first Clerk shall have a Spoliation in the Spiritual Court against the Presence of the King; because the King ought to have removed him by Quare Impedit, and not to have collated as he did. And there the Patronage doth come in by Debat. F. N. B. 38. R.

5. So, before Removal of the Clerk, the King cannot present the S. P. Roll. same Clerk who is in by usurpation; for this cannot arise as a Surrender and new Presentacion. 99. 13 Ia. B. R. between the King and Sacker adjudged.

Curiam. S. C. by Name of The King v. Bishop of Norwich.

6. If a Man recovers in Quare Impedit against the Incumbent, the Incumbent is so removed by the Judgment, that the Recoverer may present to the Church without other Removal of the Incumbent, * S. C. Accordingly. Acordingly, the Incumbent continues Incumbent De Facto till Presentacion by the Recoverer. 99. 12 Ia. B. R. between * Whistler and Singleton. Resolutio per Curiam. Trin. 13 Ia. B. R. between Austin and Dr. Harris per Curiam, without right to the Bishop. 32 E. 3. Quare Impedit 2. admitted in Case of the King.

7. But after such Recovery in a Quare Impedit a Stranger to such if a Stranger Recovery cannot present to the Church; for notwithstanding the Recovery, yet the Incumbent continues Incumbent De Facto to the Strangers. 99. 13 Ia. B. R. between Fairbank and Durham. The Church, his Presentation would be void, as being made to a Church that is full. Inc. Svo. 58. cap. 20. cites S. C.

8. If A. and B. are Tenants in Common of an Abbotson, and the Church voids, and a Stranger usurps, and his Clerk induted, and and 54. S. C.
A. and B. bring Quare Impedit, in which B. is summon'd and fever'd, and after A. recovers before other Removal of the Incumbent, B. cannot present; for he is a Stranger to the Recovery. *Dubitat.* p. 13 Ta. B. R. between Fairbank and Durham.

9. So in this Case B. cannot after the Recovery present the same Person who was Incumbent, and against whom the Judgment is given; for this Acceptance cannot make the Church void to B. *Dubitat.* p. 13 Ta. B. R. between Fairbank and Durham.

10. The Bishop collates without good Title of Laple otherwise, and after the Patron dies after the six Months past, and the Executor brings Quare Impedit by Force of the Statute of 4 E. 3. and the Bishop and the Incumbent plead Plenarity by six Months, and adjourned no plea upon Denunciar, because this Collation is not any Plenarity, being tortious. 39, 32 Cl. B. Rot. 2065. between Smallwood and others Executors of Smallwood, against the Bishop of Coventry and Litchfield. Adjourned upon Denunciar; but another Deed brought before abatement, because it was the Improvisation of the Testament.

Co Litt. 544. b S. P. For it shall be taken to be only provisionally made for the Celebration of Divine Service till the Patron presents. — If the Bishop collates his Clerk either before he gives Notice of an Avoidance where Notice is requisite, or at any Time within the 6 Months limited to the Patron to all his Church, the Patron may at any Time after present his Clerk; for tho' a wrongful Denunciar makes such a Plenarity as shall bar the Laple to the Metropolitan and King, yet it is no bar to the true Patron; and if the Bishop admits the Patron's Clerk, the other is out Ipso Facto; or if the Bishop will not admit him, the Patron may as well then, as at any other Time before, have his Remedy at Law against the Bishop. *Watt* Comp. Inc. 187. cap. 12. cites Hob. 502. Hill 17. Inc. Gawdy v. the Bishop of Canterbury & al. — In such Case the Patron must actually present, and the Ordinary must refuse to admit his Clerk before the Patron can bring his Action; for tho' the Ordinary has collated, yet the true Patron may present to the same Ordinary, and he may institute &c. his Clerk, and then the two Clerks shall try who has the better Title. *Watt* Comp. Inc.avo. 425. cap. 22. cites Pl. C. 76. Grenbo's Case. — *Watt* Comp. Inc. avo. 425. cap. 22. cites S. C.

12. If Laple be devolved to the Metropolitan, and after the Ordinary, who has passed his Time, collates his Clerk within the 6 Months of the Metropolitan, and his Clerk thereupon is Infructed and Inducted, it seems that this was a Plenarity against the Patron; for the Collation is lawful against all except the Metropolitan, and it is a Plenarity against him also. Summer Aulice at Bath in the County of Somerset before the Lord Finch, upon a Trial between Sir Francis Popham, and the Bishop of Bath and Wells and his Son; this was a Question, and to held by Lord Finch.

13. But a Collation by Laple by a Bishop, and an Institution and Induction thereupon, will put another Bishop, who has the right Title to collate, out of Possession, and to a Quare Impedit; so that he cannot present before the Incumbent is removed. *Co. 6. Greene 29 b. and Boswell 50. Co. Litt. 344.

S. C. cited by Hobart
Ch. J. Hob. 302. in the Case of Gaw...
Patron to his Quare Impedite, but he may present; for the Presentee, the King being deceived; and then this is an Institution and Induction without any Prevenient. Co. 6. Greene 29, b. adjudged.

15. If the King presents, and therein mistakes his Title, as if he presents Ratione Lapus where he has Title Pleno Jure, tho' the Clerk be Instituted and Inducted thereupon, yet this does not put the King to his Quare Impedite; for his Prevenient is void, and then an Institution and Induction without a Prevenient is only as a Collation, and to the King not out of Possession, but may present before Removal of the Clerk. Co. 6. Greene 29, b. Resolved.

16. If the King presents, and before Institution or Induction, the King repeals it, and thereof gives Notice to the Ordinary, who after notwithstanding, institutes and indicts him, yet the King may present another; For the Church ist not null, in as much as there is not any Prevenient. D. 12, Eliz. 2. 70. will prove this, in as much as a Confirmation to such Incumbent made by the King is void. Co. 6. Greene 29, b. Resolved.

17. So would it be in this Case, though the Ordinary instituted, and indicted the Clerk after Repeal, and before Notice thereof to him given; For the Notice makes nothing to the Silence of the Repeal, but only to charge the Ordinary as a Disturber, if he proceeds after Notice. D. 12, Eliz. 2. 70. will prove this in as much as a Confirmation to such Incumbent is void. 25. C. 3. 47. accordingly. Vide Co. 6. Greene 29, b. Resolved.

18. If the King presents A. and, upon Refusal of him, brings Quare D. 339, p. pl. Impedite, and pending this B. procures a Prevenient from the King of himself in Deceit of the King, and thereupon the Ordinary institutes, and indicts B. yet this does not put the King out of Possession; But he may present before Removal of A. by Quare Impedite, in as much as the Prevenient was void, and so an Institution and Induction, without any Prevenient. Co. 6. Greene 29, b.

19. If a Man presents in Time of War, and the Prevenient is institutted and indicted in Time of Peace, yet this shall not put the Patron to his Quare Impedite, but that he may present; For this is but an Institution and Induction without any Prevenient. Co. 6. Greene 30. Browne 6, E. 3.

20. If a Stranger, without Title presents by Tort to my Church (being void) by Simony, and 6 Months past, yet I may assert present; For the Statute has made the Presentation Institution, and Induction void, and so he is not Incumbent, nor the Church will. Co. Litt. 120.

21. If a Lapse devolves to the King, and after the inferior Ordinary collates for the Lapse, and his Clerk is instituted and indited, it seems that this does not make any Plenary against the King to put him to his Quare Impedit, but that he may present and quit the Clerk of the Ordinary; For when Lapse is incurred to the King, this cannot be taken away by the Ordinary, and then when the Ordinary collates without good Title, this does not make any Plenary against him, who has the Right as the King has to present; For Lapse incurred to the King is not like to a Lapse incurred to a Metropolitan.

22. If a Man be presented instituted and indicted to a Church by Simony, tho' it void as to the King and the Parishes, yet it is not void to an Usurper; For a Man without Right shall not present thereto. Hobart's Reports. 227. Winchcomb's Case.

23. Where an Advocate is aliened in Mortmain, the immediate Lord may present within the Year, tho' the Church be fall by 6 Months before his Quare Impedit brought, so that he brings it within the Year; Quod nota; Br. Mortmaine, pl. 13. cites 21 E. 3. 27.


25. If the Incumbant resigns, and the Usurper presents within 6 Months, and is in for 6 Months, no Notice being given of the Resignation, yet that shall bind him, and he shall be put to his Right of Advocate; Otherwise if the Ordinary had collated; Because the Induction is notorious to the Country, and the Patron ought to take notice of it at his Peril, to prevent the Usurpation by an Stranger. Noy. 65. Patch. 39. Eliz. Servien v. Bishop of Lincoln.


28. In all Cafes when the Church is not otherwise filled, than by Institution and upon a void Presentment, or by wrongful Collation (except the Collation be made upon him that hath Right to collate) tho' the Clerk, by whom the Church is filled, has remained as Incumbent for some Years, yet if after the Patron presents his Clerk to the Bishop his Presentment is not void, but the Bishop may and ought to institute him thereupon, and the Institution shall be good to the Ousting of the other Incumbent, and if the Bishop refuse, the Patron may by Suit recover his Presentment. Watf. Comp. Inc. Svo. 384. cap. 20. cites 6 Rep. 22. Green's Cafe and 6 Rep. 50. Bofwell's Cafe—& Co. Litt. 344.

29. If
Presentation.

29. If a Church be once duly filled of a Clerk, tho’ the Clerk be after deprived, yet it till such Time as he is actually deprived, the Patron may not present. Watf. Comp. Inc. 8vo, 384. cap. 20.

(Q. a. 2) Plenarity. By whom to be pleaded, and in what Cases it is a good Plea.


Patron, or he who is presented by Law. Per Belknap, but per Parry at Common Law the Incumbent might have pleaded that he was in the Pretension of the Plaintiff himself. But not of the Pretension of a Stranger, Quod Belknap conceives. Br. Plenarity, pl. 12. cites Fitz. Incumbent. pl. 4 2 R. 2. --- S. P. That Plenarity by 6 Months of the Pretension of a Stranger is not Plea for the Incumbent to plead. per tot. Cur. For it is not to the Writ; For he does not give a better Writ against any Patron certain; Nor is it not in the Action; For he does not make to himself any Title to the Patronage. Br. Plenarity, pl. 9, cites 16 E. 4. 11. --- S. P. Nor for any other but for him against whom the Writ of Right of Advowson lies, which is against none but the Patron. per non. Cur. Br. Quare Impedit. pl. 134. cites S. C. --- S. P. for lenity. pl. 6. cites 58 H. 6. 20.

If the Clerk of a Stranger be Incumbent of a Church by the Space of 6 Months, by Admission and Institution only, upon his Pretension, this makes a Plenarity without Induction. Hill. 22 H. 7. Kelw. 88. --- And the Patron may plead Plenarity against all Common Persons. Watf. Comp. Inc. 8vo, 504. cap. 26.

2. If my Ancestor, Tenant in Tail presents, and after a Prior gets the same by a man Advowson and appropriates it, and holds in proper Use by Licence a Peer had pretended to, and a Day, and my Ancestor dies, I may have Affile of Derright Pretension or Quare Impedit at any Time; for now the Advowson is always by this by 6 Months in the Time of the Ancestor, Per Finch J.

then the Issue shall attend till the Church voids. Br. Presentation. pl. 8. cites 46 Aff. 4. Per Finch J.

3. In Quare Impedit, the Incumbent pleaded, that the Patron T. H. was the Defendant of the Manor of Dale to which the Church is Appendant, and the Church voided by the Death of one E. and the said T. H. presented him, by force of which he was admitted 6 Months before the Writ purchas’d; Judge and pleaded to it, and the Plaintiff is A. C. E. Sc. Per tot. Cur. it is a good Plea for the Patron himself Plenarity, withoutli’ shewing other Pretension in him before; But per Dunby’s, yet this does not lie in the Mouth of the Incumbent. To which it was said, the Pretension that the Plea was good by the Incumbent in this Case. Quare Cauflam, In a Stranger to the Writ; Because it seems that this Plea is for the Patron, and not for the Incumbent. Br. Plenarity. pl. 4. cites 22 H. 6. 25.

The Court held the Plea naught, because the Defendant showed no Title in A. Brown. 162 Cranwell v. Liffier --- Nov 20. S. C. by Name of Liffier v. Cranwell. But had he pleaded Pretension of the Plaintiff himself, or Collation by Liffier to the Ordinary, there, he need not make any Title. --- Watf. Comp. Inc. 8vo. 516. cites S. C.

4. Patron Imparfare cannot plead Plenarity against a Stranger Patron; S. P. Br. Ple. for the Pleading is given by the Statute of Welfminter, cap. 5. that the Church is full by 6 Months, before the Writ purchas’d, of such a one by a Day before. That Presentation of such a one; which Patron Imparfare cannot plead, for Plenarity by he is not in any Presentation. Br. Plenarity. pl. 7. cites 38 H. 6. 20.


5. Note,
5. Note, when there is no Patron, as where the Prior is a Priest, and is admitted to his own Benefice or where my Advowson is aliened in Mortmain, and appropriated to a Religious House, and the like; In those Cases I may have Quare Impedit, and there: Plenary by 6 Months is no Plea. Br. Plenary. pl. 10. cites 14 H. 8.

6. Plenary by 6 Months upon an Institution, where the Institution is made upon a Pretenient, is pleadable by all Persons against a Common Perfon; yet a Plenary by mere Collation is not pleadable, but the Patron may bring his Writ and remove the Collate at any Time. Watf. Comp. Inc. 8vo. 525. cap. 26. cites Star. Wett. 2. cap. 5. 3 Cro. 297. Mich. 32 & 33 Eliz. C. B. Smallwood, Cole and Sale v. the Bishop of Coventry and Martin. Jenk. Cent. 7. Cafe. 7. 6 Rep. 49. Mich. 3 Jac. Boswell's Cafe.

Dr. Watson says, From this he supposes, that Plenary upon a void Pretenient is not pleadable; for then the Clerk is Incontinent as it were by Collation only; but when it is said, that Plenary by Collation is not pleadable, it is to be limited as to fuch who have Right to pretenient, but not to fuch who have no Right to collate; for Plenary by Collation puts him, that has the Right to collate, to his Writ of Right, and is pleadable against him that has the Right of Collating. Watf. Comp. Inc. 8vo. 525. cap. 26. cites 17 E 3 64. b. Dean of Lincoln's Cafe. — And 6 Rep. 49, 50 Mich. 3 Jac. in Boswell's Cafe, and 2 Inf. 557.

See (F. a. 2) (R. a) At what Time it may be. [Where there is Alienation, Difeife &c.]

1. If a Man be disifeied of a Manor, to which an Advowson is appendant, and after the Church voids, the Difeife may præter便利 before Re-entry into the Manor, because his Entry is Congeable into any Part * of the Manor, 19 H. 6. 33. 16 E. 3. Quare Impedit. 146. Contra 39 E. 3. 21. b.

Where his Entry into the Manor is not taken away, he may pretenient to the Advowfon: Per Prior. Br. Quare Impedit pl. 11. cites 25 H. 6. 52. — S. P. by Pollard J. Kelw. 169. Mich. 6 H. 8. — But Brooke (in hyp. 1) makes a Quere thereof, because, he says, it seems he cannot make Title without the Manor. — If a Man befeef of Land and of Advowson, appendant be disposed of the Land, and the Advowson voids, he shall not pretenient to the Advowson, for he cannot make Title; for if he intitles himself as to the Advowson in Gross, then the Difeife shall make a faying, that A B was feefed of the Land to which &c. and intitled him &c. Abi he hoc, that it is in Gross &c. And if he claims as Appendant, the other shall fay, that A B was feefed of the Land to which &c. and intituled him, Abi he hoc, that the Difeife was feefed at the Time of the Avoidance; Per Darby; But per Littleton, a Man who is disposed of, the Manor or Land, may feife Villainy Regardant, and may enter into any Parcel, and therefore may pretenient, but cannot have Common Appendant without an Entry. But per Darby Ch. J. Advowson is not Parcel of a Manor but appendant, and therefore a Diversiy; for Difeife may enter into any Parcel, but not into the Appendancies without the Manor or Land to which &c. And tho' the Advowson may be voided and made in Gross, it ought to be when the Owner is feefed of the Land to which &c. but not by Pretenient when he is out of Pretenient; Quad nota, good Reason; and Needham J. cum illo. Br. Pretenient, pl. 51. cites 9 E. 3 58. — And where Tenant for Life aliens the Manor in Fee, he in Reversion cannot pretenient to the Advowson before he has enter'd into the Manor; Per Needham J. But per Mylne the Seifin Tempore vacanthis is not traversable; and so Littleton and Moyle against Darby and Needham &c. Ibid. — If an Advowson voids in the Time of a Difeife, and the Difeife re-enters before Pretenient made, the Difeife may pretenient and shall have Quare Impedit. Br. Pretenient. pl. 41. cites 2 H. 7. Per Towneley; quod non negatur.


2. So if Lefsee for Life of a Manor, to which an Advowson is appendant, aliens the Manor; and after the Church voids, the Lefsee may pretenient before Entry into the Manor for the Fortunet, because his Entry is congeable into any Part. 19 H. 6. 33. b.

3. So if Difeife of a Manor, to which &c. aliens it, and after the Church voids, the Difeife may præter便利 before Entry into the Manor. 19 H. 6. 33. b.

4. If
4. If Lefsee for Life of a Manor, to which an Advowson is Appendant, aliens one Acre with the Advowson, by which the Advowson is Appendant to the Acre, and after the Church voids, The Lefsee may present before Entry into the Acre, because his Entry is congeable into any Part for the Forciture. Contra 18 E. 3. 44. by Mtte. 39 Reports Contra. 23 M. 8.

5. If Baron be lefsee of a Manor, to which an Advowson is Appendant, jointly with his Wife for Life, and aliens one Acre with the Advowson, by which the Advowson is Appendant to the Acre, and dies, and after the Church voids, The Lefsee cannot present before the Acre recontinued. 17 E. 3. 5. 19. Adjudged. Contra 22 E. 3. 7. Revert. 23 M. 8.

6. But if the Alieenee alien the Acre to another, saving the Advowson, and after Baron dies, the Lefsee may present to the next Avoidance; because the Lefsee cannot recovcr this with the Acre. 17 E. 3. 5. 19. b.

7. So if the Baron had alien'd the Advowson as in Gros, and after aliens the Manor to another, and dies, the Lefsee may present to the Advowson, when it voids, before the Manor recontinued, because it is in Gros. Contra 17 E. 3. 19. b.

8. If a Lefsee be endow'd of the third Part of a Manor, and of the Advowson Appendant, and after another Baron and Lefsee purchase the whole Manor; and after the Baron aliens one Acre of the Manor with the Advowson Appendant, and after second Presentment passes the Baron dies, and Tenant in Dower dies, The Lefsee may present to the third Presentment tho' he has not recontinued the Acre; because the Advowson by the alienation could not pass as Appendant to the Acre, unless as the Baron had only a Reversion therein at the Time. 23 M. 8. Adjudged. 22 E. 3. 7. Adjudged. Same Case. 179.

9. If Tenant in Tail of a Manor, to which an Advowson is Appendant, discon- tinues one Acre with the Advowson, and dies, and after the Church voids, the Issue may present before the Acre recontinued; because the Discontinuee never presented after the Discontimance, this being the first Voidance after. 34 E. 1. Quare Impedit. 179.

10. If Tenant for Life of an Advowson in Gros levies a Fine, and after the Church voids by Death of the Incumbent, or otherwise, before any Claim made by him in Reversion, but after he in Reversion presents. In this Case he shall not have this Presentment, though the levying the Fine was a Forfeiture, yet till he in Reversion has made his Election to take Advantage of the Forciture, the Estate of the Tenant for Life is not destroyed nor ended; and he might have taken Advantage of the Forciture by his Claim in the Life of the Incumbent; and inasmuch as he did not make his Claim before the Death of the Incumbent, the present Presentment was a Chattle vested in the Lefsee, which cannot be devolved after by the Presentment of him in Reversion. Trin. 13 Car. B. R. between Spring and Sir Julius Caesar. Per Curtains. Awarded in Writ of Error upon a Judgment in Bank in a Quare Impediment. Dilect. 11 Car. 39, S. C. — Jo. 23 M. 8. Adjudged.

(Watf. Comp. Inc. Svo. 179. cap. 10. cites S. C. — Jo. 389. S. C. — It is an error to believe that this Presentment was a Chattell vested in the Lefsee, which cannot be devolved after by the Presentment of him in Reversion. Trin. 13 Car. B. R. between Spring and Sir Julius Caesar. Per Curtains. Awarded in Writ of Error upon a Judgment in Bank in a Quare Impediment. Dilect. 11 Car.)
(S. a) What shall be a **good Presentment**. How it may be.

1. **A Common Person may present to a Church** by Parol. Co. Litt. 120.

2. **If a Common Person presents to a Church** by Writing, yet this is not any Deed, but only in Nature of a Letter to the Bishop. Co. Litt. 120.

See pl. 4. in the Notes.

For the Presentment is of the Clerk, and the Direction is to the Bishop, and though it be by Writing if is no Deed, but only as a Letter to the Bishop, and this is the Reason that the King himself may present by Parol. Co. Litt. 120 a. — It is only a Commendation, or Declaration of the King's Will, which may be by Parol. Cro. J. 248. Tom. 8 Jac. B. R. pl. 7. the King v. . . . . for the Vicarage of Hunton in Suffex. ——S. P. Mo. 874. pl. 1221. in Cae of the King v. Bishop of Lincoln and King.

3. **The King may present to a Church by his Letters.** 2 E. 1 Rot. Patentum Henr. 3.

4. **The King may present by Parol without Presentment in Writing.** 19 E. 3. Quaer Impeedit. 60. Agreed. Co. Litt. 120.

5. **If the King be deceived in his Title of Presentment, this is a void Presentment.** Co. 6. Greene. 29. b. Adjudged. D. 16 El. 327. 6.

6. **If the King grants a Presentment by his Letters Patents by these Words, (Damus [ & ] Concedimus) without any Words of Presentment, yet it seems that it shall amount to a Presentment, and a good Warrant to the Bishop to institute him on.** Dibutar. 19 E. 3. Quaer Impeedit. 60.

And though a Corporation made their Presentment by a wrong Name of Incorporation, yet it was held good. Cro. J. 248. pl. 7. Coke said, it was so ruled in the Dean of Norwich's Cafe.

7. **If a Man presents Ad Retuluriam, it is as good as if he had presented Ad Ecclesiam.** Cro. J. 248. pl. 7. Coke said, it had been so adjudged.

8. **If the King do ratify the Possession of the Incumbent, ita quod in nullo Gratuver, this is now as a New Presentment; per Coke Ch. J. 3 Bull. 90. Mich. 13 Jac. in Cae of the King v. Sakar.

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(T. a) Revocation. *Who may revoke his Presentation.*

— Br. Quaer. Impeedit. pl. 248. cites S. C.—But in the second 45. cites S. 2d E. 2. Rot. Patentum, Part 1. H. 3. D. 18. El. 348. 12. Fitz. Na. 34. (C) 271. (D) D. 12. El. 292. 70. he may before Institution. 25 E. 3. 47. Admitted and adjudged. 7 7 D. 4 32. D. 16 El. 327. 4. After Letters obtained for Admission, Institution and Induction, and before Execution thereof. 14 E. 3. Quaer Impeedit 5. The King to revoke it; otherwise it is a Deceit of the King and void. Arg. 2 242. cites D. 339. The Vicar of Yatton’s Cafe —— If the King, before Admission of the first Prefect, presents another, without Fraud or Corin in the second Prefect, such Revoc is not necessary; but if the first Prefect...
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fence be instituted, then such second Presentation is no Repeal of the former, without revocation of the former Presentation, and the Admission and Institution thereupon; and also there ought to be an express Grant of Reversion of the first Letters Patent, and of the Admission and Institution thereupon mentioned in the second Letters Patent of Preferences. 25. 359. Mary pl. 47. Ex. This decision was given by Mr. Justice Patch 9 Ja. in the Exchequer, between Colvett and Kitchen. —— The King may vary in his Presentation without revoking the former, and it shall not be void by the Statute of 6 & 8. 15. per Coke, Warburton, and Foller. Cro. J. 245. pl. 7; Trin. 8 Jac. C. B. in Cae of the King v. . . . . See this Statute at Prerogative (Q. b. 2) p. 8.

2. If the Prentence of the King be instituted, the King cannot revoke it after Induction. *Dibut. * 18 Cl. 348. 12. 25 E. 3. 47. Admitted as it stands; for it is certified, that it was receiv'd after the Letters of Repeal.

3. If the Prentence of the King dies after Induction and before Induction, this is a Reversion in Law, so that the King shall present again, because the King has not the Effect of the Prentence. *D. * 20. Cl. 360. 7. Admitted. And *C. 9. Holt 132. Law, that it was so resolved there. *Dibut. D. * 18. Cl. 348. 12.

by the Repeal, and if the Bishop does not out the Clerk, the Temporalties shall be filled into the King's Hands for the Contempt, and because another Title was made but the King's Prentent, which is defect'd, a Writ was awarded to the Bishop, *fr. Prentent. * pl. 6. cites 42 E. 3. 53.

The King was to present, but his Clerk is instituted, but not induced, and died before Induction. The Question was, if the King shall present for the God Lapfe, because the Church was not full against the King? The Justices were all of Opinion, that the King might repeal such Prentence before Induction; And as to the principal Matter, the Court inclined that the Prentence was not prev'sent again. Le. 136. pl. 218. Trin. 52 Eliz. C. B. Wright v the Bishop of Norwich.

—S. P. D. 48. 4. pl. 12. Hill. 18 Eliz. in *Wilson's Case,* and there it was held by Dyer and Maunton accordingly; but Manwood and Harper contro; but all agreed, that the King's Prentent shall always be to be Admissus, Institus, & Induc'tus, which was confirmed by Precedents and the Books of *22. 25. 6. 62. and 22. 38 E.* —— But D. 360. b. pl. 7. Mich. 18 & 20 Eliz. in the Case of *Coke's Case,* where a Church became void by taking a second Benefice, and Lapsed to the Queen by the 21. H. S. by Default of Patron, Bishop, and Metropolitan, the Queen prentend'd there but it was admitted, institut'd, and Induc'ted. Then B. died. The Queen present.' G. The Patron bought Quare Impedit against G. and cou'd of the Avoidance and Lapsed, and that the Queen present'd G. who was admitted and institut'd, but did not by (Inducted) and that the Church being now void by B.'s Death, it belongs to him to present. The Question was, if this Pleading was good? And by the greater Number of Justices it was held good enough, and Precedents shown in the King's Case where Admissus & Instructus only had been allowed. And in this Case it cannot be intended otherwise than that the Queen's Prentent was effectually executed in all Refpects, and is not revocable. and for that the *Writ* was awarded to the Bishop. —— *Bentl.* 512. pl. 297. & C. accordingly, and cites several Precedents where (Induction) was omitted and held good. —— *fr. Quare Impedit, pl. 1. * cites 25 H. 6. 2.

4. If the Chancellor presents to a Benefice, supposing it to be under Wulf Comp. Inc. Svo. 394 cap. 23. the Value, where in Truth it is above Value, then the Prentence is admitted and institut'd, and before Induction the King being apprised thereof, repeals the said Prentent, and presents one in *And Dr. of his own Name, This is a good Repeal; because, as it stands, the King has a right Precedent, and the King is received also in the first Grant. 38 E. 3. 3. b. 9. Abjudged."

ing is not recited in the Prentent to be under the Value, else according to the Lord Chancellor's Case in Feb. 224. the Prentent will be void, and if so, it can be no Question in the King's Case at what Time it may be revok'd. —— It remained good till it was avoided. Winch 19. Patron and Morce's Case.

Where a common Per'gian Patronetum * 10. b. vers. 3. 3. 1. QuaRe Impedit 185. 20 (Pol. 541) by our Law, Linwood fol. 110. b. 38. E. 3. 36. b. 14. E. 3. 2. b. and that the Ordinary may admit which of the Clerks he pleases.

presentation.

7. Brooke makes a Quære in the Case of Nomination being in one, and the Presentation being in another, if the Nominator may name one, and after another, as well as the Patron may vary in Presentation; and says that divers of the Justices held that he may. Br. Quære Impedit, pl. 133. cites 14 E. 4. 2.

(U. a) What shall be said a Revocation.

1. If the King presents to a Bishopric, and dies before his Clerk is Admitted and Instituted, the Presentation is revoked in Law by his Death. Mich. 8. In. Scaccario, and Hill. 8. In. Scaccario, between Colvert and Kitchin adjudged. Per Citiam.

2. If the King presents to a Benefice, and after presents another without Revocation of the first, or Mention thereof, yet it is a Revocation in Law of the first. Mich. 8. In. Scaccario. D. 8. In. Scaccario, between Colvert and Kitchin, per Citiam. D. 12 El. 292. 70. 16 El. 327. 4.

3. Let otherwise it is if such second Presentation be obtained by Fraud and Desert of the King, pending a Quære Impedit by the King upon his first Grant, Notice being given to him of his first Grant. D. 17 El. 339. 47. Co. 6. Greene 29. b.

4. If the Presentee of the King dies after Institution, and before Induction; this is a Revocation in Law, because the King has not the Effect of the Presentation, and so shall present again. Dibutacrit. D. 18 El. 348. 12. Co. 9. Holt 132. said to be refus'd in the said Case of 18 El. D. 20. El. 360. 7. Admitted.

5. If the King presents, and after before Institution revokes it, but before Notice thereof to the Ordinary, the Ordinary Institutes and Induces him, it seems that this Presentation was well revoked in Law, and the Conducit thereof to the Ordinary is not material as to the Substance of the Revocation, but only to discharge him from being a Disturber. D. 12 El. 292. adjudged as it seems. But Dyer makes a Quære thereof. Dibutacrit. D. 16 El. 328. 6. Dice 25 E. 3. 47. It seems will prove it.

6. If a Man presents, and before Institution dies, yet it seems that this is not any Revocation in Law of the Presentation, because this is passed from him by the Presentation. 24 E. 3. 30. It seems will prove it.

S. C. cited Watts. Comp. Inc. Ston. 268. cap. 20. For if his Executor presents another Clerk, this second Presentation is also good, and the Bishop is at his Liberty which Clerk to receive. Cites Le 251. Trin. 21 Eliz. Smallwood v. the Bishop of Lichfield &c.—S. P. Arg. Lane 74. cites Mark Ogle's Case.

8. In a Case cited of a Clerk in a Bishopric, it seems that for there is no Plenary against the King without Induction; for where Title falls to the King, and Admission and Institution is past before, and no Induction, then the King may present. Br. Plenary, pl. 13. cites 53 E. 5. 4. —Centra a Common Person. Ibid.
Queen presented one P. to the Vicarage, who brought a Quare Impedit against the Bishop and his Collatee, pending which, but L. the Collatee by Fraud and Deceit obtained a Presentation from the Queen, without mentioning his Pleasure to revoke the first Presentation. The Queen by Letter signed &c. by her, certified the Court that she had forgot the first Presentation, and said her Pleasure was that it should stand firm. And in the Term following the Queen had Judgment, because L. having demur'd, the Fraud and Deceit done to the Queen and the Court pending the Writ was confessed by it, tho' the Notification thereof was not made under the Great Seal &c. D. 339. b. pl. 47. Hill. 17 Eliz. Price v. Bishop of Bath and Lancaster.

8. A was presented by Simony, and died; the Patron presented B. the King presented J. S. and after a General Pardon came out with a Clause of Restoration of Forfeitures. And altho' the King may revoke his Presentation by express Words, yet whether or no the general Words of Restitution contained in the Pardon shall amount to the Revoking of the Presentation, and of restoring to his Right of presenting, was a Great Question. Ex adjournat. Fresm. Rep. 198. Trin. 1675. C. B. The King v. Turville and the Bishop of Lincoln.

(X. a) Presentation. * Examination. What Time the Ordinary shall have to examine the Clerk.

1. By the ancient Canons, the Bishop had two Months Time to inquire and inform himself of the Sufficiency and Qualities of every Clerk to him presented, as appears by the Canon in 1 Ja. cap. 95.

Person to Holy Orders or to a Benefice, touching the Qualification of such Persons for the same respectively; in that there are two certain Times or Seasons especially, wherein this Examination is required; the one before an Admission to Holy Orders, the other before an Admission to a Benefice. The former of these is expressly enjoyn'd by the 24th Canon Ecclesiastical, whereby it is required, That the Bishop, before he admit any Person to Holy Orders, shall diligently Examine him in the Presence of those Ministers that shall assist him at the Impostion of Hands; or in Case of any unlawful Impediment of the Bishop, then the said Examination shall be carefully perform'd by the said Ministers, provided they be of the Bishop's Cathedral Church, if conveniently it may, otherwise by at least three sufficient Preachers of the same Diocese. Godolph. Rep. 270. cap. 24. S. 1.

2. But by the Canon made 1 Ja. cap. 95. it is ordered that the 2 Months shall be abridged to 28 Days only.

3. Examination of the Clerk is to be done at a convenient Time within the 6 Months; for the Ordinary cannot refuse to Examine the Clerk during all the 6 Months, and to suffer a Lapse to incur to himself; for by so doing the Patron should lose his Presentation, and the Ordinary take Advantage of his own Wrong; but if the Ordinary, when the Clerk comes to be examined Sede circa Curam Pastoralem, he is not then obliged to leave the Business in Hand, and presently examine the Clerk; but he may appoint a convenient Time and Place for the Examining of him. Godolph. Rep. 271. cap. 24. S. 3.
(Y. a.) Presentement. Refusal. What shall be good Cause of Refusal. In Respect of the Presentor.

1. It is good Cause of the Refusal of a Clerk, that his Presentor being the Patron is excommunicated. 15 H. 7. 7. b. laid to be held in ur Books. Co. 5. Spec. 58.

2. If 3 Jointenants are of an Adowment, or of a next Avoidance, and one or two of them only present; the Bishop is not any Disturbance if he refuse him; for he is not bound to admit the Clerk, if all the Jointenants do not join in the Presentment. D. 14 Cl. 304, 54.

3. But if there are 3 Grantees of a next Avoidance, and after the Church words, and two of them present the Third being a Clerk, the Ordinary is bound to admit him, because he cannot join in Presentment of himself, and he may relinquish his Clerk, and accept a Presentment from the other two. D. 14 Cl. 304, 54.

4. If 4 Coparceners are of an Advowson, and the 2 Elders or Elders, and the 3d present, and the others present another, and not all together, or the Elder alone, the Ordinary may refuse all their Clerks. Co. Litt. 186. b. 1.

(Z. a.) What shall be good Cause of Refusal. In respect of the Presentee. And for what Causes they may be refused. [Crimes &c.]


2. 5. Co. Spec. 58. Refused that all such as are sufficient Causes to deprive an Incumbent are sufficient to refuse Presentee.

* For if he keeps them for two Months, both shall be void; And therefore it is not at the Peril of the Bishop. —— Br. Quare Impedit. pl. 92. cites S. C.

4. It
Presentation.

4. It is good Cause of Refusal, because the Presentee was Perjur'd, tho' no Conviction was thereof. D. 13 Cl. 293. 3. * 38 E. 3. 2. b.

5. So, it shall be, tho' he was Perjur'd in a Suit between the Ordinary and another. Debitur 13 E. 3. 2. b.

6. It is Good Cause of Refusal of a Presentee, because he is Br. Quare Impedit, pl. 93. cites S. C.

7. It is Good Cause of Refusal of a Presentee, that he has kill'd a Br. Quare Impedit, pl. 92. cites S. C.

8. The Ordinary may refuse a Clerk upon his Conscience of an offence done by the Presentee, which is good Cause of Refusal, tho' he be not convicted thereof by the Law; and this shall be tried by issue whether it be true or no. 38 E. 3. 2. b.

9. It is Good Cause of Refusal of a Clerk, because he is Simoniacus in the same Presentment, that is to say has made a corrupt Contract to be presented.

10. It is Good Cause of Refusal of a Clerk, because he is Simoniacus in other Benefice than this, to which he is now presented. Ibid. 16 Pr. 28. between Boughton and the Bishop of Rochester in a Quare Impedit, per Curiam.


12. If a Miscreant or Schismatike be presented and indicted, this is good Cause of Deprivation. 5 Rep. 58. in Spector's Café, cites 5 R. 2. tit. Tryal 54. and says it was agreed to be good Law; So if he be Irreligious he may be refused, as it is said in 5 H. 7. 6. But when he is charged with the One, or refused for the other, it must be alleged particularly, so that Pl. 35. & 36. and the Party may answer therefor. Ibid.

(Z. a. 2) Resufal. What shall be good Cause. Illiterature &c. not being Crimes. See (Z. a. 3)}
Presentation.

2. In Quare Impedit, Plaintiff counts that he was seised in Fee, of the Advowson, and that the Church becoming void, he presented one G. who died, and that it belonged to him to present, and the Defendants disturbed him; the Bishop claimed nothing but as Ordinary; and said that within six Months after the Avoidance, the Plaintiff presented Francis Hodder, who, at that Time was a Person * Minus sufficient in Literature for Capes, to have the said Church; That he examined him, and finding him Minus sufficient, he refused him, whereupon he gave notice to the Plaintiff, and be not presenting within the six Months, the Bishop collected the Defendant; Plaintiff replies, That Hodder, at the Time of his Presentation &c. was in Holy Orders, and had been admitted thereunto upon Examination by the Ordinary, and was instituted a Vicar into another Church for divers Years, and was in Verbo Domino Doctus &c. The Plea was held good by 3 Justices (there being then no Chief Justice) but was adjourned to be further argued; Afterwards Treby being made Ch. J. it was held, per tot. Cur. to be an ill Plea, 3 Lev. 313. Trin. 3 W. & M. C. B. Hele v. the Bishop of Exeter and Hayman.—But this Judgment was reversed in the House of Lords.

‡ Show. Parl. Cates 88. S. C.

(Z. a 3) Refusal. Trial. Where, and How the Cause of Refusal shall be tried. And Pleadings.

It is required 1. 9 E. 2. 1 T is desired, that Spiritual Persons whom our Lord the King by Law, that the Person presented be Idonea Person, for to be the Words of the King's Writ, Presentment Iodonea Person, and this IDONEA was consideth in diverse Exceptions against Persons presented; 1st, Concerning the Person, as Baldwy, Villageney, Outlawry, Communication, a Layman, Ununder Age, and the like. 2dly, Concerning his Conversation, as if he be Criminals &c. 3dly, Concerning his Inability to discharge his Pastoral Duty, as if he be unlearned, and not able to feed his Flock with Spiritual Food &c. and the Examination of the Abilility and Sufficientty of the Person presented belongs to the Bishop, who is the Ecclesiastical Judge; and in this Examination he is a Judge, and not a Minifier, and may and ought to refuse the Person presented, if he be not Idonea Person. And if the Cause of Refusal be for Obstacles of Learning, or that he is an Layman, Sclavante, or the like, belonging to the Knowledge of Ecclesiastical Law, there he must give Notice thereof to the Patron; if the Cause be Temporal, as a Pleon, or Homicide, or other Temporal Crimes, or if the Difficulty grow by any Act of Parliament or other Temporal Law, there no Notice ought be given, unless Notice be prefered to be given thereby. But in a Quare Impedit brought against the Bishop for refusal of the Clerk, he must file the Cause of his Refusal specially and directly (for whether the Cause thereof be Spiritual or Temporal, the Examination of the Bishop concludes not the Plaintiff) to the intent the Court, being Judges of the principal Cause, may confine with
Presentation.

Learned Men in that Profession, and resolve whether the Cause be just or no; or the Party may deny the same, and then the Court shall write to the Metropolitan to certify the same; or if the Cause be Temporal and insufficient in Law, (which the Court may decide) the same may be traversed, and an Issue thereupon joined, and try'd by the Country, and yet in some Cases, notwithstanding this Statute, Idemvitas Pernio shall be try'd by the Country, or else there should be a Failure of Justice, (which the Law will never suffer) as if the Inability or Insufficiency be alleging in a Man that is ++ dead, this Cause is out of this Statute, for the Bishop cannot examine him; and the Words of this Act are De Idemvitis Perinio presentat ad Beneficium Ecclesiasticum pertinent Examinatio &c. And consequently, tho' the Matter be Spiritual, yet shall it be tried by a Jury; and the Court, being affid by Learned Men in that Profession, may instruct the Jury as well of the Ecclesiastical Law in that Case as they usually do of the Common Law.

1. In Quare Impedit against the Bishop he pleaded, that he refused the Clerk, because upon Examination he found him to be Schismatics Invertater, and for that Reason he refused to admit him, as being a Person by the Laws of the Church, unable and unfit to take a Benefice with Care of Souls. This Plea was adjudget in C. B. to be insufficient, because it was Generally Schismatics Invertater; And upon Error brought in B. R. the Judgment was affirm'd; for the Statute of Articulis ** super Clarius, cap. 13. says. Properเตกจยน Scientia, and other venalible Causes, whereas Caufa vaga & incerta is not a rea-

fensible one; and tho' the Bishop (as it was urg'd) is Judge in the Examination, yet since his Proceedings are not of Record, the Cause of Refusal is traversable; and it is be travers'd, and the Party re- 

fused be alive, it shall be tried by the Metropolitan, but if he be dead it shall be tried by the Country. And if such general Allegations be admitted, Patrons will be much prejudice'd now-days in their Presentations. 3 Rep. 57. Bill 33 Eliz. B. R. Spect's Case.—— Also, Spect's Bishop of Exeter. And 15. 189. pl. 225. S. C. adjudget. ——— Golddb. 55. S. C. but no Judgment.—— 5 Lev. 198. pl. 251. S. C. but no Judgment. —— And it was obser'd, that it appears in our books, that the Cause of Refusal ought to be certain, as in 5 H. 7. 19. and 11 H. 7. &c. &c. that the Preference is a Baffard, Stilem, if this see, or Ultrater &c. 3 Rep. 58. s. a. ——— These Words seem to be wrong, and that it should be Articuli (Clerk.)

So as this Act is a Declaration of the Common Law and Custom of the Realm. 2 Inf. 652.

2. Quare Impedit against the Bishop and others; the Bishop said, that he S. C. cited 

examined the Clerk of the Plaintiff at B. in the County of C. and refused him 

for Nondility, and gave Notice to the Plaintiff thereof, and he did not present another within 6 Months, by which he presented by Law, and the Plaintiff said, that his Clerk was Allg., and because the Clerk is now dead, this cannot be try'd by the Metropolitan by Examination, and therefore it was try'd per Pais, and this by the County of C. where the Examination was, and not by the County of D. where the Writ is brought; quod nota. Br. Quare Impedit, pl. 102. cites 39 E. 3. i. 2.

3. In Quare Impedit if the Bishop justifies the Refusal of the Clerk be- 

cause the Church was litigious 'till be inquired De Jure Patronatus, he shall not traverse all Refusals after the Inquiry, by reason that he has justified before; and if the Plaintiff alleging other Refusal after the Inquiry De Jure Patronatus, this is a Departure and goal for he relinquishes his first Day alleging of the Refusal which ought not be; for if he will have Advantage thereof, he ought to have alleging this Day at first; for he shall allege only One Day. Br. Repleader, pl. 41. cites 33 H. 6. 13.

4. The Ordinary commanded the Clerk to come to him afterwards to be 

examined, because the Ordinary had then other Business. And there the better Opinion was, That it was a good Plea for the Ordinary, that he did not refuse the Clerk, but that the Clerk did not return to him again; and that the 6 Months passed, so as he made the Collation, and that the Pa. * This is at 

tron made his Presentation too late, so as he had not convenient Time to examine him. 3 Le. 46. Mich. 15 Eliz. in C. B. cited by Lord Dyer as * 14 H. 7. 15.

(A. b.) Disturbance by the Ordinary. What Act will

make the Ordinary a Disturber.
That the Church is of the Value of 40 l. per Annum, and so it does not belong to the Chancellor to present, commands the Ordinary to receive J. S. his Clerk, whom he presents; if the Ordinary does not send to the Archdeacon not to make Induction, but suffers the Induction to be made a Month after, he shall not be adjudged a Disturber; for there is not any Default in him. 38 C. 3. 4. 9. Adjudged.

2. But in this Case if the Inhibition had come to the Ordinary before the Warrant made to the Archdeacon to make Induction, if he had made the Warrant alter, by which he had been induced, he should be a Disturber. 38 C. 3. 5.

3. In Quære Impedit, the Bishop pleaded, that he claimed nothing in the Patronage but as Ordinary; A Writ to the Bishop is thereupon awarded against him, and after he collates; this makes him a Disturber. 8 H. 4. 22 b. 23. pl. 8. Bishop of Winchester v. Rye and Ux.

4. Where a Man presents, and his Title is found upon a Jure Patronatus, and he is free to have his Clerk admitted, and after another presents; there, if the Bishop could have admitted and instituted the Clerk of him who had the Verdict, and does not, but defers it till the Judge of the Cases, and then presents his own Clerk, in this Case he is a Disturber against Both the Presentors; and If he shall be taken, whether he, who presented and had his Title found, failed to have his Clerk admitted, or not; and whether the second presented to him so foolishly that he could not admit the Clerk of the first by due Process, before the Presentation of the second, or not. And so the Church is not litigious, but whether two present severally at one Time, and both Titles are found by diverse Commissions; or where one presents, and his Title is found by Commision, and before that the Bishop can admit his Clerk, another presents, quod nota. Per Newton; if two present to one Church at one Time now the Church is litigious; and there, if after the Title is found by Commission, the Hands of the Bishop are cloaked from taking Benefit by the Litigiousness, unless the other fails a Ne Admit; for he is bound in Right to admit his Presentee for whom his Title is found, and in this Case Diverse Commisions ought to be awarded, and the Bishop ought to give to the Commissioners diverse Days, and ought to warn the one of the Day given in the other Commission, so that they may have Notice to come and give their Evidence, and yet such Titles found there shall not conclude the other Party in Quære Impedit; for it is only Inquest of Office. Br. Quære Impedit. pl. 80. cites 21 H. 6. 44.

5. Where different Persons present their several Clerks, and the Ordinary accepts the Presentee of the one without Inquiry De Jure Patronatus, he is a Disturber; Per Port. Quod Newton & Markham concelebrant. Br. Quære Impedit, pl. 83. cites 22 H. 6. 25.

* S. P. Per Patton, Ibid.

Refusing to award a Jure Patronatus when he is required, makes him a Disturber.


* Orig. is (Present) and so are all the Editions.

6. If a Disturber presents, and the Bishop inquires De Jure Patronatus, and another is found Patron, there, if he will present within the fix Months, the Bishop is bound to admit his Clerk; but if he does not present he ought to * admit the Clerk of the Disturber. Agreed. Br. Quære Impedit, pl. 12. cites 33 H. 6. 12. & 32. 34 H. 6. 11. 38. and 35 H. 6. 18.

7. If there are two Partons, and the Bishop admits the Clerk of the true Patron, yet this is no Excuse in Quære Impedit, for it is no Plea, that he was Verus Patronus. Per Prior, Quod Non Negatur. Contra, If he had inquire'd De Jure Patronatus. Br. Quære Impedit. pl. 12. cites 33 H. 6. 12. & 32. 34 H. 6. 11. 38. and 35 H. 6. 18.

8. Whether if the Plea of the Ordinary be insufficient, he shall thereby be a Disturber? Goldsab. 35. Arg. says, It seems that he shall, and cites 14 H. 7. 21. b. and 5 H. 7. 20.

9. If after a Jus Patronatus, he admits the Clerk of the Patron against whom his found, is at his Peril, both as to the Title itself; and such Patron's defending it. And is against Justice and the Intent of the Law, to
Presentation.

35

to put the Party to the Delay and Charge of a Trial, and then act contrary to the Finding. And the Books, which say, that the Ordinary is to judge of the better Title, mean, that he is not to prejudice his own Head, but Secundum Allegata & Probata upon Verdict given of the Right, and found according to the Form of Law to give Institution, which is his Judgment, and Induction which is his Execution. And if the Patron bring Quare Impedit against the Usurper and Incumbent, not naming the Bishop, and makes good his Title, he may have an Action on the Cause against the Ordinary for that useful wrong Delay and Trouble that he hath put him to, and shall recover Costs and Damages, not in respect to the Value of the Church (for there is no Damages for that by the Common Law but by the Statute of Weights and Measures 2d.) but for the other Respects. But if he name the Ordinary in the Quare Impedit, he can have no other Action on the Cause; neither can he have such Action on the Cause before he has tried his Title in a proper Action, and against the proper Parties. Per Hobart, Ch. J. Hob. 317. Patch. 17 Jac. in the Cause of Elvis v. Archibishop of York, Taylor and Bishop.


11. Ordinary may examine and refuse, but both must be in convenient Time, else by his Delay he is a Disturber. 2 Salk. 539. Mich. 3 W. & M. B. R. Hale v. Bishop of Exeter.

12. It was objected, That the Bishop not giving Notice of Refusal for U-literate till 32 Days after, was a Disturbance in his Facto; but the Court gave no Opinion in this Point. Carth. 312. Tin. 6 W. & M. B. R. in Cafe of Bishop of Exeter v. Hele.


1. The Bishop incumber'd the Church after a * No Admittas directed to him within the 6 Months, and the Patron brought Quare Impedit, and recover'd, and had Writ to the Bishop to disincumber the Church, who said that he had admitted the Plaintiff; Et non Allocatur. The Reason seems to be, inasmuch as he travers'd the Incumbance, and upon the Incumbance found it was prayed that the Temporalties be seized as upon Attachment upon Prohibition; & non Allocatur. Br. Quare Impedit, pl. 145. cites 21 E. 3. 3.

2. Quare Impedit against the Bishop of N. and others; and at the Di-
fires the Bishop appear'd, and the others made Default. Chaunt said the Bishop claims nothing but as Ordinary : Judgment if without special Disturbance shewn, the Plaintiff assign Tort in him. Caud said, We release our Damages, and pray Judgment and Writ to the Bishop. But per Babb. This cannot be; for the Damages are not taxed, but it shall be recorded that you will not have Damages; and so it was, and he had Writ to the Bishop. Br. Quare Impedit, pl. 150. cites 10 H. 6. 4.

3. The Bishop may be a Disturber within the 6 Months, and it is no Plea in Quare Impedit or Trespass, to justify by Matter happening pending the Writ; for it is brought of Disturbance before the Writ brought, which was a Tort, and cannot be defended by Matter subsequent. Br. Quare Impedit, pl. 82, cites 22 H. 6. 28 & 29. Per Newton and Paton.
Presentment.

It is a good Plea to say, that he is Ordinary, and the Church was Linguita.

Plea to say, that he is Ordinary, and the Church was Linguita.

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Presentatio

dinary, as whose Pre森entum he received him as Ordinary, by which he was Instituted and Inducted, Alias the boc, that he made Collation modo & forma post the Plaintiff supposes. And per Keble, Fineux, Townend and Brian Ch. J. this is a good Plea for the Ordinary to show that another is Patron and not the Plaintiff, tho' he does not make to himself Title to the Advowson; for the Ordinary has Interest to meddle with the Church, as in Affidavit the Tenant shall compel the Lord to make to himself Title to the Rent; for there is Privity between them and between the Ordinary and the Patron; As in Wait the Tenant may say that the Leitor has granted the Reversion to J. F. to whom he has attorn'd. So of a Seigniory granted &c. And so, that a Stranger has recovered the Seigniory against the Lord; for the Ordinary may traverse this Thing alleged against him, which proves him to be a Disturbmer, without alleging Title in the other Person. And Per Rede, Jay, Vaviloff and Davers, This is no Plea; for he does not plead as Ordinary, as to say that he claims nothing but Admission, Institution and Induction as Ordinary; Judgment if without special Disturbance &c. or to say that he Ne Disturba pas; for then the Plaintiff shall have Writ to the Bishop immediately, or to say that the Church is Litigious, or that his Clerk is Criminal, but cannot intrude a Stranger without intruding himself. But Brian and Townend Contra; for otherwise there shall be a Mediator, that the Bishop shall be bound to admit the Clerk of whomsoever will present to him, which is not Reason: Et adjournatur; for the Ordinary has lawful meddling with the Church, As the Tenant has with the Seigniory or Reversion. Br. Quare Impedit, pl. 129. cites 5 H. 7. 33.

(B. b) * Admission. † Institution and ‡ Induction.

(What Things it shall be made.)

1. A Donative may pass by Gift of Lay Patron without Institution or Induction. Da. 1, 46, b.


‡ Induction is nothing else but the Putting of the Person into Actual Possession of the Church and Glebe, which are Temporalties of the Church, or the Making of a Clerk Complete Incumbent of the Church; This is Induction, and it is by Letters from the Bishop of the Diocess directed to all and singular the Clerks, Rectors, Vicars &c. within the said Diocess, to put the Clerk or his Lawfull Attorney for him, and in his Name, into the actual Possession of the Church to which he had been Premised and Inducted, together with all the Profits, Dues, Members and Appurtenances whatsoever thereunto Belonging or Appertaining; of the due Execution whereof a Certificate endorsed on the Indulment of Induction, and subbscribed by a competent Number of Witnesses, ought to be returned to the said Bishop as Ordinary, who may appoint the Archdeacon to give Induction. Godolph. Rep. 2, 8. cap. 24. S. 18.

Induction is done in the following Manner: one of the Clergymen commissioned takes the Person to be Inducted by the Hand, lays it on the Key of the Church, and pronounces the Words, By Virtue of this Commission I Induct you into the Real and Actual Possession of the Rectory of &c. with all its Appurtenances; then he opens the Church-door, and puts the Person into Possession thereof, who commonly tolls a Bell &c. and thereby flies and gives Notice to the People that he had taken Corporate Possession of the said Church. If the Key of the Church-door cannot be had, the Clerk to be Inducted may lay his Hand on the King of the Door, the Latch of the Church-Gate, on the Church-Wall &c. and either of these are sufficient. So it may be by Delivery of a Clos of the Glebe &c. Jac. Law Dict. Verba Induction. Cites Country Part, Comp. 21. 22.

2. In the King's Chapel at Westminster, when a Prebend is void, the King shall make Collation by a Patent to whom he pleases, and send him with it, and by Force thereof he shall take Possession. 14 9. (Without any Institution or Induction is implied.)

3. If the King grants a Free Chapel to another, he ought to be put in Possession by the Sheriff. 14 4. 4. 11. u.

4. If a Clerk be presented, he has not Possession before Induction, 11 D. 4. 9. Com. Have Back 523.

5. If the Bishop of Sarum be Patron of the Church of S. which is Presentative, and lies within the Diocess of Sarum, and it is the Corps of a Prebend in the Church of Sarum, and the Bishop of Sarum is also Patron of the Church of D. which is Presentative also, and lies within the Diocess of Winton, and after the Church of D. is united to the said Prebend, with the Consent of the Bishop, and Dean and Chapter of both Diocess. By this union both Churches are so annexed and united, that if the Bishop of Sarum collates a Clerk to the Prebend, and he is thereupon intailed in the Cathedral Church of Sarum, he has thereby Possession of both Churches without any Presentative, Admission, Institution or Induction to, or by the Bishop of Winton; for inasmuch as he has Possession of the Prebend, he thereby has Possession of the Corps of the Prebend, and by the Union the Church of D. is parcel of the Body of the Prebend. P. 10 Car. B. R. between Lezby and Holler upon Evidence at War in an Election Firm, upon the Trial of a Title of a Lease made by such Prebendary before the Statute of 13 El. of the Church of D. which was not before the Bishop of Winton, but only by the Bishop, Dean and Chapter of Sarum; and this held per Curiam to be good for the Cause aforesaid.

6. By the Laws of England the Acts of Presentation, Institution and Induction are all Authorities given by Law, and must be executed according to the Form prescribed by Law, and cannot be modified; for Actus legitimi non recipiunt Modum. For the Law gives the Church, and not the Patron and Ordinary, who are but Ceremonious Ministers, and are appointed their Manner and Form, which they may neither Exceed nor Abridge. Hob. 153. in Caeo of Colt and Glover v. Bishop of Coventry.

(C. b) By whom it shall be made. Admission. Institution. Induction.

It is not only Penal for the Bishop to institute, but the Institution is void because it is not by Act of Jurisdiction, from which he is suspended. But it may be a Question in Case of a Collation, whether if it is a Lease happen the Bishop may collate? But the better Opinion is, he cannot; because it is not by way of Interest, but by way of Presumption for the Cure, and to supply the Negligence of the Patron. This appears, because the Patron may presume at any time after a Lapse, and before Collation. 5 Salk. 202. cites Patch 13 Car. B. R. Lumm v. Dordon —- Croe C. 4'5. 5. C. and because this and another Point there concerned Ecclesiastical Jurisdiction, the Court required to hear Civilians, and it was argued accordingly; but the other Point being clear for the Defendant, Judgment was given for him upon that Point, and then this not being material, nothing more is there left about it.

Warf Comp. Jac. Svo. 2'4. cap. 19. cites S. C.

2. The Ordinary shall send to the Archdeacon to make Induction. 38 C. 3. 3. b.

3. The Archdeacon shall make the Induction. 38 C. 3. 3. b.

But the Bishop may direct his Mandate to such other Clergyman as he pleases to make Induction, and cites Parsons Counsellor 8. — The Archdeacon having received a Mandate for Induction makes a Proept Omnibus Literatis infra Archdiocesanum to induct, a Clerk not belonging to the Archdeaconry made the Induction, and held to be well enough. Arg. Vent. 57. Maches. 29 Car. 2. B. R. in Caeo of Robinson v. Wolly. Cites Noy's Reports. But says, (Quere that Case?)
Presentation.

4. By Prescription the Dean and Chapter of Lichfield make Induc-

tion. 11 P. 4. 9. 275, cap. 15, cites S.C. And that if Induc-
tion be made by the Archbishop when it ap-
pertains to the Dean and Chapter by Prescription, that Induc-
tion is said to be void, 11 H. 4. 9. but the

coury is held Pitch. 11. Quare Impedit 162, that in such Case it is only voidable, and so resolved. Hill

5. So of the Dean and Chapter of Pains. 11 P. 4. 9.

Comp. Inc. Svo. 275, cap. 15, cites S.C. And that if Induc-
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coury is held Pitch. 11. Quare Impedit 162, that in such Case it is only voidable, and so resolved. Hill

6. An Induction made by the Bishop is * void, where it belongs to S.C. cited; the

Dean and Chapter by Prescription. 11 P. 4. 9. b. Contrac. 14


Godolph. 275, cap. 24, S. 16. cites S.C. But Dr. Watfon says, he supposes this is to be understand where it is done of his own Authority; for he says, he doubts not but that a Bishop may give Induction as well as Institution to a Benefice of his own Gift where the Right of Induction to a Benefice within his own Diocese is in him; or however that an Archdeacon may Induce to a Benefice within his Archdeaconry, although he be Patron thereof; nevertheless, the Rule is, Modus & Convertio Vacant Legem, and therefore De Jure Com-

man in either Bishop nor Archdeacon may induce a Clerk to their Benefices of which they are Pa-

trons, yet by Prescription or Composition their Induction in such Case must be good. And accordingly, though the Bishop of Chichester does not the Dean of the exempt Jurisdiction of Battle within that

Diocese, and does not commit to him the Care and Jurisdiction of that Church, yet the Patron thereof is to

institute and Induce the Dean, and the Patrons accordingly have given the Deans Induction and Induc-
tion for some Hundreds of Years; and without Question such Induction and Induction is good; but this Deanery was originally given to the Incumbent as a Donative only by the Patron, and the Bishop

admits or approves of the Patron’s Presentation, and commits to him the Care and Jurisdiction by Com-


7. An Induction by the Patron is void. 11 P. 4. 10.


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admits or approves of the Patron’s Presentation, and commits to him the Care and Jurisdiction by Com-


8. The King’s Grantee of a free Chapel shall be put in Possession by the

Sheriff of the County, and not by the Ordinary of the Place. 11 P. 4. 11 b.


9. A. and B. two Patrons, pretend a Title to present. A. presented; the

Bishop refused; whereupon A. sued in the Audience, and had an Induc-

tion to the Bishop. And afterwards, upon that Suit he obtained Institu-

tion and Induction by the Archbishop; after which the inferior Bishop instituted and induted the Clerk of B. Whereupon Proceedings issued out of the Audience against the inferior Ordinary. Thereupon a Prohibition was

prayed, because the Ecclesiastical Court ought not to interfere after Induction and Induction; For this would be to determine the Incum-

bency. And therefore Quotid Inducption the Prohibition was granted; but not Quotid the Contempt of the inferior Ordinary in granting Induction after he had been inhibited. Moor 879. pl. 1235. Trin. 15 Jac. Middle-

ton v. Lawre.

10. Tho’ the King may present to a Church, yet he shall not collate, admit, nor institute; for he cannot exercise the Spiritual Function. And if he brings Qsa. Imp. against the Bishop and recover, he ought not himself to make an Admittance, but must send his Writ to the Bishop to do it. Arg. 2 Bull. 4 in Cafe of Stevenson v. Wood.


tow presented to the Archbishop, who admitted and instituted the Clerk, Patch 29, and granted Mandate to the Archdeacon for Induction, which was by an In-

struction directed to certain Parson’s, as usual, to do it. They omitted the
the doing it for 2 or 3 Months, and in the mean time a Bishop of Glou-
cester is made and consecrated, and afterwards the Parson made the Indu-
cation. Adjudged per tot Cur. that the Induction is void; For though it
belongs to the Office of Archdeacon, yet his doing it is only by
Mandate and Authority of the Bishop, and they held it to be no more
than if a Man makes a Letter of Attorney to make Livery and dies,
and the Attorney makes Livery after his Death. 2 Lev. 199. Trin. 29

(D. b) What Thing shall amount to Institution and In-
duction.

I. ThE Provision of the Pope is as an Institution. 11 D. 4. 76.
b.
2. And when the Clerk is put in Execution by force of the Provi-
dion, it shall be as an Induction by Force of the Bulls. 11 D. 4.
76 b.
3. A Parson, Vicar, or Chantry Priest may be admitted and in-
tuted he not knowing it. As if the Patron sends to the Bishop to admit
his Clerk, and he agrees to it; and if the Bishop says, in the Absence
of the Clerk, to J. N. I admit thee to the Church of D. in the Name of
the Clerk, this Admixture is an Institution though the Clerk be absent; but
there he may refuse, because he was absent at the time &e. Br. Qua.
Impedit, pl. 155. cites 32 H. 6. 25. by a Doctor of the Law.
4. Where a Recovery is in Qua. Imp. and the Bishop upon Premtmen
t will admit and institute his Clerk, and he is induced, and this without
any Writ to the Bishop. This is good, as well as a Man may enter
without an Haberc facias feillim after Recovery. Hutt. 66. the third
Resolution in the Case of Rud v. Bishop of Lincoln.

(D. b. 2) Admission, Institution, or Induction. Good.
And the Effect thereof.

1. Per sona Ecclesiæ numquam dicitur Impersonata, ante Inductionem ;
 nec habet ius in Re, sed ad rem, iunte Inductionem. D. 221. b.

2. Note that a common Person may have Qua. Impedit against an-
other, though his Clerk was not induced; For the Entry is there, Quod
admissius & Institutus fuit. Br. Qua. Impedit, pl. 1. cites 22 H. 6. 27.

3. The Incumbent has no Remedy for the Profits, nor can he try his
the Case of Quarles v. Fairchild.

The Clerk shall not have the Profits before Induc-
tion, but the Ordinary shall forester them. Per Nichols J. Roll. R. 461. Patch. 14 Jac. in Case in the
Cafe of Colt v. Glover. Institution intitles the Parson to the spiritual Profits as Oblations &c. before Induction, and he is liable to be sued for neglecting the Care, but he can not sue for Great Tithes, for they are Temporal. 11 Mod. 42. pl. 12. Patch. 1705 B. R. Anon.
4. Admission, Institution, and Induction without a Presentation is void. S. P. Adjudged accordingly.


Cro. J. 242. Mich. 8 Jac. B. R. Dunson & Colette, and cites S. C.—S. C. Cro. C. 99, 109 Mich. 2 Car. in Cafe of Stephen B. Potter, and says it was resoloved accordingly, Anno 8 Jac. in C. B.—S. C. cit'd Arg. Gibb. 52. Patch. 1 Geo. 2. B. R. in the Cafe of the King v. the Archbishops of Armagh—and and cites Cro. J. 352. Dunson & Colette. S. C. cit'd Gibb. 54. But says that it is to be understood, that they do not put the rightful Patron out of Possession, but that he may at any Time present or bring Quare Impedit, and so it is taken in Lord Hobart 301, 552. which proves that Dunson and Colette's Cafe, which is founded on Green's Cafe notwithstanding that Resolution; therefore though the King might notwithstanding such Collision either present or remove the Incumbent by Quare Impedit, any time during the Life of such Incumbent, yet it does by no Means follow, that the Coflatee was not a compleat Incumbent during his Life if not removed, and cites Cro. E. 207. 240. Dy. 295, 294.

5. If a Gift be made to a Parson before Induction, it is good. Arg. Goldsb. 163. in the Cafe of Robins v. Prince.

6. If he alone by Consent of Patron and Ordinary before Induction, it is good. Arg. Goldsb. 163. in the Cafe of Robins v. Prince.

7. Before Induction he is not Patron to all Intents; For a Great of Annuity before Induction is not good. Per Gawy. J. Goldsb. 1635. in the Cafe of Robins v. Prince Cites Pl. C. 526.

8. He, who is instituted, may enter into the Globe Land before Induction, but before and has Right to have it against any Stranger. Per Coke. Roll. R. 192. Patch. 13 Jac. B. R. in the Cafe of Hitching v. Glover.


11. It was held, that Letters of Institution sealed with another Seal than that of the Bishop of the Diocafe, and made out of the Diocafe were good enough; For the Seal is not material, it being an Act made of the Institution, and the Writing and Sealing is but a Testimonial thereof, which Seals may be under any Seal or in any Place; But they would advise. Cro. C. Prin. cites 242. Hill. 9 Car. B. R. in the Cafe of Cort v. the Bishop of St. Davids. But Vent. 16 Patch. 21 Car. 2. B. R. in Cafe of S. P. Adler 163. in the Cafe of Robins v. Prince.

12. A Presentation may be without Institution and Induction, the Bishop being Party. Resolved. Cumb. 302. Mich. 6 W. & M. B. R. in the Cafe of the Queen v. the Bishop of London and Dr. Birch.
2. Induction is triable by the Court, and not by the Bishop. Pl. C. 529. b. in the Case of Hare v. Bickley—cites 21 E. 4. 7. &c. 33.


4. If the Bishop refuses to give Institution, the Clerk may have a Square Impedit, or Duplex Querela to the Archbishops for it, but Action for Cafe will not lie against him. Roll. R. 64. in Cafe of Powle v. Godfrey.

(E. b) Resignation. By what Words it may be.

Watt. Comp. Inc. Svo. 47.
cites S. C.

This in the Margin is said to be the Case of Walrod v. Pollard.—And Ibid. 294. a. Marg. pl. 6. cites Hill. 2o Jac. B. R. Fairchild v. Gayre, where the Civilians held, that Resignare is not a good Word of Resignation, but the Judges Contra.

2. If a Prebendary gives Grants, Renders and Confirms to the Ordinary his Prebend, and the Possessions appertaining thereto, to Have and to Hold to him and his Successors in Fee, and Subjects and Submits to him Omnia Jura by reason thereof Qualitarecunque acquisita, these Words are sufficient and amounting to a Resignation, tho' the proper Words are not therein. D. 13 El. 294. b.

3. A Resignation was made, and afterwards in the same Instrument a Condition was inserted, declaring it void, if A. or B. were not admitted by Assent of the Bishop within 6 Months. The Bishop within the 6 Months refused to accept the Presentation. It was intided, that it is against the Nature of a Resignation to be Conditional, and that it must be Absolute, Sponte, Pure, and Simpliciter, and that this is an Act judicial to which a Condition cannot be annexed: And Judgment was afterwards given accordingly. Ow. 12. 34 Eliz. C. B. Gayton's Cafe.

4. One that had a Donative made a Resignation thereof by the Words (de Rech]a,) Per tot. Cur. this Resignation extends to all the Possessions; For as the Donation to the Church extended to invest him with all the Possessions, so the Resignation extends to the same. Cro. J. 63. 64. Patch. 2 Jac. B. R. Fairchild v. Gayre.

(F. b)
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(F. b) To whom it may be.

1. A Resignation ought to be to the immediate Ordinary, and not to the mediate Ordinary, D. 13 El. 294. b.

2. A Prebendary cannot resign to the King, because though he be the supreme Ordinary, yet he is not the immediate Ordinary, and he is not bound to give Notice to the Patron as the Ordinary ought; nor can make Cession of himself, but ought to present to the Ordinary, D. 13 El. 294. b.

3. Resignation cannot be but to a Superior; per Coke; Quod Haughton Concelit. And per Coke, a Bishop cannot resign to the Dean and Chapter, Rolf. R. 137. Rolf. R. 137. Hill. 12 Jace. B. R. Anon.

4. Where two Persons have the Donation of a Donatress as Founders, a Resignation to one of them is good. Resolved. Cro. J. 63. Patch. 3 Jac. B. R. Fairchild v. Gayer.

(Watf. Comp. Inc. Svo. 49. cap. 4. cites S. C. Watf. Comp. Inc. Svo. 49. cap. 4. cites S. C. And being made to one of the Patrons and a Stranger, yet it is good to both Patrons, and void to the Stranger, and especially it being made (Et quibuscunque alii Personeis, qui have Interrell.) Yelv. 69. S. C. Brown. 271. S. C.

(F. b. 2) How Resignation may be. And when; And the Effect thereof.

1. If two Persons resign Caussa Permutations, the Church is not thereby void; for this is not Absolute, but Conditional. 3 Bull. 218 Arg. cit 4, E. 3.

2. In Scire facias upon an Annuity recovered against a Parson, the Defendant said, that such a Day &c. as B. in another County, he resigned into the Hands of the Bishop of L. Ordinary there, who accepted it, and fo it remains in the Hands of the Bishop; Judgment of the Writ, and no Plea; for it is only Argument, and fo it seems that he shall say, that No Parson, or traverse that he was Not Parson the Day of the Writ purchased nor after. Br. Traverse per &c. pl. 223. cites 7 E. 4. 15, 16.

3. Re-
3. Retignation or Deprivation shall not abate the Wit, and yet such Acts by a Parson, Prebend &c. shall avoid Leaves made by him who resigns or is deprived. Br. Deposition, pl. 8. cites 15 All. 8.


5. After a Clerk has taken Institution, he may avoid the Church again by Retignation before Induction. Wat. Comp. Inc. Svo. 50. cap. 4.

(G. b) Voidance. Dispensation. In what Cases the Dispensation of the Pope shall prevent a Voidance.

The King brought Quae Impediment against R. Bishop of Sarum, and H. C. Bishop of St. D. of the Prebend of C. in the Church of Sarum, and averred that M Bishop of Sarum, presented this same H. C. now Bishop of St. D. to the Lad Prebend, and after the Bishop was translated to Bath and Wells, by which the Temporalities came to the Hands of the King, and after the said H. C. Prebendary was made and created Bishop of St. D. by which the Prebend voided &c. (For it was agreed, that where an Incumbent is created a Bishop, that his ancient Benefices are void in Fact immediately; For Sovereign cannot use the Office of a Subject; Quod Nara.) and the Bishop of Sarum made Bar at Patron as above, by which he made Colission, abjurate him that the Prebend voided the Temporalies being in the Hands of the King, and the Incumbent & Bishop of St. D. said, that the Bishop of Sarum presented him, by which he continued Prebendary, abjure him, that the Church voided the Temporalities, being in the Hands of the King, &c. non allocatur without making Title, by which he said, that before he was created a Bishop the Pope granted to him to retain his ancient Benefices, by which he retained it &c. And there it is agreed by Thirl, Hill, and Culpeper, that the Grant of the Pope cannot change the Law of England, and after the King left his Grant in another Person, and counted upon the Statute of Provisions; and per Halk and Thirl, this Grant to retain is no Collison, Reversion nor Provisions, and therefore the Pope of the same Patron, to the Bishop that the Bishop be immediate Patron; and it was agreed, that by the Creation into a Bishop the Church is void in fact immediately, and the Patron may present. Br. Quae Impediment, pl. 31. cites 11 H. 4. 57. 59 ——Br. Prepositive, pl. 14. cites S. C. and says, Quære de toto. ——Vaughan Ch. 1. says, Their Meaning is to be learned, who say, that an Incumbent’s Benefice is void by the Common Law, and not by the Canon Law upon his being made a Bishop. The Words of Thirl, who was Ch. J. in this Case of 11 H. 4. are, “That he superposed, when that a Man beneficed is made a Bishop, it is by the Law of Holy Church that his Benefice becomes void; and that the same Law which give the Voidance, may cause that it shall not be void, and that that concerns the Power of the Pope.” And Vaughan says, The Common Law does not prohibit Parliaments, nor make a Voidance of his Benefice when the Incumbent is Bishop, but it is by the ancient Ecclesiastical Law of England. Vaugh. 22 in Case of Edes v. Walter, Bishop of Oxford.

2. In a Quae Impediment, the Defendant plead in Bar the Statute 21 H. 8. that if the Incumbent hath a Benefice with Cure of the yearly Value of 8 l. and is indicted into another &c. the first shall be void, and alledge that the former Incumbent had &c. The Plaintiff replied the Statute 25 H. 8. that a Chaplain to an Earl might have a Dispensation to hold two Livings, and that the former Incumbent was such. And the Question was, Whether the Pope before that Statute could grant such Dispensations at Common Law; and it was argued that he might, for at first every
* (G. b. 2) [Voidance. Dispensation.] Plurality. * There is no Letter to this in Roll.

1. If an Incumbent has a Dispensation for a Plurality from the Pope, and he takes a second Benefice he may keep both, and neither shall be void, * because it is not the Voidance by Common Law, but by a Canon and Law of the Church; and therefore the Church may dispense with it. 11 H. 4. 60. b. takes Notice, that it

puzzes in the New Books for Current, that in Case of Pluralities the Voidance is by the Common Law, and therefore may be dispensed with by the same Law; but that in Case of a Bishop made, the Voidance is by the Common Law; but he says, that if the Canon Law be made Part of the Law of this Land, then it has much a Law of the Land, and as well and by the same Authority as any other Part of the Law of the Land; and if it be not the Voidance of the Law of the Land, then hath it no more Effect than a Law of Un- fals; therefore the Canon Law here is the Law of the Land. Vaughan 21. in Case of Edes v. Walter Bishop of Oxford.

2. If a Parson has a Dispensation to retain the Benefice, if he enters into Religion, the Church shall not void it the Entry into Religion be afterwards. Ditto. 11 H. 4. 60. b. 77. b. 

3. A Monk or such Religious cannot have Benefice by Licence, unless he has a Bull of Exemption. 11 H. 4. 78. 

4. 57. where it was said by some that it had been used to make Dispensations, and to grant to one who entered into Religion to retain his first Benefices.

4. If an Incumbent has Dispensation to retain the Benefice, tho' he be deprived; this shall not have the Voidance, if he be deprived after; (for it seems it is repugnant.) Contra 11 H. 4. 65. b.

5. If a Battard be a Parson, it the Pope makes him able before Privation, he shall retain the Benefice. 11 H. 4. 75. Granted. (It seems he shall not be deprived in this Case.)

King or Archbishop before he be deprived, he shall retain the Benefice. Whitt Comp. Inc. 257. cap 14. cites 11 H. 4. 53. 76. 77. &c.

(H. b) In what Cases the Dispensation of the King shall prevent a Voidance.

1. If the King gives Licence to an Incumbent to be Incumbent and Bishop, if he be made Bishop after, the Benefice shall not be void. 11 H. 4. 62. D. 39 El. 2. R. between Armiger and Holland, her Civilians resolved.


2. Henry de Blois the Brother of King Stephen was Bishop of Winchester and Abbot of Clarenborough. Liber Succesiones 19.

Winfald refers 1 to this Café, and said that the same Person had the Possessions and the Dignities of them at the same Time. — In the Time of H. & Henry Comfort the King's Great Uncle, being made Cardinal, had the Pope's

4 Y
[I. b] In what Cases the Dispenstation of the Pope subsequent shall toll the Benefit of a Voidance. [Voidance by the Canon or by Statute, when and in what Cases. And Pleadings.]

1. If an Incumbent be created Bishop, the Dispenstation of the Pope after to retain the Benefice also shall not void the Patron of the Preleucnt. 11 H. 4. 38. b. 59. b. 78. b. clearly agreed.

2. If an Incumbent of a Church, with Cure under 81. per Annum, takes a second Benefice with Cure, in which he is also Instructed and Inducted, by which the first is void against the Patron, so that he may preseas, but before Preleucntation the Archibishop by Force of the Statute of 25 H. 8. gives to him a Licence perinde Valere) to hold the two Benefices, tho' he was Instructed and Inducted before into both; this is not a good Licence, tho' confirmed according to the Statute to take away the Preleucnt of the Patron, tho' it is a Voidance by Force of the Canon, and not by Force of the Statute of 21 H. 8. For by the Canon the first Benefice was to void, that the Patron might have preseas before any Dispensation, and therefore after such Time as the Patron had Power to preseas, this Power cannot be taken away by a Licence. Trin. 14 Car. B. R. between Baldeok and the King; in Writ of Error upon a Judgment in Bank in Suae Impediment, where it was so adjudged upon a De- nuncer; and now per Curiam of B. R. accordingly resolved, but Day given over to Michaelmas Term. But afterwards in the same Trinity Term adjudged accordingly per Curiam. Intra Term. 13 Car. Rot. 1259.

See S. C. ar.
gued Mo.
443 to 448.
by Name of
Robins v.

* Fol. 260.

Gerrard and
Prince. And
Ibid. 448.
The Justices

doubted if the Qualification and Dispenstation which came after the Institution, and before the Induction to the second Benefice, be sufficient by the Proviso of the Statute of 21 H. 8. to retain both Benefices; and Popham and Gawdy thought that it was not sufficient, because the Induction shall have Relation to the Institution, and the Benefice is taken by the Institution; and the Intent of the Statute was nor, that the Qualification should serve them who might obtain two Benefices, but that first they should be Chaplains retained, and Qualifie or Graduates, and then to acquire the Benefices; and if it shall be allowed that the first Benefice shall not be void till Induction, one might by Covin obtain 20 Benefices, and not be Inducted to any, and would never take Dispenstation till he had first the Benefice; but Fenner and Clichen contra, that the Qualification and Dispenstation is Time enough before Induction: And after 23 Convocation of all the Jusifie of England, Hill. 41 Eliz. they agreed with Popham and Gawdy, by which Clichen and Fenner Mutatis Opinionibus attented to the Judgment for the Plaintiff. — Godsb. 162. pl. 97. S. C. — Jenk. 273. pl. 42. S. C.

4. King H. 4. Prefented one that was incapable of his Presentation, and the Presentee was thereby Admitted, Instructed and Inducted, and afterward
ward the Pope enabled the Presentee by his Bull, yet the King had a Seire facias, and thereby recovered his Presentation again, because the Incumbent was not capable when he was pretenced. Dod. of Adv. 74. Leis. 14.

5. 21 H. 3. 13. § 9. Enacts that if any Person having a Benefice with a General Life, and therefore need not to be pretenced, or any Part thereof. Cro. E. 661. Armiger v. Holland. —Mo. 322. S. and P. —§ 1. Value of a Church shall be accounted as its valued in the Valuation of the Bench, and not according to the true Value, as it is upon Improvement, that Opinions have differed before; for the Statue mentions it was valued in the ancient Book of First Fruits and Tenth, which was taxed 29 £ 1. And after when another Valuation was made 26 H. 8 then according to that Valuation. Cro. C. 456. cites it as adjudged in Sir. in C. B. in Case of Drake v. Hill. According in general, that 'tis of 81. Value, sufficient, without saying it is such Value in the Queen's Books, and it shall be taken to be accounting to the true Value thereof! Cro. E. 832. Bond v. Trickett. —It shall be accounted according to the true Value of the Church. Nay 38. Irene v. Trickett —Same Cases cited Warf. Comp. Inc. 8vo. 6. cap. 2. —In all Precedents of Pleadings founded upon the Statute of 21 H. 8 it is expressly alleged that the Benefice at the Time of accepting the 2d, is of the true Annual Value of 81. and 2d) the Precedents in Co. Ent. 569. c. 512. a. With § 70 and § 57. And it seems also that where a Verdict found that the 2d Benefice is not of the clear yearly Value of 50 £ it is irrebutted Imperially. For in a Trial at Bar of B. R. Hill. 2 W. & M. in Exequency by John Leiffe of Esq. F. Lakes Dean of Wiltfie v. Dr. Simmib Dean of Guernsey, for the Rectory of H. in the County of Oxford, it was agreed by all the Justices that the Value shall be taken as in the Valuation in the King's Books, and the same Resolution was per tot. Cur. In the Exequency, 5 Nov. 1692. in a Case between Stamp and W. By Bill. 3 Lut. 1555. in the Case of Shipes b. Smith, the Reporter says he had this by good Information; and adds, That if the Value shall be taken as in the Book, it was to many Years before the Verdict, to what Purpose can it be to find by the Verdict, the than it was of the real Annual Value of 50 £. For if the Value thereof shall be taken, as it was in the last Book of the first Fruits, this was 26 H. 8. In Quare Impedit the Plaintiff set forth, That he was cited in Fee of the Advowson, and presented A. who took another Benefice, and to the Church became void. Per acceptionem alterius Beneficij, and the Defendant demurred, because he doth not show the Value of the 2d Benefice, nor that there was Care of Souls belonging to it: And resolved per Curiam, That he need not, the Plaintiff himself being rightful Patron; but otherwise it is the Plaintiff did go to mistake himself by a Rule, there he ought to have these Particulars, that it might appear to be a Cession within the Statute that the Patron ought to the Notice of; but to the Patron it is sufficient that the Benefice be void, and sheto the Benefice be but of the Value of 20 s. per Ann. yet the Patron may take Notice of it, if he will; but he is bound to take Notice of it according to Valuation Cafe 111. If he value be taken on Valuation per Cessio, yet if it be found Quod vacante per Mortem, it is for the Plaintiff he be Patron, according to ir. 282. And so the Demurrer was over-ruled. Freqm. Rep. 241. 242 pl. 235. Buhl, 16...—Pridgdon's C. A. If there are two Parishes of one Church, and each of them has the entire Care of the Parish, and both the Benefices of the Value of 81. per Ann. one dies, and the other is pretenced, this is a Parliury within the 21 H. 8. and is within the Limits of the Statute, that none shall have 2 Liberties or Benefices with Care of Church. Cro. E. 511. Anon. —Hub 138. 8. B. but lays that if the Churches had been united before, and then a Patron had been pretenced &c. to the United Churches, it had been otherwise.

S. 10. It shall be lawful for the Patron thereof to present another, as if the instrument had died or resigned, any Licence, Union, or other Dispensation to the contrary notwithstanding.

he pleads, may present upon the taking of the 2d Benefice. Per Vaughan Ch. J in delivering the Opinion of the Court. Freqm. Rep. 51. pl. 64. in Case of Shute v. Hislop.

Since the Statute of 21 H. 8. there have been diverse General Parishes, and no Plurality was ever conceived to be within them. Cro. C. 532. in Case of the King v. Pryll.

S. 11. Every Licence, Union, or other Dispensation obtained contrary to The Pope this shall be void.

S. 12. If any Person of either (from Rome or elsewhere) any Licence, Union, or other Dispensation, to receive any Benefice with Care, be shall forfeit Privileges. Br. Parliam. pl. 12. cites Sir H. 4. 6. —Per Horton, to which Hankford agreed —[* All the Editions of Br. have the Word (Note) but the Year-Book is in the Affirmative, if with the Consent of the Patron] —And in the Case of Andrew Coke (Quoted in the Notes) Vaughan Ch. J gives the Opinion that if it were without the Consent of the Patron, it was not depending to hold, but was a Granting away the Property of the Patron, which a Dispensation could not. Gaiusitus Cotinis D. D. Archididacous Law entis
Presentation.

Lemmes the 13th of May, &c.

May ordain, that every Spiritual Person of the King's Council may purchase a Licence or Dispensation to keep 3 Benefits with Care, and the * Chaplains of the King, Queen, King's Children, Brethren, Sisters, Undes or Aunts, may so keep each of them 2 Benefits with Care.

*The King's

S. 13. Provided that every Spiritual Person of the King's Council may purchase Licence or Dispensation to keep 3 Benefits with Care, and the * Chaplains of the King, Queen, King's Children, Brethren, Sisters, Undes or Aunts, may so keep each of them 2 Benefits with Care.


S. 19. The Brethren and Sons of Temporal Lords (born in Wellow) may purchase such Licence or Dispensation, to keep as many Benefits with Care, as the Chaplains of a Diocese or Archdeacon.

S. 21. The Brethren or Sons (born in Wellow) of every Knight may keep two with Care.

A Retainer within this Statute must be formed and after their Lord and Master, testifying whose Chaplains they be, or else not to enjoy such Plurality of Benefits.

S. 22. Provided that the Chaplain, so keeping Benefits with Care, shall (where need shall be) have Letters under the Seal or Seal of the King, or of some other Person, or of both, testifying whose Chaplains they be, or else not to enjoy such Plurality of Benefits.

Seal of the Qualifier. Jenk. 275. p. 91. — And so are the Words of the Statute, and so Selling only is not sufficient. Godb. 41. Queen v. Savage. — By the Retainer of the Number allowed by the statute, the Squire is executed, and the Person so qualified to retain has no further Power to qualify another, by doing a further deal; for the Act is Provided always, that they shall have &c. Stat. 18. The Queen v. Benjamin,et. Skilling. and Skilling. — Having seen the Retainer under the Hand and Seal of the Person who gives the Qualification, is good Evidence of the Retainer. Litt. R. 1. The King v. Frankwell.

On a Question whether a Leaf, granted to W. the Plaintiff, by a Parson of a first Living with Care, and above 81 a Year, was good, he having accepted a 2d Living with Care and of 81 before the Leave was confirmed by the Bishop, and he being Chaplain to Queen Elis. but no Testamental being produced (the Parson having been dead 30 Years, and the Leaf continuing, it being made for 81 Years) it came in Debate whether a Retainer by Parol only by the Queen, was not sufficient. Coke Attorney General infold that Chaplain may be retained by Parol without Testamental, and that Qualification comes times cannot, and made before he is unfeudal; so that he has it in Pugno to shew to the Court, tho' he had it not at the Time of taking the second Benefice. And adjudged accordingly for the Reasons aforesaid. 2 B. R. pl. 224, Whitelaw v. Hickford. — Cro. E. 42a. 424. Mich. 7 & 8 Eliz. B. R. C. P. Poulton held that the Queen could not retain by Parol only; but Fenner et contra. It was shown that Y during his Life was reprieved her Chaplain, and performed the Office of Chaplain as well in her private Cloister as elsewhere, and had all the Benefits as her Chaplain &c. Wherefore the Court said that it should be intended that he was her Chaplain, and was well and duly retained; and therefore it was held that he was a Person able to make such Leave; and the Jury found for the Plaintiff. — 1 Salk. 162. in a Note, in the case of Brown v. Mugg, cites 8 C.

S. 23. Doctors and Bachelors of Divinity, Doctors of Law, and Bachelors of Laws in Canon, admitted to the said Degrees by either of the Universities of this Realm, and not by Grace only, may purchase such Licence to keep 2d Benefits with Care. 29.
S. 29. It shall be lawful to Spiritual Persons, being Chaplains to the King, if one being to accept (of the King's Gift) any Benefices, to what Number aforesaid, without the incurring the Penalty of this Act, the King's Chaplain takes a Bis- 

phoprick, &c.

celves to be the King's Chaplain, and Bishops are not in that Respect Chaplains to the King, within the Meaning of this Law; So that the Clause of the Statute which gives the King Power to give as many Benefices as he will of his own Gift to his Chaplain, will not stand them. Per Hobart Ch. J. Hob 15.

In Case of Colt and Glover v. Bishop of Coventry.—The King by a Special Process in the Statute 21 H. S. may give to any of his Chaplains as many Benefices as he pleafe. But otherwife it is a Common Perfon; for they are flinted by the Statue: Adjudged 4 Le. 244. p. 42. Trim 21. Jan. C. B. Bishop of Exe-

cetera v. Wallop.

S. 14. Every Archbifhop and Duke may have each of them 6 Chaplains. The Arch-

bishops' Chaplain having one Benefice of the Gift of the Queen, procured a Dispensation to Have and Enjoy 3 Benefices incompatible, which the Queen confirmed under the Great Seal, its quod &c. Abique impedimento aliquam Statut, ant aliquit alia re quacunque Non Oblata, by Virtue whereof he obtained two others incompatible. And it was a Question whether the first was void by the Statute 21 H. S. or not. And the next Term Judgment was given for the Queen without Argument. D. 53. b. p. 25. Trim 18 Eliz. Coxe's Case. — The Reporter adds a Note, that to much of the Act of 21 H. S. as concerns the procuring Dispensations from Rome for Plurality or Non-Residents, and all Words and Sentences concerning it, and also the entire Act of the 24th for granting Dispensations at Canterbury, are repealed by the Act of 1 & 2 P. & M. cap. 8. And by the Act of Eliz. 1, the entire Act of the 1 & 2 P. & M. is repealed, and also this Part of the 21 H. S. and no Words of Reviving thereof; for this had been merely contrary to the Intent of the Act; but in the Act of the 25th which is Revived, there is a Pro-

vifio and Restraint to Canterbury, for Dispensations derogatory or contrary to the Act of 21. which affi-

xes the 21 to be in Eic and Force. D. 352. p. 25, at the End.

S. 15. Every Marquis and Earl may have 5 Chaplains. An Infant

S. 16. Every Viscount and Bishop may have 4. Lord of 90 years of

Age, retained a Chaplain, and held good within the Statue. 4 Rep. 119. cited in Aclon's Case, as if the Queen v. the Bishop of Salisbury. Patch. 44 Eliz. upon a Retainer by the Earl of Southampton.

—Wait. Comp. Inc. Svo. 29 cap. 5. cites S. C. If the Son and Heir apparent of a Lord retains a Chaplain, his Father dies; this Retainer is not suffi-

cient, but there must be a New Retainer. Jenk. 2. p. 91. — Wait. Comp. Inc. Svo. 53. cap. 3.

cites S. C.

S. 17. The Chancellor, and every Baron and Knight of the Garter, may have 3.

S. 18. Every Ducketfs, Marchionefs, Countefs and Baronefs, + being Wife, +

dows, may have 2. By these Words it suffices that


S. 19. The Treasurer and Comptroller of the King's Household, the King's Secre-

tary and Dean of his Chapel, the King's Almoner and Master of the Rolls, may each of them have 2, and the Chief Justice of the King's Bench, Lord having two Benefi- 
cences with Care, without a special Licence or Dispensation. The Treasurer and Comptroller of the Metropolita-

Licence or Dispensation of the Metropolitan, seems not to be in Danger of losing his Plurality by Force of the Act of 21 H. S. because the Words are not that he must sue for a Licence &c. but that he may sue for such Licence &c. but he is thereby in Danger by the Spiritual Law. Quare bene inde. D. 312. b. p. 38. Anon.

S. 24. Provided that every Archbifhop, because he must be at Conferation of Bishops, 8 Chaplains; and every Bishop, because he must be at the giving of Orders and Conferation of Churches 6 Chaplains, may have two Chaplains over and above the Number limited, whereas every one may purchase Dispensa-
tion, and take as many Benefices with Care as is before advis'd.

S. 25. No Perfon, to whom any Number of Chaplains by the Provisions aforesaid is limited, shall advance any Spiritual Person above the Number appointed, to receive more Benefices with Care than is above limited; and if they do, every such Person so advanced above the said Number shall incur the Penalty in this Act.

4 Z

S. 33.
Presentation.

After Marriage with a Peer, the can't retain, the after Marriage with a Gentleman may be. Jenk. 273. pl. 91.—Watt. Comp. Inc. Soc. 34. cap. 5.; cites S.C.——

6. 25 H. 8. 16. S. 2. Enacts that every Judge of the King’s Bench and Common Pleas, the Chancellor and Chief Baron of the Exchequer, the King’s Attorney and Solicitor-General may each of them retain one Chaplain, having one Benefice with Care of Souls.

Goldsb. 162. 7. Dispensions are involved in Chancery in a Paper-Book kept there by S. C.—This Way of Memorandum; as for Instance, 25th August, Ann 29 Regime was agreed by the Jubilee. Brog. ut t. una cum Reformation Ecclesiastica Parochialis de Horton Eccles not to be in the Bishop of Robins v. Gerrard and Prince.

Goldsb. 164. 161. in S. C. of Robins v. Prince.—[The Act appointing the Involvement is not the 21 H. 8. but the 25 H. 8. cap. 21.]

8. P. Reelor of C. was elected Bishop of Oxford. Before this Conferment the Archbishop gave him a Dispensation pursuant to the Statute of H. 8. to retain his said Rectory with the Bishoprick, which the King confirmed by Letters Patent under the Great Seal, and that the Bishop might enjoy &c. so long as he continued Bishop of Oxford, with a Non Obstante aliquo Statuto, or other Matter. P. died; W. was elected Bishop of Oxford, and got Letters of Dispensation &c. to hold the said Rectory in Commandant &c. The Patron of C. brought a Quare Impedit. Judgment was given by the Opinion of the whole Court, That the Avoidance was by Death, and not by Cessation. Vaugh. 19 to 27. Patch. 19 Car. 2. Edes v. Walter Bishop of Oxford.

See (1 b) pl. 5. in the Notes.

1. In the Statute of 21 H. 8. 13. is a Proviso, That no Deanry, * Archdeaconry, Chancellorship, Chaplery, or + Prebend, nor Parfomage that does both a + Vicar endow’d, nor any Benefice properly appropriate, be taken to be a Benefice with Care of Souls in any of the Articles of this Act.

* S. having one Benefice was presented to a 2d, and then purchased a Dispensation, (which was too late) and then was qualified, and afterwards accepted the Archdeaconry of Gloucester. Wray said, That a Doctor of the Civil Law affirm’d to him, that their Law is, That if One having a Benefice with Care of Souls accepts an Archdeaconry, the Archdeaconry is void; but Wray said, That he conceiv’d that upon the Statute of 21 H. 8. the Law is qualified by this Proviso. Le 216. pl. 442. Patch 31. Eliz. B. R. Underhill v. Savage. — S. C. shortly stated. 4 Le 88 pl. 185, by Name of Savage’s Cafe. — Taking a Prebend does not make a Church void. Mo. 261. pl. 411.

† It was said, that the 21st of H. 8. against Parishes does not extend to Rectories where there are Ecclesiastics endow’d, and Llandeul describes a Benefice without Care, in Cupis Curry Viscitils perpetuo exercendis efl; Otherwise, where the Vicar is Temporal and Removable. Arg. Vent 14. Patch 21. Car. 2. B. R. in the Cafe of Heath v. Pryn. — A Man was prefect to a Church with a Vicarage endow’d, the Parish accepted of a Premonition to the Vicarage without Dispensation; whether this were a Plurality by the Law, and by the Statute of 21 H. 8. was the Question. Hobart Ch J. was of Opinion, that notwithstanding they were several Advowsons, and several Quare Impedita might be brought of them, and several Actions maintained for their several Pollutions, yet the Premonition of one Man to the Parsonage and Vicarage was no Plurality, because the Parsonage and Vicarage are not Care Care; And there is a Prov.
void in the Statute, That no Parsonage, that hath a Vicar endow'd, shall be taken by the Name of a Benefice with Cure within the Statute, as to make it a Plurality. Godolph. Rep. 296. cap. 26. S. 5. cites Mich. 22 Jac. B.R. Woodley and the Bishop of Exeter, and Manwaring's Cafe. Cro. par. 2

But I do not observe this Point there.)

2. In Quare Impedit, it appear'd, That the Incumbent of a Church in England was made a Bishop of Ireland; and afterwards the King granted to the said Bishop to have and retain the said Church for 6 Years in Consequence. It was held, that the Commandator, notwithstanding this Grant for 6 Years, hath yet Power to retain during his Life, and cannot be abridg'd by the Limitation for 6 Years; and it is like a Confirmation or Attornment, or Affirm to a Legacy, and cannot abridge the Estate which is confirm'd, but that it shall enure according to the Estate which is limited. Per Hutton & Winch Julites. Cro. J. 692. Mich. 22 Jac. C. B. in the Cafe of Woodley v. Manwaring &c.

(I. b. 3) Voidance. At what Time by Pluralities.

1. It was held Per Cur. That if any Parson who was ousted of his Parsonage in the late Wars, by that which they then call'd Sequestration, for not conforming to the Presbytery &c. had accepted another Benefice by Presentation, and Confirmation by the Commissioners or Triors, (there being then no Bishops) this was not any Avoidance of the 1/12 Living unless be continued in such Second Living the 25th of December, Anno 1659 (which is the Time mention'd in the new Statute) and so void'd his Liking thereto. Sid. 163. Mich. 15 Car. 2. B. R. Brown v. Spence.

2. It has been resolve'd in Holland's Cafe, and likewise in Dilly's S. P. Lane Cafe, in the 4 Rep. and often before since the Council of Lateran, Anno 22. in the Cafe of Deniv's Drake. — cites 4 cites 2. in Dilly's Cafe — But it is void, for as the Patron may present another to it if he will; but if the Patron will not present, then it under the Value, no Lapse shall incur till Deprivation of the first Benefice, and Notice; but if of the Value of 81. or above, the Patron at his Peril must present within 6 Months be allow'd by 21 H. 8. 13. Vaugh. 131. Hill. 22 & 23 Car. 2. C. B. Shute v. Higden.

Core void without Induction. Trin. 1 & 2 Ph. & M. Agar v. Bishop of Peterburgh and Den. — By the taking the second Benefice, and by the Induction thereto the first is clearly void. Cro. F. 651. Mich. 39 & 40 Elias B. R. Armiger v. Holland. — The Incumbent after taking the said Benefice may officiate the Cure till the King himself takes Cure to do it or 'till another shall be admitted and instituted to it, and shall be subject to Payment of Tents, and subject to Ditire's for Rent Charge and other Charge which lies upon the Rectory, because he takes the Profits as one that enters without Admission and Indition shall be, but neither the one nor the other can bring Action of Juris strum, or Wrts of Amity, nor sue for either, nor plead as Incumbent in Possession in Quare Impedit, without a Qualification and Indition. Jo. 339. Hill. 9 Car. the King v. Prett. —— * Godb. 25. pl. 53.

3. Where a Parson is presented to a 2d Benefice there is a Difference S. C. Vaugh. between Non-subscription and Not reading after Subscription, as to the making the first Church void for the Statute 13 Eliz. prohibits Admission be's C. B. Ad. Fore Subscription, and makes the Admission, Indition, and Induction unjust'd.—S. C. void; and in such Cafe the Party never was lawful Parson, and to the & P. Per Vaughan Ch. 1. And he required to inform the others of the reading the Articles should not make the Benefice void ab Initio; but the Statue is, That Admissions, Inductions, and Inductions made contrary to the Act should be void ab Initio; Now he that does not subscribe is not
(I. b. 4) **Dispensations.** Granted by what Words, and necessary in what Cases.

1. **CHAPLAIN** advance'd to two Benefices with Cure ought to have the King's Dispensation for Non-Residency, and ought to be resident upon one of them. Confirmation of the King, and Dispensation of the Archbishop are necessary regularly to maintain Pluralities. Jenk. 273. pl. 91. cites Rep. Drury's Cafe.

2. Quare Impedit by the Queen for having taken a 2d Benefice, and a Lapce incur'd, the Defendant pleads a Dispensation from the Archbishop, Upon Oyer of the Dispensation, which recited the two Benefices to be of small Value, and then said, Unimisses, incorporatas & anneximas the one to the other, for the Life of the present Incumbent, without the Word (Dispensation) for the Taking thereof, It was objected, that this Clauze could not enure as a Dispensation, because there was no such Intention, but to make an Union; and this cannot be an Union, because there is not the Concurrence of the Patron and Ordinary, Sed non Allocatar; for Per Curiam, tho' there cannot be a Perpetual Union without the Concurrence of the Patron and Ordinary, because 'tis a Lois to them, yet there may be a Temporary Union, i.e. to the Person; as in this Cafe, for the Life of the Incumbent, and this (as was said at the Bar, and not denied by the Court) might be done by the Metropolitan alone; for after the Death of the Incumbent the Union is dissolved, and no Lois accrues either to the Patron or Ordinary in the mean time, for one of them had his Presentation and the other his Admission; and this is a compleat Dispensation, and allow'd by the Statute 21 H. 8. (viz.) Any Licenté, Use, or Dispensation to the contrary, and no Necessity for the Word (Dispensation.) Cro. E. 719. Mich. 41 Eliz. C. B. the Queen v. Page and the Bishop of London.

3. A Parson who had one Benefice, and being Chaplain to an Earl got a Dispensation to hold another, *Modo fit intra 10 Miles of the first;* and he accepted another, with Cure, and was instituted and inducted, but it was 17 Miles distant from the first; and the Patron not presenting to the first Benefice within 6 Months, the Bishop collated to the first, and his Collatee was instituted and inducted; and in Ejection, the Question was, Whether the Words (*Modo fit*) made it a conditional Dispensation, and the first Benefice void, when he took the second. Adjudg'd, that tho' these Words usually made a Condition, yet by the Civil Law they were only a Caution or Admonition, unless other Words are added, viz. *That if he do otherwise, then it shall be void,* and therefore in this Case all the Court refus'd, that they shall not make a Condition, and the father because of the great Inconvenience which might follow, to make a great many Benefices void by Lapce, which have been quietly enjoyed under such Dispensions. Cro. Car. 475. Trin. 13 Car. B. R. Dodson v. Lynne.

4. The Defendant was Chaplain Extraordinary to the King, being Incumbent of Stockton, and afterwards inducted to the Rectory of Inkborough, being above the yearly Value of 8 l. by reason whereof Stockton was void, and fo continued two Years; and then he was again presented.
(I. b. 5) Qualification. What is good, or may become good Ex post facto.

1. IN QUARE IMPEDIT by the Queen to present to the Church of M., which was void by the Incumbent's taking another Benefice, not being qualified ; the Defendant pleaded, That he was Chaplain to Sir James Crofts, Controller of the Household, and who by the Statute of 21 H. 8. might have two Chaplains, and might qualify them to take two Benefices, and that he had a Dispensation accordingly. The Plaintiff replied, That the said Sir James Crofts had two other Chaplains advanced to two Benefices, and who are still alive, and so the third could not be qualified &c. The Defendant rejoined, That one of those two Chaplains was dischargin; by the said Sir James Crofts, to be his Domestick Chaplain, he hath now but two Chaplains, of which the Defendant is one; and upon Demurrer, it was adjudged, That after a Person hath retained his full Number, and they are certified Sub Signo & Sigillo to be his Chaplains, and thereby qualified to have two Benefices, tho' he afterwards remove them for any Dippleasure, or otherwise, out of his Service, yet during their Lives he can qualify no other, for they are still his Chaplains at large, tho' not his Domestick Chaplains, and so are Chaplains within the Statute. Godb. 4. pl. 47. Trin. 28 Eliz. C. B. Rot. 1132. The Queen v. Savare.

2. A LORD retains 6 Chaplains at one and the same Time by Letters Testimonial, where he is only intitled to retain three.—All six are pretend'd to fix several Pluralties.—The three who are first promted are warrantied by the Statute, and yet the Retainer was not according to the Statute, But IN AEQUALI TROE MELIOR EST CONDITIONI SUSCEPTORI. 4 Rep. 90. Trin. 43 Eliz. in Drury's Cafe.—cites D. 132.

3. Retainer of a Chaplain more than the Act allows is not made good by the Death of the other Chaplains afterwards, but he must have a new Re-tenure. Per 3 J. v. Gaudy ; and adjudg'd accordingly, and the Judgment affirm'd. Cro. E. 839. T. Trin. 43 Eliz. Drury v. the Queen.

4. If a Man be a qualified Chaplain to any Subject, and then be made a Bishop, his Qualification is void, so as he cannot take two Benefices De Novo after by force of that Qualification. Per Hobart Ch. J. Hob. 157. in the Cafe of Colt and Glover v. the Bishop of Coventry.
**Presentation.**

See (I. b) pl. 5. S. 29. in the Notes.

(I. b. 6) Retainer. How. And Qualification Annul'd or Destroy'd by what Act.

1. LORD's Chaplin being sufficiently qualified with his Master's Testimonial Sign'd and Seal'd, that he is his Chaplin, and having also a Special Dispensation for a Plurality, and being once advanced to the Plurality, ought to enjoy it during his Life, notwithstanding his Master's Death, or Departure from his Master's Service. Per Catlin, Saunders and Dyer. D. 312. b. pl. 88. Trim. 14 Eliz. Anon. But the Reporter adds a Quære, by Reason of the Case of Whatcomb (Whetstone) v. Hickford—Sav. 101 pl. 18. S. C.—4 Rep. 80. b. S. C.—Jenk. 232. pl. 91.—Mo 361. pl. 65. Mich. 41 & 42 Eliz. Adjourned by Anderfon, Glanvill and Kingmill, that he who was first retained should be prefer'd, and not he that first took a 2d Benefice, and got Dispensation; but Walmesley controverts the Case. The Queen v. Drewry, as to the 2d Retainer—C. E. 724. 2 Judges, who before inclin'd otherwise, changed their Opinion; And so it was adjudged that the 3d Chaplin was not within the Benefit of the Statute 21 H. 8. 13. The Queen v. Drury.

2. Baroness's Widow retains 2 Chaplains, and they purchase a Dispensation, and the Baroness marries before the Chaplains accept a double Benefice; yet they may take two Benefices, because the Marriage is no Discharge of the Service; but otherwise it is if she dies, or if the Baron discharges the Chaplains, as he may, but if he does not discharge them, but dies; there needs no New Retainer. Mo. 678. pl. 924. Mich. 44 & 45 Eliz. C. B. The Queen v. Bishop of Peterborough.


The Earl of Winchmoreland retained 2 Chaplains, and after was attainted of High Treason, and afterwards during his Life, the Chaplain having one Benefice of the Value of 81 accepted a second Benefice with Cure. And it was adjudged that the first Benefice was void; for tho' the Earl was alive, yet the Quality of his Person was altered; for by the Judgment he was become ignoble. 4 Rep. 117; b Hill. 45 Eliz. C. B. in Aclon's Case. Cites it as the Earl of Winchmoreland's Case.

4. Attainder of the Lord &c. is Discharge of the Service and Power to qualify; and those Chaplains retained and qualified before, who have not two double Benefices, are disabled by the Attainder. Mo. 678. pl. 924. Mich. 44 & 45 Eliz. in Case of the Queen v. Bishop of Peterborough.

5. If an Officer allowed by the Statute to have one, two or three Chaplains, retains a Chaplain, and after is removed from his Office, in this Case the Retainer at the Common Law remains, but the Retainer upon the Statute is determined; for after the Remotion the Chaplain can't be Non-Resident, or accept another Benefice. 4 Rep. 118. Aclon's Case.


The Church is void in face immediatly, and the Patron

If an Incumbent be made Bishop, the Church is void. D. 4. 5. Mo. 159. 34. Doctor and Student. 130. b. 7 D. 4. 25. b. 11 D. 4. 37. b. 24 E. 3. 26. b.

2. If the Incumbent of a Provostry be elected Bishop of the Bishopsrick Wirt Comp. which is Patron of the Provostry, and afterwards the King grants the Temporalities to him, yet the Provostry is void before Confirmation; For he may refuse before, and he is not Bishop before Confirmation, 41. E. 3. 5. b. ad libitum.

3. But after Confirmation the Provostry is void, 41. E. 3. 5. b. ad libitum.


5. If an Incumbent be created Bishop of the fame Diocefe where he was Incumbent, the Church is void thereby; For he cannot be Sovereign and Subject. Da. 1. 1. Commentaries. 69.

6. So if he be created Bishop of another Diocefe, the Church is void thereby, 11. D. 4. 37. b. 77. Because he, who has taken upon him the office of a Sovereign, shall not retain the office of a Subject.

7. If an Incumbent be elected Bishop, yet the Church is not void thereby before Confirmation, 11. D. 4. 37. b.

8. If an Incumbent in England be made a Bishop in Ireland, yet the Church here is not void thereby, 24. E. 3. 2. b. If Dean of York be made Bishop of Limerick in Ireland, this makes a Dispensation of the Deanny as well as if he had been made Bishop of any Place in England. 13. Car. Regis, between Evans and Alosch. Relolved per Curiam upon a Special Petition, and ordered per Curiam, That this should not be spoke to any more but only to the Parties in the Case.

9. If an Incumbent had been created Bishop, this had made a Vacancy by the Common Law, 11. D. 4. 38. 60. 77. 29. E. 3. 44. It was said that herefore when the Constitutions were made, by which Plurality was voided, the which Constitutions commenced from Rome, yet from that Time it was Caus of Vacancy in Banco Regis. 10. 26. E. 3. 55. b. It is said, That the Pope J. made Constitution that a Patron shall not have but One Benefice with Cure &c.

11. In a Quare Impedit, for hindring to present to the Parish Church S. C. Show. of St. James, the Plaintiff declared, That St. Martin's being a large Parish by a Statute made 1 Jac. 2. the Patron of St. James's was to be taken out of it, and made a Patron of itself with Cure, and Dr. Tennison, then Vicar of St. Martin's, first Reitor, and appointed the Patronage after his Death to the Bishop of London and his Successors, and to the Lord Jeronim and his Heirs alternately, that Dr. Tennison afterwards made Bishop of Lincoln, so that it belonged to the King to present by his Prerogative; To this Declaration the Bishop of London demurred, and Dr. Birch pleaded the Statute 25 H. 8. And that by virtue thereof, the Archbishops of
of Canterbury granted a Dispensation to Dr. Tennison, to hold this Church in Communion, which the King confirmed from the 22d of October till the first of July following &c. To this Plea the Attorney-General demurred. The Court held, That the King's Turn is not served by * confirming this Commendam, because the Dispensation was only to live the Avo-
dance, and the Confirmation continued the Poise, but transferred no Right; It was objected, That no Body can say the King shall present, when the Act of Parliament says otherwise, And that this was therefore a Cattle except from the Prerogative; but the Court held that this Act did not interfere with the Prerogative, because a New Dispensation must be subject to the Prerogative as an Old one; such like an Easement created by Act of Parliament, is subject to such Bars as other Estates-tail, and the Wife shall be endowed of it. Then it was objected, That this New Church, as to Dr. Tennison, was a Kind of Donative, he coming in without Institution and Induction. And that by the very Words of the Statute, the pre-
etable Right do not commence till after him; And that in Cafe of a Donative, the Promotion of the Incumbent makes no Cession. But Curia Contra; For in point of Easement the Right of Presentation commences by the palling of the Act Immediately, but in point of Interest, not till the
Avoidance. 2 Salk. 540. Mich. 7 W. 3. B. R. The King v. Bishop of Lon-
don and Dr. Finch.

(L. b) Taking of second Benefice.

By the In-
stitution and
Induction to 1. If an Incumbent takes a 2d Benefice, the first is void Anno
the 2d Ben-

fice, the first is void, tho' the

first be under $1
as well as if it

was above that

Value

Per Jonas J. 16. 424, 425. the King v. Baldeock — Dr. Watson says, If one of our Clergy be
created a Bishop Suffragan of England, not any (as he conceives) of the Prelates he had before, do become void; but on the other hand, if he exercise the Office of a Suffragan by Commission he is there-
by qualified to hold at one Time two Benefices with Care, and cites Stat. 26 H. 8. cap. 14. However, his

Bene
cence with Care, taken after he is suffragan, may (unless Dispensation prevent) void any Dignity he had before. Watf. Comp. Inc. Svo. 43. cap. 3. —* Hob. 158. 166.

2. At Common Law, if an Incumbent had taken a 2d Benefice, with Care neither the first nor second had been void. Co. 4. Holland.

75. b.

But by the General Council of Lateran, held Anno Domini 1215, it was ordained, That if a Man takes divers Benefices with Care of Souls, the first shall be void, it has not the Dispensation of the Pope. Co. 4. Digby 79.
Preseation.

Pope Alexander the Third at Rome, in Palacio Lateranensi ibidem inceptum in Anno 1170 & continuata alique Annum 1179, quod est Anno 26 H. 2. Arg. Mo. 426 in the Case of Robins v. Gerard. 4 Sep 79. in S. C. by Name of Digby’s Case, it is said by the Reporter to have been under Innocent the Third. — Knighton’s Chronicle Inter decem Scriptores, pag. 2422. 119. 27. This Council was held under Innocent the Third, in Anno 1215. — 2 Inst. 31. mentions it in the Year 1179.

4. This is to rectify in Linwood, fol. 81. in the Constitutions of Peckham, where by the Provincial Synod the Constitution of the General Council is confirmed, and the Constitutions of Othobon in Linwood, that the last ought to be void, is repealed as too hard and strict. Co. 4. Digby 79.

5. 27. 1. Rot. Pat. 99. 16. in Appellationsbus. Papa dispensavit cum J. de Langetone Cancellario super Pluralitate Beneficiorum suorum cum Curis suo Cetera, quae obtinuerit, nisi dispensavit quod quidem haec Beneficet cum praevia reciperet & renuntiate polit in Regi palatu, at sedent Cancellaria condescenderet assumtur & Rex beneficium unum incenit per patentes litteras.

6. If an Incumbent takes a second Benefice with Cure, by which the first is void by the Canon against the Patron, so that he may present before any Deprivation, yet till Deprivation it is not void to a Stranger; For it he sue for Times against a Parishioner, it is not any Bar against him that he has taken a second Benefice. 121 Car. B. R. said by Justice Barkeley, that Justice Bichetton in his Argument of the Case of Fryst said, that it was adjudged.

7. 1. 11. 3. 2. R. Rot. 21. The Bishop of Durham presented B. to the Prebend of W. of the Church of St. Andrew, and after the same B. to the Deanship of the same Church. Et pro quo non licet aliquis praedictas in una & cedem Ecclesiam Collegiæ posse videat. [twas] Unjudged quod Rex recuperet Praesentationem ad Ecclesiæ de W. predicat.

Church, void by Ceillon upon Account of the Canon, be of the Gift of the Bishop, and within his Diocese, it may go in Law by the Bishop’s Negot to collate, tho no Deprivation be made of the Incumbent, or Notice given of the Avoidance.

5. Quare Impedit by the King, and counted by the Possessors of the Bishopry of B. (who was Patron of the Benefice) being in his Hands, and that A. the Clerk and Incumbent accepted another Benefice, by which this Benefice is void, and remained void quouique &c, and it was admitted for a clear Voidance. Br. Quare Impedit, pl. 98. cites 24 E. 3. 32. But it was said else, where, that this ought to have been certified by the Bishop or the Metropolitam, and that it is so Voidance in Fact till be be deprived by the Spiritual Law, and it is only a Voidance in Law before. Ibid. cites 11 H. 4. 57. 59.

9. If a Man presents one, who has a Benefice, and is admitted and indentured this, is a Cession without more; But in Quare Impedit the Court shall not take thereof Notice before it be certified, because it is a Thing spiritual; Per Brown Serjeant. Br. Quare Impedit, pl. 87. cites 14 H. 8. 16. 17.

10. Where the King presents by reason of a Plurality and want of Qualification, and Verdict is found for him, in as much as the first Benefice is absolutely void by the Church was full of the King’s Preseuntion Modo & Forma, as was alleged, and now is void; For Crook says, that it it be found that the Church is full of the Defendant by the Presentment of the King, that it shall be intended, that it was void by the 2d. Benefice, and that the King presented him anew. Litt. R. 1. Hill. 2 Car. C. B. the King v. Frankwell.

5 B (L. b. 2)
Avoidance, by not reading the Articles &c.

1. 13 Eliz. 12. E Nafts, that every Person hereafter to be admitted to
the
3. 8 months, be a Benefice with Care fully, within two Months after his Induction, publicly read the Articles of Religion in the Church, whereof he hath the Cure, in Common-prayer time, with Declaration of his
Ascend thereunto, and be admitted to administer the Sacraments within one Year after his said Induction, (if he be not admitted before) in Pain upon any such Default to be deprived 100. f. &c.

- 8. 7. All Admissions, Institutions, and Inductions to Benefices, and all Tolerations, Dispositions, Qualifications, and Licences whatsoever to the contrary hereof, shall be void in Law.

A Prentence to read the Articles, and in the Word of God, it was adjudge, that this was not such a Benefice as the Statute intended, but that it ought to be absolute and without Condition. Cro. E 252. pl. 19. Mich. 13 & 14 Eliz. B. R. Smith v. Clerke.

Upon a Trial at Bar in Quare Impedit, the Plaintiff proved, that he read the Articles upon the 5th of November, where his Induction was 5 September; this was ruled insufficient, because not within two Months after the Induction, computing 28 Days to the Moon. Lev. 101. Parch. 15 Car. 2. B. R. Brown v. Spence.

In Quare Impedit, the Plaintiff proved, that he read them in a Porch of a Church of Ease within the same Parish within a Month after his Induction, the Keys of the Chapel being detained from him by the Defendant, and this was also admitted by the Court to be a sufficient Reading of the Articles within the Statute. Lev. 101. B. R. Brown v. Spence.

Immediately upon No Reading the Articles according to the Statute, the Incumbent is deprived into facts, and the Patron may present upon such Deprivation prefently if he will, and his Clerk ought to be admitted and instituted. Vaux. 152. in Case of Shute v. Higden. [But no Lapse shall accrue till after Notice to the Patron. 15 Eliz. 2 S 3.]

A Man had a Benefice Competible, and without sufficient Disposition took another Benefice Competible, but did not subscribe the Articles as required by this Statute, and yet he was admitted, and admitted to the second Benefice, (and died,) and upon Habe whether the Church voided per Meritum &c. a special Verdict found as above. And the Opinion of the Court was, That the first Benefice voided per Mortem; and not by the taking the 2d Benefice; For he never was lawful Patron thereof, by reason of this Statute. D. 377. b. pl. 51. Mich. 25 & 26 Eliz. Anon. — S. C. cited Vaux. 152 in Case of Shute v. Higden. — In such Case the Admission and Institution are void, to that he never was Incumbent there, and consequently cannot be deprived. And 65. pl. 136. Trin. 24 Eliz. in Case of the Queen v. Bishop of Lincoln and Cock — Required by all the Justices, absolute Popish, That in Case of the Pretenent's not Reading the Articles, the Church becomes void prefently, and there needs not any Deprivation: for otherwise the Statute would be defeated at the Pleasure of the Ordinary, if he would not deprive. Cro. E 659, 680. Trin. 41 Eliz. B. R. Baker v. Brent and Robertson — The Church in such Case would void prefently, without any Sentence declaratory; for the Statute provides, that he shall be ipso facto deprived, and the Admission, Institution, and Induction are merely void in Law; and Voidance by Act of Parliament need not have any Sentence declaratory. 6 Rep. 29. b. Trin. 24 Eliz. B. R. Green v. Baker & al.

2. In Debt &c. the Plaintiff counts, that H. Dean of Lincoln by Indenture dated 24 July, demised to the Defendant the Rectory of M. &c. who therein covenant to find a sufficient Priest to serve in the Church of M. to be approved of by the Dean and his Successors, and to pay him 40 Marks per Annum at the least; and then sets forth the Statute 29 Car. 2. for perpetuating Augmentations to poor Vicarages, which enacteth, That every Augmentation made payable to any Vicar, Curate, &c. should continue payable to them; and that they might recover the same by Disfet's or Action of Debt, then he says, that 5 July, 32 Car. 2. by the Approbation of the Dean at the Nomination of the Defendant, and with the Licence of the Bishop he was admitted; and from that time to this was Curate of the Church of M. and for 40 Marks Pension, due for a Year, he brings this Action. The Defendant pleaded in Bar, and confesseth the Lease and Covenants, but says, that the Plaintiff was nominated &c. 5 Nov. 1677, and had Possession; but further says, that the All of Conformity 13 Car. 2. by which it is enacted, That all Ministers &c. shall, within two Months after the actual Possession of their Vicarage or Curacy, declare their Assent and Consent to all Matters in the Book of Common Prayer, and upon Neglect thereof shall be ipso facto deprived;
Presentations.

and that the Patron may present &c. as if the Incumbent was dead; and that the Plaintiff did not within two Months after his Presentation declare his Affent, and that at no time after the 5th of November the Defendant did nominate the Plaintiff to the Dean to be Curate &c. the Plaintiff in his Replication contended the Nomination 5 Novemb. and that he continued in Possession till the 5th of July following, and being in Possession by the Consent and Permission of the Defendant, and by the Approbation of the Dean and Licence of the Bishop, he, within two Months after the said 5 July, declared his Affent and Consent according to the Statute. The Defendant demurred; the Court agreed, that such Stipendiary may be within the Act of Conformity, tho' that is, that the Patron shall present as if he were dead, and here was no Presentation requisite in this Case, but only a Nomination. And that tho' he was ipso facto deprived for his Neglect in not declaring his Affent within two Months after his first Nomination and Possession, yet this Statute not disabling him from being nominated De Novo, and he continuing always in Possession, and performing his Office by the Allowance of the Defendant and the Dean till the 5th of July; this amounts to a new Nomination, and therefore his declaring his Affent within two Months after the 5th of July, makes him a Curate within the Statute, and enables him to bring Action, and Judgment was given for him by the whole Court. 3 Lev. 82. Mich. 34 Car. 2. C. B. Carver v. Pinkey.

(M. b) *Deprivation. [And of Curates to prevent Institutions &c.]

1. If the Incumbent be deprived, the Church is void by it. 11 H. 6. 60. B. 77.

* Deprivation is a Discharge of the Incumbent of his Dignity or
Ministry, when insufficient Cause against him is conceived and proved; for by this, he loses the Name of his first Dignity, and herein two Manner of Ways, either by a Particular Sentence in the Spiritual Court, or by a General Sentence by some positive or Statute Law of this Realm. If Deprivation is in the Spiritual Court for that, that it is grounded upon some Defect in the Party deprived, although it be by Act of Law, yet it is deemed as the Act of the Party himself. The Causes of Deprivation, by Conclature in the Spiritual Court, are to be referred to the Common Law. 10. Wats of Capacity, 24th.

* Contemp. 3dly Crime. As concerning the first, although by the Common Law, if a Lay Patron be prefented, infiltrated and induced to an especial Benefice, which Curate is altogether incapable of the same, yet the Church is not therefore to be void as if no Presentation had been, but it is still full of an Incumbent &c. And the Law declares, for his Want of Capacity, the Church be adjudged void, and upon this no Lapel shall incur against the Lay Patron, without Notice (of such incapacity and Sentence of Deprivation thereof) to him given. Dod. of Adv. 75, 74. Lect. 14.

† The 3d Cause is Crime, within which may be comprehended Disobedience, or Spoil of the Church Benefice, once, in our Books worthy of Deprivation, like亏 Schism or Heresy; for the which, or if for some other Causes the Incumbent were deprived in ancient Time in the Court of Rome upon such Deprivation coming in Querelon in our Law, the Issue should be upon the Avoidance, and it should be tried where the Church or Dignity is. Dod. of Adv. 76, 77. [So that if our Law adjudges not the Church actually void, without a Sentence of Deprivation as has been before proved. 2dly, That though such Sentence of Deprivation be merely wrongful, yet the Dignity is void, and the Sentence remains in his Force until it be reversed. 3dly, and lastly, If the Party deprived within Time require by this Law an Appeal, upon such Sentence of Deprivation given against him at the Court of the high Jurisdiction such is the Nature of an Appeal that it holds (the sentence upon which it was first brought) in Sentence; because in the Common Law it is laid to have Effectual Injunction prior to Pronouncing; and therefore if he be brought upon Deprivation, it voids the Vigour thereof, and revives the former Dignity; for such Church shall not be void until the first Sentence of Deprivation chance to be affirmed in the Appeal, and thus much of Deprivations in the Spiritual Court shall suffice at this Time. Dod. of Adv. 76, 77. Lect. 14 —— * The Church is not

2nd
2. If an Incumbent be deprivable, yet the Church is not void before Deposition. Contra. 17 E. 3. 59. b.

If a Patron takes several Benefices, but without Licence or Plurality, this is a Vindication in Law, but not in Law; for he ought first to be deprived by the Bishop, and then the Patron may present, and the Patron may see for the Deposition. Br. Quaer. Imped. pl. 51. cites H. 4. 57. 59 — Patron took a 2d Benefice above 8 l. per Annum, by which the Tithe was void. But by Patron's Content continued Peffion. Per Richardson J. He cannot be any way removed till Lapse incur. Het. 116. Fowler's Case.

If a Church be void, and a Stranger enters a Caveat, the Bishop, that none be instituted to that Church until he be made Privy thereunto, and the Bishop before that he have Notice of the Caveat, institutes an Incumbent, the Institution is merely void in the Spiritual Law; for the Registrar ought to notify the Bishop to the Bishop, and his Negligence in that shall not prejudice him; and entered the Caveat, and if the Bishop have Notice of the Caveat, and gives Day to him that puts it in, and before that Day he institutes an Incumbent, this is merely void; for the institution of a Caveat is as a Superintendence in our Law. Goldb. 146 Hill 42 Eliz. cites it as said per Dr. Amias in the Lord Zouch's Case. — Institution and Induction void good, that a Caveat was entered before; and the Ecclesiastical Court cannot meddle with it. Litt. B. 165. Stephens v. Cripp.

A Caveat was entered with the Bishop not to admit without giving Notice, yet Admission is good; but if he admits one that has to Right, he is a Disburber, but otherwise the Caveat does nothing, but only to make the Bishop careful what Person he admits 2 Brownl. 119. Anon — A Caveat is of Force for 5 Months, and any one may freely present after the End of 5 Months, as if no Caveat had been entered; Per Dr. Talbot. Cro. J. 464. Hutchings v. Glover.

The King was Patron of the Church of D and B. Incumbent. W. entered a Caveat in the Life-time of B. after lying in Extremis, viz. Caveat Episcopus, no quits-admissit &c. Ruff-Covensis the first W. — B. dies. J. S. a Stranger presented. M. who was instituted and indited, and W. presented his Clerk, who was likewise instituted and indited, the latter likewise presented his Clerk who was instituted and indited, and it being a Quittance in the Spiritual Court, which of these Clerks had the bolt Right? Sentence was given there, that the first Institution was void by reason of the Caveat, and then the Church being full of the 2d. Incumbent, the King was put out of Pudification, and his Premonition void. But it was resolved, Ith. That the Cavet was void, it being entered in the Life-time of the Incumbent. Secondly, That the Church was full by Institution against all Person but the King, and then the Presentation by W. was void, by reason of the Super-institution of the Clerk of the Stranger; and so the Presentation of the King was good. Poph. 152. Hill. 15 Jac. B. R. Morgan v. Koon. — S. P. per Montague. Ch. J. Cro. J. 464. Hutchings v. Glover.

4. If the Patron present one that is merely a Layman within the Age of 25, and he upon this be admitted, instituted, and indited, and afterward a Qua. Imp. be brought against the Patron and the Incumbent, whereas Judgment is given by the Default of the Incumbent, where indeed the Incumbent was never at any time duly instituted, according to the Law, by reason of which Judgment the said Incumbent is removed; if upon this afterward the said Incumbent by Sentence declaratory be deprived in the Spiritual Court for want of Capacity in Suit there, for the Cause of his Incapacity exhibited against him, such Sentence is good, and available in the Common Law, although the said Incumbent were before removed from his Benefice by the Judgment given against him in the Qua. Imp. For though such declaratory Sentence given against him by the Spiritual Law cannot remove him that is removed already, yet it shall make this Incumbent answerable to the next Incumbent for all the mean Profits received by him that was the first Incumbent, from the time of his Induction. Yet if the first Incumbent so deprived will afterward bring a Writ of Deceit upon the Judgment, given against him in the Qua. Impediment by Default, because he was not instituted as aforesaid, he shall have Judgment herein, and the same Deposition had in the mean Season in the Spiritual Court is no Impediment thereunto, for in the said Suit of De-
(N. b) Entry into Religion.

If an Incumbent enters into Religion, the Church is void thereby. It is a Rule of the Canon Law, that Beneficium non vacat per Religionis ingressum ante Professionem, nisi de Consecutione ingressi.

2. But otherwise where the Dispensation is after. Contra. 11 H. 4 60.

(O. b) Lapse. What it is, and the Commencement.


2. 6 E. 1. Rot. Parentium Hrand. 25. At a Quare non Admissit by the Abbot of St. Mary Eboragum against the Bishop of Norwich the Bishop made Title by Lapse, selecting, that he collated Authoritate Concilii post Lapsum immetre, itali, Dic et, and there after in the Judgment it is said, Quia tempus immetre Authoritate Concilii non inceptus verius Patronum nisi a tempore Scientiae Morris &c. (Quare what Council is intended) P. 9. E. 1. B. Rot. 51. It appears that Lapse was given per Concilium Lugdunense post tempus Semestre. In a Writ in the time of E. 2. cited Co. 6. Catesby 62. according.


4. Britton. fol. 253. If the Church remains undiscovered beyond 6 Months, then according to the Council of Lyons by the Discord of the Parties the Bishop shall be in the Place of a Canon, and shall give the Church to any Clerk having every one's Right. But after Selden, in his Book of Titules, 398. says that the Manuscripts of Breton have for de Lians de Latt, which is without doubt for de Lateran.

5. Selden in his Book of Titules fol. 385. holds that Lapse was received in the Laws of England from the General Council of Lateran held in 25 H. 2.

6. In Iseiden. fol. 326. there, among the Canons of the Council of Lateran held under Alexander the Third, Anno Domini 1118. in Time of King D. 2. there is such Canon, Cum vero Praebendas, Ecclesias, feu qualibet Officia in aliqua Ecclesia vacare continerit, vel haren Modo vacant, non diu maneant in Suspendo, fed infra lex Mensis Perfonis, qui digno administrare valeant, conferatur. Si autem Episcopus, ubi ad eum spectaverit, contene divulgatur, per Capitolium ordinetur.

7. Before the said Council the Patron was not limited to any Time, but might present at his Pleasure without any Lapse. Selden in his Book of Titules 387. Bracton. lib. 4. 241. to present by Lapse; For that the Constitution says, Quod Collatius Beneficii, eft Rel Spiritualis & alter Credentes scintent Hereticis; And the Common Law says, That a Presentation to a Benefice is temporal, at
8. In the Book which is in the Exchequer, whereas the Title is
Transcriptam Chartarum Comitis Cornubiae, there is a Charter
69. & 168. by which the Bishop of Norwich recites, Cam per Lapidum
Temporibus Administravit Concilii de Prio de preneciendo in Monasterio de Eya
quod eit de Patronatu Ricardi Comitis Cornubiae iacit in ad nos esso-
latum sit Porelas, and least this should draw a Right to him and
his Successors, they put their Seal thereto.
9. Regestum Ossinianum fol. 42. b. Inter Prohibitiones, Quia
secundum Legem & Confluentium Regni nostri Angliae Episcopum
per Lapidum Temporibus ante 6 Sessus centuriae non deden
by the Abbet of Lyny against the Archbishop of Canterbury, the De-
fendant says that the Church is still of his Collation Ratione Conci-
lis Lagdunensis, and being demanded, Per quem Aructum ejusdem
Concilii contulit eandem Ecclesiam, dicit quod ipsi eit Archiepiscopus
& primas Angliae & quod non bilt nec bebedac hoc concedere in Cena
ia, and because the Plaintiff Pretenetur ante Lapidum Temporibus teme-
tris, & Archiepiscopus nijit dicit quod ipsi ad Ecclesiam contulit
Aloriatore Concilu Lagdunensis nulla certam Rationem super eo
exprimendo & sic possit obnubus de Regno Pretenationes attulere, &
Conflutedo Regni Angliae fit quod nullus Patronus debet a Pretenatione
Ecclesie fuiexcludi Aloriatore Concilii, nisi negligens sit, & remissus in
prefentandz in fchn tempus Semestre, ideaqueuen recuperet & tindit to
the Bishop granted.

Wart. Comp.
11. A Lapfe is an Act and Office of Trust repoded by Law in the Or-
cap. 3d. dinary, Metropolitan, and lally in the King to provide the Church of a
Lapfe to the Reétor in default of the Patron, and yet as for him and to his Bchool
In respect of his Episcopd Care, but to the King is as supreme Patron, and is the Reason that Rome did not claim
its Per Doderidge Roll. R. 464 in the Cafe of Colt v. Glover, cites Doctor and Student — "It is not an
Interst but a Trust or Administration. Per Hobart Ch. J. Roll. R. 475 in S C,

(P. b) By what Time the Patron may present before
Lapse shall incur.

Wart. Comp.
1 By the Common Law of England as well Clerks as Laymen
inc. 590. shall have 6 Months to present before Lapse shall incur. Doctor
185. cap. 12. and Student. 116. b.
cites S. C.
2. By the Common Law of Scotland Laici Patroni quadrimeitre
feu quator Mentium, Ecclesiastici vero sex Mentium Spatium habent
sit concessum ad Pretendentium Personam idoneam Ecclese vac-
cant. Skene Regiani Maxistrens. 10. b.
3. But § 6. pl. 1. cap. 7. pl. 7. cap. 102. pl. 12. cap. 119. 158
Conclet Patrono Laico Spatium sex Mentium, infra quod pretendent
debet. By the Petit Customs of Normandy, the Patron as well Laich
as Ecclesiost had six months to prentice after the Death of the last
Possestor. Nuad vide Chapter of Patronage. § 70.

(P. b 2) How the Six Months shall be reckoned.

1. QUARE Impedit against the Bishop of A. who justified for Lapse. Godolph.
The Plaintiff replied, 'That before the 6 Months ended, he pre-
mitted &c. The Defendant rejoined, 'That the Church to which the Pre-
rentment was, is a Church with Cure of Souls, and the Parishes there
are Welchmen, and speak and understand no other Language but Welch,
and that the Plaintiff could not speak or understand the Welch Lan-
guage; For which Caufe he refused him, and gave notice of the Plain-
tiff of the Refusal and Caufe thereof; and it was agreed and resolved by
the whole Court that the Computation of the 6 Months in such Cases,
ought not to be according to the Calendar January, February &c. but Se-
cundum monymerum fyuholmen Dierum, allowing 28 Days to every Month. Le.
31. Trin. 27 Eliz. C. B. Albany v. the Bishop of St. Asaph.

(Q. b) How the 6 Months shall be Reckoned. From
what Time.

1. Tempus Semestre Authoritate Concilii non incipit velius Pat-
tronos nifi a Tempore scientia Mortis Perfossa (that is to say
accordingly, and says Per legem & Confuetudinem Regni hactenus Uni-
tatas.
2. As if the Incumbent dies beyond Sea, the 6 Months shall not be
reckoned from the Death, but from Knowledge of the Death by the
Patron. 6. E. 1. Rot. Patrimonii Hembrana 25. between the Ab-
bot St. Mary Chorlton and the Bishop of Norwich, adjudged in a
Quare non admittit.
3. As the 6 Months shall not be reckoned from the Death of the last
Incumbent, but from the Time that the Patron might by Computa-
don per Rationabiles Dietas, having Regard to the Distance of the
Place where he was at the Death of the Incumbent, if he was within the Notice
the
Presentation.

the Realm at the Time, come to the Knowledge of the Death of the Incumbent; for he ought afterwards to take Notice at his Peril, and * not before, maimish as he was in other County than where the Church is, and than where the Incumbent died. 6 E. 1. 75, adjudged. Queen Eleanor's Cafe. Contra Co. 9. Cately 62. b.


4. So a Furtiori it would be, if the Patron were over the Sea at the Time of the Death of the Incumbent. 5 E. 1. Queen Eleanor's Cafe 75, agreed.

5. Apud Secutos, by the Common Law of the Realm the Time limited for the Patron to present, is to be computed a temporae Scien
diam non autem a tempore Vacationis beneficium. Steene Regiatm Vaci

6. See the Petit Customs of Normandy, Chapter of Patronage. S. 70. The 6 Months shall be counted from the Day that the Death of the last Pollitor is commonly known. In the ancient Book, fol. 49. b.

7. Registrum Originale, fol. 42. Inter Prohibitions. Quia secon
dum Legem & conuentudinem Regni nostrui Anglicae Episcopi &c. Bene

Hele v. the Bishop of Exeter. For the Crime is as much in the Conscience of the Patron as the Bishop.

8. If the Ordinary refuse a Clerk because he is Criminofus, in this Cafe the Patron shall not have 6 Months to present after Notice given, but from the Voidsance. 14 H. 7. 21. Curia 13 H. 7. Heli. 50. b. Quare.

9. If the Ordinary refuse a Clerk for Cause of Illiterature, the Patron shall not have 6 Months from the Notice thereof but from the Voidsance. D. 15. 16. Cl. * 227. 7. Per Einiam.


10. If a Church voids be Resignation or * Deprivation, the 6 Months shall be reckoned from the Notice thereof to the Patron, and not from the Voidsance. 1 H. 7. 9. b. D. 15. 16. Cl. 327. 7. Dr. 3.

S. P. P. 527.


The six Months shall be accounted from the Time of the Admission and Institution as to an Usurper, and not from the Time of the Voidance; but the Bishop as to the Lapse shall count the 6 Months from the Time of Vacation; and against a Common Person, it is full by Admission and Institution without Induction, and from the Induction the 6 Months shall be accounted there, and so where the King presents he shall account the 6 Months from the Time of Institution. Br. Presentation, pl. 46.

12. If Quare Impedit by the Statute of Wilt 2 Fin. Law 8vo. 196.
Presentation.

13. If the Incumbent dies, and the Patron presents another, and the Bishop upon Examination finds him unable for Literature, in this Case the Justices were of Opinion that the 6 Months should be accounted a Tempore mortis &c. D. 327. b. pl. 7. Mich. 15 & 16 Eliz. cap. 29 — S. P. Because the Patron ought to present a Clerk that is qualified, otherwise his Presentation is void, and shall not prevent the Lapfe. 4 Mod. 120. Titm. 4 W & M. B. R. in Case of Helc v. the Bishop of Exeter.

14. If an Avoidance be caused by an Union (for so it may be) then the 6 Months shall be computed from the Time of the Agreement upon that Union; for in that Case the Patron is not ignorant of, but prefix to the Avoidance; for there can be no Union made, but the Patron must have the knowledge thereof; and then it is to be appointed who shall present after the Union, as whether one or both, either jointly, or by Turns one after another, as the Agreement is upon the Union. Godolph. Rep. 243. cap. 22. S. 2.


1. If the Ordinary refuse a Clerk, because he is Criminus, he ought to give Notice thereof to the Patron; otherwise no Lapfe shall incur. 38 C. 3. 2.

2. If the Ordinary refuse a Clerk for a private Caufe, as if the Clerk upon the Examination of the Ordinary confesses himself to be a Common Adulterer, or that he comes to the Prelegation by Ufury and the like; in this Case the Ordinary is bound to give Notice thereof to the Patron, or otherwise no Lapfe shall incur. 18 P. 7. Kil. 50. b. 3. So Notice ought to be given of a Refusal for a Notorious Crime, as because he is a Common Adulterer, or a Common Murderer. 18 P. 7. Kil. 50. b. Contra per Frounck.

4. If a Lay Patron presents a Clerk who is refused because he is not well letter'd, no Lapfe shall incur without Notice given to the Patron of this Refusal. 18 P. 7. Kil. 49. b. But on Notice Lapfe shall be to the Patron if the Patron does not present another within the 6 Months after the Church became void. And. 32. pl. 70. Patth. 3 Eliz. Anon. — If I present my Clerk to the Bishop, and he finds him Not able, and refuseth him, there if he gives Notice to me, and I do not present within 6 Months, he may present by Lapfe; but if he doth not give Notice, but presents by Lapfe, there after the 6 Months I may have Quare Impedit against him Per Newton and Fation. Br. Quare Impedit. pl. 83. cites 22 H. 6-25.

5. If a Spiritual Patron presents a Clerk who is refused for Default See(T.) of Literature, there Lapfe shall incur without Notice, because the Law intends, That he might have sufficient Knowledge of his Sufficiency before he presented him. 18 P. 7. Kil. 49. b.

5 D. 6. 37
6. If an Incumbent of a Church with Cure of the Value of 5 l. per Annum, takes a 2d Benefice which is not within the Statute of 12 H. 8. the no Lapce shall occur to the Ordinary by this Voidance by the Canon before Notice given to the Patron, yet after Notice LaPce shall occur if he does not present within 6 Months. Titn. 14 Cat. B.R. in Baldock's Case, by Jones and Barkley.

Notice at his Peril; for it is said by Act of Parliament, and the Words are, That it shall be void as of the Incumbent was dead. Per Jones J. Jo. 202. S. C. — If a Man be presented to a Benefice of 61 l. per Ann. and after to another of 25 l. if he is Depaired for Plurality, the Bishop must give Notice to the Patron; for 'tis at the Common Law, and 'till Depaired 'tis no Cejfion. Godb. 23. Paffh. 96. El. C. B. Where an Acceptance by Statute no Notice need be given to the Bishop. Brow. 16.

8. P. Br Notice. 71. 17. cites H. 10. - By Quare Impedit. pl. 11., cites S. C. — The Patron shall take Notice of every Voidance of an Advowson, except Resignation, and of this the Ordinary shall give Notice to him. Br. Notice, pl. 27. cites Provick's Readings. 117. — If the Advowson of a Church is by Resignation, or such like, where the Bishop is proxy or Proxy to the Curate, where a Vacancy & Patron must be given there of Sufficient Avance to the Patron, or otherwise the Ordinary shall not take Benefit of the Lapce. D. 295. B. pl. 3. Misc. 12 & 13. Eliz. in the Case of Bedinhfet v. Pickering. — If an Usurer presents within the 6 Months, and the Precedence is in for 6 Months, no Notice being given of the Resignation, yet that shall bind him, and he shall be put to his Right of Advowson. Secus if the Ordinary had collated, because the Indulgence is Notorious to the Country, and the Patron ought to take Notice of it at his Peril to prevent the Usurpation of a Stranger. Noy 65. Servin v. Bishop of Lincoln.

8. So if the Bishop dies who took the Resignation, yet Lapce shall not occur to his Successor without Notice given. 18 H. 7. H. 49. b.

9. So after such Resignation no Lapce shall occur to the King after a Year and a Half for Default of the Ordinary and Metropolitan, because no Lapce shall occur to the King where no Title of Lapce was to the interior Ordinary. D. 18 El. 348. 12.

* S. P. For 10. Upon * Deprivation the Ordinary shall give Notice. But it is said elsewhere, that of Voidance, Cession, and Creation, the Patron shall take Notice as his Peril; and the same Law of Resignation as of Deprivation is not Br. Notice. pl. 24. (bis.) cites 5 E. 4. 4. to take Vacancy before Notice given. Br. Quare Impedit, pl. 12., cites S. C. — The Notice of Deprivation or Resignation ought to be given to the Ordinary himself, and not by a Stranger. Br. Notice, pl. 25. cites Doct. and Stud. Lib. 2. cap. 31. — If a Patron be deprived by the Ordinary, or reads not his Articles, in which Cases the Church is void, yet Notice must be given to the true Patron for the Time, or Turn) or else the Lapce incurs not, (which is inconvenient for the Church, and a Prejudice to the Ordinary) for which he shall be in this Case answer himself of a sufficient Notice; for if he give Notice to him that is not Patron for this very Turn, his Notice is void, and the true Patron perhaps knows not of the Deprivation; or if he knows it, needs not present without Notice given him. In this Case Sir H. Hobard Cha. J. holds, That his Way is to award a 'jure Patronatus, with solemn Premunitions Quorum Intercedent; and then Inquity being made who is Patron, to give him Notice; and if he presents not within 6 Months, then the Ordinary may collate, that shall not bind the very Patron, yet it shall excuce the Bishop from Disturbance upon special Matter of new. But if the other supposed Patron present, and the 6 Months incurs, Quere if the true Patron be bound, since there was no Notice given him. And the Opinion of Hobart is, That 'tho' without Notice the Patron is not bound by the Lapce, yet that is nothing to have the Usurpation of another pretended Patron, who is not Subject to give Notice. Godolph. Rep. 182. cap. 46. S. 4. cites the Case of Elive v. the Archibishop of York.

11. In Quare Impedit against the Bishop and his Collatee the Bishop pleaded, That A. presented J. S. to him at B. and he being getting on Horseback, commanded J. S. to attend him at N. within the same Degree within 3 Days, that he might examine him and inquire of his Ability; but J. S. came not then nor in 6 Months after, by which he collated by Lapce Alqvis hoc, that the said W. L [as the Plaintiff had counted] gave the said Minor to E. L. in Tull, Priif etc. And it was at length held, that the Ordinary shall have Time to be advis'd; for in Examination he is judge, and not Officer,
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Office; And that the Time and Place given were convenient, and that
he need not give Notice to the Patron, that J. S. came not be examin'd
because he had not refus'd him. Br. Quare Impedit, pl. 81. cites 14 H.
7. 21. 15 H. 7. 6, 7, 8.
12. If the Bishop refuse a Clerk because he is a Villain, as he may do, Br. Notice,
he shall give Notice thereof to the Patron, whether he be Lay or Spiritu-
S. C. tual. Br. Quare Impedit, pl. 92. cites 14 H. 7. 28. Per Brian and the
greater Part of the Justices and Serjeants.
13. Patron presents a mere Layman, who is admitted and instituted, S. C. Bendl.
Notice must be given before Laple shall incur. And. 16. pl. 84. Patch.
195. pl. 254.
Adjudg'd. —
S. C. D. 292.
b pl.1 Mich.
12 & 13 Eliz. Adjudg'd. — 2 Show. 54 Per Scroggs Ch. J. Patch. 31 Car. 2. B. R. in the Case of
Hill v. Boomer. S. P.
14. 13 El. 12. Enacts that No Lapse shall accrue 'till 6 Months after Notice
of Depreservation for being under Age, Not reading the 39 Articles, or
Opposing the same, given to the Patron by the Ordinary.
Where one of the above.
Under the Age of 23
Years was
preferred to
a Benefice, the Question was, Whether the Patron should have Notice, or that Laple otherwise shall
not incur to the Bishop, which is grounded upon this Statute. And it was held clearly by Mallet,
Heath, and Brampton Justices, That the Notice ought to be given, or otherwise that Laple shall not
incur. But they agreed, That if the Act had avoided the Presentation 40, as well as the Admission,
Institution, and Induction, that in such Case the Patron ought to have taken Notice at his Peril, being
an Avoidance by Statute, if the Provifo help it not. Mar. 119. Mich. 17 Car. the Bishop of Here-
ford v. Okeley.

(S. b) In what Cases, and in what not, Lapse shall in-
cur without Notice for Collateral Cause, where De Jure
Notice ought to be.

1. In such Cases where of itself no Lapse would incur without Notice, if the Ordinary who ought to give the Notice dies before Notice, yet no Lapse shall incur to the Successor without Notice. 18 D. 15. mill. 49 b.
2. Where Notice is to be given, and none is given within a Year and a Half, by which Laple ought to run to the King if Notice had been given, yet no Laple shall incur to the King, because * no Laple • S. P. Hob. shall run to the King, where no Title of Laple was to the inferior Or-
dinary, insomuch as he comes to supply their Default. D. 18 El. 345. 12.
and Litchfield. — S. P. Cro. J. 95. in the Case of Lancaster v. Lowe.

3. If Notice ought De Jure to be given, the Temporalities of the
Ordinary being in the Hands of the King, yet it seems that no Laple
shall run to the King without Notice to the Patron: for it seems that
the Guardians of the Spiritualities ought to give Notice. D. 22 El.
369. 54 will prove this.

(T. b)
(T. b) What shall be sufficient Notice where it is requisite.

1. If an Ordinary refuse a Clerk for illiterature, and notifies it to the Patron by Publick Intimation fixed on the Door of the Church to which the Clerk was prefent, it is not good without Notice to the Patron of the Patron. D. 16 El. 327. 7. Adjudg'd.

2. But where the Patron cannot be found, peradventure such publick Intimation shall be sufficient. D. 16. El. 327. 7.

3. The 6 Months shall be accounted upon the Death, Creation, and Omission of the incumbent, from the Time of the Death, Creation and Cisation; But upon Resignation or Deposition, it shall be accounted from the Time of the Notice given by the Bishop; and if another Bishop gives Notice this is void as it seems. Br. Quare Impedi., pl. 159, cites D.C. & Stud. Lib. 2. But see F. N. E. that Notice of Resignation shall be given by the Bishop, where he intends to present by Laple, Quod vide ibid. fol. 35.

4. In Quare Impedi &c. the Bishop, as Ordinary, entitled himself to present by Laple, by reason of a Deposition, for not subscribing the 39 Articles, and on Huce taken, if Notice of the Deposition was given by the Ordinary to the Patron, it was found that the Bishop notified in the Church, the not subscribing by a certain Intimation feigned by him, viz. R. Episcopos C. Univeris Rectoribus, Vicaris, Curato, non Curato, Clerici et Literati quodcumque intra Dioecesium nostrarum C. Salutem. Cen. R. T. &c. non subscripsi &c. Juxta Statut. &c. commanding them all, and especially the Curate of C. to declare in the said Church of C. the said Non-subscribing &c. This, tho' found to have been publicly read in English in the Pulpit of the Church &c. and afterwards fixed at the Church Door, was held by all the Justices in Cam. Seace except Harper and Mounfon, Abente Gawdy, to be insufficient to prejudice the Patron, because it is upon a Penal Statute to the Incumbent, and also to the Patron, to make him lose his Prefentment, and therefore such Notice to the Patron ought to have been Personal, and the Intimation ought to have notified, that the Ordinary had deprived him by declaratory Sentence for his Not subscribing and subscribing to the Articles according to the Statute; For otherwise it shall be intended, that the Ordinary is contented to permit him &c. D. 546. pl. 75. B. Hifl. 18 Eliz. Bacon v. the Bishop of Carlfile &c. Witton.

v. the Bishop of Lincoln and Cock.——— S. P. D. 360. b. pl. 34. Pach. 22 Eliz. seems to be S. C. and that it seemed to the Court, that the Queen should not press by Laple, though the Patron had notice of himself of the Not Reading of the Articles by his Preffentee, notice not having been given by the

Ordinary.
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5. If *A* a Spiritual Man has the Presentation, and *B*, a Layman the Nomination, the Presentation shall be made only in *A*'s Name, that hath the Presentation, and not in *B*'s Name that hath the Nomination; therefore, if the Ordinary should refuse the Clerk for Disability, notice shall be given only by him, to him that hath the Presentation, and not to him that hath the Nomination. Dod. of Adv. 66, Lec. 12.

(U. b) In what Cases Laple shall incur to the Ordinary.  

1. If the Church be litigious between two Patrons, and the one brings his Quare Impedit, or Allise of Patronage, *Presentment* against the other, without naming of the Bishop, and recovers against him, if the 6 Months be passed pending the Writ, Laple shall incur to the Bishop; for no Default was in the Bishop.  

2. But being named he cannot take Advantage of any Laple, but ought to see that the Case be forced, by Allowance out of the Profits to be taken by Sequerallation, and he can take no Advantage of the Laple, so neither can the Metropolitan, or the King; For no Laple being against the Ordinary, there cannot be any Laple against them, and one *Bishop's* Case was cited by Coke to have been so adjudged, Cro. J. 93; in the Case of Lancaster v. Low—Jenk 281, pl. 7.

3. If any present审理, there shall be awarded two *Commissioners* De Juris Patronatus: And if the one be found Patron by the one, and the other by the other, there the Church is litigious, and if their Titles are not discussed within the 6 Months, the Bishop may present by Laple. Br. Quare Impedit, pl. 35, cites 21 6 44.

2. But if the Bishop refuses my Clerk without Cause, and after the Church *becomes* litigious, no Laple shall incur to the Bishop. For this comes by his own Act.  

3. If a Quare Impedit, against a Disturber, the Bishop not being named in the Writ, if the Plaintiff recovers within the 6 Months, yet if the 6 Months incur before the Writ to the Bishop, then out the Laple shall incur to the Ordinary.  

4. So if after the Recovery within the 6 Months, the Defendant brings a Writ of Error, and the 6 Months pass, Pending, no Laple is incurred to the Ordinary, 17 3 75. Fithy, 3 48, b. 3 E. 75. Admitted.

5. If the Bishop is a Disturber, no Laple shall run by his Disturbance, though the Church be void by 6 Months, Cr. 3 8 3. B. R. between Palmer and Smith. Resolved per Curiam.

6. As if the Patron presents to the Bishop, and he will not examine the Clerk, but delays him, by which the 6 Months pass, yet no Laple shall run to the Bishop; Because he is a Disturber, and this comes by his own Disturbance, Cr. 3 8 3. B. R. between Palmer and Smith. Resolved per Curiam.

7. Laple may be of a Viceage attendant to a Prebend, Br. Presentation, pl. 26, cites 24 E. 3 26.
8. Of a Chantery, which has not Cure, the Ordinary shall not have Advantage of Lapfe, unless it be expressed in the Foundation. Br. Quare Impedit. pl. 131. cites 13 E. 4. 3.

9. If a mere Layman be preferred and instituted, and no Sentence of Nullity or Deprivation given, the Ordinary cannot collate by Lapfe. Fin. Law. 5vo. 89.

10. If in a Quare Impedit against the Ordinary, he confesses the Disturbance, he cannot afterwards have Lapfe. Br. Quare Impedit. 103. cites 39. E. 3. 15.

11. No Lapfe can be after Injunction, tho' there be no Induction. Per Popham Ch. J. Goldsb. 164. in the Case of Robin A. Prince.

(X. b) Lapfe. In what Cases it shall be presented by the Naming of him in a Writ.

1. If a Church becomes void by the Death of the Incumbent or otherwise, and the Patron within the 6 Months brings a Quare Impedit against the Bishop, and after 6 Months pafs without any Presentation by the Patron to the Bishop, Lapfe shall incur to the Bishop, notwithstanding the Pendency of the Writ; for it is not Reason that the Ordinary should lose his Title of Lapfe without any Torte done by him, by a fraudulent Action of the Patron without Cause, by which the Ordinary shall be put to Expenses without Cause; and by such fraudulent Means the Patron may keep the Church perpetually void. Hobart's Reports 270.

2. If a Man recovers against J. S. in a Quare Impedit within the fix Months, and Defendant brings Writ of Error, and Plaintiff files a Quare Incumbavit against the Bishop, and after the 6 Months pafs, yet no Lapfe shall incur to the Ordinary; for the Quare Incumbavit shall prevent it. 17 E. 3. 75.

3. If a Man brings a Quare Impedit against Patron, Ordinary and Incumbent, and the Ordinary pleads that he claims nothing but as Ordinary, and after the Plaintiff recovers, and the Patron and Incumbent bring Writ of Error in B. R. pending which the Bishop dies, and another is made Bishop, and after the Incumbent takes a 2d Benefice, by which
which the meet is void by the Statute of Plurality, six Months past, and after wherein the Judgment is affirm'd, no Lapfe shall incure to the Ordinary: P. 3 Inst. B. R. between James and Bolton abovesaid, this Matter being returned by the new Bishop to him directed.

4. A Church is void for a Year, where a Quare Impedit was brought within six Months against a Bishop and a Difteree; neither the Metropolitan nor the King shall have any Lapfe; for the Bishop being made a Party, has no Lapfe; and where the Bishop shall not have a Lapfe, neither the Metropolitan nor the King shall have it. Jenk. 281. pl. 7. cites 1 Int. 344. b.

(Y. b) Against what Person being Patron, Lapfe shall incure.

1. If an Infant Patron does not present within six Months, Lapfe shall incure. 33 E. 3. Quare Impedit 46.

2. So Lapfe shall incure against a Feme Covert, if she does not present within six Months. 33 E. 3. Quare Impedit, 46.

3. 17 E. 2. 8. Enacts that Lapfe for six Months shall not prejudice the King's Presentation to a Church.

Ordinary cannot present by Lapfe, but sequestrate the Profits, and find the Cure till the King will present. Br. Quare Impedit, pl. 90. cites 14 H. 7. 21.

4. If the King has Presentation in any other Right than in Right of the Crown, Lapfe shall incure against him as well as against any other Person. But Brooke says Quare Legem inde, because it seems Not. Br. Presentation, pl. 56. cites the Register, fol. 31.

5. Where the King's Tenant grants Maximum Presentationem, and dies; this shall hold Place against the King, and the Bishop may present by Lapfe upon the King before Office found; but when Office is found, the King shall have the Prefentment, and the Incumbent shall be removed. Br. Presentation, pl. 24. cites 14 H. 7. 21.

(Z. b) Lapfe. To whom it shall accrue [for a Colateral Respect.]

1. If a Metropolitan Archbishop visits an inferior Bishop, and inhibits him during the Visitation as usual, and after during the Visitation and Inhibition; or before any Release made by the Archbishop, a Lapfe incures to the Ordinary; tho' the Acts of Jurisdiction of the Ordinary are suspended during the Visitation, so that he cannot institute his Clerk, yet he shall have Benefit of the Lapfe and not the Archbishop, but he shall collate to the Archbishop, and he ought to institute his Clerk. Tyr. 13 Car. 3. B. R. between Dodson and Lynn. Agreed by the Civilians in their Arguments.

2. If a Bishop dies, by which the Temporalties are in the Hands of the King, if during this Time Tempus Sempertempest pæsus, by which it incurs, and Lapfe happens, the King shall have it, and not the Guardian of the Ordinary des, the King.
Presentation.

3. If the Patron presents, and his Clerk is instituted, and remains without Induction 18 Months, no Lapse shall accrue to the King; for the King cannot have a Lapce but where the Ordinary might have had it before. Hobart's Reports 208.

4. If the Patron does not present within 6 Months, the Ordinary shall have other 6 Months, and if he does not present within this, the Metropolitan shall have other 6 Months, as it is said; and if they do not make Collation within this 6 Months, the King shall have it, as it is said. Br. Quare Impedit, pl. 53.

5. If a Lapse devolves to the Ordinary, and within those Months he is transferred to another Bishopric, Per Noy Attorney General, in Default of the Patron's presenting the Warden of the Spiritualities shall present, whatsoever he be. Noy 69. Anon. Cites D. 87. pl. 103.

(A. c) Lapse. In what Cases after Lapse incurred it shall be taken away.

* Br. Quare Impedit, pl. 53. cites S. C. — Br. Quare Impedit, pl. 64. cites S. C.

1. If Lapse incurs to the Ordinary, yet if the Patron presents before the Church is full, the Ordinary ought to receive his Clerk; for the Lapse to the Ordinary was, because upon Neglect of the Patron he ought to fee the Church vacated, which is now performed by the Patron. * 11 H. 4. 80. 18 E. 3. 21. + 38 E. 3. 2. b. Adjudged Br. Quare Impedit, pl. 53. — S. P. Br. Quare Impedit, pl. 51. — S. P. Br. Quare Impedit, pl. 52. — S. P. Br. Quare Impedit. 

2. But
2. But if the Ordinary collates by Lapce, and after and before Induction the Patron presents, the Ordinary is not bound to receive him. D. to Ch. 277, 56.

3. If pending a Quare Impedit Lapce incurs to the Ordinary who is not named in the Writ, and the Plaintiff has Writ to the Bishop, Impedit, pl. at which time the Church is not full, yet if the Ordinary collates before the Receptae of the Writ, his Clerk shall not be released. 11 P. 4. 80.

4. If Lapce incurs to the Inferior Ordinary, and within his 6 Months after the Superior Ordinary collates, by which the Church is full, yet if the Patron presents his Clerk within those 6 Months, he ought to be received; For the Collation of the Metropolitan is tortious, and a Collation shall not put the Party to a Quare Impedit, and therefore this tortious Collation against the Patron is, as it has Collation had been. Dubitatur. 11 P. 4. 80. where it is observed, that the Tort is between the Ordinary and the Metropolitan, and not to the Patron.

5. If the Ordinary collates within the 6 Months, and after 6 Months pass, yet the Patron may present before a new Collation by the Ordinary; for the first Collation was by Tort, and therefore cannot become Rightful; and the Clerk does not put the Patron to his Quare Impedit, because it was but a Provision for the Time, and therefore there ought to be a New Act before it shall be a good Collation.

6. If the Ordinary collates, and his Clerk is instituted and inducted within the 6 Months of the Lapce incurred to the Metropolitan, and after his 6 Months which he himself had are passed; though this Collation be tortious to the Metropolitan, yet it seems, that this shall take away the Presentation of the Patron so that he shall not present. Summer Vacanct at the Miles in the County of the Parish, between Sir Francis Pepham Plaintiff, and the Bishop of Bath and Wells and his Son Defendants in a Quare Impedit this was a Question, but so held by the Lord Finch, the Judge of the Miles, for there was a Right of Collation. And though his Time was passed, yet this rests only between him and the Metropolitan, and an Impediment only to the Metropolitan.

Right be passed, and his Incumbent be in, the Patron by Quare Impedit shall not remove him; because his Possession is not taken away; for the Collation does not toll the Possession of a Patron, as a Penitent shall do, for by this the Wrong is done to the Metropolitan or the King, and not to the Patron. As if the Archbishop presents within the 6 Months to the Bishop in the Place of the Bishop, the Patron shall not have Quare Impedit thereupon, because the Church is full by one who does it, unless he is Officer, and by Colour of this; but if any Stranger who has no Colour presents, it is otherwise; for by this the shall be put out of Possession; Per Dyer and Walthe J but Wefton and the Serjeants contra in both Cases; for by presenting an Autel Temp they are Disturbers as any Stranger. Dal. 59. pl. 9 6 Eliz. Anon.

The Archbishop has a Title to collate by Lapce; the Bishop collates before him, this shall bind the Archbishop; for at Common Law when a Clerk was once admitted, he was not removable; and Collation remains at Common Law. Wett. 2. helps only in Case of Presentation. Jenk. 281 pl. 7.

(B. c) Lapce to the King. [In what Cases; And in what Cases taken away.]

1. Vide in Case of the King when Lapce may be taken away the Archbishop's Prerogative, note Abolishment.

Lapce, or by Ordinary, or Wardship, and does not present in his Turn, he shall lose it. Gro. J. 54. the King vs. Bishop of Wiston and Campeon.

5 F 2. 11
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The Patron's Title continues against the Ordinary and the Patron is presented by him, yet the King is not bound to receive him; so the Presentation being once settled in the King, shall not be bevosted.

V. 10. 277. 55.

2. If Lapse comes to the King for Default of the Ordinary and Metropolitan, if the Patron presents to the King before any Person is presented by him, yet the King is not bound to receive him; so the Presentation being once settled in the King, shall not be bevosted.


3. After a Lapse incurred to the King for Default of the Ordinary and Metropolitan, if the Patron presents, and his Clerk is instituted, yet this shall not obst the Lapse from the King, but he may remove him by Quare Impedit. Co. 7. Basketville 22. Admitted. 27 Mo. 260.


4. If Lapse comes to the King to present a Prelatory of his free Chapel, because the Dean thereof does not collate thereto within 6 Months, and after before the King presents the Dean collates, yet the King shall have it, and shall remove the Clerk. 27 G. 3. 84. b. Adjudicatur.

5. If a Lapse incurs to the King for Default of the Ordinary and Metropolitan, and after the Ordinary collates, and his Clerk is instituted and instituted, the which Clerk to dies feit of the Church, it seems the King may present, for the Lapse resolved to him; for it seems the Church was never full, neither against the Patron nor against the King, in as much as the Collocation of the Ordinary gains no Possession against the King, but the King might have presented without being put to his Quare Impedit; and it seems that the Church was not full against the Patron. (But Quare this.)

6. When the Queen's Presentee for Lapse has left the Incumbency by ill pleading, which he may do as well as by Resignation or Deprivation, yet the same shall not turn to the Advantage of the Queen; for where the Queen presents for Lapse, and her Clerk is instituted and instituted, she has no more to do, but the Incumbent must sit as well as he can for the Securing of it; for by what Manner ever he loses his Incumbency, the
Presentacion.

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the Queen shall not present again. Otherwife if the Queen be Patron Le.


7. Quare Impedit; the Cae was, after Lapfe incurred to the Queen the Bifhop being Patron presented, and afterwards the Successof the Bifhop collated the Defendant who was inducted; the Queen brought a Quare Impedit, and it was adjudged, that the Queen had not lost her Pretenfion, but if the Incumbent had died it were otherwife; for here the Church became void by the Incumbent’s own Act; fo if he had resigned or been deprived; and it would be inconvenient if the Queen should lose her Pretenfion by the Incumbent’s own Act. Cro. Eliz. 119, 120. Mich. 30 & 31 Eliz. B. R. the Queen v. the Bifhop of Lincoln and Ligh.

nothing was done thereupon till 15 Eliz. when C. Bifhop of Lincoln prefented again one E. but Non Contar, whether by Death, Avoidance, or Relegation. Afterwards E. being in, C. was removed to Winchefter. F. the Succeedor Bifhop certifed, that E. did not pay the Tenfhus, whereby the Church avoided, and thereupon F. collated Lee. The Qution was, If the Queen might now remove Lee, and to have her Pretenfion which accrued by Lapfe upon Avoidance of D. who took another benefice without Porularity (Qualification)? In arguing this Cae, the Cae of Rinhildb v. Thorntail was agreed. That if Lapfe is devolved to the Queen, and a Stranger presents, and the Incumbent dies, the Queen shall not take the next Pretenfion; But from this, there is a Difference between the Incumbent’s own Act, because Relegation may be by Cajin to defraud the Queen, As if Lapfe accrues to the Queen, and then the Patron prefents by Cajin, that the Incumbent shall reign, and fo Pretenfion shall accrue to the Patron upon a new Avoidance, and the Queen be barred of her old Lapfe, which is not reafonable. Others faid, That in such Cae the Queen ought to be availed; But they agreed, That as Cajin is intendable upon this Certificate; because it is a Judicial Act, which the Bifhop must make by Command of an Act of Parliament, as of Deprivation, which he must do by the Laws of the Church as Judge. And the Juflices inclined against the Queen. Now with refpeft to which, it was afterwards adjudged for the Bifhop.—S. C. Goldsb. 55. pl. 7. & pl. 10. 82. pl. 4. and 86. pl. 9. Judgment was given for the Queen.—Oh. 89. 9o. S. C. adjudged for the Queen.—4 Le. 95. pl. 195. S. C. adjudged. —* In the Cae of Cumbr v. B. the Bifhop of Cbmftes trt and Gruff. Cro. J. 216. pl. 2. Hill. 6 Jac. B. R. It was held, that by Death or Relegation before the King in such Cae has prefented, his Pretenfion was lost, unless it be by Cajin to take away his Title, in which Cae he shall have his Pretenfion. But that if the Patron dies, or rejects the first Benefice, and the Patron prefents, and the Pretenfion reigns upon Cajin or dies, the King has lost that Pretenfion; for Lapfe is but Unica Proxima Vice.

8. P. was Tenant for Life of an Adowfon, Remainkr in Fee to A. —P. prefented his Clerk, who was admitted, instituted and inducted; but by the Statute 15 Eliz. the Benefice was void for want of reading the 39 Articles; however, he continued in the Church, and by Reputation was Parfon during his Life; Afterwards P. died, and then the Incumbent died; then the Queen reciting her Title to prefent by Lapfe, prefented her Clerk, who was admitted, instituted and inducted; and A. prefented his Clerk who was admitted &c. No Notice was ever given to P. of the Avoidance for Not Reading &c. Adjudged, that the Queen’s Pretenfion was void, and that the other was good, though it was objected, that it belonged to the Executors of P. because as to P. himfelf, the Church was full till Notice. Yelv. 7. Trin. 44 Eliz. B. R. Grendit v. Baker.

9. If a Church becomes void by Acceptance of a 2d. Benefice with Cure, and continues void feveral Years by Lapfe in the Time of one King, who dies, the Successor of the King may prefent, and is not restrained by the Statute 25 Eliz. 3. 1. For by the express Words of the Statute, All Rights and Titles to prefent in his own Time until before this Statute, and in his C. Time after, and all his Heirs, after the Death of E. 3 are faved; And it fhall not bar the Titles which the King had in another’s Right fallen, or to fall in his own Time, or in the Time of his Heirs; And that there was fuch a Saving appeared by the Copy out of the Parliament Roll, and by an ancient Book in the Escheuer wrote in Parchment, which fuch a Saving; Per all the Juflices and Barons besides Vernon. And they held, that the Words in the faid Statute (of old Titles) is intended in the Time of the Progenitors of E. 3. and not of any Titles of
of Presentments to fall in the time of E. 3, or of any of his Heirs, but intended to exclude E. 3, and all his Heirs from Titles of Presentment in others Right, fallen before the Time of E. 3, whereof any Church was full, and which Title is only in Another’s Right; and that the express intent of that Statute was to take away the Statute of 14 E. 3, cap. 2, in this Point. Cro. C. 354. Hill. 9 Car. in Cam. Scacc. The King v. Pryit and the Archbishop of Canterbury.

(B.c. 2) In what Cases Lapse shall be to the King or Others; and what may be done after.

1. Vide many Precedents, that by Determination of Commendams Reversion, be it by Death, Resignation, Translation, or Promotion, it belongs to the King to present. Noy. 138. — And it is said there, that there are infinite Numbers of such Precedents.

2. In the Time of H. 3, there were in Com. Northampton. 2 Register, &c. Maidwell and Kelmarsh, whereof there were 2 Patrons; Afterwards the Patron of M. in the Time of H. 3. purchased the Advowson of K. and always after they were come into one Hand the Purchaser presented only to the Church of M. (cum Capella de K.) it as appears by the Bishop’s Register. The Queen presented B. who brought Bill in the Exchequer against the Incumbent of Maidwell, who occupied the Glebe of K. 'Twas decreed for B., that the Patron of M. after his Purchase had presented only to Maidwell, yet K. remain’d a Church in Right, and the Franktenement is in Suppence and not in the Patron of M., as a Diffieror. For Entry of the Patron in the Time of Vacation is no Tort nor gains any Franktenement. Per tot. Cur. Savil 17. pl. 46. Pach. 22 Eliz. Lewis v. Predreth.

3. If after Alienation in Mortmain the Church voids, and the Abbot presents and 6 Months past, the Lord at any Time within the Year may remove the Incumbent; for the Act of Parliament gives all this Time to the Lord to enter, and therefore when he purifies the Statute no Laches shall be imputed to him. D. 25. b. Marg. cites it adjudg’d. Mich. 19. Jac. C. B.

4. When a Lapse is in the King he is not compellable to present, and 'till he presents the Ordinary has the Cure De Animis, and he shall provide for it; so the Difference is between the Curia Antiqua and the Patronage. Per Doderidge J. Roll. R. 464. Trin. 14 Jac. in Cam-Scacc. in the Case of Colt v. Glover.

5. The King can’t grant over a Presentation which he has by Lapse. Per Croke J. Roll. R. 467. in the Case of Colt v. Glover, cites D. 18 Eliz. 339. and 4 Eliz.

(B.c. 3) Pleadings in Case of Lapse.

1. 25 E. 3. Stat. 3. ENACTS that when the Ordinary presents by Lapse, cap. 7. and the King takes the Suit against the Patron, who in Decreti suors the King to recover; In this Case, when the King’s Right is not tried, the Ordinary or Incumbent may counterplead the King’s Title.

2. By W. and N. by the King, and counted that: T. was seised of the Manor and Advowson, and presented one P. and from T. it descended to R. as Son and Heir, and that R. adher’d himself to the Enemies of the King, in Scotland, by which he was outlaw’d; and the Church voided by Resignation, and the King seised the Manor and Advowson, and presented R., &c. and is disbur’d. Chelre demanded
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demanded Judgment of the Count; for it does not appear if the King had Tenure of the Manor and Advowson or Amnon and Vahrum et non Allocatur. Chelres, Judgment of the Count; for it does not appear if the Advowson was appendant or not, ct non Allocatur. And after, Ali except W. pleaded Ne disturbs this, and W. the Incumbent pleased, That the same R. who was ousted'd, a long Time before the Outlawry, leased the Manor and the Advowson to J. S. for Life, the Remainder to T. in Fee, and A. presented this same W. who was received and instituted, Abothe hoc that R. had any Thing the Day of the Felony, or after, Prift, Judgment if any Disturbance, Prift &c. The King pleaded Effopp, that it was found by Officer, that R. was seized the Day of the Felony; And He in Remainder after the Death of A. trespass'd the Office in this Point, and found against him, Judgment if against this Matter found against the Patron he shall be received; and because the Statute does not give, that the Incumbent shall be received but where the Patron pleads rightly; and when he traverses, and it is found against him, this is not faintly, and so he and the Incumbent effopp'd; and because that which is found against the Patron shall be try'd by the Incumbent again, and he claims by the Patron, therefore he shall be bound by that which binds the Patron; by which it was awarded, that the King have Writ to the Bishop. Br. Quare Impedit, pl. 66, cites 38 E. 3. 31.

(C. c) Usurpation. The Effect.

1. He who usurps gains the Fee thereby. 9 H. 6. 30. b. 31. Wart Comp. Inc. Svo. 284. cap. 13. cites S. C.—— Usurpation gains the Church, so that the Advowson can't be granted over. Gro. E. 811. in the Case of Leak v. the Bishop of Coventry and Babridge.—— S. I. Wart Comp. Inc. Svo. 222. cap. 13.

2. If an Infant, seised of a Manor with Advowson appendant, suffers Usurpation, and after he makes Removal of the Manor cum Pertinentias, neither the Feoffee nor the Feoffor has any Remedy of the Usurpation. Br. Presentation, pl. 62, cites 16 E. 3. he in Remainder is without Remedy of the Usurpation. Ibid.

3. If I grant Advowson to a Parson and his Successors, and the Church voids, and a Stranger presents his Clerk, who is instituted and inducted, and the 6 Months pass, he has lost the Advowson for ever; for the Parson cannot have Writ of Right, because neither he nor any of his Predecessors were thereof seised; and he can not have Quare Impedit, because the 6 Months are pass'd; and he can not have Allite of Durrien Presentment, for he never presented, and this Lachesse shall bind the Successor for ever. Br. Presentation, pl. 22, cites 19 H. 6. 40. Per Acque J. Quod non Negatur.

4. If the King confirms the Patronage of an Usurper that has pretended several Times, and the several Clerks inducted, such Confirmation is void, for the Usurper has no Patronage; but if the King confirms the Incumbent 'tis good to the Incumbent, for he is Incumbent de facto, and the King can't remove him without Quare Impedit by the Stat. 25 E. 3. 13 R. 2. Jenk. 312. pl. 96.

5. If a Man present by Usurpation to my Advowson within 6 Months, I may have a Quare Impedit; but after the 6 Months if the Church become void, I can't present, but am put to my Writ of Right of Advowson. And if a Man usurps on the King, he is put to his Quare Impedit within the 6 Months, and that a double Usurpation on the King puts him to his Writ of Right. Godb. 263. pl. 362. Mich. 13 Jac. C. B. Anon.

5 G (C. c. 2)
Ursumption at Common Law. How; And Remedied by Statute.

1. 13 Ed. 1. WHEREAS of Advowsons of Churches there be but three Original Writs; that is to say, one Writ of Right and two of Poifition, which be \( \dagger \) Darrein Prefentment and Quare Impedit.

\( \dagger \) An Affid of Darrein Prefentment no Man can have without alleging a Prefentment in his own Time. 2 Inf. 556.

It appears by this Statute, that every Prefentment which was admitted would put the very Patron out of Poifition at Common Law, and to his Writ of Right of Advowson. Br. Prefentation, pl. 46. — Br. Plenary, pl. 16. cites S. C. — By the Order of the Common Law, if one had prefented to a Church whereunto he had no Right, and the Bishop had admitted and instituted his Clerk, this Incumbent could not be removed for divers Reasons: 1st, for that he came in to the Church by a judicial Act from the Bishop, (who the Law intended, Scrutins Archivis, to do Right) the Incumbent could not be removed neither by Writ of Right of Advowson, nor Affid of Darrein Prefentment, nor Quare Impedit, only the Patron should recover his Advowson in a Writ of Right of Advowson, which by the Ursumption was diverted from him. 2ndly, That by the Common Law, in every Town and Parish there ought to be Perfons Idonea, and this appeareth by the Words of the Writs of Quare Impedit. 3rdly, That the Incumbent should have Curam Animarum might the more effectually and peaceably intend to get great Charge the Common Law provided, That after Institution be should not be subject to any Action, to be removed at the Suit of any Common Person, without all Respect of Age, Coveture, Imprudence, or Non fane Memory, and without Respect of Title, either by Defcent or Purchase, or of any Effect, wherein you may (as often it hath been laid) observe, what Inconveniences follow when the right Institution of the Common Law is not observed. 2 Inf. 557.

\( \dagger \) By this Word (prefented) it appeareth that no Patron doth put the Patron, that hath Title to prefent, out of Poifition, but only Plenary by Prefentation; but Plenary by Collation doth put him that had Right to collate out of Poifition. 2 Inf. 557. — S. P. 6 Rep. 56. in Green's Cafe. — S. P. Cro. E. 20. Smallwood v. Bishop of Coventry and Marsh.

If Tenant for Years or Guardian in Charity bring a Quare Impedit, altho' the Defendant hath a Writ to the Bishop against the Termor or Guardian, and his Clerk is admitted, instituted and inducted, notwithstanding the Tenant of the Frehold of the Advowson is not put out of Poifition. Note a Diversity between a Mere Ursumption and him that comes in by Course of Law. 2 Inf. 357.

\( \dagger \) This is intended of a Church Prefentative. 2 Inf. 557.

\( \dagger \) Albeit that Admissio in its proper Sense is, When the Bishop upon the Examination findeth him Able, (that is) Idonea Person, yet here it is taken for Institution; for here is implied ad eandem Ecclesiam, and therefore of Necessity it must be here taken for Institution, and the rather for that before Institution the rightfull Patron is not put out of Poifition. And it is to be obServed, that by the Institution the Church, as to all Common Persons, is Plena & Confulta as to the Spirituality; that is to say, the Cure of Souls; for when the Bishop doth institute him, he hath, Instituit ad eam Beneficium & habere Carum Animarum, & accipe Carum tuum & mean; but before Induction the Parson hath not the Temporals belonging to his Rectory. 2 Inf. 557.

But the Church is not full against the King before Induction, because in the King's Case Plenary is to be intended of a full and compleat Plenary as well to the Temporals as to the Spirituals. And nota, present, (Prestentation) Admissions, Institutions &c. are the Life of Advowsons; and therefore, if Patrons suspect that the Register of the Bishop will be negligent in keeping of them, he may have a Certiorari to the Bishop to certify them into the Chancery. 2 Inf. 558.

If Tenant have a Poifition and that he or some of his Ancecors had presented; but if the Patron claimed the Fee Simple of the Advowson by Purchases, and had never presented, there he could have noWrit of Right of Advowson, but, before this Statute, had lost the Advowson; and likewise if Tenant in Tail or Tenant for Life had suffered any Ursumption, they had been Remediless by the Common Law, because they could have no Writ of Right. 2 Inf. 558 — At Common Law if Tenant for Life, or by the Curtesy, or in Deser, or the Guardian or Tenant in Tail, had suffered Prefentment, or that he is in Barren, or the Hon to the Writ of Right of Advowson, and as to the Tenant, the Bishop had suffered Ursumption, and if the Bishop, Archdeacon, Parson, and the like, had suffered
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feted Ufurpation; and those are remedy'd by this Statute, and that the Heir, or he in Reversion, or the Feme or Succeflor fhall have Quare Impedit at the next Avoidance. Br. Presentation, pl. 45. — Br. Plenitury, pl. 16, cites S. C. — S. P. 6 Rep. 50. Mich. 3 Jac. B. R. in Boswell's Cafe.
If a Bishop, Abbot, or Prior &c. purchafe an Advowfon, and flrivers an Ufurpation before they prefent, they and their Succeflors are bar'd for ever, unlefs by force of this Act the Ufurpation be avoided in a Quare Impedit. 2 Inft. 358. — So if a Man purchafe a Manor with the Advowfon appantant, and ftriver Ufurpation at the firft Avoidance, he is without Remedies for ever; for he cannot have Quare Impedit after the 6 Months, and he cannot have Wirte of Right of Advowfon, because he never had Possifion. Per Thorp. Nota. Br. Quare Impedit, pl. 29, cites 45 E. 2. 14. — A Purchafe is not within the Act of this Statute; for he cannot have an Action Poftoffitory, because he cannot allegue a Presentation in himfelf as he ought to do in his Count; and he cannot have a * Wirte of Right, because he cannot allegue Scin in the Eiples as he ought to do by the Law. Per Doderidge J. 3 Bull. 40. Trin. 13 Jac. B. R. Harretles v. Quare Impedit. — S. P. But he may have Quare Impedit, and allegue a Presentation in him from whom he purchafed the fame; and to that end, Right Beiton, was the only Act provided for, Remedy of fuch Purchafors; but the Quare Impedit is more ancient than the Turk of E. 4, as appears by the Statute of Glavine. 2 Inft. 356. — In 8 E. 1, it appeareth Quad funt tria Brevia de Advocacione Placitibus, Brevia de Recto, Quare Impedit, & Ultimae Prefeftationes, but yet the Original Writs of Dover and Guiffon &c. did of an Advowfon, and fo doth the Judicial Wirte of Seife factas. 2 Inft. 356.

* It is provided, that fuch Preffentations fhall not be fo prejudicial to the * The Privileg Heirs, † or to them unto whom fuch Advowfons ought to ⋆ revert after the Death of any Persons.

Fraudem & Negligentiam Caffadum &c. And the Words of the Body of the Act are, Quod huic injujmodi Preffentationes, (fuch Preffentations) but these Words are to be expounded, Such Preffentations as be in the same Miftakes; and therefore this Act extends to Heirs of Advowfons, the' they be out of Ward. 2 Inft. 358. And this being a Law that supplceth Wrong and advancer Right, doth bind the King, tho' he be not named in the Act. 2 Inft. 359. The King being informed that he had Interell, prefsed during Non-age of the Patron; and on another Avoidance, the Patron prefsed, and the King brought Quare Impedit, and he pleaded at before; and it was held, that the Statute of Wedmifler 2, does not aid the Defendant, tho' he be an Infant; for the Statute mentions, Where Ufurpation is had upon an Infant, Feme Covert, Termor, Tenant for Life, or the like, by negligent Keeping, that he shall have the fame Action and Exception as their lift Preceflor might have had; and this of Heirs who come in by Liq ueft, who may be in Ward, or have Actions as Heirs of their Anceflors. But * * Infant Purchafor has no Guardian or Action Antecedent of that which is purchafed, and therefore Ufurpation had upon him now shall bind him, as it would have bound an Infant or Feme Covert at Common Law, by the Opinion there, and this immediately within 6 Months; † † for the 6 Months is given by the Statute to bring the Quare Impedit to reform it. Br. Quare Impedit, pl. 18, cites 35 H. 6. 39. — ** S. P. 2 Inft. 353. — † † S. P. Br. Preffentation, pl. 46. — Br. Plenitury, pl. 16, cites S. C. — And it was held, that if the Statute shall serve the Infant, yet the King shall not be bound thereby; for where by the fame Statute Preffentation had and enjoy'd 6 Months by Lapse shall bind, yet the King shall not be bound thereby, but shall have Quare Impedit after the 6 Months, by which the Defendant amended his Plea. Br. Quare Impedit, pl. 18, cites 35 H. 6. 59. A Prior was exceed of an Advowfon, and granted the two next Preffentations to W. F. and Ian Heirs. The Church voided. W. prefented and died. The Church voided again, and his Son and Heir prefented where this is only a Cattle; and it was agreed, that this is an Ufurpation, which put the Party to his Wirte of Right of Advowfon; but now this is expressly aided by this Statute. Br. Quare Impedit, pl. 14, cites 34 H. 6. 27. — * Notwithstanding he eff elli hereditibus, to those Heirs that have the Reversion of the Advowfon by De- fent; for the Preamble faith, Heredes etiam five majores, five minores &c. And the Periles of this Branch is, Quod in hereditatis ultimo Antecedent hujujmodi heredes &c. So at this Statute doth help the Heir of him in the Reversion, and not the Leffor himfelf; but the Heir of him in Remainder is not within the Purview of this Act. 2 Inft. 359. "This is that of Tenant by the Courtef, Tenant in Dower, or otherwise for Life, or for Years, or in Fee Tail. 2 Inft. 359. — Ufurpation had upon Tenant in Tail foul'd himfelf for his Life, but not the Front in Tail; for he is aided by the Statute. Per Bell. Br. Quare Impedit, pl. 29, cites 45 E. 2. 14. — If the Advowfon was in Grofs, then the Preffentations are but Ufurpations, and shall not Pre- judge the Heir in Tail by Reafon of the Statute. Br. Quare Impedit, pl. 31, cites 45 E. 2. 24.

The * fame fhall be observed in Preffentations made unto Churches, being of * If a Feme the ⋆ Inheritance of Wives, what Time they fhall be under the Power of their Husbands, which must be aided by this Statute by the Remedy afo- fand.

the Remedy of this Act. 2 Inft. 356. — † This is intended of an Advowfon by Difent. 2 Inft. 356.

Also Religious Men, as Bishops, Archdeacones, Parfons of Churches, and other Spiritual Men, fhall be aided by this Statute, in Cafe having no Right to preffent, do preffent unto Churches belonging to Prelacies, Spiritual Pre- fered.

By this Pre- fentation and Ufurpation in Time of Dignities.
So great Regard the Law hath to the Judgments, as this Act provideth, That by any general Words of this Act they shall not be avoided by Pretence of Joint Defence; qua Judicia in Curia Regis reddit a pro Venerate accipiantur; & Judicia sunt tamquam Jurisdiction. 2 Inf. 366.

Or by Affid of Darrein Prefentment, or by Inquest by a Writ of Quare Impedit if it be paffed, or be annulled by Attaint or Certification, which shall be freely granted.

And sometimes when an Agreement is made between many claiming one Adversary, and inrolled before the Justices in the Rolls or by Fine in this Form, That one shall present the first Time, and at the next Avoidance another, and the third Time another; and so of many, in Case there be many, that are privy.

In Blood; and if one of the Parties or his Heirs, or any Stranger usufirp in the Turn of another, the Party wrong'd is not driven to his Quare Impedit; for so it may be, that the Quare Impedit, or Affid of Prefentment, may fail, and yet he may have Remedy by this Branch of the Act; for albeit there be a Plenary by 6 Months, yet the Party may have a Scire facias upon the Roll or Fine, and therein recover the Prefentation and Damages. 2 Inf. 362.

See (G. a) (H. a) (K. a)

And when one has presented, and had his Prefentation, which he ought to have according to the Form of their Agreement and Fine; and at the next Avoidance, be to whom the second Prefentation belongeth is disturbed by any that was Party to the said Fine, or by some other in his Stead, It is provided, That from henceforth they that be so disturbed shall have no Need to sue a Quare Impedit, but shall reftort to the Roll or Fine.

And if the said Concord or Agreement be found in the Roll or Fine, then the Sheriff shall be commanded, that he give Knowledge unto the Disturber, that he be ready at some fhort Day, containing the Space of 15 Days or 3 Weeks, (as the Place happeneth to be far or near) for to come, if he can allege any Thing, wherefore the Party, that is disturbed, ought not to prefent. And if he come not, or that evidence doth come and can allege nothing to bar the Party of his Prefentation, by reason of any Deed made, written since the Fine was made or inrolled, be shall recover his Prefentation with his Damages.

No Damages by this Act are to be recovered but that is Impe- ditor or Di-
covered but against him that is Impeditor or Disturber. 2 Inft. 563. — In a Quare Impediment against the Patron and Incumbent, the Plaintiff recovers the Advowson Post since the time; and because the Incumbent was Impeditor, for that he had counterfeated the Title of the Plaintiff, therefore he recovered the Office for two Years as well against the Incumbent as the Patron. 2 Inft. 563.

And if the Advowson be deroyn'd within the Half Year, yet the Disturber shall be punished by the Imprisonment of Haiti a Year.

2. 7 Anne, cap. 18. Forfrance as the Pleading in a Quare Impediment is found very difficult, whereby many Patron[s] are either defeated of their Rights of Presentation or put to great Charge and Trouble to recover their Right, which is occasion'd by the Law as it now is; for Remedy whereof, be it enacted by the Queen's Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in Parliament assembled, and by the Authority of the same, That no Usurpation upon any Avoidance in any Church, Vicarage, or other Ecclesiastical Promotion, shall displace the Estate or Interest of any Person entitled to the Advowson or Patronage thereof, or turn it to a Right; but he or she that should have a Right if no Usurpation had been, may present or maintain his or her Quare Impediment upon the next or any other Avoidance, (of disturbed) notwithstanding such Usurpation.

(D. c) Upon what Thing Usurpation may be.

1. If a Donative becomes void, and after a Stranger presents thereto, and his Clerk is admitted, instituted and inducted, yet this is not any Usurpation to the true Patron; But all this is merely void. Co. Litt. 344.

2. If the Ordinary deprives an Incumbent for Crime or other Wuff Com. Caufe in which he ought to give Notice thereof to the Patron, but he does not give Notice thereof to the Patron, but after a Stranger presents his Clerk, who is instituted and inducted, and 6 Months pas; it seems that this is no Usurpation upon the Patron; for tho' the Ordinary hath not have any Advantage of any Place without Notice, yet the Church of itself is void, and against Strangers the Patron is bound to take Notice of it at his Peril. See Ten. 44 2 supra.

3. Cl. B. R. Greene and Baker's Case.

(E. c) Usurpation. What Act or Thing will make an Usurpation, or put a Man out of Possession.

1. If a Man recovers in a Quare Impediment, and has Execution, every other is out of Possession thereby. 9 H. 6. 57.
If a Man brings Quare Impedit against the Incumbent only without the Patron and Recovers, and by Writ to the Bishop the Incumbent is removed, and the Clerk of the Recoveror intituled, this shall put the Patron out of Possession tho' he was no Party to the Suit. 

Distrattur. 9. H. 6. 32.

If the Bishop be a Disturber, no Lapse shall incur by his Disturbance, that the Church be void by 6 Months. Cr. 3. Jas. B. R. between Palmer and Smith. Resolved per Curiam.

As if the Patron present to the Bishop, and he will not examine the Clerk but delays him, by which the 6 Months pass, yet no Lapse shall incur to the Bishop; Because he is a Disturber, and this comes by his own Disturbance. Cr. 3. Jas. B. R. between Palmer and Smith. Resolved per Curiam.

If a Stranger presents to my Church being void without any Right or Title, but merely by Tort, but he presents by Simony, and his Clerk is admitted, instituted, and inducted, and 6 Months pass, yet this is not any usurpation to me; Because the Presentation, Admission, and Institution are made void by the Statute of 3 El. and the Pretenue is not Incumbent de facto. Co. Litt. 122.

If I present my Clerk, who is admitted, and after another presents and ousts my Pretenue without Title, Now, notwithstanding that Pretenue shall not lose his Possession, yet I am not out of Possession, but after the Death of my Pretenue I shall present again. Br. Confirmation. pl. 1. cites 44. E. 3. 33. Per Tank.

In Scire facias it was agreed, That if the King seizes Advolony of a prior Alien for War and Precepts, and after the Prior is restored, this does not put the Prior out of Possession, nor shall the Prefentment of the Guardian in Chivalry put the Heir out of Possession; For the Possession of the King affirms the Title of the Prior Alien, and of the Heir; But the Heir nor the Prior Alien shall make Title by this Presentation of the King. Br. Presentation pl. 47. cites 46 E. 3. 6.

Where the Defendant presents in Jure Usuris, yet if he has no Right this does not vest Possession in him. Br. Quare Impedit pl. 108. cites 14 H. 6. 23.

Between Patrons, if one of them be presented and admitted, and instituted by the Ordinary, and is in by 6 Months, this shall gain Possession; Contras where he presents a Clerk, and puts him in Possession without the Ordinary; As where I have a Free Chapel, to which I may make Collation, and put my Clerk in my felf without presenting to the Bishop, there if a Man at an Avoidance puts in his Clerk who is in by 6 Months, this does not put me out of Possession, nor if he presents him to the Ordinary, who admits and institutes him. So where an Abbot is Elective, and not presentable, there Presentation does not gain Possession, Per Markham, quod Danby concibus; but Norden held Contras, and that in these Cases of Presentation to the Bishop, where the Clerk is admitted and instituted, he is a clear Gainer of Possession; otherwise it seems clearly to be, where he puts him in Possession of his own Authority, by which he continues till the 6 Months pass; this does not gain Possession clearly as it seems, Contras of the Bishop who makes Collation by Lapse; For there 6 Months make Possession. Br. Quare Impedit. pl. 83. cites 22. H. 6. 23.

A Prior was seised of an Advolony, and granted the 2 next Presentations to W: F. and his Heir, the Church voided, W. presented and died, the Church voided again, and his Son and Heir presented, whereas it is only a Chattle; And it was agreed that this is a Usurpation which gives the Party to
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to his Writ of Right of Advowson by the Common Law, but now this is expressly aided by the Statute of W. 2. That Usurpations permitted by Tenors shall not grieve him in the Reversion, by which at the next A-

Contra, the Grant is void, as it seemed by ; Rep. St. And although such Grantee presents by Colour of such Grant, yet that is a Usurpation which shall bind. Nov. 145. Anon.

11. By the Possession of the King by Presentation, or by the Possession of any other Person by Presentation, every other is out of Possession. Br. Quare Impedit, pl. 18. cites 35 H. 6. 59.

If J. N. takes, he shall be put out for Spoliation; For he may pray the Ordinary to admit him, but not present himself. Br. Quare Impedit, pl. 18. cites 35 H. 6. 59.

If a Church becomes void, to which I have Cause to present, and a Stranger makes Presentation, and his Clerk is instituted and inducted, against whom a Stranger brings Quare Impedit, and recovers, this Recovery shall not grieve me who am rightful Patron, and a Stranger to this Recovery &c. Agreed per tot. Cur. Keilw. 49 pl. 4. 18 H. 7.

If a Stranger presents the very Patron, this will not put him out of Possession. Br. Presentation, pl. 23. cites 14 H. 8. 2.

15. If the Ordinary makes Combination within 6 Months, this does not gain Possession to the Succesor; For he has Colour as Ordinary; Counter, where he presents without Colour, Note the Divinity. Br. Presentation pl. 23. cites 14 H. 8. 2.

16. If a Man presents himself, and is inducted, and dies, this does not poll the Action of the very Patron; But he may have Quare Impedit, and this does not gain Possession. Br. Presentation pl. 23 cites 14 H. 8. 2.

17. A College was founded by the Name of Aule Scholarum Reginar de Oxon. The Procurit of the said College presented to a Church being void by Name of the Prorot of the College of the Queen in Oxon, and omitted the Word (Scholarum) And it was hold clearly by the Court, that this Presentation thus made, by a contrary Name of their Foundation, shall make no Usurpation, nor gain any Patronage to themselves; for there was no such Name of Incorporation as they presented by, and so consequently no Usurpation thereby by them gained. Bulst. 91. Mich. 3 Jac. Dr. Ayray v. Sir Richard Lovelace.

18. It was held by Brampton and Crooke J. that a Naked Presentation without any Induction, does not gain any Right, and the very Patron by this is not put out of Possession, but that it is the Institution and Admission by the Ordinary, which is a Judicial Act, that makes the Usurpation, and there is not any Interest gained before; for if there be a Presentation without Institution, nothing is done, therefore if the Usurpation is gained by the Institution, which is subsequent to the Presentation, the Usurper in his Declaration cannot say that he was feigned in Fee and presented, which is precedent to the Act which makes the Usurpation,
Presentation.

Usurpation, viz. the Institution. And till Institution no Estate is drawn out of the Usurpation; that is, after Presentation and before Institution, the very Patron grants his Advowson to a Stranger, the Grant is good, tho' afterwards there be Institution of the Clerk of the Usurper. And they said that in Truth there cannot be an Usurpation to gain the Fee till the Institution, and by Relation, which is a Fiction in Law, it shall not be to taken; for Relation and Fiction is to preserve, and to prevent Nulchif, and not to do a Tort, as the Cafe in Question is. But Barkley and Jones held, That the Presentation is the sole Act of the Party which gains the Advowson, and the Institution is only a succeeding Ceremony; and when the Ceremony is performed, it shall have Relation to the precedent Act; and cited 6 E. 3. 41. b. that Presentation in Time of War, and Institution in Time of Peace, shall be an Usurpation in Time of War. See pending. Jo. 427, 428. Hill. 15 Car. B. R. in Case of Sir Henry Harper v. The Bailiffs and Burgesses of Derby.

(F. c) Usurpation. For whom the Usurpation shall be said to be.

Watf. Comp. Inc. Svo. 204.
1. If the King presents in Right of his Ward, who has not any Right to the Advowson, this belts the Inheritance in the Ward by Usurpation, because he has expressly presented in his Right.

2. So it is of a Common Guardian. Contra 17 E. 3. 60. 7 b. 4. 26. b.

3. If I present as Procurator to J. S. to a Church of which J. N. is feised; this shall be an Usurpation for J. S. if I am Procurator of J. S. 17 E. 3. 60.

4. So it shall be if I present as his Procurator, tho' I be not his Procurator. 17 E. 3. 60.

5. So if I my self am feised of an Advowson, and I present as Procurator to a Stranger, this shall be an Usurpation upon myself for the Stranger. 17 E. 3. 60.

6. So shall it be, if I present as Attorney to a Stranger of an Advowson whereof I my self am feised, this shall be an Usurpation for the Stranger. 17 E. 3. 60. b.

(G. c) Usurpation. What Person [may] usurp. The King.

S. P. By all the J ufficcs, except Windham J.
1. The King may usurp 42 E. 3. 4. b. 43 E. 3. 15. D. 18 El. 351. 22. and cites Trin. 35 H. 8. The King may gain an Advowson by Pretenctment, and Plenary by sir Months without any Title. Also against an Infant Purchaser.
For whom.

2. If the King presents in Right of his Ward, who has not any See (F) right to the Advowson, this vests the Inheritance in the Ward; for he has expressly presented in his Right, and is an usurpation. Ergo 42. E. 3. 4. b. 43. E. 3. 14. b. Contra 22 E. 4. 9. b.


(H. c) *Who may usurp in Respect of the Estate.*

1. If a Man seised of an Advowson in Fee, grants the three next Hab 3:15. 7. S. C. The Grant of the three Avoidances of the Church to J. S. and after the Church holds, and the Grantor himselt presents, and his Clerk Instituted and Indicted, tho' the Grantor himself has the Fee, so that he cannot gain a new Fee by an usurpation, yet this shall be an usurpation as to the Grantor, by which the two other next Avoidances to him granted are turned to a Right; and so because he cannot have a Writ of Right, he is without Remedy for them. B. 16 No. B. between Sir William Writ of Ellways and Tailor. Per Curtiam. Intratit. Contra. Co. Litr. 249. there cites H. 13 El. B. Per Curtiam, for the Privity between them (makes it) no usurpation, and because he cannot usurp upon himself.

This usurpation is not remedied by the Statute of W. 2. 5. And fo his Right being remedyless, it is gone, and in Reversion is seised in Fee discharge'd of this Grant, and having usurp'd within the 6 Months, the Interest does not continue divided in him; and if he dies, his Executor shall not have it: but his Heir, for it is dower'd in the Reversion; as if Tenant for Life be discharge'd by him in Reversion, and dies seized, this is a Discharge of the Estate in Fee, and so the Reversioner is seiz'd in Fee of the Advowson. Adjudged accordingly. But Hutton Contra; for he held that they were 5 several Interests, as if 5 several Grants had been made. Jo. 6. pl. 4. S. C.

2. But D. 12 Car. 2. between Legg and Sir Anthony Ager in Eccles. 54. Ch. 2. and at the End of pl. 1. next for himself for the Privity between them; and therefore this Presentation upon the Lease only bars the Lease for this Turn only, and his Estate not turned to a Right; and in this Case they denied the said Case of Sir William Ellways and Tailor to be Law.

5 I
Presentation.

(H. c. 2) If he shall be said to be the Usurper.

1. If a Head of a Corporation, by a wrong Name of Incorporation, presents a Clerk, who is Admitted, Instituted and Inducted; the Party who is presented shall not by the PreSentment be the Usurper, because the PreSentment as to him (being by a void Name of Incorporation) is void in itself, and he by this gains nothing at all (the Presentation of him being by a contrary Name differing from the Name of the Foundation); but this Collation here by the Bishop shall make Him to be the Usurper. Per to. Cur. 1 Bulk. 91. Mich. 14 Jac. Dr. Ayrey v. Sir Richard Lovelass.

See (b. c) (f. c) Usurpation. Upon whom. Upon the King. [Or others.]

For the Advowson was always appendent, and the Inheritance passes to the Granter, and is not made disappendant, as in Case of a common Person; for the King cannot be put out of Possession; but the Patentee shall not have Quare Impedit of the first Disturbance; for that PreSentment, being a Chofe in Action, doth not put unless mentioned in his Grant. And if the Patentee brings Quare Impedit on the 2d Advowson, he shall make his Title by the PreSentment of the King not making Mention of the Usurpation. 2 Le. 17. pl. 41. Mich. 14 Eliz. Anno —.—3 Le 61. pl. 59. Mich. 18 Eliz. C. 6. the S. C. in the same Words. — Dal. 75. pl. 1. Ann. 14 Eliz. S. C. * Hob. 248.

2. But a Man may usurp upon the Queen: For the Plenary Act is good Plea against her. 18 Eliz. 3. 2. Adjudged. But there scarce.

3. This Usurpation is only to the PreSentment.

4. A Man may usurp upon the King, and put him to his Writ of Right. 18 Eliz. 3. 16.

A Man may usurp upon the King, if his Clerk be received, as well as upon a common Person: Good Notice, and this puts the King out of Possession. Br. Quare Impedit, pl. 59. cites First. Quare Impedit 15 and 18 Eliz. 7. 15.—But Brooke says it is said elsewhere, that Lapte shall not hold Peace against the King; for Nullam Tempus Occurrat Rege; and from hence it seems that the King may have Quare Impedit after the 6 Moats, if the Church be void, but if it be so by PreSentation, and no Patron nor Incumbent alive who may be said Disturbator, against whom the King may recover, the King is put to his Writ of Right of Advowson; Contra it seems where they are alive, for Plenary is no Plea against the King. Per Caud. but Belk contra.

In Quare Impedit it is admitted, that two PreSentments shall put the King out of Possession, and put Him to his Writ of Right of Advowson. Br. PreSentation, pl. 9. cites 4. Eliz. 5. 4.—And says, see 24 Eliz. 4. 5. That the King shall have Quare Impedit or Writ of Right of Advowson, and some other Actions. And Brooke says, from hence it seems that the King may be put out of Possession. Ibid.—Br. PreSentation, pl. 9. cites S. C. — Br. Quare Impedit, pl. 59. cites S. C. and 24 Eliz. 4. accordingly.—S. P. Br. Prerogative, pl. 110. cites 24 Eliz. 3. 10.—Vauhan Ch. 1. says, That the Reason why two Usurpations put the King out of Possession is, that after the Death of the first Incumbent there is none against whom he may bring his Action. 2 Jo. 10. in Case of the King v. Service, cites Stand. Preer. 39. 54. 52.—But fee pl. 3.


* S. C. adjudged in C. B. against the Opinion of Anderfor Ch. J. there, that the King is put to his Writ of Right
Determination

D. R. this Judgment was reversed, by the Opinion of Popham Ch. J. Yelverton, Williams, and Tanfeld, Fenner being e contra; and they alleged two Reasons, viz. The Right of Patronage, and the Adowment itself being an Inheritance in the Crown of Record, the Law so proceeds it, that by no Tort done by a Subject it can be diverted; For in Case of the King there ought to be the same Means to divert it out of the King, (viz. a Record) as there is to intitle him, and there is no Matter of Record against the King; For the Presentation by a Subject is only Matter in Fact, which Act, though it is mixt with the judicial Act of the Bishop, yet it shall not prejudice the King, in as much as it is ground only upon the Tort of the Subject, 3dly, No Man can shew when and at what Time the Uturpation upon the King commences; For there is no Doubt, but after the 6 Months passed from the Incumbency he may well present for a Plenary, But Plea against the King, & Nullum Tempus Occurrat Rejudg, and after such Uturpation upon the King, there is no Doubt per Cur., but that the Patronage is yet in the King to grant. And they all held, that during the Life of the first Presentee, there is no doubt but that the King may preterit, and then the Death of the Incumbent cannot make that an Uturpation which was not to his Life; For his Death is a Determination of the first Tort, which will rather aid than hurt the King. And per Tanfield, according to this Resolution it was reversed also 23 & 24 Eliz. C. B. in one Barley's Cafe, though in that Case there was not any Induction, which was the Reason that the Opinion of the Judges was not delivered in Point of Judgement, but all were of Opinion as they are in this Court now are; and no Book in the Law is contra, but only a glancing Opinion in 42 Eliz. 3. 19 E. 5. and 18 E. 3. Yelv. 90. 91. Titin. 5 Jac. B. R. the King v. Matthew —Nov. 18. S. C.


Quae sub diem hujus inentis, the Defendant pleaded, that the Church was still in the Day of the Act purdue by the King, and his Counsel demanded Judgment of the Writ; Eo non Allocutus against the King. And there it is agreed in a Manner, that Plenarita is no Plea against the King claiming in his own Right, or in another's Right, by which the Defendant alleged two Preferences in his Answer one after another, to prove Uturpation to put the King out of Possession. And per Belknap clearly, this shall not tere against the King, by which Candish dared not demur, but traversed the Preference of the King. Br. Plenarita pl. 1. citas 45 E. 7. 12. —Uturnation upon the King does not gain Possession. Br. Quare Impedit, pl. 28. citas S. C. But Brooke tlya, Quare in: —† Orig. is (Concilium de iud in Judgement &.)

In a special Verdict in Trench, it was adjudged, That an Uturpation on the King's Title by Presentation will put him out of Possession, and he is put to his Quare Impedit, and cannot preterit, till the Incumbent is removed by Judgment. * But double or treble Uturpations by several Persons shall not gain the Incidence of the Adowment out of the King; for that is permanent, and cannot be devest. Whereas, as to Preference, the King may be put out of Possession, because that is transitory. Adjudged 6 Rep. 50 a. Titin. 44 Eliz. D. B. Green's Cafe. —S. P. determined on a Writ of Error. Cro. J. 125 the King B. Champion, with this further Reasons, That the King is put to his Action of Quare Impedit, because Reaon requires that the Church should be served. —Cro. J. 33 the King v. the Bishop of Norwich. S. P. adjudged. —† Cro. El. 518. in Hufsey's Cafe. S. P.

6. The Patency of the King of an Adowment presents twice to the Church, and his Clerk is instituted and inducted where the Patent was void in Law, and it did not pass by the Patent, yet the Patency has so gained the Possession of the Adowment by this Uturpation against all Strangers, that at the next Avoidance, if he be preterit, he may maintain against a Stranger, who makes no Title thereto, an Affirm of Darrein Preferment. D. 18 El. 251. 22. Adjudged.

7. An Uturpation may be upon a Feme covert. 50 C. 3. 13. b. at a Feme Common Law. and take a Husband, and the Church voids, and the Stranger does present, and the Husband suflers an Uturpation &c. By this Uturpation the Wife shall be put out of Possession after the 6 Months past, and the shall be put to her Writ of Right of Adowment if she have preferred before; and if she have not preferred, she is without Remedy; and if the other wife it, is, if the Feme be an Adowment by Defunt, or by Course of Inheritance. —F. N. B. 54 (S.)

8. If a Common Person utrurs upon the King, and his Clerk is admitted, instituted and inducted, the King is put to his Quare Impedit, and cannot preterit till the Incumbent is removed. Co. 6. Greene 39.

But the King may bring his Quare Impedit at any Time, unler the Act of

Lives of the Patron and Incumbent or of the Incumbent only, tho' it be after the 6 Months. For Quare Impedit, pl. 59 cites 42 E. 5. 4. —If there be an Uturpation upon the King by a competent Plea, the King cannot present to the Church before he has removed the Incumbent by Quare Impedit, albeit Contentions might grow in the Church between the several Claimers of the benefice, to the Disturbance or Hindrance of Divine Service, and this was by the Common Law. But in that Case the King is put out of Possession as to the bringing of an Action, but the Inheritance of the Adowment is not devest out of him. 5 Lat. 338. 9.
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Presentation.

9. If the Ward of the King has an Advowson in Gros, whereas he is seised in Fee, but this is not found in the Office, and after the Church voids, though the King may present thereon without any Office thereof found, yet if a Stranger presents, and his Clerk is in by 6 Months, and after the Peer lies Livery, this is an Usurpa-
tion upon the Heir; for the King without such Office had not any
Possession therein to protect the Inheritance of the Heir. Mill. 14 Car.
52. R. between Harper and Worsdall in Writ of Error upon a Judgment
in Bank in Advowson Imped, adjudged per Curiam. In-
tratatur.

10. If an Infant purchases an Advowson, and Usurpation is had upon
king, he shall not avoid it by Nonage; for the Statute says, Per Negli-
geniantem Cujovatum, which is of an Infant who is in ly Defent; for an
Infant and Feme Covert were bound by Usurpation at Common Law af-

4 Le. 299.
pl. 339.
Mich. 18.
Eliz. B.B.
S. C. Anon.

11. The King was seised of a Manor to which an Advowson was Ap-
pendant, and the Church being void, a Stranger presented A. who was in
by 6 Months unknown to the Council of the King who afterwards
granted the Manor with the Advowson to W. R. Then A. died. It was
held per Cur. that the Grantee shall present, because the Advowson
was always appendant, and the Inheritance thereof passed with it to
the Grantee; for it was not made Disappendant by this Usurpation
unto the King, though in the Cafe of a common Perfon it had been so,
until he had continued it and made it appendant again by a Writ of
Right of Advowson. And it was agreed, that W. R. the King's Pate-
tree shall have the next Avoidance, (though he could not have the pre-
vent Avoidance for want of being mentioned in his Grant) and in Qui
Imp. to be brought by him, he shall make his Title by the last Pre-
sentation of the King, without making Mention of the Presentment of

12. It was held by all the Justices, That no Usurpation can be upon
Lincoln.

(K. c) Usurpation. Upon whom. In respect of Estate.

S. P. if the Advowson be appendant, but it serves for the others for
Title in Quare Impedit after his Death. Br. Presentation al &c. pl. 1. cites 27 H. 8. 1. But he says, Quare
if it had been an Advowson in Gros.—If one presents alone, and his Clerk is induced, the other is out of Possession. Br. Quare Impedit, pl. 52. cites 11 H. 4. 54. per Hanke. And Brooke says, the
King's Attorney in 33 H. S. agreed with Hanke clearly.

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By the Common Law, if an Advowson defends unto Parcers, the one presents twice, and usurps upon his Co-ber, yet he that was negligent, shall not be clearly barred, but another Time shall have his ed to divers. Then to present when it fails.

Coparceners, if they cannot agree to present, the Eldest shall have the 16 Turn, and so every one according to Seniority, and this Privilege extends not only to their Heirs, but to their Assignees, whether they have their Easement by Conveyance, or by Act in Law, as Tenant by the Curtesy, and therefore although the Coparceners do make Compromise to present by Turn, this being no more than the Law appoints, (Expresso corre- rate infant nihil operatur) they remain Coparceners of the Advowson, and the Inheritance of the Advowson is not divided; and notwithstanding this Compromise, they may join in a Quare Impedit if any Stranger usurp in the Turn of any of them; and the sole Presentation out of her Turn did not put her later out of Possession in respect of the Privy of Estate, no more than if one Coparcener takes the whole Profits, 2 Inf. 365.

This Law doth extend to Ufuration by one Coparcener upon another as well before Partition as after. 2 Inf. 365.

14. A Man seised of a Manor with Advowson appellant had Issue four Daughters, and died, and they made Partition of the Manor, and that each should present by Turn in Degrees, as their Age was, by which the Eldest commenced &c. and her Clerk was in, and after the Eldest died, her Heir within Age, and found by Office for the King, and he feited the Ward, and after the Church voided again, and the King presented in Turn of the second Daughter: And per Catesby the King prefented in Right of the second Daughter, and therefore his Presentation in the Turn of the second Daughter, does not put her to Writ of Right of Advowson; But to this Brian and Choke were strongly Contra, and that it was Ufuration; For there is no Privyty of the Partition in the King, and this Presentation is in Jure Regis Proprio, as Lord, and never shall make Title to the Heir in Quare Impedit. Br. Quare Impedit. pl. 139. cites 22 E. 4. 8.

15. Where there is a Corporation of Masters and Consecrers, and the Master presents in his own Name, this will not put the Succesor out of Possession; For he cannot do a Tort to himself; per Fitzjames Justice; and all the Justices in B. R. were with the first Judgment. Br. Presentation. pl. 23 cites 14 H. 8. 2.

16. If 2 jointenants present one of themselves, this does not gain Possession; For it is not a Presentation, but a Prayer to be admitted. Per Fitzjames. Br. Presentation, pl. 23 cites 14 H. 8. 2.

17. Where a Bishop suffers an Ufuration of a Church in Right of his Bishoprick, it shall not bind his Successor, but himself only during his Time; And it was resolved by all, that Ufurations shall bind the Bishops who suffer them, but not their Successors; because it is within the Statue 1 Eliz. which restrains Alienations and Grants by Bishops &c. And Judgment accordingly. Cro. J. 673. Mich. 21 Jac. B. R. Dalton v. Bishop of Ely.

Br. Error, pl. 85. cites S. C.

18. When one usurps upon a Leafe for Years, this gains the Fee, and puts the true Patron out of Possession; And though by the Statute of W. 2. cap. 5. he in Recover after the Lease may have a Quare Impedit, when the Church is void, or may present, and if he does present, and his Clerk is admitted and indited, then he is remitted, yet till it be recovered, or his Clerk be in, the Ufurper hath the Fee, and the Writ of Right lies against him, and that defends to his Heirs. Hutton. 66 Rudd. v. Bishop of Lincoln.
Presentation.

(L. c) Usurpation. Upon whom. In what Cases Usurpation * upon one shall be upon others, at the Common Law.

1. If Lessee for Years, or Guardian, brings Quare Impedit, tho’ the Defendant has Writ to the Bishop against the Tenant or Guardian, and his Presence accepted, yet the Tenant of the Frankenmement is not put out of Possession therev. 52 E. 4. 14 b. Term.

2. If 3 Coparceners make Partition to present by Turn, and the Elderst Ultras in the Turn of the Middlemost; this shall not be any Usurpation upon the Turn of the youngest. * 30 E. 3. 5.

Inf. 565. 2 H. 7. 4. 5. 22 E. 4. 9.——— * This seems misprinted for 52 E. 3 (152) and is the Case of Sir Richard Talbot v. the Bishop of Hereford.

3. [80] If 3 Coparceners are, and the Elderst presents in her Turn without Partition, and after a Stranger ultras in the Turn of the second, yet this is not any Usurpation as to the 3d or 1st Coparcener, but only to the 2d. 12 H. 7. Kel. 1. Per Curiam.

The Court inclined that it would put all of the Possession, and would not permit a Special Verdict upon the Motion of Servant Maynard, but a Case was made of it for the Consideration of the Judges. 2 Vent. 59. 53. 7th. 14 b. Anon.—Watf. Comp. Inc. 201. cap. 15. cites Same Cases. And Dr. Watson says the Case of Vent. seems to be upon this Rule. Partition, and cites made of an Advowson does not favor the Right and Inheritance thereof, but is only of the Possession, and cites 2 Co 87. Court’s Case; therefore the Inheritance remaining intact, an Usurpation a Severance in the Turn of one Coparcener, gains the whole Inheritance by Wrong till avoided, and consequent upon must put all the Coparceners out of Possession.

4. So had it been, tho’ Partition had been made to present by Turn. See (L. c) 12 H. 7. Kel. 1.

5. If Tenant for Life, the Remainder over in Fee sufers Usurpation, and the Tenant for Life dies, he in Remainder has no Remedy for this Usurpation. Br. Quare Impedit, pl. 162. cites 16 E. 3.

6. An Advowson descended to 3 Coparceners Infant, and before Partition by any of them, a Stranger usurps, it seemed to the Court that Usurpation should be upon all; for one Right descended to them, and they may join in the Partition. 21 E. 3. 31.

And the Usurpation on a Difference no Agreement between them, the Elderst may present, yet it is but a Privilege which the Elderst Daughter may waive. Trin. 35. 1. C B. 4. 1849. Hoy v. Belyv.

(M. c) Usurpations. Defeating of Usurpations.

1. If the Diffeesor of a Manor to which an Advowson is appendant, * Br. Quare impedit, pl. 32. cites 14 H. 6. 14.——— It was said for Law, that by the Reged he has recommenced the Manor, and the Advowson was always appendant, and to remain after the Reged; but contro an Advowson in greffs. Br. Quare Impedit, pl. 106. cites 14 H. 6. 15.

2. But if he re-enters within the 6 Months, his Presence shall be received, and the other ousted. (It seems it is intended upon Recovery in Quare Impedit.) 14 H. 6. 24. Quare.

4. If a Feme suffers an Usurpation upon her Advowson, and after she takes Baron, who presents to the next Abundance in Right of the Feme (and Clerk induced) this voids the Possession in the Feme. 14 H.

5. If the Patron of an Advowson creates a Vicarage out of it lawfully, and after a Stranger usurps upon him in the Patronage, and after that in the Vicarage, and then the Patron recovers the Advowson in Writ of Right, yet this shall not defeat the Usurpation in the Vicarage, because the Vicarage is not appendant to the Advowson, as it is implied by the Case; for this is put to prove it. 17 C. 3. 51. v. Curia. (It is to be admitted here, that the Patron of the Patronage is Patron of the Vicarage.)

6. If an Advowson descends up 2 Coparceners, and after an Usurpation is made upon the one who dies without Issue, by which her Right descends to the other Coparceners, this shall defeat the Usurpation; because she cannot have Action of Parcel of the Advowson being seized of the Remainant. 17 C. 3. 22.

7. If 3 Coparceners are of an Advowson, and the eldest presents in her Turn without Partition, and after a Stranger usurps upon the Turn of the 2d, and afterwards the 3d presents in her Turn, this renders the 2d again, so that the shall present again when it comes to her Turn; for their Right is joint, and so the Usurpation being avoided by one, it is so for all. 12 H. 7. Bell. 1. Per Curiam.

8. The Law would be the same tho' there was a Partition, because the Partition does not sever the Inheritance; for they shall join in Writ of Right, and the Partition is only as to the Possession. Contra 12 H. 7. Bell. 1.

9. A Manor with Advowson appendant descends to an Infant, who suffers Usurpation, and after makes Payment of the Manor and participatit; the Feoffee has no Remedy for the Usurpation. Br. Quare Impedit, pl. 162. cites 16 E. 3.

10. If a Recovery in Quare Impedit be within six Months against the Incumbent, he is removed by the Judgment; so that if the Recoverer suffers the Incumbent by Agreement to continue Incumbent during his Life, yet his Patronage is revoked by the Judgment. Per Coke, Dodsidge and Haughton. Roll. R. 213. Trin. 13 Jac. B. R. Harris v. Austin.

Per Coke Ch. J. but he says he will not call it a Remitter. Roll. R. 214. in Case of Har-

11. Pemberton took this Difference, where the King has a good Title, no Recovery against his Clerk shall affect the King's Title; for he shall not be prejudiced by a Recovery, to which he is no Party. If the King have a defective Title, as by Usurpation, there if the rightful Patron recover against the King's Incumbent, the King's Title shall be bound, tho' he be not a Party; For his Title having no other Foundation than a Presentation, when that is once avoided the King's Title falls together with it. But tho' the King's Title be only by Usurpation, yet a Recovery against his Clerk by a Stranger, that has nothing to do with it, shall not prejudice the King; Covin may be betwixt them, and the King be triced. And North Ch. J. said, He was clearly of Opinion, That the
King's Title by Usurpation should be avoided by a Recovery against his Clerk, tho' the Recoveror were a mere Stranger. Mod. 255, 256. Titm. 29 Car. 2. C. B. The King v. Thornborough and Studley.

* (M. c. 2) [Defeated by] Remitter.

[1.] 9. If a Man usurps upon me, and at the next Avoidance I usurp (M. c.) pl. 1, upon him, I am remitted to my ancient Right, and the usurpation upon me defeated. 17 E. 3. 37. b.

Roll, and the Pleas go on to, to &c. but to prevent Confusion, I have added a Letter, and altered the Number of the Pleas, yet so as the old Numbers appear at the same Time.

+ So if the King usurps upon me, and I upsurp upon him again, and present, and my Clerk is in by 6 Months, I am now remitted; And to it was adjudged in Dyer's Case, upon Fisherbeins's Case; because his Clerk was legally in by 6 Months, and to a Remitter, which shall bind the King. Per Coke Ch. J. 3 Build. 38. Titm. 15 Jac. in the Case of Harris v. Audlin.

[2.] 10. If an Advowson be alligned to 2 Daughters Coparceners * Writ, in Chancery, and the Eldest after presents to the * next Avoidance, this shall be in her ancient Right, and not by Usurpation, because the first Premention of Right belongs to her, and this shall avoid the Alignment in Chancery. 17 E. 3. 39. 38. Adjudg'd.

Prelimention of the Eldest to be contrary to the Alignment.

[3.] 11. If a Man usurps upon me, and his Clerk is in by 6 Months, and after I bring a Quare Impedit against Patron and Incumbent, and they do not plead Plenary by 6 Months, but I recover upon Non iam Informatum pleaded, I am by this remitted. 92 12 Ja. B. between Audlin and Harris. Per Ecurtum. Titm. 13 Ja. B. R. Same Case.

[4.] 12. So the Law would be this I was a Purchaser of the Advowson, and never presented before the Usurpation. 92 12 Ja. B. Dubitatur. By [Reports.] Tr. 13 Ja. B. R. Same Case.

had by him, another or others upon A. and presents, and A. brings a Quare Impedit after the 6 Months, and a Plea of Non iam Informatum is entered for the Incumbent, the Advowson is hereby restored: for here was but a Remitted Right, and if you will not take Advantage of it, A. shall hereby have his Right again, A. had a Right, and having a Judgment to recover that to which he had a Right, his Right shall thereby be recovered. Per Coke Ch. J. 3 Build. 46. Titm. 15 Jac. B. R. in the Case of Harris v. Audlin.

[5.] 13. If I [am] lessee of an Advowson, and after the Church voids the King presents by Usurpation, and 6 Months pass, and after I bring a Quare Impedit against the Incumbent of the King, who does not take Advantage of the Plenary, but upon Non iam Informatum, this pleaded I recover, I shall thereby be remitted. 92 12 Ja. B. between Audlin and Harris. Tr. 13 Ja. B. R. Same Case. Recovery is remitted to his ancient Right, and Judgment accordingly. Brown. 165. Pech. 12 Jac. S. C. by Name of Audlin v. the Bishop of London &c. 3 Build. 36. S. C. by Name of Harris v. Audlin. —— Roll. R. 210. S. C.

[6.] 14. But otherwise it would be, if I am a Purchaser of the Advowson, and the King usurps before any Presentation by me, and 6 Months pass before the Quare Impedit brought against the Incumbent, and after I recover in a Quare Impedit brought after the 6 Months pass'd against the Incumbent upon Non iam Informatum pleaded, without taking Advantage of the Plenary, I shall not be remitted; because by the Usurpation and 6 Months pass'd, I had but a Remitted Right, without any Action to recover it, and the S. C. King is not Party to the Action. 92 12 Ja. B. between Audlin and Harris. Tr. 13 B. R. Same Case.
[7.] 15. If A. was feized in Fee of 6 Acres, to which an Advowson is appendant, this seizes, and this descends to B. and a ter A. is appertain of a Tenancy by Act of Parliament, by which the King seizes the 6 Acres, and he seizes, the Church voids, and J. S. usurps upon the King; and after the Act of Parliament is repealed, and B. restored, by which he enters into the 6 Acres, and after the Church voids; the said Annul- lation continues nor defeated by the Repeal of the Act of Parliament, to that B. nor his Feoff of the 6 Acres cannot maintain a Qua- re Impediment against J. S., who usurped before, if he disturbs them. D. 28 H. 8. 24. 153. 

[8.] 16. If A. usurps upon B. a Purchaser of an Advowson in Fee, and the Clerk of A. is in by 6 Months, and after the Church voids, and B. presents C. and he thereupon is instituted and induced; but A. brings Quare Impediment against B. and C. This is no Remitter to B. the Writ being brought within the 6 Months; for during this Time that the Clerk is to be removed by the Writ, this is not a Remitter. D. 14 Car. 2. B. between Harper and Wierdale. Adjourn'd Per Curiam, in Writ of Error upon a Judgment in a Qua- re Impediment in Bank Infratur.

Roll R. 214.
S. C. cited by Coke Per Coke Ch. J. in S. C.

10. Where the King recites, That whereas he had recovered an Advow- son by Default in a Qua- re Impediment he brings a Writ De Droit D'Advowson, and in this recovery, he shall be in by Force of the Tail, and not in Fee-Simple, notwithstanding the Grant of the Action be so; for where a judgment and my Right do meet together, I shall be in my Right. Per Coke Ch. J. 3 Bult. 46, 47. in the Case of Harris v. Aulfyn. cites 4 E. 3. F. 19. by Wilby.

S. C. cited by Coke Ch. J. as mentioned by Huffay; but Coke says, He has the Book but cannot find the Case there. Ball. 46. in the Case of Harris and Aulfyn.

11. If the King nusurps upon J. S. and afterwards by his Letters Pa- tent grants this unto him again, this Judical Patent reciting his ancient Right, shall revest this in him, and he shall be in again in his ancient Right. As where he usurped by Presentment to the Advowson of a House of Religion, and afterwards, reciting the ancient Right of the Abbott, grants this Advowson again to him and to his Successors for ever; the Abbott, by this grant, is in again in his ancient Right. Per Coke, Ch. J. 3 Bult. 46. in the Case of Harris v. Aulfyn. cites it as adjudged 32 E. 3.

Br. Presentation. pl 57. cites S. C. but Brooke makes a Quare.
Darrein Prefentment, because the Advowson was fevered from the Acre; but if the Advowson were appettant to the Acre, then the Wife ought to recover the Acre before the present to the Advowson. F. N. B. 32. (K)

13. If a Man traverse an Office found of a Manor, unto which an Advowson is appettant, and upon the Traverse the King lefes the Manor Leaue unto him who rendered the Traverse, without mentioning the Advowson, and afterwafts the Church voids, he whom rendered the Traverse shall have the Prefentment, if the Traverse be found for him. F. N. B. 34. (P)

and leaves the Priory to Farm during the War, without mentioning the Advowson, the King shall have it. F. N. B. 55 (P) in the Notes there (f) cites 29 E. 5. 18. (or 98)

14. Where an Advowson has an Advowson by Descenst, and the Church S. C. cited voids, and he, who hath Title Paramount, usurps and preffents unto the same Church, and the 6 Months do passe; he is remitted by this Usurpation, B. R. in the

and the Infantant of Potielion, and without remedy by that Usurpation. Cased of Wade F. N. B. 35. (M)

15. Two several Purchasors are of the Reversion in Fee of an Advowson after a grant of the next Usurpation. An Avoidance happens, and by Concedency one of the Purchasors presents in the Turn of the Grantee of the next Usurpation; but upon a Bill by the other Purchaser, was decreed, that no Benefit should be had by this Usurpation, to as to defeat the Plaintiff's Title, nor should it be given in Evidence against him at a Trial at Law, which was then order d. N. Ch. R. 4. Patch. 3 Car. Markhall v. Hide.

(N. c) * Quare Impedit. Of what Thing it lies.

A Quare Impedit lies of a Dominate, and the Write shall be
Quod permittat ipsum prestante ad Ecclesiam &c. and declare the Special Matter in his Declaration. Co. Litt. 344

of Right of Advowson complain of the Deforce of the whole Advowson; The Quare Impedit and Darrein Prefentment complain only of a Chattle, viz. of the present Avoidance. Jenk 13. pl. 25.

On a Write of Error upon a Judgment in a Quare Impedit brought out of Ireland, Exception was taken amongst others, That the Write of Error was Qui cum &c. per breve nothrom de Quare Impedit; Whereas the Words of the Write are, Quod permittat ipsum prestante &c. And there is no such Write as Quare Impedit; But it was answered, That Brocket 246. 247 distinguishes between the Writs of Quod Permittat and Quare Impedit, That the Write of Error was an old antiquated Write, or taken away by some old Statute now lost, and cited the Statute 15 E. 1. cap. 5. and Maynard's E. 2. fol. 200 Mich. 10. E. 2 to prove that there never was such a Write as Quod permittat; That in all Judicial Records it is called a Quare Impedit, and fo in Writs of Error, and in Writs to the Bishop for admitting Clerks, and cited several other Books. And per Cur, as to the Calling the Write Quare Impedit instead of Quod permittat, the Pret is, That there was formerly a Write of Quare Impedit, now out of Use; And the Write Quare permittat is now erroneously called by the Name of Quare Impedit; This Error has prevailed in Judicial Writs and Acts of Parliament, but never yet in Writs of Error; However, it being now a legal Name, the Write of Error ought not to be disallowed for usifg of it; 10 Mod. 308. &c. Patch. 1 Geo. B. R. the King v. the Bishop of Meath.

2. 13. E. 1. cap. 5. Sect. 4. Enaets, That * from beneficent &c. Writs shall be granted for 4 Chapells, Prebends, &c. Vicarages, Hospitallis, Abbeys, Priories, and other Houses which be of the Advowsons of other Men that have not been used to be granted before

not lie de Capellis Prebendis &c. and yet it is adjudged in 14 H. 2. which was long before this Statute that a Quare Impedit did lie of a Chapell; and it was resolved in Parliament, Hilt. 19 H. 3. Quod nullis Aliis ultimae Praentationis capiatur de Ecclesiis Prebendatis, nec de Prebendis; but now this Act hath made it clear, and the Write shall be Ad Capellan. &c. 2 Inf. 565. 264. * That is, Writs of Advowson, Quare Impedit, and Affile of Darrein Prefentment, which in this Act had been named before 2 Inf. 564.

* A Quare Impedit lay of a Chapell at Common Law, F. N. B. 22 (C) in the Notes there (e) cites 24 H. 3. Quare Impedit. 185. And so it did of a Prebend. F. N. B. 53. (c) in the Notes there (c) cites 13 B. 2. Brat. 643.
Presentation.

As to the Word (Chapel) When the Omission was, Whether it were Ecclesia, or Capella Pertinens ad Mariam Ecclesiam, the Issue was, Whether it had Baptistarium & Sepulchram; For if it had the Administration of Sacraments and Sepulture, it was in Law adjudged a Church. Trin. 29, E. 1. in Banco, Rot. 17. in Quare Impedit Ric' de Smithy's Cafe. Mich. 21. E. 1. in Banco, Rot. 1. Herft Prior de Clus Cafe. Hill. 8. E. 1. in Banco, Roger de Bingo, and Count de Po'lie's Cafe. Hill 8. E. 2. cor. ran Rege Cornub. pro Capella Sancti Berione. A Capella venit Capellana; Rot Cart. 26. Nov. An. 28 H. 4. in Cart' Fact' Will. Oron. Episcopo & Capellani ut patet Mich. 52. E. 1. Coram Regi Gloc, Capellania sancti Oswald Prioratus, Sancti Oswalde de Gloc que est de Libera Capellana Noitra. 3. 24. 5. 56.

If a Patron of a Chapel present unto it by the Name of a Church, and the Clerk be instituted and indict- ed thereunto &c. it hath lost the Name of a Chapel 2 Inf. 364.

|| Quare Impedit was brought by a Prebendary of an Avoidance of a Vicarage, which was appellant to his Prebend, Quod nota. Br Quare Impedit. pl. 93. cites 22. E. 3. 26 —— Br. Presentation pl. 26. cites 24. E. 5. 26 —— S. P. Br. Quare Impedit. pl. 156. cites F. N. B. fol. 52. 55.

It was ob. 3. Quare Impedit lies of an Archdeaconry. Br. Quare Impedit. pl. 100.jected. That cites 24. E. 3. 45. Quare Impedit does not lie of an Archdeaconry ship; For it is not local, nor any Indenture made thereof, but it is only a Matter of Function, but it was not allowed: For an Archdeacon hath Locum in Choros; And by the Statute a Quare Impedit lies of a Chapel, and by Equity thereof, of a Prebend. Le. 205. Trin. 31. Eliz. C. B. Smolwood v. the bishop of Lichfield — Ow. 59. S. C. by Name of Sale v. Bishop of Lichfield — The King shall have a Quare Impedit of the Sub-Diocese of York, which is voided when the Temporalties of the Archdeaconry were in the King's Hands. F. N. B. 54. (G)

*S. P. where

4. A Quare Impedit lies of a * Chantery of Saint T. in O. Br. Quare there was a Impedit. pl. 5. cites 9. H. 6. 16. Composition, that if the Patron did not present within one Month, then that the Ordinary should present. Br. Quare Impedit. pl. 151. cites 15. E. 4. 5. —— So of a Chantery, which is Donative by Letters Patent F. N. B. 23. (C)—A Quare Impedit of a Chantery ought to shew in what Church or Chapel the same is. F. N. B. 33. (C) in the Notes there (e) cites 12. H. 4. 19. See Libr. Entn. 499.

S. P. F. N. B. 53. (A)—Mediatatus Ecclesie, but not Quare Impedit; For this is Quod ipsum presentabre ad Ecclesiam, so that this is all for the Pretenation only. Br. Quare Impedit. pl. 10. cites 33. H. 6. 11.

5. A Man may have Writ of Right of Advowson de Advocacione None shall have Quare Impedit presentare ad Mediatam Ecclesiam, but where there are 2 or more Patrons, and 2 several Incumbents of the Church within one and the same Vill, so that the one Patron has a distinct and separate Advowson of one half of the Church, and his Incumbent has a distinct and separate Half of the Tithes, and other Ecclesiastical Profits within the same Vill; So of the other Patrons, Mutatis Mutandis, and in this Case the Advowson and the Church are never sever'd in Right and in Possession; But when there is only one Incumbent, tho' the Advowson is divided and sever'd in several Hands, yet there never shall be a Quare Impedit Prefentation ad Mediatam fest tinction Patrem Ecclesie &c. and the Reafon of this Diversity is manifest: For every Quare Impedit is in the Person, and respects the Church which belongs to the Incumbent. Revised: 10 Rep. 135. b. Trin. 10 Jac. C. B. Smith's Cafe.

F. N. B. 39 (G) says, it seems (within the Writ [there] above-mentioned, that) a Man shall have a Quare Impedit good permittat ipsum presentatam ad tertain Patrem Ecclesie; and that it seemeth to stand with Reason; For a Confirmation may be made of 3 Advowsons, and every Patron to present by Turn, and then every one hath a Right to a third Part.

6. Quare Impedit lies of a Priory, or of an Abbey. F. N. B. 33. (F)

7. A Man shall have a Quare Impedit of an Hermitage; And a Writ to put him into corporal Possession. F. N. B. 34. (E)

Quare

where this where this Cafeis: For I do not ob- observe, that serve, that it is war- ranted by either of the Books cited, no- thing being there said of a Church in Antient Demene.
Pretention 413

(O. c) Who shall have Quare Impedit.

1. That in the Case of a next Avoidance shall have a Quare Impedit against the Patron who granted it. 39 H. 3. Quare Impedit. 95. See Br. for Curant, and said to be oftentimes adjudged.

Br. N. C. 4 E. 6. pl. 110. by Name of Ogle v. Harrison. — A. grants that whenever the Church becomes void, that B. and his Heirs shall nominate a Clerk to the Grantor and his Heirs, and that he and his Heirs shall present him over to the Ordinary, and the right Opinion was, That every of them shall have Quare Impedit, if B. presents to the Ordinary, A. shall have Quare Impedit, &c. contra. And tho' the one has a Right to the Bishop, this shall not oust the other of the Possession. Mo. 49. pl. 147. Patch. 5 Eliz. Anon.

If the next Avoidance be granted to 2, and one, before the Church avoids, Receiver to the other, the Receiver may have Quare Impedit in his Name alone. Adjourned and affirmed in Erron. Mo. 467. pl. 604. Trim. 39 Eliz. Lewis v. Bennet.

2. Before the Statute of 27 H. 8. of Tithec, if Citty que Ufe of a Manor, to which an Advoction was appellant, presents to the Church when it becomes void, and this by Sufferance of the Prebend, yet if he be disturbed, he cannot maintain a Quare Impedit; For he has not any Estates at Will. 17 H. 7. Rell. 42. b.

Quare Impedit by the King, and made Title, because J. N. who was Present was outlived, and the Church voided, and the King presented &c. The Defendant said that before the Ordinary, the Patron had paid for his Clerk, and the Church voided after the Ordinary, and he presented at the Will of the Prebend, and therefore Writ was awarded to the Bishop for the King; And for it follows, that upon Voidance Citty que Ufe has a Charter, and therefore it shall be forfeited by Ordinary, Quare if he had presented Nomine Ecclesiae. Br. Pretention pl. 10. cites 3 H. 5. 7.

3. Quare Impedit lies for the Bishop, who is disturbed, to have Presentation to the Prebend; So for the King, the Temporaries being in his Hands. Br. Quare Impedit. pl. 94. cites 24 E. 3. 26. Br. Pretention pl. 25. cites S. C.

And adds, That in some Places the Dean shall present to some Prebends.

4. Quare Impedit by the King of the Vicarage of B. and found against him, and the Defendant prayed Writ to the Bishop; and Thorp J. took Time to advise; For he doubted whether a Layman could be Patron of a Vicarage, but a Parson or Parson impairance. Br. Quare Impedit pl. 165. 39 E. 3. 33.

5. Dislittle of a Manor, to which an Advovention is appellant and voids, may have this Writ. F. N. B. 33 (Q)

6. The Issue in Titel shall not have Formation of an Advovention in Gross, aliened by his Ancestor, but Quare Impedit at the next Avoidance in his Turn. Br. Quare Impedit. pl. 69. cites 14 H. 4. 33.

7. Where a Prior was Patron impairance, and J. N. presented his Clerk to the same Church, who was Admitted, Instituted, and Indulged, by this the Prior is not out of Possession; For he cannot have Writ of Right nor Quare Impedit; For he is in Possession, and to he shall have no Action, but Trespass, or Spoliation in the Spiritual Court, became the Church is adjudged always full of him. Per Prict. Br. Pretention pl. 36. cites 39 H. 6. 20.

But as to a Stranger who has just Title to present, it shall be adjudged void; For Patron impairance cannot yield Pleasuary, but it is always full as to him who no Right has, and the Admission, Institution, and Indulgence supposed is not to the Purpse, if he who presents has no Title; But the Prior ondtains Patron, and the Opinion of the Court was, that the Church is always full of the Prior, and that the other who was Admitted, Instituted and Inducted, was not Patron. Ibid. — Br. Quare Impedit pl. 114. cites S. C. — Ibid. pl. 114. cites 53 H. 6. 11. S. C.

8. 7 H. 8. 4. Enacts that Receivers of Manors &c. and Advoventions, their Heirs and Assigns, shall have Quare Impedit for an Advovention, if upon a Voidsance any Disturbance be made by a Stranger, as the Receivers might have had, albeit they were never visited by Pretention.
9. If the Patron sells the Fee of the Advowson after the Avoidance, neither he nor his Vendee can have a Quare Impediment, because the Avoidance makes it a Chuse en Action; so that it does not pass to the Grantee, and the Grantor has destroyed his Action by his Conveyance, and it none can have it. Cro. E. 811. Hill. 43. Eliz. C. B. Leak v. Bishop of Coventry and Babington.


It was said that if Husband has an Advowson in Right of the Wife, and the Church becomes void and the Husband dies, the Executors shall have the Preferrention; and that there are many Books in that Point; and Anderson said he knew that well, but that he doubted of the Law in that Case. Goldb. 57. pl. 10. in Specet's Case. — See (P. c) pl. 1.

11. A. presents B. and before Institution revokes that, and presents C. Quare Impediment lies for C. Agreed by all. Latch. 248. Hill. 22 Jac. in Cafe of Evans v. Alcough.

12. He that has the Nomination is only Patron, and shall have a Quare Impediment or a Writ of Right, as his Case requires. Dod. of Adv. 66. Lec. 12.

(O. c. 2) One or several, and where two shall join.

But now the Y by the Register the King shall join with another Person in a Quare Impediment. F. N. B. 32. (G.)

1. By the Register the King shall join with another Person in a Quare Impediment. F. N. B. 32. (G.)

By the Register the King shall join with another Person in a Quare Impediment. F. N. B. 32. (G.)

Note. They may waive the Partition of the Advertisement and the Agreement thereon, and present by a new Partition. F. N. B. 36. (D) in the Notes there (a) cites 21 E. 3. 31. 15 E. 5. Qua. Imp. 58. 33 E. 5. Qua. Imp. 196. by Skipw.

(P. c) What Persons may have it upon the Disturbance.

If the Baron be disturbed to present to an Advowson which he has in Right of his Wife, and dies, the Feme shall have a Quare Impediment of this Disturbance. 3 E. 3. Quare Impediment 27. 3 D. 5. Quare Impediment 27. admitted.
2. Guardian in Socage of a Manor, to which an Advowson is appen-
dant, if he be disturbed, shall have a Quare Impedit in his own Name, tho' he cannot make Account thereof. *Time of C. 1. fol. 132.* judg.

Manor, unto which an Advowson is appen-dant, and the Church voids, the Heir shall present, and not the Guardian, because he cannot account for the same. F. N. B. 35. (T) — It seems the Present-
ment ought to be in the Name of the Heir, and yet a Guardian in a Quare Impedit against him may make Title against the Stranger in Right of the Heir, and also have a Writ to the Bishop thereupon, but he cannot maintain Quare Impedit. F. N. B. 35. (T) in the Notes there (a) cites 29 E. 5. 3. 14. 22.

3. One Cenographer, upon Agreement to present by Turn, shall have So where Quare Impedit against the other who disturbs him in his Turn; quod


4. Three Jointenants were feiled of certain Land to which an Advowson was appen-
dant, and the one presented alone, and his Clerk admitted and in, 13 S. 3.


5. Where Guardian presents in Right of the Heir, whether the Heir has Right or no Right, he, who will have thereof Quare Impedit, shall have it against the Guardian, and not against the Heir. Br. Quare Impedit, pl. 47. cites 7 H. 4. 25. 37.

6. Where the King or the Pope presents, Quare Impedit shall be against S. P. For the Incumbent alone. Br. Quare Impedit, pl. 47. cites 7 H. 4. 25. 37. cannot be implicated. Br. Quare Impedit, pl. 149. cites 12 H. S. 12 — Quare Impedit by the King against the Incumbent alone, who pleaded, which was found against the King, and it was pleaded in Arreid, because
because the Patron was not named in the Writ; but because the Writ was admitted, it was awarded that the Plaintiff entred his fine die. 

br. Quare Impedit, pl. 44. cites 3; H. 4. 25

5. The Master and Confreres of D. presented the Master, and the Master and Confreres of E. brought Quare Impedit against the Master by a strange Name; and it lay well, and they recovered per Judicium; for it was a void Presentment. 

br. Quare Impedit, pl. 149. cites 12 H. 4. 12.

6. When a Man disturbis aud dies, Quare Impedit lies against his Heir and the Incumbent, because he shall make Title and have his Possession; but by some, in Quare Impedit when the Patron dies as above, and the Plaintiff proceeds against the Incumbent, this shall not bind the Heir of the Patron, because he is not Party; and there is no Reason to give Quare Impedit against the Heir, for he does not make any Disturbance; and also the Plaintiff shall recover Damages against him, which is not Reasonable where he does not make any Disturbance. 

br. Quare Impedit, pl. cites 9 H. 6. 20.

7. Quare Impedit lies well against Parson imparfonce; for the Church is void, having regard to Strangers. 

br. Plenary, pl. 6. cites 38 H. 6 20. Per Priorit and Forresee.

8. One Jointenant or Tenant in Common shall not have a Quare Impedit for the Advowson which they have in Common or in Jointure, if one of them present solely against his Companion. 

F. N. B. 34. (U)

9. If A. wantonly by Ulurpation present B. and B. is received, and afterwards A. having gained the Patronage grants the Patronage to R. S. Walmley J. thought the Quare Impedit shall be brought against R. S. which Anderson Ch. J. doubted. 2 Le. 58. Mich. 32 Eliz. C. B. in Cate of Hall v. Bishop of Barb.

See (N. c)

[P. c. 3] Of what Thing.

[1] 5. If there be a Presentment to the Appropriation by a Stranger, and the Clerk inducted, yet the Patron of the Appropriation cannot have Quare Impedit, because he cannot be put out of Possession. 44 Eliz. 3. 33 b.


Br. Quare Impedit, pl. 140. cites S. C. per Brian, that having named a Disturber and an Incumbent the Writ is good; for the Plaintiff is not disturbed by C. but by B. and there is no Reason to have Action against him who does no Wrong to the Plaintiff, and therefore was held good. And Brooke says, so lee that the Writ is good against Disturber and Incumbent, though the Disturber is not even Patron.

Watf. Comp. [5] 9. A Quare Impedit lies of a Deanry by the King, though it fine Svo. 450 be elective by others. 17 Eliz. 3. 40 adjudged. cap. 22. cites S. C.
(Q. c) Of what Things, and for what Causes it may be brought. And what will * be sufficient Seisin to main- ** See (R. c) tain it. In what Cases it is + necessary to have ++ See (S. c) Seisin.

1. If a Man creates a Church at this Day, and is disturbed to present, he cannot maintain Quare Impedit, because he cannot allege a Presentment. 

Quare Impedit if he cannot allege a Presentment in himself or in his Ancestors, or in another Person, from whom he claimed the Advowson, and that in his Count, unless in special Cases; As if a Man at this Day * erect a Church parochial by a Licence of the King or other Chantry, which shall be presentable &c. If he be disturbed to present to the same, he shall have a Quare Impedit, without alleging of Presentment in any Person, and shall count upon the special matter. F. N. B. 53 (H).—Watt Comp. Inc. Svo. 442 cap. 22. cites S. C. — A Man shall not have

2. If Advowson be granted by Parliament, he shall have Quare 

impedit presentare upon the Matter. 21 C. 4. 3. b. 16 D. 7. 8. per Choke. — Watt Comp. Inc. Svo. 442 cap. 22. cites S. C. — S P. that he shall have Quare Impedit without alleging Presentment before. 2 And. 53 in pl. 57. cites S. C.

In Quare Impedit to present to the Church of St. Andrew Wardrobe, Plaintiff declared, that by the Act 22 Car. 2. for re-building London, it was enacted, that the Parishes of St. Andrew Wardrobe, and St. Anne Black-Friars should be united, and St. Andrew Wardrobe to be the Church to be rebuilt, and the Parish Church, and the Patronage to prefect by Turn, and the first Presentation to be by the Patron of the Church the Endowment of which was of the greatest Value, which was that of St. Andrews, that 1 July 25 Car. 2. the Incumbent of St. Andrew Wardrobe died, and that the King as Patron presented J. S. which was the first Avariance after the Act; that J. S. died, whereby it belonged to the Patron (Patrons of Black-Friars) to prefect as in their Turn, and that the Defendant hindered them: The Bishop claimed nothing but as Ordinary, and Blake the Defendant demurred to the Declaration, for that it did not appear that the Plaintiff, or any by whom they claimed had presented to, or ever were in Possession of the * Church of Black-Friars; and that such a Presentment must always be alleged in a Quin. Imp As to this it was said, That this being an Union by Act of Parliament, which appoints that the Patron shall present by Turns, and that the greater Value should present first, this was not necessary in this Case; to which the Court said, That the Act did not intend to restore a Title to one who had lost it by Ultraposition, but to leave the Title as it was before; and perhaps here might have been Ultraposition before this Act made; and if so, the Ultrager, and not the Plaintiff, is Patron within the Act till they had regained their Right by a Writ of Right of Advowson, and thereupon it was adjourned to be further argued. But Judgment was afterwards given for the Plaintiff upon this Point, and affirmed in Error in B. R. but reversed in the House of Lords on a Writ of Error. 5 Lev 442. Hill. 7 W. 57. C.B. Recreation &c. vs Bishop of London and Blake. — * The World is (Vandalage) but this Case of Union by Act of Parliament, and the Rectory being appropriate, the Court said, they would intend it a Church now within the Meaning of the Act, and therefore I thought it better here to use the Word (Church)

3. If the King be intitled to the Advowson by Office, he shall Quare 

impedit without Presentation. 21 C. 4. 16 D. 7. 3. 

E. 4. 1. 3. and this as well to an Advowson in Gros to as to an Advowson Appendar, and by all the Jurisdictions the King is Patron by the Office till it be traversed in Chancery. — Watt Comp. Inc. Svo. 442 cap. 22. cites London Cases.

4. A Recovery in Quare Impedit against B. and Damages for two Years because the Church was full of C. is a good Title in a Quare 

Impedit after the Death of B. without alleging Presentment. 42 C. 3. 8. b. 

A Recovery in Quare Impedit against B. and Damages for two Years because the Church was full of C. is a good Title in a Quare Impedit after the Death of B. without alleging Presentment. 42 C. 3. 8. b. 

5. But in this Case, if he had once prefected, and the Church full after the Recovery of this Presentement, this Recovery is not suf- 

ficient Title. 42 C. 3. 8. b.

4 N
Presented.

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6. If an Abbot has been Parson imparitance Time out of Mind, and afterwards the Abbey is Difficulty, he of whom the Advowson is held shall present, and if disturbed shall have a Quare Impedit, without alleging of any Presentment in the Count, but shall shew the special Matter. F. N. B. 33. (K)

7. If an Abbot, situate of a Manor unto which an Advowson is appertaining, and the Advowson becomes void, the Difficulty may present and have a Quare Impedit, tho' be has not entered into the Manor. F. N. B. 33. (Q)

Sec (Q c)

(R. c) What will be sufficient Seisin to maintain this Writ.

1. This Writ is all in the Possession, and the Presentment is the Possession. 21 C. 4. 2.

2. If my Clerk be instituted and not induced, when it voids again I may maintain this Writ. 38 P. 6. 15. b. by Hard.

3. A Recovery in Quare Impedit, without alleging Presentment, is not * sufficient, because it lies against the Defendant, who claims nothing in the Patronage. 139 P. 6. 25. b.

Br. Quare Impedit, pl. 142. cites S. C.— F. N. B. 36 (D.)—See (Q c) pl. 4.

4. A Presentment by Lapse to the Ordinary is sufficient Seisin. 9 H. 6. 24. b.

But if the King be dissolved of an Advowson which has been ever held appropriated, he shall have Quare Impedit without alleging any Presentment. Watf. Comp. Inc. Svo. 442. cap. 22. cites S. C.

5. A Presentment before Time of Limitation is not sufficient; because it is not tillable. 20 C. 4. 15. 42 C. 3. 4. b. Admitted. 17 C. 11. 14. b.

Watf. Comp. Inc. Svo. 442. cap. 22. cites S. C.

But if the King be dissolved of an Advowson which has been ever held appropriated, he shall have Quare Impedit without alleging any Presentment. Watf. Comp. Inc. Svo. 442. cap. 22. cites 17 C. 3. 10. b. 20 C. 4. 15.

Quare Impedit by the King, and owned by the Bishop of St. David's was Patent of a Benefice in the Church of A. called the Prebend of G. and that such a Bishop presented to it by Name of Prebend, and after the Bishop by Assent of his Chapter, and the Chapter of A. made it a Treasury by Name of Dignity, and annex'd it to the Bishoprick; and after the King releasing the Ordinance, Ratified, Granted and Confirmed the same Thing accordingly, and that it should be named Treasury accordingly, and that J. B. Incumbent there died, by which it voided, and remained void till the Temperatums came into the Hands of the King by the Death of T. G. Bishop there, and yet is void, and so it belonged to him to present. And so fee that a Voidsance which belongs to a Bishop, who dies before he presents thereto, shall afterwards belong to the King, quod sita; and the Defendant demur'd, because it was never put in Use by the Name of Treasury by any Bishop, therefore the King ought to have made Title by Name of Prebend and not of Treasury; for during the Life of J. B. Incumbent of the Prebend, the Bishop is only a Patron as of Prebend and not as Treasury, till a Bishop has put it in Use by such Name; & non allocatur; but Writ to the Bishop awarded for the King. Br. Quare Impedit, pl. 42. cites 50 E. 3. 26.—Br. Presentment, pl. 10. cites S. C. Br. Affliations, pl. 3. cites S. C.—Watf. Comp. Inc. Svo. 442. cap. 22. cites S. C.
8. If Presentment be to an Advowson, and after \, it is Appropriated, and a Vicarage made in the same Church, the Presentment adverse is sufficient to have Noe Impediment for the Vicarage, without other Presentment for the Vicarage. 50 C. 3. 27.

9. If Presentment has been to two Churches, and after they are united, he who is made Patron by the union may have Noe Impediment this, without other Presentment. 50 C. 3. 27.

10. The same Law where a Church Parochial is made Collegial. 50 C. 3. 27.

— Pl. 10. in Roll is plac'd after the Sub-Division of (In whom) but it seems more properly plac'd before it, as here it is done.

In whom.

11. The Presentment of the Grantee of the next Avoidance is sufficient Title for the Patron in Fee to have this Writ. * 9 P. 7. 23. Co. 5. Counties of North. 97. b. adjudged.


12. It ought to be alleged in the Plaintiff, or in him whose Estate he has. 21 C. 4. 2. b.

For whom.

13. A Grantee of the Next Avoidance presents, and after the Heir of the Grantor grants the next Avoidance, the last Presentment is sufficient for the Grantee. 9 P. 7. 23.

Wart Comp. Inc. Svo. 443. cap. 22. cites S. C.

14. So if Grantee of the Next Avoidance presents, and after Grantor grants the Advowson to A. who grants it to B. the last Presentment is sufficient for B. in this writ, without alleging Presentment in S. C.

Wart Comp. Inc. Svo. 435. cap. 22. cites S. C.

15. The Presentment of Grantee of Next Avoidance is sufficient for See pl. 11. Grantor and his Heirs. Co. 5. 97. adjudged.

Supra — See (Uc) pl.

1. 4. infra. — In Quare Impedite the Plaintiff counted that his Ancestor was seized of the Advowson and his Clerk in, and after he granted the Advowson to J. S. for Life, the Church voided, J. S. professed, and his Clerk in, and J. S. died, and after the Church voided, by which the Plaintiff as Heir of the Ancestor professed, and the Defendant disturbed him, and it was held, This is sufficient to keep the Presentment and the Title; For the Presentment of the Tenant for Life does not make Title to the Plaintiff, nor the Presentment of a Guardian or Tutor, and the Defendant assented to the first Presentment, and had Life upon it, and not upon both. And per Littleton he ought to answer to both, but the Life shall be upon the first only, and the Plaintiff shall not reply to him to the second Presentment. Br. Quare Impedite pl. 129. cites 4. 2. 22. The Books are not directly that Presentment alleged in the Grantee is not good; But, that where a Presentment is alleged in the Grantor and Grantee, there the Presentment in the Grantor is only transferable; For that is the Principal, and the alleging of the Presentment in both is not double. Cro. E. 518. Mich. 518 & 59 Eliz. C. B. Fitzton v. Hall.

16. If Tenant for Years presents during his Term, this is sufficient for him in Reversion. 22 C. 4. 9. b.

17. So if Lessie for Life presents. 22 C. 4. 9. b.

18. So if Tenant at Will presents. 22 C. 4. 9. b.

Br. Quare Impedite pl.

Inc. Svo. 445 cap. 22. cites S. C. — S. P. and with this agree divers Opinions in 4. 4. 2. 22 E. 4. 9. b. 16. 4. 18. 3. 9. H. 7. 23. Brook tit. Quare Impedite 122. 13 Eliz. D. 520. And true it is, that it is generally understood in our Books, that where Tenant for Years or for Life, brings Quare Impedite he ought to allege Selin in him who has the Fee, and this is regularly true; And yet Presentments by themselves suffice, as appears 8 H. 5. 10. and this Resolution does not impair the said Rule: For Presentment of the Grantee of the next Avoidance being made in the Title and Right of the Grantor shall serve as well for him as his own Presentment and is Tantamount. 9 Rep. 98. the Counties of Northumberland's Catej.
Presentation.

19. So if a Guardian presents during the Wardship. 22 E. 4. 9. b. the King be the Guardian. And to 42 E. 3. 4. b. where a Manor cites S. C. — descends, and no Prebentment has been before.

But per Brian clearly, the Plaintiff In Quare Imped, shall allege a Prebentment in his Ancestor over and above the Presentment of the Guardian, and others had ill, and therefore shall not have Quare Imped, but it is put to the Writ of Right. Br. Quare Imped. pl. 139. cites 22 E. 4. 8.

20. So if the King presents in Right of his Ward, though the Ward has no Right, this Mutation for the Ward is sufficient Prebentment for the King, if it becomes void during Monage, and for the Year after. 42 E. 3. 4. Contra 21 E. 4. 9. b. as to the Heir.

Quare Imped, and counted of a Presentation of J. S. who was seized in Free, &c. and of 2 others in himself by the Ward and the Heir of the said J. S. and that the Church is now void, and it belongs to him to present, and the Defendant disturbed him. Caused. said, the Clerk alleged by the King to be instituted &c. by the said J. S. was not received nor instituted by the Presentation of J. S. and it seems to be a good Plea; For the 2 Prebentments of the King during Custody did not make Title to him nor to the Heir, without alleging Seisin by the Presentment in the Ancestor of the Heir, or in the Feodar of the Ancestor of the Heir, &c. adfuturum. Br. Quare Imped. pl. 145. cites 45 E. 3. 4.

21. A Prebentment by the Bishop as Patron is sufficient for the King to maintain a Quare Imped in the Church, when the Temporalitys come into the Hands of the King for Vacancy of the Bishoprick. 50 E. 3. 26.

Fol. 378.S.
pl. 42. cites 8 C. — Wart Comp. Inc. Svo. 446. cap. 22. cites S. C. — If the Bishop dies, and the Advowson happens void before his Death, the King shall present unto the same by reason of the Temporalitys, and not the Bishop's Executors. F. N. B. 33 (R) cites 8 E. 2. Prebentment, 10. 39 E. 3. 21.


23. If the eldest Son by the first Venter presents, and dieth without Heir, and afterwards the Church become void, the younger by the 2d Venter shall not present, nor have this Advowson; But Devon, if in a Man hath two Daughters by divers Venters, and they enter and make Partition to present by Turn, and one dieth without Heir, the other Sister shall be her Heir; Quod futurum certe est; But after the Partition, if one Sister hath presented, and afterwards died without Heir, it seemeth her Sister of the Half-blood shall not be Heir unto her. F. N. B. 36. (E).

Sec (Q. 2).

(S. c) In what Cases there needs a Seisin.

24. If the King be intituled to an Advowson by Office he shall have Quare Imped without Prebentment, 21 E. 4. 16 D. 7. 3.

Contra 17 E. 3. 10. b. 11. 14. For there a Prebentment is alleged and tendered, and the Tractes allowed per Curiam, where the King makes Title by the selling by Office of the Possession of Prior Alien, and the Prebentment alleged in the Procurator of the Prior.

2. But 17 E. 3. 14. b. It is said that if the Escheator seizes an Advowson upon particular Command to seize it, the King may have Quare Imped without alleging any Prebentment; For the Seifure makes Title without more.

3. If a Man recovers in Writ of Right of Advowson, and has Execution, he may have Quare Imped without alleging any Seisin; For the Recovery sufficiently enough affirms his Right. 14 C. 2.

Quare Imped. 171. Adjudged.

pl. 37.
4. 17 E. 3. 10. It is said that he may allege Seisin in Recovery. Writ, Comp. In: Sro. 447; cap. 32; cites same Cases.

5. If the King fieses an Avoidson, which has been held always in proper Use, he shall have Quare Impedite without alleging any Precedent. 17 E. 3. 10. b.

6. If the King has Caused to present by the Temporalities of the Bishop, he shall not have Quare Impedite without alleging Seisin by Precedent. 17 E. 3. 40.

7. He who has no Right shall not have Quare Impedite without Precedent. 17 E. 3. 40.

8. If a Church be void at this Day, and the Patron presents, and is disturbed, he shall have Quare Impedite, tho' he had never Possession before. Br. Quare Impedite pl. 138. cites 21 E. 4. 13. Per Catesby.

9. If the King recovers by Quare Impedite, and afterwards ratifies the P. N. B. 34. Estate of the Incumbent; yet at the next Avoidance the King shall present, because his Recovery and Judgment for him was not executed. F. N. B. 34. (F) cites T. 9. E. 3.

(T. c) What shall be sufficient Seisin. See (Q. c) (R. c)

(U. c) Quare Impedite. See (R. c)
4. A Presentment alleged in a Lefsee for Life or Years is sufficient Title in this Writ. Co. 5. 97. b. Co. 6. 7. 7. 23. Br. Quare Impedit, pl. 158. cites 22 E. 4. 8. Per Choke. — See (R. c) pl. 16, 17, 18.

5. So a Presentment alleged in a Tenant at Will is a sufficient Title in this Writ.

6. So a Presentment alleged in a Tenant in Dower or Tenant by the Courtsey is sufficient Title in this Writ. Co. 5. 97. b. 

7. So a Presentment alleged in Tenant by Statute Merchant, Staple, or Elegir, is sufficient Title in this Writ. Co. 5. 97. b.


9. So this Presentment by the Procurator shall be sufficient for the King, he having the Poisselions for Cause of War, the Abbot being an Alien. 17 E. 3. 10, 14. Admitted 60. Abjudged 76.

10. So a Presentment alleged by the Guardian in Chivalry or Es- coge is sufficient Title in this Writ. Co. 5. 97. b.

11. Upon an Alienation of an Advowson in Mortmain, if the Lord, of whom it is held, at the next Advowdance brings Quare Impedit, it is sufficient for him to allege a Presentment in his Tenant, who alien'd it in Mortmain. 21 E. 3. 27. b.

12. If a Lefsee for Life or Years presents, and his Clerk intitulated, it is sufficient Title for him in Quare Impedit at the next Advowdance, without alleging any Presentment by the Lessee. Co. 5. Specet 57. b. Abjudg'd. Co. 5. Count North. 98. 11 H. 7. 29.

13. If the King be feited of a Manor in Fee, to which an Advowson is appendant, and the Church voids, and a Stranger usurps, and after the King grants the Manor and Advowson in Fee to J. S. as he may, because the said usurpation is not any usurpation to the King as to the Inheritance; and after the Church voids, J. S. shall take his Quare Impedit, being disturbed, and make his Title by the last Presentment of the King, without making mention of the Presentment of the Stranger. Hobart's Reports 189.

14. If two Jointenants be of an Advowson, and the one presents to the Church, and his Clerk is admitted and intitulated, this in respect of the Privity shall not pur the other out of Possession, but if that Jointenant who presents dies, it shall serve for a Title in a Quare Impedit brought by a Survivor. Co. Litt. 186. b.

(X. c) At what Time the Presentment being shall be suffi- cient.

Walf. Comp. 1. A Presentment before time of Memory is not sufficient, because it is not triable. 17 E. 3. 11. 14. b. 29 E. 4. 15. 42 E. 3. cites S. C. 4. b. admitted.

2. But
(Y. c) Quare Impedit. At what Time it lies.

1. Quare Impedit lies against the Patron after 6 Months Plenarity of his Incumbent. 15 C. 3. 2. 13. b.

2. If a Man gives Land and Adweston appendant in Tail, and the Tenant in Be Quare Tail suffers Usurpation which continues 6 Months and dies, the Title in 148. cites S. Tail shall not have Quare Impedit, nor Allot of Darrein Plenainty till C. — But the next Avoidance. Br. Quare Impedit, pl. 141. cites 46 All. 4. per Finch. If the Acces-

Man to appropriate, and dies after the 6 Months past, and after the Heir suffers other 6 Months, he may present, and may have Quare Impedit or Darrein Plenaternity. Ibid. — Br. Quare Impedit, pl. 148. cites S. C. For upon Appropiation the Church remains void to him who has Title. — Where a Man makes Disturbance, and the Disturber appropriates the Adweston, there the Party may have Quare Impedit against the twentieth Abbot who is in after the Appropriation, and forty Years after; for all those are only as one and the same Incumbent, and is no Plenarity which puts a Man from his Action, Br. Quare Impedit, pl. 19. cites 55 H. 6. 11.

3. The King may have Quare Impedit at any time during the Lives of the Patron and Incumbent, or of the Incumbent only, notwithstanding its being after the 6 Months; For Nulsum Tempus occurs; Regl; Quod Nota. Br. Quare Impedit, pl. 39. cites 47 E. 3. 4.

4. Quare Impedit by the King, who counted, that T. held the Manor of Br. Droit de D. of him in Capit with this Adweston appendant, and presented, and after the Church ceased, and after he aliened in Mortmain, and the Bishop of R. So it was ad-
presented, and his Clerk admitted, instituted, and endowed, and the Bishop mitted there died, and the King within the Year brought Quare Impedit against the In-
cumbent alone, and well per Judicium; For he may plead against the King within, and the Bishop, who was, was not a Disturber, so that the Year after the Action does not lie against him, and it lies well within the Year the Action in Mortmain, or Usurpation in him the with in the Year it suffices. Br. Quare Impedit, pl. 40. cites 47 E. 3. 11. Year shall not grieve him and so it seems that the King by Usurpation not assailed by any Alien may be out of Possession as well as a common Person, and so is the old Opinion there; and therefore it seems that the one Usurpation within the Year cannot be an Interruption, and a Deficient cannot toll the Entry of the Lord who enters for Mortmain; For he has no Right of Entry, but only a Title of Entry, which may be taken at any Time within the Year. Br. Quare Impedit, pl. 49. cites 47 E. 3. 11.

Quare Impedit of an Adweston in gross, the Plaintiff counted, that J. was therof seised and present-
ed etc. and held the Adweston of him, and after aliened to the Dean and Chapter of H. by which he pre-
sented by the Statute of Mortmain, and it is yet within the Year, and the Defendants said, that the Church was fully 6 Months before the Writ was brought of its own Prefentment; Judgment of the Writ; and be-

 cause it is half a Year after the Alienation, therefore the Writ lies well, per Cur. Br. Quare Impedit, pl. 70. cites 21 E. 5. 27. — Br. Mortmain, pl. 13. cites S. C.

5. Quare Impedit by R. H. against 5. and three of them brought Qua-Quare Im-

pe rt against the Plaintiff of younger Date, by which R. H. prayed, dit by J. A. and W. P. that all may be determined upon his Writ of elder Date, and that the other against B. B. may be discontinued or nonluted, and then it was not much denied; but and others, afterwards, vol. 56. It was agreed, that if they cannot agree to discontinue the Plaintiff the last Writ that then each shall answer the other in both Writs, and the Defen-

6. Quare Impedit for Demurrer; and after the same Defendants said, that they had another Quare Impedit against the Plaintiff, and prayed that they may answer thereon; and per Brown, they shall proceed upon the Quare вместо of the first Date, and this shall make an End of all; for otherwise there may be Inconvenience; for it may be
be, that the one may be found for the Plaintiffs, and the other with the Defendants, where it is all of one and the same Presentation, to one and the same Church; and Newton accordingly, and to inconvenience to any Party where they plead upon the Writ of elder Date. Br. Quare Impedit, pl. 79. cites 19 H. 6. 45.—For where A. brings Quare Impedit against B. and his Incumbent, and an archdeacon, or the next archdeacon, and the other set aside, there if the Title be found for A. he shall have Writ to the Bishop to nominate his Clerk, and to the other if this Recovery, be within the 6 Months, and not the Incumbent, so he was named in the Writ, and may have Answer, and if the Clerk of A. was in at the Time of the Recovery he must make no Writ to the Bishop, but shall recover Damages for the Disinfection, and if B. recovers against A. there the Clerk of A. shall be ousted, if he was in by his own fault, pending the Writ; but if he was in at the time of the Writ purchased, he shall be ousted; For it was the Polity of the Defendant that he had not pleaded that the Church was full of the Presentation of A. the Day of the Writ. Ibid.—But because the Plaintiff did not aver that the second Writ was of the same Presentation of which he brought his Writ, therefore each was awarded to answer to the other's Answer. Ibid.

6. In a Quare Impedit for the King; though the Defendant has a Writ to the Bishop against the King, the King may have a new Quare Impedit against him of the said Avoidance, and make other Title. F. N. B. 35. (P).

Note, in such Case the Profits are to the Prior, and yet the Freehold is in the Abbot. F. N. B. 36. (Q.) in the new Notes there (s) cites 20 E. 5. Non-ability; 9. 14 H. 4. 10. adjudged.

For the Institution and Induction thereupon are merely void, and so the Church was never full of the Person of such Clerk. Writ. Comp. Inc. 159. cites Hob. 167.

9. 1 Mor. 1 Parl. 2 Seff. cap. 5. enacts, that that the Statute of 32 H. 8. cap. 2. (of Limitations) shall not extend to a Writ of Right of Advowson, Quare Impedit, Aisle of Darvin Prebend, Jurc Patronatus &c.

(Y. c. 2) Quare Impedit. Where it shall be brought.

1. Quare Impedit by the King against the Bishop of Sarum of the Prebendary of Horton, and counted of a Voidance by reason of the Temporalities of the Bishop being in the Hands of the King, and that the Prebend voiding, the King presented, and he disturbed, and counted that such a Bishop presented such a Prebendary who died, and so it is void &c. and it was brought in Wiltshire where the Cathedral Church was, and not in the County of S where the Body of the Prebend, viz. the Manor of Horton, was, which made the entire Prebend, and yet the Writ awarded good; Quod Nota. Br. Quare Impedit, pl. 68. cites 21 E. 3. 50.—But Fitz. Brief 325. Anno 15 E. 3. is contra, but it is better here, as it seems; For Quare Impedit lies where the Church is.

* Quare Impedit was brought in the County of Hereford of an Advowson by Wales, and lay well. Br. Quare Impedit, pl. 16. cites 35 H. 6. 50. —S. P. that it shall be brought in the County adjoining; per Fortescue. Br. Quare Impedit, pl. 19. cites 36 H. 6. 53. And Brook farn, the Reason is told elsewhere to be in as much as the Lords there have no Authority to write to the Bishop.——S. P. Co Lit. 134. b. Neither shall Consonance be granted in a Quare Impedit, because the Inferior Court cannot write to the Bishop. Quare Impedit of the Archdeaconry of St. D. in Wales was brought in the County of Hereford, as in the County next adjoining to the Benefice; Quod Nota; and the King made Title by reason of the Puffications of the
(A. d) Quare Impedit. How it shall be. In what Cases the Writ shall be Ad Ecclesiam.

1. If a Quare Impedit be brought of a Chapel, the Writ shall not be Quod pernittat presentare ad Ecclesiam, but ad Capellaniam. 8 H. 6. 37. Curia.

And because the Writ was Ad Ecclesiam, the Opinion of the Court was, that the Writ should abide. Br. Quare Impedit, pl. 77. cites S. C. — If the King be disturbed to collate by his Letters Patent unto his Free Chapel, he shall have a Quare Impedit, and the Writ shall be Quod pernittat presentare &c. at Precbendam in his Free Chapel &c. F. N. B. 55. 5 D.
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Presentation.

(E)—F. N. B. 33. (E) in the new Notes there. (b) cites 16 E. 3. Brief 660.—And 13 H. 4. Brief 670 where Ecclesia shall be intended a Parochial Church.

2. If the Clerk of a Donative be disturb'd, the Patron may have a Quare Impedit Quod permitat ipsum presentare ad Ecclesiam &c. and declare the special Matter in his Declaration. Co. Litt. 34. 4 cites D. 1 Jac. B. R. Ret. 601. between Furchild and Gayer, in Trespals. Resolved for the Recency Parochial Donative of St. Birien in Cornwall.

3 Where 2 or 3 Patrons are feis'd of an Advowson to present by Turns, the Qua. Imp. shall be Presentare ad Ecclesiam; for it is but one Church. But where the Church is divided, and there are 2 several Patrons and 2 several Incumbents of the same Church, so that a distinct Part of the Church and Tithes belong to each, in such Case the Quare Impedit shall be Presentare ad Mediatetam Ecc. Ecclesia. So in Case of a Confoundation of 2 or 3 Churches into one, and the Patrons now present by Turns, as one Incumbent poiffes the whole, the Presentation shall be Ad Ecclesiam. 10 Rep. 136. Trin. 10 Jac. C. B. Smith's Case.

4. In Quare Impedit for the Vicarage of B. in Devon, it was objected upon a Demurrer, That there is a Variance between the Writ and the Count, the Writ being Quod permitat ipsum presentare ad Vicariam Ecclesiae de B. and the Conclusion of the Declaration is Quod ad ipsum E. (the Plaintiff) ad Ecclesiam presentatu fide vacantiu &c. permitat presentare &c. So that the Writ is Quod permitat &c. presentare ad Vicarium, and the Declaration is Ad Ecclesiam pertinent presentare. But to this it was answered, and fo resolved by Cdr. That Omnium Vicarum ecclesiae, and that it is so held expressly in several Books, and therefore no Variance in Substance but in Form only; besides, this was not shown for Caule of Demurrer, for the Caule shown was Want of Proffert, and the Precedents are as in this Case; and fo Judgment for the Plaintiff. Whereupon De- fendants brought a Writ of Error, and a Bill in Chancery &c. Card. 315. 316. Trin. 6 W. & M. Reynell v. Long.

5 The Act of 22 Car. 2. for Rebuilding London, enabled that the Parishes of St. Andrew Wardrobe and St. Anne Black-Fryers should be united, and that the first Presentation shall be by the Patron of the (Church) whose Endowment is of the greatest Value. Now the Truth was, that St. Anne Black-Fryers was a Vicarage. And upon a Quare Impedit brought it was among other Things ruled by the Court, That tho' Ecclesia and Vicaria are different Things, yet it appearing upon the whole Record that the Rectory of Black-Fryers is Appropriate, the Vicarage of Black-Fryers shall be a Church within the Intent of the Act. 3 Lev. 435. 436. Hill. 7 W. 3. in C. B. Reynolds & al. v. Bishop of London and Blake.

6 There needs not the Name of the Saint, as Ad Ecclesiam de Sanfel M. de W. except there be more Churches in the same Vill. F. N. B. 32. (E) in the new Notes there, cites 9 Eliz. Dyer 259. 13 H. 4 872.

7 If a Man be disturb'd to present unto a Parsonage, then the Writ shall be * Precipe &c. Quod permitat ipsum presentare &c. ad Ecclesiam &c. for the Word Ecclesia is always intended a Parsonage. And if it be a Vicarage, then the Writ is Quod permitat ipsum presentare ad Vicarium. And if it be a Pretend, then Ad Prebendam, and if a Chapel Ad Capel- lam; and so he ought to come the Adowson as it is &c. F. N. B. 32. (H.) cites 8 H. 6. 22.

* And note, Such Writ was at the Common Law. F. N. B. 32. (H) in the new Notes there. (a) cites 14 H. 4.

2. Quare Impedit 183. ad Capellanam. 2 H. 5. Grants 89. ad Vicarium.—† In a Quare Impedit Presentare ad Ecclesiam, it is a good Plea to the Writ that it is but a Chapel, for * Ecclesia shall be intended a Paroch Church. F. N. B. 52. (H) in the new Notes there (b) cites K. 3. 62. 22 E. 5. 2 a. 12. a. 8 H. 6. 42. a. 57. 3. 15 H. 4. Brief 870.—‡ S. P. in F. N. B. 55; E. in the new Notes there (b) cites 16 E. 3. Brief 660. and 15 H. 4. Brief 56.
Presentation.

8. There is another Form of Writ Quod permittat ipsum presentare ad Ecclesiam Domus Sancti Martini Bristol. qui vacat. &c. and of an Hospital and the like. F. N. B. 33. (G.) cites Lib. Entr. 526.

(B. d) Quare Impedit. How it shall be brought.

1. A Writ may be brought Quod permittat ipsum presentare ad Cantarian, without laying Perpetuum Cantarian. 17 C.
2. 12.
2. So he need not lay Ad perpetuam Vicariam. 17 C. 3. 12.

(B. d. 2) Quare Impedit in general. At Common Law or by Statute.

1. QUARE Impedit and Darrein Presentment complains of Chattel only, viz. the present Avoidance. Jenk. 13. pl. 23.
2. Quare Impedit was by the Common Law, but it was only upon a Presentment, viz. Induction; but if the Incumbent was to be inducted, then at the Common Law a Writ of Right of Advowson only lies. Per Popham. Brownl. 168. Trin. 4. Jac. the King v. Matthews.
3. In Quare Impedit both Plaintiff and Defendant are Actors one against another, and therefore the Defendant may have a Writ to the Bishop as well as the Plaintiff, which he can't have without a Title appearing to the Court. Vaug. 58. Trin. 21. Car. 2. the King v. Jervis & al.
4. If the Church is full of the Defendant by Institution, then it is a Quare Impedit within the Statutes; other wise it is a Quare Impedid at Common Law. Skin. 25. Mich. 33 Car. 2. C. B. Holt v. Holland.

(B. d. 3) Quare Impedit. In what Cases it lies.

1. If the Advowson be in Gros'; the Tenant in Tail may have Quare Impedit. Br. Quare Impedit, pl. 31. cites 43 E. 3. 24.
2. Where I grant one Part of an Advowson to S. and another to W. and the third to F. referring the fourth Avoidance to my self, in this Case Quare Impedit does not lie; for the Advowson is one entire Thing, and we cannot join in Action; and therefore, if we cannot agree in Presentment, the Bishop shall have it by Lapel; but of Coparceners, if they cannot agree, the Elders shall have the Presentment, Br. Quare Impedit, pl. 10. cites 53 H. 6. 11.
3. Note when there is no Patron, As where the Prior is Priest, and is admitted to his own Benefice; Or where my Advowson is alien'd in Mortmain, and appropriated to a Religious House, and the like; in those Cases, I may have Quare Impedit, and the Plenarty by 6 Months is no Plea. Br. Plenarty, pl. 10. cites 14 H. 8.

4. Collation
4. Cotion by 6 Months does not toll Quare Impedit, where the Plenary is by such Collation, for the Statute of Westminster 2d. requires Preten-
tation in this Case. Jenk. 231. pl. 7.

5. A Man can't have Quare Impedit and Darrein Preten*ent io, but on the Return of the Quare Impedit, the Darrein Preten*ent brought after shall abate. But Per Hobart, if he had brought another Quare Impedit it had been well; and it was received in the Earl of Bro-
ford's Case. And Per Hutton, W. 2, 5 proves that he shall not have both. Noy 18. Misch. 15 Jac. C. B. the Village of St. Andrew's v. the Arch-
bishop of York and the Counties of Shrewsbury.

6. If A. a Spiritual Man has the Presentation, and B. a Layman the No-
mination, if B. nominates to A. the Spiritual Man, C. a Clerk to be pre- sented over, and A. doth so accordingly, it before C's Admission B. nominates anoth'er to be likewise present, which A. refuses to do, because A. hath pre-
presented one already by his Nomination; B. shall not maintain any Quare
Impedit against the Prefentor for such Relusf; because A. is Patron, and
being a Spiritual Man he cannot change his Presentation already made.
Dod. of Adv. 65, 66. Lect. 12.

(B. d. 4) Quare Impedit. *Proces* and Proceedings.

1. 52 H. 3. E NACTS, That in Affies of Darrein Preten*ent, cap. 12. E and in a Plea of Quare Impedit, of Churches vacant,
† Days shall be given, from 15 to 15, or from 3 Weeks to 3 Weeks, as the
Place shall happen to be near or far.

Marlborough 13.
The Sheriff must summon the Defendant by good Summons, and return their Names upon the Original ; The
Writs are returnable from 15 Days to 15 Days; The Summons on the first Writ may be made at the Church-
Door, or to the Perfon of the Defendant; and altho' a Nilh be return'd upon the first Summons, Attach-
ment and Diffref, yet if the Defendant make Default upon the Diffref, a H. et f^a be given to the Bishop on
the Title made by the Plaintiff. Brownl. 158. — See the Case of Williams v. Blower & a contra.

This Act extends not to a Writ of Quare non admissi nor to an Incomunbr, but only to the Affie
of Darrein Preten*ent and Quare Impedit, and the Reason thereof is for fear of the Lapie. 2 Inf. 124.
† By Affiet of Parties a longer Day may be given than is prescribed by this Act, but that Affiet must
be entered of Record. And it is to be observed, That by the Common Law great Delays be disallow'd
in four Kinds of Actions viz. In all Writs of Dower, Quare Impedit, Affie of Darrein Preten*ent,
and Affie of Novel Distress, and therefore no Protection shall be allowed, or Eslien de servito Regis
shall be cast in any of them. 2 Inf. 124.

At the Con-

In a Plea of Quare Impedit, if the Disturber come not at the first
Day that he is summoned, nor caft no Eslien, then he shall be attached at
another Day; at which Day, if he come not, nor caft no † Eslien, he shall
be disfrain'd by the great Diffrefes above given.

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another Day; at which Day, if he come not, nor caft no † Eslien, he shall
be disfrain'd by the great Diffrefes above given.
Bishop against the Plaintiff by the Common Law; And so be the later Books, and common Experience, at this Day. 2 Inf. 124, 125.

† Ethonum or Exonum, is derived of the French Verb Effonier or Exonerier, which signifies to excuse, to as an Eton in legal Understanding is an Excuse of a Default, by Reason of some Impediment, or Disturbance, and as well for the Plaintiff as the Defendant, and is all one with that which the Civil-Tables call Excusation. Of Eftonis there have been (as we have read in our Books) 5 Kinds, viz. 1. De Servitio Regis. 2dly, In Terram Sanctam. 3dly, Ultra Mare. 4thly, De Malo Lediti, in our old Books called Ethonum de Reftantibus. 5thly, Et de Malo venienti; and this last is the common Eftoie which is intended in this Act. 2 Inf. 125.

In a Quare Impedit or Darrein Premisment, an Efton de Service le Roy ad Terram Sanctam, or Ul- tra Mare, lieth not for doubt of the Law, but a common Efton lieth; and of Efton the Mirror said well, Abuson et one fourth Caufes de Eftonis from Receivable de cyt que Droit, ne allowe Bauxime in real Cafe, & Abuson et d'allowe Eftonis in Personal Actions. For the fame Author treating of Droits, par vieus Roys ordain, faith, Ordeins fuerint Eftonis in mir Actiones, & Reals & Nos in Per- sons. And I find not in Glanvill any Eftonis but in Real and Mixt Actions; but before the making of this Act, Eftonis were allowed in Personal Actions. 2 Inf. 125.

And if he come not, then * by his Default a Write shall go to the Bishop of * Upon the same Place, that the Claim of the Defendant for that Time shall not be pre- judiced to the Plaintiff; facing to the Defendant his Right at another Time when he shall sue therefor. Words of this Act, Plaintiff shall have a Write without making of any Title. 2 Inf. 125. — The Statute faith only, Scributur Episcopo, and yet the Plaintiff shall have both a Write to the Bishop, and besides a Write to enquire of Damages. If the Bishop be out of the Realm, a Write to the Bishop may be awarded to his Vicar-General, for he is in Place of the Bishop. 2 Inf. 125.

1. If the Defendant appear at the Grand Dihtref, and take a Day by Prece partum, and after makes Default, no Write shall be awarded to the Bishop; for this Cafe, in respect of his Appearance, is out of the Statue; but a new Dictref shall be awarded. 2 Inf. 125. * The King shall take the Benefit of this Statute. 2 Inf. 125.

The same Law, as to the making of Attachments, shall from henceforth be observed in all Writs where Attachments he, as in making Detrefes, so that the second Attachment shall be made by better Pledges, and afterwards the last Detref.

according to the Letter, and needeth not any Exposition. 2 Inf. 125.

2. In Quare Impedit the Plaintiff recover'd against the Bishop, and had Diftingus Episcopum directed to the Sheriff for disturbing the Church; and the Sheriff returned 20s. in Iffues, and the Plaintiff pray'd another Dif- tref, and had it. Br. Quare Incumbavit, pl. 2, cites 21 E. 3. 31.

3. If the Defendant makes Default after Appearance, the Plaintiff shall recover immediately, and his Damages; but if they have Day by Continued, there the Plaintiff shall only have Diftnings upon the Default. Br. Quare Impedit, pl. 151, cites 2 H. 4. and 6 R. 2.

4. Quare Impedit; the Sheriff return'd Nibil at the Summers, and At- tachment at the Diftref; And by 4 Justices, the Plaintiff shall recover by Equity of the Statute; But 2 Justices Contra. Br. Quare Impedit, pl. 152, cites 11 H. 6. 3.

5. In Quare Impedit the Sheriff may summon the Defendant in the Church, 5 P. For in Per Martin. But Danby and Cotton Contra; but that he may, in Write of Right of Advowment. Br. Quare Impedit, pl. 152, cites 11 H. 6. 3.

Disturbance is to be punished for the Damage done to the Person; By Danby and another Justices. F. N. B. 32. (E) in the new Notes there (b) cites S.C.

6. If some of the Plaintiffs appear in Quare Impedit, and some not, Summons ad Sequendum imple shall issue before the others shall proceed. Br. Quare Impedit, pl. 153, cites 11 H. 6. 23.

7. The Bishop of Coventry was Patron of two Prebends, and he granted Br. Lit. pl. the next Avoidance of either of them, as should happen to be most vant. to 25, cites 42.

J. S. which Grant was confirmed by the Dean and Chapter; The Bishop that E 5 S.P. made the Grant; One of the Prebendaries died; The then Bishop col- lected it to A, and the Grantee brought a Quare Impedit, and the Court were of Opinion, Th at it must be brought in that County where the Chure-
Presentation.

dear Church is, and not seere the Body of the Prebend lies, according to 21 E. 3. 2. & 3 Eliz. -- -- v. Ralph Bayne Bp. of Lincoln and Merrick.

8. If the Bishop and Defendant join in bringing a Writ of Error, the Bishop, unless summoned and served, must join in the Assigning them. Cro. J. 92. Mich. 3 Jac. Lancaster v. Lowe.

9. After Judgment in Quare Imped for the King v. Saker, and Writ to the Bishop, the Incomendant continued Possession, and washed the Vicarage House, so a Prohibition was prayed and granted per Curiam; For as Coke saith, "Tis the Dower of the Church, and any one may have this Writ against him; For it is the Writ of the King, and the Prohibition was Not to do well." Roll. R. 335. Hill. 13 Jac. in the Cafe of Knowles v. Harvey.

10. Judgment was in Quare Imped, and the same Term a Writ of Error was delivered to the same Court before a Writ to the Bishop was awarded to admit the Clerk. Per tot. Cur. The Writ of Error ought to have been allowed without any other Superfeceans, because a Writ of Error is a Superfeceans in it fell. Godb. 439. Trin. 5 Car. B. R. Earl of Pembroke v. Bottock.

A Juror was denied to be withdrawn after Evidence given in Qua. Imp. and Departure from the Bar, because the King shall not be prejudiced; For the Judgment is Sala Tute, but otherwise it is tried in the Exchequer upon an Information or Intrution. Noy. 111. the King v. the Bishop of Whinfell and Dr. Hide.

2. Mod. 264. & c. accordingly, and the Court said, that the Sheriff ought to have gone to the Church, and seized the Profits, and if there be nothing to return, to return a Nullity; And that the Court being moved again, continued their former Opinion; It was objected that leaving the Notice upon the Summon was as much as was required; For the other Writs are only to give the Defendant Time to plead, and therefore not necessary that the Notice should be given upon every one of the Writs; For if once served it is enough. But the Court was of Opinion, that the Defendant having not appeared nor cast an Effoign, and Judgment Final being given, it was Reason that all the Proces should be served really, of which there had been no Occasion, if he had either appeared or confessed, and therefore the Proces not being duly served Judgment

11. In a Quare Imped, if the Ven. Fac. be returned, the Plaintiff cannot be nonsuited without calling the Jury; But if the Ven. Fac. be not returned at the Day, then he may be nonsuited on the Roll without calling the Jury; And so he may in the first Case if Deft, content. Noy. 107. Anon.

In a Quare Imped against two, they severally appeared, and cast an Affoign by Turnes, and Idem Dies was given to him who first appeared &c. Then an Attachment ensued against them for not appearing at the Day, and Proces continued to the Grand Distrefs; which being returned, and no Appearance, Judgment Final was ordered to be entered, according to the Statute of Marlbridge, cap. 12. It was moved to discharge this Rule, because the Defendants were not summoned, either upon the Attachment or Great Distrefs, and the Sureties, returned upon the Proces, were John Doe and Richard Roe; that if Judgment final should be entered, there is no Remedy but by Writ of Deceit, and on such a Writ the Summons and Veyors are to be examined in Court, but Feigned Persons cannot be examined, so that it is an Abuse of Officers to return such Names; that Ignorance of the Sheriff was the original Cause of it, who being to make Returns, and finding the Names of John Doe and Richard Roe set down in the Books of Precedents as Forms, followed those Precedents exactly, and made their Returns accordingly, and took no further Care to return true Summons, per Cur. the Deign of the Statute of Marlbridge was to have Proces duly executed, and that cannot be without the Tenants having notice of it; For if the Defendant do not appear upon the Summons, an Attachment issues against him, commanding the Sheriff to seise his Body, and to make him give Sureties for his Appearance, if he will not appear, then the Grand Distress is awarded, to seise the Thing in Question; and if still he neglect to appear, then Judgment Final is to be given, by which the Right is for ever concluded, and this being so fatal, the Proces must never be suffered to be changed into a Thing of Courte. It is true, the Defendant here had Notice of the Suit, but he had not such Notice as the Law allows him; And for his Forcuring in Effoign the Law allows it him. Accordingly Judgment was set aside. Mod. 248. pl. 7. Trin. 29 Car. 2. C. B. Searle v. Long.
(B. d. 5) Pleadings. Abatement of the Writ by Death of one of the Parties, and the Effects thereof.

1. Prior Defendant in Quare Impedit died, and the Writ abated. S. P. And after he not being named by his proper Name, quod Nota; For now there is no Defendant, Br. Corporations, pl. 79. cites 10 E. 3. 16. & Finiz. Quare Impedit 32.

2. Baron and Feme brought Quare Impedit, and the Feme dy'd pending the Writ, and yet the Writ remained good, and the Baron had Writ to the Bishop as Tenant by the Curtsey. Br. Quare Impedit. pl. 67. cites 38 E. 3. 35.

Impedit by the Baron and Feme, if the Writ abates by the Death of the Feme, and the Baron and Feme, another Writ, and Party is pleaded in Bar, he may aver, That the Church was sold, within 6 Months before the first Writ prohabe; For it is abated there by the Act of God, and not by the folly of the Party, Per Newton. Br. Journes &c pl. 12. cites 7 H. 6. 16.

Baron and Feme made Title to present in Right of the Feme, and after Issue joined, and before the Venus Faicas the Feme died. The Baron showed that himself had taken out a Venus Faicas in his own Name; Whereupon the Defendant demurred, supposing that the Writ was abated; But Wyche was of Opinion, that the Writ was not abated, because this was a Chattel vested in the Husband during the Wife's Life. Writ. 75. Patch 22. C. D. Blunt &c. Us. Hutchinson. —So where severall Baron and and their Femes were Plaintiffs, and one of the Femes dy'd pending the Writ before Judgment, the Court awarded the Writ to the Bishop, in the Name of the Baron and the others, Mo. 456. pl. 629. Trin 38. Elia. The Counsell of Northumberland's Cite.— But if Quare Impedit be brought against Baron and Feme and thers, and the Feme was deceased the Day of the Writ prohabe, the Writ shall abate; Contrariwise, if she had died pending the Writ. Br. Quare Impedit. pl. 153. cites 11 H. 6. 25.

3. If Quare Impedit be brought against the Patron and Incumbent, and the Quare Impetor did pendant the Writ, yet the Writ shall not abate, and so Recovery may be against the Incumbent alone. Br. Quare Impedit. pl. 47. cites 7 H. 4. 25. 37.

Patron pleaded in Bar, and the Incumbent pleaded the same Matter also, and so to Issue, and after they came and pleaded that the Patron is dead after the last Continuance, Judgment of the Writ, and the Writ was awarded good, per Judicium, after long Argument, by Reason of the Mistake of the Lay. Br. Quare Impedit. pl. 6. cites 9 H. 6. 30. —So where a Patron, or 2 Principals bring Quare Impedit, and the one dies, the Writ shall stand for the same Milchief, and so is 38 E. 3. 35. Br. Quare Impedit. pl. 6. cites 9 H. 6. 30. —S. P. Br. Quare Impedit. pl. 67. cites 38 E. 3. 35. S. P. And fo of Tenants in Common. Br. Quare Impedit. pl. 57. cites 14 H. 4. 12.

4. If one of the Plaintiffs, or one of the Defendants in Quare Impedit dies, Quære if the Writ shall not abate. Br. Quare Impedit. pl. 7. cites 9 H. 6. 36. per Rolle.

* The Death of one Plaintiff shall not abate the Writ, but he shall be severed E. N. B. 55 (L). If a bring Writ of Right of Advenance, or if it be brought against two, and the one dies, of the one Part or the other, the Writ shall abate, Contrary in a Quare Impedit; For there, after Title made, the Defendant become Actor, and he may recover Damages against the Plaintiff. Br. Quare Impedit pl. 6. cites 9 H. 6. 30. per Babington. In Quare Impedit against 3, the one died pending the Writ, and yet the Writ was awarded against the other; quod nota. Br. Quare Impedit. pl. 65. cites 9 H. 8. 6. Death of the one before Writ prohabe, shall abate the Writ against all; but Death of the one pending the Writ shall not abate the Writ (but) against himself: himself only: Note the Diversity. Br. Brief. pl. 3. cites 2. H. 8. 20.
But in Quarei., Br. 31. Yet Milch. S. C. by Name of Pipe v. the Queen. — S.P. For there are 2 Mitchell's, viz., if the Writ abates, the Disturbance shall not be punished, though the Writ was well commenced: For there was a Disturbance; And why, if the Writ abates not, but the Plaintiff shall proceed to Judgment and Execution, the very Plaintiff shall not be put out of Possession. and as in the last Case, he may continue it, if by Writ of Right, but is without Remedy, if the Writ abates, which is the greater Mitchell, it shall not abate. 7 Rep. 26 b in Hall's Cafes, and cites H. 4. 26 b. 17 H. 8. 13. P. 86. 6. 57.

Quare Impedit by a Prior against the Bishop of C. and others, one pleaded that one of the Defendants was dead the Day of the Writ served, and demanded Judgment of the Writ, et non Allocutio for all. Br. Quare Impedit, pl. 49. cites H. 4. 54. 56.

The Grantee of the next Presentation brought Quare Impedit. pl. 158. cites 4. E. 6. 
Quare Impedit, and did after the 6 Months pass, pending the Writ, and the Executors brought another Quare Impedit by Journeys Accounts, and took general Writ, and counted generally that the Grant was made to the Teller, and he brought Quare Impedit and said, that they brought this Writ, Et ex Ratione pertinens ad ipsos presentantes, and the Defendant hindered them, and then it appeared, that this is of a Disturbance done to themselves after the 6 Months passed, and then the Writ does not lie; For all ought to be comprised in the Writ, and court specially, and shall demand Writ to the Bishop upon the Petition, and Writ of the Teller, and because it did not follow, they said, the Writ is not good. Br. Quare Impedit, pl. 160. between Mark, Ogle, and Harriston. But Brooke says, It seems that where the Plaintiff dies, one can have other Writ by Journeys Accounts. — Br. N. C. 4. E. 6. pl. 410. S.C.

The Plaintiff in a Quare Impedit dying pending the Writ: It was prayed to have another Writ for the Executors; for he said he could not have it but by the Allowance of the Court, and the Court granted it, but did him lack well to it, it lay in this Case or not, and in what Form the Writ shall be. Br. C. R. 174. Hill 52. Eliz. Walter Moile's Cafes.


6. Quare Impedit brought by the King abates by his Demise, Het. 83. Pach. 4 Car. B. R. the King v. Clough.

(B. d. 6) Abatement of the Writ for other Matters. In what Cafes, and the Effect thereof.

1. NOT E; A Writ brought by the King or Queen is not, Unte queritur, that the Defendant injures &c. 18 E. 3. 12. (as it is in the Cafes of a Common Perfon) Allo it the Words Ut dicitur be omitted, the Writ is good; Yettee 38 E. 3. 31. That in the King's Case it shall be Ut dicitur, but in that of a Common Perfon, in all Writs it shall be Ut dicit, and if it be Ut dicitur, the Writ shall abate. F. N. B. 32. (E) in the New Notes there (c) cites the above Cafes, and 17 E. 3. 50. 74.

2. Quare Impedit by the King against L. and intituled himself to the Manor of the Advoceeon, because L. the Defendant was Oultowered to the Envoy, and conveyed in Forma Juris (as appears in the Book) and upon the Avisance he presented, and L. said that the Advocate was fevered into three Portions, and named the Portions, Alsumo boc, that the Incumbent, who died, was presented by the Father of L. as the King supposed in his Count; and the King denounced, and had Writ to the Bishop, because the Plea of the Defendant, viz. That the Church was severed into three Portions goes in Abatement of the Writ, and the Traveres goes in Bar; But if he had rested upon the Plea, that the Advocate was fevered into three Parts, the King's Writ had abated. Br. Quare Impedit. pl. 115. cites 22 Atl. 33.

3. A Writ was brought by the Queen ratione minoris etate J. filii & Lauris S. in Coisella Regium existen. de qua praed. S. Terram sua tenant in Capite,
In Quare Impedit, it was agreed, that it is a good Plea to the Writ by the Patron or Incumbent, to say that the Writ bears Date in the Life of the Incumbent. Br. Brief, pl. 75. cites 46 E. 3. 19.

So if it be brought by the Heir to say, that it bears Date in the Life of the Aneeelor in this Action. Br. ibid.—Br. Quare Impedit, pl. 52. cites S. C.

5. In Quare Impedit by a Prior against the Bishop of C. and others, one pleaded that the Church was full the Day of the Writ purchased of the Presentation of the Plaintiff; Judgment of the Writ, and because he claimed nothing in the Patronage, the Plaintiff demurred; and therefore awarded that he shall not have the Plea; quod nota. Br. Quare Impedit, pl. 49. cites 7 H. 4. 34. 36.

6. In Quare Impedit the Defendant said that the Clerk of the Plaintiff was instituted and induced before the Writ purchased and is now in judgment of the Writ; and the best Opinion was, that it is a good Plea; for he cannot recover the Presentation where himself has the Presentation, and it does not lie for Damages only. Br. Quare Impedit, pl. 54. cites 12 H. 4. 11.

7. In Quare Impedit by C. against B. the Plaintiff counted that N. was seized of a Manor and Advowson appellant who presented &c. and N. gave it in tail, and the Domes to the Aviceeence presented, and his Clerk in &c. and after the Tenant in tail died without issue, and he in Remainder entitled and presented T. &c. and his Clerk in, and after died, and be presented again, and the Defendant differe'd him; and the Defendant said that a Stranger was seized of the Manor and Advowson appellant, and presented F. &c. and died, and the Manor with the Appurtenances descended to K. as Daughter and Heir, who took the Defendant to Baron, and the Baron and Fene in Jure Usuris presented, and the Fene is yet alive; Judgment of the Writ: And the best Opinion was, That it is no Plea to the Writ; for the Plaintiff alleges the Aviceeence by the Death of T. and the Defendant by the Death of F. and also the Defendant does not allege that the Presentation made by the Father of his Fene was after the Presentation of which the Plaintiff declares, nor does be traverse it. Br. Quare Impedit, pl. 108. cites 14 H. 6. 23.

8. Jointtenancy of the Part of the Defendant is no Plea in Quare Impedit: Contrary, it seems, of the Part of the Plaintiff. Br. Quare Impedit, pl. 108. cites 14 H. 6. 23.

In Quare Impedit, an appellation of one cannot pass to the other. Br. Quare Impedit, pl. 52. S. P. and cites S. C. Where the Writ was against Patron and Incumbent, and the Patron made Default, and the Incumbent appeared, and pleaded that the Plaintiff was made a Knight after the last Communion, and was found for the Incumbent, by which the Writ was abated, and the Plaintiff prayed a Writ to the Bishop for Default of the Patron, but could not have it, because it is repugnant to have a Writ to the Bishop when his Writ abates. Br. Peremptory, pl. 12. cites 7 H. 6. 15.

Br. Quare Impedit, pl. 154. cites 51 H. 6. 15.

Where the Plaintiff in a Quare Impedit was made a Knight pending the Writ, Shelly thought that inasmuch as this shall be accounted his own Default, he shall not have a Writ by Journeys Accounts. And agreed that the Books are clear that the Writ shall abate, * D. 95. a b. pl. 7. Patch 25. &c 25 H. 8. &c. (But it seems by the other Part of the Case (tho' not clearly expressed) that if this being made a Knight was not the Act of the Plaintiff himself, but that he had been compelled by the King to be made a Knight (as anew Man having lands of a certain Value, was compellable to be at that Time, and till the 12 Car. 2.) then he might have had this Writ. See Ibid.—And after this Case it was enacted by 3 R E. 6.
In Quare Impedit the Plaintiff counted that one 7. F. was seized in Fee of the Manor of H. and quod Advocato praedicta pertinet, and presented one R. and after gave the Manor to which &c. to one O. his Aesecutor in Tail, and alleged another Presentment in the Tenant in Tail, and convoy'd the Manor to himself as Heir in Tail, and alleged several Defendants; Littleton demanded Judgment of the Writ; for it is Ad quod Advocato pertinet, where it should be pertinuit, & non allocatur; and the Defendants adjourn'd not double, by Reason that the Gift is the Effect, and the Defendants are only Conveyances. Br. Quare Impedit, pl. 11. cites 33 H. 6. 32.

If the Writ abates for False Latin or Insufficiency of Form, this is the Default of the Clerk, and shall not be peremptory to the Plaintiff, nor shall the Defendant have Writ to the Bishop upon it, but the Plaintiff may have a new Writ of Quare Impedit; and with this agrees 3 H. 6. 3. a. 31 H. 6. 15. a. 7 Rep. 27. b. Patch. 42 Eliz. in Sir Hugh Portman's Case.

13. In Quare Impedit if the Plaintiff is Nonstitut after Appearance, this is peremptory, tho' it be before Declaration; quod nota. Br. Peremptory 74. cites 19 E. 4. 9.

This Case seems not clearly abridged; The Caze itself is, that the recover'd by Default against one, and had Judgment to have Writ to the Bishop &c. with a Ceaser Execution till tried between the others and her, for otherways this Execution against one alone, will abate the Writ against the others, as in Trelpals against several. Br. Executions, pl. 140. cites 20 E. 4. 1.
15. In Quare Impediment against several, it was agreed that to say that
The King
No jach in Rerum Natura, as the one of them is, shall abate all the Write.
but *Mishomer of the one shall not abate but only against him who is mis-

be called Prooff of the Chanonry of C and after the King impeled him by Name of the Prooff of the Hufe
of C and for this Mishomer the Quare Impediment abated, notwithstanding it was avertis'd for the King that
he was known by this Name. Br. Mishomer, pl. 24, cites 38 E. 5. 12. S P Br. Brief, pl. 157, cites
S.C. The Reason seems to be, because the King shall take Conuence of the Name, which he himself ap-
pointed by his Write.

16. The Test of every Quare Impediment shall be the same Day that the
Write is obtained, by Reason of the Law, that it do not present the fix
Months, so as to defraud the Ordinary. Br. Quare Impediment, pl. 151,
cites the Registrar.

17. In Quare Impediment by the Queen the Count was upon a Presentation
made by H. 8. in Right of his Duchy of Lancaster, and so con-
y'd the fame to her by Defendant. Exception was taken to the Write,
because it does not set forth how the Queen claims the Advowion ;
where the King presents by the Temporalties in his Hands, the Write
shall say, Rationale Episcopatus Cant. nunc vacant, or in Cafe of Ward,
Rationale Cullodie ; and that therefor in this Cafe it ought to be said
Rationale Ducatus. But Anderfon Ch. J. held the Write well enough,
and it is good enough both Ways, either Generally or Speciâly ; and
cited the Book of Entries accordingly, where the Write is general, but
the Count is Rationale Ducatus sui Lancastriae. And afterwards a Proceed-
ent was shewn of Anno 32 H. 6. where the Write was General, and the
Count was Rationale Ducatus. Le. 226, 227, pl. 327. Patch. 33 Eliz.

18. If a Man has an Advowson in right of his Feme, and the Husband
brings Quare Impediment, the Write shall be general Ad quan Facias
Donationem; without mentioning his Wife ; per Anderfon Ch. J. and
book the Book of Entries 493, that the Write is general and the Count
special. Le. 227, pl. 307. in Cafe of the Queen v. Bishop of York.

19. The Plaintiff in a Quare Impediment declared thus, (viz.) Statim
I do not ob-
serve any
Specifit Donationem, leaving out the Word (ad 3) adjudged, that the
Write shall be amended. 3 Nels. a. 36. pl. 5. cites Reynoldson v. Bishop
of London. 3 Lev. 435.
pl. 12. Hill. 50 Eliz. in Brookesby's Cafe is the same Point, and that at length by the Opinion of all
the Justices it was amendable, and that a Clerk of the Chancery came into C. B. and amended it.——

20. If after 6 Months a Quare Impediment arise, which was brought with
in the 6 Months, the Plaintiff is remediable to recover his Prelection
yet the Write shall not a-
bate, but he shall recover
all in Damages, and therefore to prevent this it is usual to name the Ordinary in the Quare Impediment.
Per Pigot. Br Quare Impediment, pl. 147. cites 9 E. 4. 50. —— But if the Quare Impediment arise within
the 6 Months, the Plaintiff may bring another Write ; but if the Plaintiff be *Nonad within the 6 Months,
he cannot have a new Write ; because the Defendant on Title made has a Write to the Bishop, and for
that Cause a new Write to the Bishop will not be given. Brownl. 101. Anon. —— *S. P. 7 Rep. 27. b. Portman's
Cafe.

21. The Patron granted the next Presentation to A. and B. The Church
Ow. 85 S. became void, and during the Avoidance A. released his Right to B. who
being disturbed, brought a Quare Impediment alone ; The Defendant de-
murred, because it appears of the Plaintiffs own knowing, that they
Hill 52 B. ought to have joined in the Action, and the Release, being made after biz. S. C.
the Church was void, was of no Effect ; Adjudged accordingly that the
Release was void. Le. 167. pl. 232. Mich. 30 & 31 Eliz. C. B.
Brookesby v. Wickham and Bishop of Lincoln.

Interest to be released, but a Power only to present, and an Authority annexed to the Person.—After
the Voluntary it is merely a Chafe on Action, and to not to be released. Cro. E. 173. Brooksby's Cafe.

22. A
22. A Quare Impedit was brought by several Persons jointly, and in the Declaration they stand in their Title; The Court agreed, that the Writ shall abate; For the Judgment must agree with the Writ, unless there be several persons, and upon divers Titles a joint Judgment cannot be given; nor there can be but one Rightful Title. Mo. 134. pl. 327. Anon.

23. In a Quare Impedit; where the Writ abates, the Defendant shall not have a Return; for perhaps his Clerk is in; if not, he may recover by a Quare Impedit as Plaintiff; and there can be no Judgment where there is no Writ. Where the Writ abates there is no Writ. Jenk. 124. in pl. 51.

24. In Quare Impedit &c. the Defendants pleaded in Bar another Quare Impedit brought by the same Plaintiff for the same Church, and averred that they were the same Plaintiff, the same Avoidance, and the same Disturbance, upon which both Actions were brought, and that the first Action is still depending &c. The Plaintiff replied, that after the bringing the first Action he still continued seised in Tail of the Advowson; and being so seised, he presented his Clerk to the Bishop &c. who refused him, which is the Disturbance upon which he now declared in this 2d. Action, and traversed that it was the same Disturbance, upon which he declared in the former Action. The Defendants demurred; the whole Court agreed, that the Writ ought to abate; for though there must be a Disturbance naturally to maintain the Action, yet the principal Effect of the Suit is to recover the Presentation; and therefore for the same Thing you shall not have two Suits at once. Now there was a Disturbance laid in the first Action, and the Avoidance of the same, to that the new Disturbance better not the Plaintiff's Case; besides, it is the Nature of a Quare Impedit to be final, either upon a Discontinuance, or Nonuit; but by this Means one Man may bring 20 Quare Impedit, which would be intolerably vexatious; and the adding a new Defendant mends not the Case; For still there are two depending against the same Person; but he may have as many as he will against several Persons. Hob. 137. pl. 157. Trin. 14 Jac. the Earl of Bedord v. Willon.

25. Quare Impedit against Richard Bishop of Lincoln, the Patron and Incumbent, who pleaded, that at the Day when the Writ was brought, there was no such Richard Bishop of Lincoln, and this was held a good Plea in Abatement. 3 Nell. a. 58. pl. 19. cites Hutt. 33. Copp. Dike v. Tanley; and Winch. 73. S. C. reported by the Name of * Blunt v. Hutch-ison.

26. In Quare Impedit the Defendant prayed Oyer of the Writ, and pleaded in Abatement that there was a Variance between the Writ and Count, the Writ being * quasi adversum speciet Donationem, and the Count was, * quasi ad quem Donationem spectat sine Proveniencia. It was objected on Demurrer, that the Title by the Writ is a Title in Fee, but this in the Count is only a Title Pro hac Vice; fed non omnino natur; For
For the Precedents are so, and the Writ is always general; and if the King has Judgment by Default, and a Writ to the Bishop, this will not gain a General Title to the Crown, or become an Usurpation; per Holt Ch. J. For where the King has Judgment by Default in a Quare Impedit, he, as well as a Subject, must by Suggestion on the Roll for his special Title. A Relpondes Oulter was awarded, 2 Salk. 559. Trin. 5 W. & M. the King v. Dr. Lancaster and Bishop of London.

27. In Qua. Imp. the Count varied from the Writ; for the Writ was Quod permittat presentare ad Vicarium, and the Declaration is Act Ecclesiastic pericent presentare; but upon Exception taken to it the Court resolved, That Omnes Vicaria off Ecclesiast, and that it is to hold expressly in several Books, and therefore is no Instance in Substance, but in Form only; and this not being shown for Cause of Dissuersion, Judgment was given for the Plaintiff, and thereupon the Defendants brought a Writ of Error and a Bill in Chancery &c. Cuthb. 315 &c. Trin. 6 W. & M. B. R. Reynell v. Long.

(B. d. 7) In what Cafes the Patron &c. must be named.

1. The King may have Quare Impedit against the Incumbent alone; contra Br. Quare Impedit, pl. 6. cit. 9 H. 6. 3. 10. by Billop.—And so where the Pope presented. Ibid.—S. P. Br. Quare Impedit, pl. 47. 5. cit. 9 4. 25. 33. — Quare Impedit by the King against the Incumbent alone, who pleaded, which was found against the King, and it was moved in Arrest because the Patron was not named in the Writ, but because the Writ was admitted it was awarded that the Defendant Ende make due. Br. Quare Impedit, pl. 44. cit. 9 H. 4. 2. 3. Quare Impedit by the King against the Incumbent alone, and created that the Abbess of W. was seized &c. in Right of the Church, and presented H. who was admitted, and after the Church voided, and for presented B. who was admitted, and after was created Bishop of S. &c. which the Church voided, and remained, and till the Temporalties came into the Hands of King E. 3. (which is intended the Temporalties of the Abbess as it seems to me,) and made the Deponent to the King who now is, by which he presented, and the Defendant disturbed him, and so for that the * King shall have Presentation which fell in the time of the former King, and not his Executors: and the Defendant pleaded to the Writ because he is only an Incumbent, and the Patron now named, and the Writ awarded good; for it may be, that the Patron did not disturb, and also in this Case the King shall not recover the Abbess, but only the Presentation, and by this Recovery the Patron shall not be out of Possession as in other Cases, because it appears that the Title of the King is not to any Inheritance. Br. Quare Impedit, pl. 47. cit. 9 H. 4. 25. 33. — * Br. Presentation, pl. 11 cit. 9 H. 5. cit. 4.

The King brought a Quare Impedit against the Bishop, Smith Incumbent, and Longford; The Incumbent pleaded that no Patron was named in the Writ; and per Cur. that is a good Plea in Bar, that the King be Plaintiff be claiming to present by Lapsy for Smoother. Also the Patron now was only Grandee of the Preceding Advowson, and had presented Smith, yet he ought to be named; but if the Clerk had been in by Collation by the Ordinary for Lapsy, or Provision of the Pope in former Times, or as Presentation Regis against whom no Writ lies, if a common Person had been Plaintiff in the Quare Impedit, in this Case it might be without any Patron. Noy. 151. The King v. Bishop of Lincolnfield &c.—Cites 9 H. 4. 35. and 7 Rep. 26. 9 H. 6. &c.

2. Quare Impedit against one who said that the Bishop presented him by Lapsy, and that he claimed nothing in the Patronage, Judgment if Tort; and the other prayed Writ to the Bishop, because he has disclaimed in the Patronage; But per Cur. you shall not have it, but your Writ shall abate, because he is no Disturber, nor the Bishop not named in the Writ; & adjournatur. Br. Quare Impedit, pl. 24. cit. 42. E. 3. 7.

3. Quare Impedit by the King, who made his Title for Alienation in S. Cited Mortmain of the Manor to which the Advowson &c. and the Bishop of 7 Rep. 26. B. R. presented his Clerk who was admitted, instituted and inducted, and the Bishop died, and the King within the Year brought Quare Impedit against the Incumbent alone, and well; for he may plead against the King Bisb and by the Statute, and also the Bishop who now is was no Disturber, so that the
the Action does not lie against him. Sav. 169. pl. 184. in Cofe of Hall v. the Bishop of Bath and Wells, cites 47 E. 3. 11.

4. Quare Impedit against R. L. as Incumbent, and D. C. as Patron; The Incumbent said, that he was presented to the same Church by A. B. and inducted and indited, which A. B. is not named in the Writ; Judgment of the Writ; Per Brian, the Writ is good; For he has named a Disturber, and the Incumbent is not disturbed by A. B. but by D. C. and there is no Reason to have Action against him who has done no Tort to the Plaintiff. And therefore held good; and for his that the Writ is good against Disturber and Incumbent, though the Disturber is not very Patron. Sav. 169. pl. 184. in Cofe of Hall v. the Bishop of Bath and Wells, cites 22 E. 4. 44.

5. Where there is no Patron, there lies Quare Impedit without naming the Patron. Br. Presentation, pl. 23. cites 14 H. 8. 2. per Fitz-James J.

But where a Patronage is gained by the Presentation, Admission, and Inflation of a Clerk, such Patron ought to be named with the Incumbent in the Quare Impedit. Jenk. 200. pl. 18. cites it as resolved.

6. Where the King presents to my Church when I have Right to present, my Quare Impedit lies only against the Incumbent of the King, without other Patron; but in every other Cofe of Common Person, it must be brought against the Patron and Incumbent. Note, This was said per Frowecke Ch. J. for clear Law. But Marrow said, He had seen Quare Impedit against the Incumbent alone between Common Persons. But Frowecke reply'd, That he never had in his Life. Kelw. 53. pl. 9.

7. In Quare Impedit the Incumbent pleadeth, Quod ipsi Nibil habat, nec habere clamat &c. Nisi de Presentatione Georgii Solicitam Miltis non natus in the Writ, and demanded Judgment of the Writ; upon which, the Plaintiff did demur in Law; And it was argued for the Plaintiff, That the Writ was well brought without naming the Patron; for if a Quare Impedit be brought against the Patron and Incumbent, and the Patron dieth, pendant the Writ, the Writ shall not abate. 9 H. 6. 30. It might be, that the Plaintiff did not know, nor could tell who presented the said Incumbent, but he findeth the Incumbent a Disturber by his Incumbency; and it of Necessity such Patron ought to be named, then if such a Disturber should die before the Writ brought, he which hath Caufe of Action should be Remedied. And by Anderfon and Pierim, the Writ is good enough for the Reason aforesaid. Le. 58. pl. 83. Mich. 32 Eliz. in C. B. Hall v. Bishop of Bath.

Rep. 24 b.
Hall v. Bishop of Bath and Mauntron. The Cause was The Dean of W. was feiled of a Vicarage of W. appiendent to the Manor of W. in Pecun Right of his Demny, and brought and presented P. who was inducted, and led the Manor to the Earl of L. for Years, who assign'd it to Sir G. S. and he granted it to C. R. The Vicarage voided, R. presented D. who was admitted &c. C. R. assign'd to H. the Plaintiff. D. was deprived. H. brought Quare Impedit against the Bishop and the Incumbent for disturbing him to present. The Incumbent pleaded, that he claimed nothing in the Advowson of the Vicarage, but is Vicar of the Church of the Presentation of the said G. S. who is alive, not named in the Writ, and demanded Judgment of the Writ; and upon Demurrer it was resolved, That the Writ should abate, and that the Patron ought to be named in the Writ; ift. Because the Patronage will in this Caufe be recover'd against him that has nothing in the Patronage; and there is no Reason, that he who is Patron shall be called thereof, when he is a Stranger, and not Party to the Writ; and especially when, as in this Caufe, he might be made Party thereto 2dly. At Common Law the Incumbent could not plead any Plea which concerned the Right of Patronage, and therefore it would be unreasonable that he only should be named in the Writ, who at Common Law could not defend the Patronage; and that he who has the Patronage, and might defend the Right thereof should be omitted in the Writ. But this Diversity was agreed. That when by the Judgment in the Quare Impedit the Inheritance, Estate, or Interest of the Patron in the Patronage is to be decided by the Judgment in the Quare Impedit brought by J. S. there where J. N. who presented, and his Clerk received, ought to be named in the Writ. But when the Inheritance, Estate, or Interest, shall not be decided by the Judgment, then it was Disturber the name'd in the Writ, he need not name the rightful Patron in the Writ; and with this Diversity the Books agree. And after the Plaintiff Hall, perceiving the Revolution of the Court, discontinued his Suit, and left his Presentation illa Vice. — Sav. 167. S. C. And it seems there, that the Writ was adjudge'd good. See 168. at the End. —— S. C. cited Cron. Hist. 151. in the Cause of Savil v. Thornton. — See (P. C.) pl. 1. in the Notes. —— Rep. 26 b. cites 7 H. 4. 25. 27. That because the Presentation was only recover'd, and not the Advowson, nor the Patron put out of Possession, the Writ was adjudge'd good without naming the Patron. Ibid. 26 b. — So where the Patron died before the Writ brought, the Writ is well brought against the Incumbent.
8. Quare Impedit, in which the Plaintiff made a Title, for that the
Defendant was presented upon a Simenical Agreement; The Archbishop
pleads, That he claimed nothing but as Ordinary; and the Defendant
Sowton pleaded in Abatement, that the Patron is not named in the Writ,
and upon Demurrer it was adjudg'd, that he need not, because his Title
is not in Question, but is admitted, and the King claims in Allirmance
of his Title and Right but by the Offence of the Defendant; and the
Patron shall not be put out of Possession by Recovery in this Action, for
he has had the Fruit of his Presentation; but his Clerk shall be remov'd
for his Simony, and therefore need not be made Party; per Charlton J.
but 3 Juftices contra, who doubted because the Patron is not only to have
his Clerk admitted, but Likewise to continue. And Respondas Outer was
awarded. 3 Lev. 16. Patch. 33 Car. 2. The King v. the Archbifhop of
York and Sowton.

(B. d. 8) Pleadings. Count.

1. In a Quare Impedit the Plaintiff ought to declare, That the Pre-

sentment was made in Time of Peace. F. N. B. 33. (K.) in the new
Notes there (e) cites 18 E. 2. Quare Impedit, 175.

2. If a Man recovers an Advowfon against another in a Writ of Right,

when the Church voideth he shall present; and if he be disturbed, he shall
have a Quare Impedit, and allege the Presentment in his against whom he
recovered, without alleging any other Presentment. F. N. B. 33. (l)

3. In Quare Impedit the Plaintiff counted of a Presentment in the Time of
his Predecessor, and another in the King who seized by renion of the War
between him and France, and that he was restor'd, and well; for the last
Presentment did not make him Title, and also he ought to make Mention

4. Quare
4. Quare Imped. by the King, Quod permittas ipsum 
Presentare ad 
Predicamentum suis. Major Pars Altioris in Ecclesia de Sarum; and because he 
did not feev in what Church in Sarum, nor of what Saint, nor in what Sar-
ums, (for there are two Sarums) therefore ill. Br. Quare Imped. pl. 
20. cites 40 E. 3. 17.

5. Quare Imped. by the King, who counted during the Time that the 
Temporalities were in the Hands of the King; the Defendant demanded 
Judgment of the Count, because it is not known for what Cause they were 
feised into the Hands of the King; et non Allocatur. Br. Quare Imped-
rit, pl. 23. cites 42 E. 3. 7.

6. Quare Imped. by the King, and counted that B. was seised of the 
Manor with Advozion appendant, and presented; and from B. the Manor 
and Advovation defended to E. and from E. to R. who now is in Ward of 
the King, and the Church voided, and the King prefented, and the De-
fendant disturbed him; The Defendant said, That there never was such F. 
in rerum Nature, et non Allocatur; for this is a Milpilixion in the Mefne 
Conveyance. Contra, if he had mistaken the Name of B. or R. now in 
Ward, for those are material, quod nota; and therefore the Writ good. 

7. In Quare Imped. the King counted upon two Presentments, by which 
the Defendant pleaded it in Abatement of the Count, et non Allocatur; Con-

As Quare 
Imped. by 
the King by 
reason of 
Ward, he 
counted of Presentment in the Grandfather of the Infant, and of another Presentment in himself, by request of 
the Cufmody &c. and the Defendant said, That the Grandfather of the Infant was seised, and presented, and gave 
the Advovation, and a Manor to which it was appendant, to M. and her Baron in Tail; and the Baron died, 
and the Church voided, and M. presented; and yet the King had Writ to the Bishop for Default of M. at 
another Day; but it was held there, that the Plea of M. is no Plea, because she did not deny the Present-
ment of the King upon her. Br. Quare Imped. pl. 29. cites 45 E. 5. 14.

Br. Omission. 
pl. 2. cites 
S. C.

8. In Quare Imped the Plaintiff counted that F. was seised of a Manor 
with the Advovation appendant, and presented, and made their Defent from 
F. to R. and from R. to F. and from F. to F. now Plaintiff; and the De-
fendant alleged, that W. was seised and presented, and it defended to T. who 
presented, and from T. to W. who presented, and from W. to the Defendant, 
and the Plaintiff voided the one Presentment by the Nonage of F. and the other 2 
by the Nonage of another F. and the Defendant alleg'd Omission in one who was 
Elder Brother to F. thro' whom the Defent is made. Judgment of the Writ, 
and the Writ awarded good, notwithstanding an Omission of one of 
Mention in the Conveyance in this Action. Contra, in Writ of Right; and it may 
be, that he in whom Omission is alleg'd was never seised, and therefore 
the Writ awarded good. Brooke says, It is a Wonder that all the Pre-
sentments alleg'd by the Defendant were fuller'd; for it seems to be 
double at this Day, and also it seems that he ought to have traversed the 
Appendant alleg'd by the Plaintiff. Br. Quare Imped. pl. 32. cites 44 
E. 3. 21.

9. Quare Imped. by two Coparceners, and counted that their Ancestor 
was seised of the Manor of D. to which the Advovation is appendant, and 
presented F. his Clerk, who was uninstructed and instilled, and made the Defent 
to them; the Church voided, they presented B. who was uninstructed and 
instilled; and the Church voided, and so it belong'd to them to present; 
and so they alleg'd two Presentments, and yet it is not challenging for 
double; and the Reason seems to be, that they ought to allege one in 
their Ancestor for Title, and then ought to speak of the other which 
they themselves made, and one of the Plaintiff's is summow'd and sever'd; 
and the Defendant said, that the who was summow'd and sever'd alien'd her 
Part to for, Judgment of the Writ; And after the said, That the alien'd 
her Part of the Land and Advovation before the Voidsance, and before the 
Writ brought. And the Plaintiff said, That they were seised of the 
Advovation in Common the Day of the Writ purchased, Agree he that she alien'd 
before the Voidsance. Br. Quare Imped. pl. 52. cites 11 H. 4. 54.
10. Quare Impedit, and counted of a Tail of a Manor to his Grandfather, to which the Advowson was appendant, and that his Father discontinued two Parts of the Manor and the whole Advowson, and that the Right of two Parts of the Manor and the Advowson defenced to him as Heir in Fail, and they'd How; and an ill Count; for the Right of two Parts of the Manor and the Advowson in Poffeffion cannot defence; by which he faid, That the Right of two Parts of the Manor and of the Advowfon defenced to him, and then well. Br. Quare Impedit, pl. 78. cites 9 H. 6. 39.

11. If the Declaration be Admissus et Infallibns, without more, it fhall abate. Br. Quare Impedit, pl. 83. cites 22 H. 6. 25.

12. In Quare Impedit the Plaintiff counted that A. was feifed of the Advowfon as of Fee, and he took A. to Feme; and the Church voided, and be in Right of A. prefented and had Iftie and died; and the Church voided again, and he prefented; and by the Opinion of the Court, because the Second Prefentment is not alleg'd in Right of the Wife, therefore ill; by which he amended his Count; quare Librum. Br. Quare Impedit, pl. 8. cites 23 H. 6. 8.

13. Where the Plaintiff counts of several Prefentments to an Advowfon in Graft, this is not double; for none of them is transferable but the lat; for this makes the Poffeffion; and if the lat Prefentment be omitted, the Defendant may plead it to the Count. Br. Quare Impedit, pl. 11. cites 33 H. 6. 32.

14. In Quare Impedit the Plaintiff made to himfelf Title, because King H. 4. was feifed in his Demefit as of Fee and Right of the Advowfon in Graft, and granted &c. and did not fhow whether he was feifed in Right of the Crown or by Purchase, or by the Dutche &c. and yet good, per Cur. for there is no other Form, and fce that it is faid in Demeft of Advowfon. Br. Pleadings, pl. 12. cites 34 H. 6. 34.

15. In Quare Impedit the Plaintiff ought to allege Prefentation, and it is not fufficient to plead a Recovery without it; because it may be that the Recovery was again a Deforcer who claimed nothing in the Patronage; but Writ of Right of Advowfon does not lie but again the Patron; per Prior. Br. Judgment, pl. 51. cites 39 H. 6. 23.

16. He who has a Donative, or ought to make Collation, and is disturbed, fhall have General Writ of Quare Impedit quod permittat ipfum Prefentare, and fhall have Special Count; for there is no other Form of Writ. Br. General Brief, pl. 24 cites New Nat. Brev. fol. 33. (C) 28. and (D)

17. The Queen brought a Quare Impedit upon the Statute 13 Eliz. cap. 12. which enacted, that no Perfon shall be admitted to a Benefice with Cure &c. except he subscribe the Articles of Religion, and that all Admissions and Inductions otherwise shall be void; The Church remained void for two Years, and then the Queen prefented, but in the Count it was not alleged, that the Church to which the Defendant was prefented was a Church with Cure; and upon Demurrer to the Declaration it was held ill. And. 62. pl. 136. Trin. 24 Eliz. The Queen v. the Bishop of Lincoln and Cock.

18. Quare Impedit lies to prefent to two Parts of the Church of &c. for in a Church there may be feveral Portions to which Prefentations may be made; as A. may have the 1st. B. the 2d. and C. the 3d. Part, and divers Patronages and Advowfons thereof, and if disturbed may have Quare Impedit, and declare of a Setlin of the 1st. or 2d or 3d Part, as the Cafe requires. And therefore the Plaintiff in the principal Cafe having declared that 1. 2. was feifed of the Advowfon of the faid two Parts of the Church afterfaiid, and prefented &c. All the Judges held the Writ good, and well maintained by the Declaration; But if he had not declared of the Setlin of the Advowfon of the two Parts, but that the Declaration had been (that be was feifed of the two Parts and prefented) according as the Writ mentioned it, the Writ and Declaration would be
Presentation.


(B. d. 9) Quare Impedit. Pleas. Good in General.

1. Quare Impedit by the King; the Tenant of the King had Issue three Daughters and died, and the Tenements came to the King by his Prerogative, and Partition was made in Chancery, and this Advowson allotted to the one who took Baron and had Issue and died, and the Issue within Age and in Ward of the King, and the Plaintiff voided, and the King presented. The Defendant said, that after this the three Daughters made Partition to present by Turn, and that the first had her Turn, and after the second, and the third took the Defendant to Baron, and had Issue and died, and this Voidance now belongs to him as Tenant by the Curtesy, and pleaded the Composition; and because by the first Partition in Chancery the King was ascertained of his Tenant of Record, and this new Partition, without Licence of the King, is an Alienation in Law without Licence, therefore Judgment pro Rege; For it was agreed, that though Partition be made between Parencers, yet they are in by their common Ancestor, and may vouch as Heir, and have every one Advantage as Heir, yet by the Partition in Chancery the one was sole Tenant of the Advowson, and by the last Partition to present by Turn all are Tenants thereof, and Writ of Right of Advowson shall be brought against all, and before again the one alone, and so the King has a Stranger to his Tenant; Quod Nota; and therefore the King recovered. Br. Quare Impedit, pl. 73. cites 21 E. 3. 30. 31.

2. Quare Impedit by the King, and made Title by Non-age of T. Son of J. W. and the Church voided, because M. H. the Incumbent thereof, was created Bishop of E. Mombray said, the Church did not void, the Advowson being in the Hands of the King. But Norton said, to this he shall not be received, and pleaded certain Effoppel that the King had certified the time of the Seisure, and the Age of the Infant, and what Day H. was sworn Bishop of E. and that a certain Year the Bishop was Treasurer of the King, and Commission made to him by Name of Bishop of E. to go in a Me служе of the King to Rome, and thwew Record which proved the Tenure and the Age of the Infant, and that he at Request of the Great Men had received the Homage of the Infant, and made him Livery within Age; and there it is agreed, that where the King makes Livery to the Infant within Age generally, Fees and Advowsons do not pass without special Words; but contra of Livery made at full Age, and upon the Livery made within Age above were no special Words of Fees and Advowsons, by which it was awarded, that the King have Writ to the Bishop. Br. Quare Impedit, pl. 74. cites 21 E. 3. 39. 40.

3. In Quare Impedit, the King made Title to present to a Prebend, because the Temporalities of the Bishop were in his Hands by reason of the Death of R. late Bishop &c. The Defendant said, that No voids pas the Temporalities being in the Hands of the King by the Death of R. this is a Pregnancy; for it suffices for the King if it be in his Hands by any other Cattle. Br. Negativa &c. pl. 26. cites 24 E. 3. 55.

4. In Quare Impedit the Defendant shall not have his Age; nor Pretension nor Enfion de Servicio Regis does not lie, nor such Dilatorily, because the Laple shall not incur. Br. Quare Impedit, pl. 116. cites 43 All. 21. per Thorp J.

5. The Plaintiff intitled himself by Presentation by A. who granted to him, and the Church voided, and be presented, and the Defendant di

6. cites S. C.
turb'd him; and the Defendant said, That after this Presentment A. was seized and presented &c. and granted the Advowson to the Defendant, and the Church voided, and be presented; and well, without showing How A. came to it again after his first Grant. Br. Confels and avoid, pl. 10. cites 3 H. 15.

6. In a Quare Impediment by the King it is a good Plea to shew that such a one was seized and presented, and the Incumbent admitted and instituted and died, and the Patron * [presented] this Incumbent who was admitted and instituted, in whose Possession the King by his Letters Patents which he threw ratified, and confirmed his Estate; Judgment if the King will impeach him, and a good Plea. Br. Quare Impid, pl. 61. cites 14 H. 4. 36.

7. In Quare Impediment it was agreed, that a Chantery may be founded without the Assent or Licence of the Ordinary, and where the King made Title by the Temporalities of the Bishop of L. to the Chanteries of St. T. in O. the Defendant said, That he and his Ancestors Time out of Mind have been Patrons of a Chantery of St. T. in the same Vill, and alleged Presentment in his Ancestor, abigu eke that this A. by whom the King claims founded any Chantery there, and no Plea, because he did not plead of the same Chantery. For it may be another Chantery for any thing that is contained in the Plea of the Defendant, and if the Defendant had pleaded that No such Church in the same County, there the Plaintiff should have had Writ to the Bishop; Per Cur. Quod Nota. Br. Quare Impid, pl. 5. citing 9 H. 6. 16.

8. In Quare Impediment the Defendant prayed Aid of the King, and had it upon Charter fexon, in lieu of Voucher, and yet it was agreed, that it is an Action which does not die with the Person; For the Heir shall not have Action of Disturbance in the time of his Father; and it was agreed, that a Man cannot wouch a Common Person in Quare Imped, but shall have Warrantia Chartae, and in lieu of this, Voucher of the King, for Action does not lie against the King. Br. Quare Impid, pl. 7. cites 9 H. 6. 56.

9. In Quare Impediment the Defendant said, That the Incumbent was presented, living the other Incumbent, and so is in by Spoliation. Br. Quare Impid, pl. 13. cites 33 H. 6. 26. in a Note.

10. If I grant the next Presentment to J. N. which he enjoys accordingly, there, if another Voidance the Grantee disturbs, and alleges the left Presentment in bundle, the Grantor may confess and avoid it, by Reason that it was but for one Term only. Br. Confels and Avoid, pl. 49. cites 13 E. 4. 2.

11. If a Man pleads, or otherwise says that such a Church is void, he ought to shew How it voided, viz. By Resignation, Death, or otherwise by Deprivation &c. For if it voids by Death, it shall be try'd by Per Nisi; and if by Deprivation, Resignation, Creation, or otherwise, this Voidance shall be tried by the Ordinary. Br. Quare Impid, pl. 85. cites 15 E. 4. 25. Per Nisi.

12. Quare Impediment by the Lord H. and M. his Feme, against the Bishop, W. H. and others, and counted that certain Persons were seized of the Advowson in gross to the Use of the Plaintiff's and the Heirs of the Feme, who granted the Advowson to R. who granted the Advowson to the Plaintiff, and the Heirs of the Plaintiff, and th'o'd Presentment, and that the Church voided &c. And the Bishop, the Patron, the Incumbent, and all the others join'd in Plea, and said that the said Feoffees were seized to the Use of the said W. H. and his Heirs Male, and that they presented abigu eke, that they were seized to the Use of the Lord H. and his Feme. And Per Keble, The Plea is not good, inasmuch as the Patron, Bishop and Incumbent have joint'd in Plea where they ought to have sever'd; and also he said that the Feoffees were seis'd to the Use of W. H. in Tail, and does not shew the Commencement of it, inasmuch as it is of a special Estate,
and also W. H. has pleaded to the Right of the Patronage, where it appears that he is not Patron; and therefore ought to have said that He disburds pas. Br. Quare Impedit, pl. 165. cites 13 H. 7. 18.

13. If 4 Jointenants bring Quare Impedit, and the one will not fie, he shall be summoned and secur'd; but if he will vary in Title, there the Writ shall abide without Remedy; for then it appears that they havejoin'd up on several Titles, quod nota. Br. Quare Impedit, pl. 2. cites 26 H. 8. 5.

14. In a Quare Impedit the Plaintiff declared, that the Church was void, and that the Defendant disburds him to present; the Defendant pleaded, that the Church was void by Acceptance of another Benefice with Care &c., and that thereby the Right of Presentation devolved to the Queen by Lapfe, upon Default of the Ordinary and Metropolitan &c. and that the Plaintiff presented the Defendant, who was Admitted and Indulged; and upon a De- murrer the Court said that every Writ, Declaration and Action ought to be answer'd by Way of Plea; that in this Case the Plaintiff alleges a Disturbance by the Defendant, which is not any how answer'd; for when the King presents &c. pending the Writ, this can be no Anwer to the Action or Grief of the Plaintiff done to him before. Whereupon they gave Judgment for the Plaintiff. And. 238. pl. 255. Stanley v.

(B. d. 10) Pleading Plenarity.

Section (Q a. 2)

1. 13 E. 1. ENACTS that from henceforth one Form of Pleading shall cap 5. be omitted among Justices in Writs of Darren Precedent and Quare Impedit, in this Respect if the Defendant allegeeth Prenancy of the Church of his own Presentation, the Plea shall not fail by Reason of the Plea, so that the Writ be purchas'd within six Months, the he cannot re- cover his Presentation within the 6 Months.

By the Common Law Plenantry before the Writ of Quare Imped- dit brought, was a good Plea, but Plenantry hanging the Writ was no Bar to the Common Law; but now by this Statute Plenantry is no Plea in a Quare Impedit or Darren Precedent, unless it be by the space of six Months before the Quare Impedit brought; for if the Rightful Patron bring his Action within the 6 Months, it is maintainable by this Statute, which short Purview doth remedy many Misciefs at the Common Law. 2 Infr. 560.

But this Act doth not bind the King; for Plenantry by the Space of six Months is no Bar against him, but he may have his Quare Impedit when he will; for Nullum tempus occurrat Regi. 2 Infr. 561.

But some have taken a Diversity when the King claimeth the Adowson in his own Right in crown, and also he claimeth it in the Right of a Subject; for then he shall not be in better Case than the Subject was; As where the King was intituled to present in the Right of a Ward, and one did usurp, and the Church was full by the Space of six Months; and it was adjudged within 12 Years after the Making of this Act, that the King by this Plenantry was bard of this Quare Impedit; but since that Time the Law hath been otherwise taken. 2 Infr. 561.

Plenantry by 6 Months against the Queen is a good Plea, albeit she claim the Adowson by the King's Indenture. 2 Infr. 561.

And yet in All Cases, Plenantry by six Months is no Plea in a Quare Impedit; [As] if an Adovson be alien'd to Mortmain, and the Church becomes void, and a Stranger usurps, and his Clerk is in by six Months, yet the immediate Lord shall have a Quare Impedit within the Year; for the Statute of ; E. 1. De
(B. d. 11) Pleadings by the Bishop.

1. Quare Impedit by Sir J. Denham against the Bishop of E. and T. Chanon, and counted that the Admission of the Abbey of St. Edes, was Appendant to his Manor of Hatfield, and that W. his Father presented one B. Chanon of the Abbey, who of his Presentation was Admitted and Instructed, and conveyed the Manor to him by Defect, and that the Abbey voided by the Death of B. and he presented, and the Defendant disturb'd him; the Bishop said that by the Foundation the Abbey is elective by the Priors and the Monks who present him to the Bishop, and he shall examine and admit, and if he be able, then the Bishop shall admit and initial, and put him in corporal Possession, and that the Abbey voided by the Death of B. and they elected C. and he upon the Presentation of him made to him, examined and found him able, and admitted and initial'd him &c. and to claim'd nothing but as Ordinary; Judgment it without special Disturbance, Tort &c. It is no Plea without trespassing the Title of the Plaintiff; for where he shows Title in Disjunction of the Title of the Plaintiff, he ought to trespass &c. or confess and avoid the Title of the Plaintiff, notwithstanding that he claims making but as Ordinary; by which afterwards betwixt the Title abique hoc, that the said B. was admitted and instructed by the Bishop of E. at the Presentation of W. Father of the Plaintiff; and the other e contra. And per Port, The Bishop as Ordinary cannot plead any Plea which touches the Right of the Patronage, but a Disturber may, and here the Bishop is Disturber; for it appears that the Plaintiff presented to him, and also the Prior, and he accepted the Presentation of the Prior without inquiring De Jure Patronatus, and therefore a Disturber, quod Newton and Patrick concelebrant, that he ought to have inquired &c. as well as between two Patrons. Br. Quare Impedit, pl. 83. cites 22 H. 6. 25.

2. Quare Impedit was brought by H. against B. and the Bishop and the Incumbent, and counted that he was failed of the Admission as in gross, and this as of Fee and of Right &c. Tempore Pleas &c. ad idem, and the Church now voided &c. and be presented, and the Defendants disturb'd him, and the Bishop said that he claim'd nothing but Admission, Instructed and Intimada; and prayed Judgment if without special Disturbance &c. and the Plaintiff said that the Church voided by the Death of J. N. as above, and that he presented such a Day, Year and Place W. P. &c. Clerk, and required him to admit him, and he refus'd, and to disturb'd him &c. to which the Bishop said that the Defendant presented such a Day, and that after in the Feast of St. Hugh the Plaintiff presented, by which he refus'd, and made Inquiry De Jure Patronatus, (which was afterwards adjug'd no Plea, because he did not lay what End the Inquiry took) which Refusal in the said Feast of St. Hugh &c. is the same special Disturbance &c. abique hoc, that he refus'd after the said Feast, &c. to which the Plaintiff said that he such a Day and Place after the Feast aforesaid, required him to admit &c. and he refus'd; and upon this they were at Issue; and after by the Opinion of the Court the Issue is miscarriag, and the Plaintiff has departed from his first Plea; for he alleged Disturbance such a Day, which the Bishop has justifiag, and he comes and alleges another Disturbance, by another Refusal another Day, and therefore this is a Departure; by which they repleaded; and the Bishop said that the Defendant presented E. his Clerk the same Day that the Plaintiff presented F. his Clerk, and 5 U.
the Church became litigious; and that the Law of Holy Church is, that when it is litigious, the Ordinary is not bound to present till it be inquired de jure patronatus, and this at the suit of the one patron or the other, or their Incumbents; and that if the 6 Months pass, that be present by lapse, and none required him within the 6 Months, by which be made Collation to one T. his Clerk by lapse, &c. &c. &c. and demanded judgment &c. and upon this the Plaintiff demurred; and there it is agreed that the jure patronatus shall be tried at the costs of the party or his Clerk, and the Bishop is not bound to be at the costs, for he is Judge in this case; but where the Court writes to the Bishop to certify Biflardy, or Matrimony, or the like, there he shall do it at his own costs; for there he is a Minifter. But per Littleton, The Juries of the Special Affidavit are not bound to sit without their fees, nor the Chancellor to make a writ without his fees for the writing &c. And afterwards it was adjudged that to say that the Church was litigious, as above, and the 6 Months pass'd, and be made Collation by lapse, is a sufficient plea without the other matter of the jure patronatus, which is alleged before; but this is only Surprize, and the plea is not the worse; for the jure patronatus is only for the excuse of the Bishop, therefore it seems it had been a good Replication for the Plaintiff to have said, that he or his Clerk required to have jure patronatus, and he refused; and therefore as to the Bishop, judgment was given that the Plaintiff take nothing by his writ. Br. Quare Impedit, pl. 12. cites 33 H. 6. 12 & 32. 34 H. 9. 11. 38. & 35 H. 6. 18.

3. Quare Impedit by the King against the Ordinary, and counted that W. N. was seized of the Manor of S. with the advowson appertaining, and presented J. &c. who was admitted, instituted and inducted &c. and gave the Manor with the advowson to E. L. in tail, the remainder to the right heirs of W. L. in fee &c. and that such a day and year it was found before the esquire &c. that the said E. L. did die seized of the Manor in tail, and that the Manor was held of the King in chief, and that T. L. is son and heir within age &c. and that such a day and year the Church voided, and the King presented B. and the Bishop disturbed him, and the Bishop said protesting that E. L. died seized in fee of the said Manor, and the place that E. L. gave the said Manor to M. and others in fee saving the advowson, and after E. L. granted the next Presentation to B, and after M. and the others gave the Manor to E. L. and his Feme and Lewis E. and after E. died, and the church voided, and B. presented to him C. at D. be being ready to take horse; and the Bishop commanded him to attend upon him at N. within the same diocese, within three days, to examine him and inquire his ability; and he did not come, nor six months after, by which the Bishop made collation by lapse, abjuring he that W. L. gave the said Manor to E. L. in tail prit &c. And afterwards Anno 15 H. 7. 7. 8. all the juries at length held, that the Ordinary shall have time to be advised; for in the examination he is judge and not officer, and he ought not to give him time and place convenient, and need not give notice to the patron that he did not come to be examined; for he has not refused him. Br. Quare Impedit, pl. 91. cites 14 H. 7. 21. and 15 H. 7. 6. 7. & 8.

(B. d. 12) Pleadings by Incumbent.

The Incumbent shall not by this Statute seize to the Church, because that many precentors to divers benefices of Holy Church, as well as the patronage of lay people as of People of Holy Church, which are void by six months, whereas the collation of such benefices by lapse of time was devolved, and of Right pertaining to the Church. 1. 25 Ed. 3. Stat. 3. c. 7.
appears, the King should have oufted the Incumbent, because Nullum Tempus occurreret Regi, and for that Reason was the Statute made. Fitzh. Tit Incumbent, pl. 11. cites M. 10 H. 4.

The Confession of the Patron or Supposed Patron, before this Statute bound the Incumbent, but now the Incumbent may plead the Title of the Patron, but the Ordinary cannot; for the Statute does not extend to him. Jerk 25, pl. 4.

Sure Facts upon a Recovery by the King in Quare Impedit; the Incumbent Defendant said, that after the 

Other Proclamation of the King, he was informed by the Statute, and induced by the same Judgment, &c., and per Hully, the same Statute which gives the Incumbent to plead against the King in Quare Impedit, gives him Answer in Scire Facts upon judgment therein, quod non nuncavit; by which they were at first; et non rota. Br. Incumbent, pl. 4, cites 16 E. 2. 15; —— S. C. C. Tit. 2. 85. pl. 112. in Co. Cae of Ongelv in Patron.—— S. P. Fitzh. Tit. Incumbent, pl. 10. cites H. 22. E. 5.— Rep. 26. cites S. C. and says, The Mitchell case before this Statute was, That by the faint Pleading or Confession of the Patron in Quare Impedit, the Incumbent was without Remedy; but that this Statute enables the Poffessor, in which is the same Thing as to fly the Incumbent after Induction, as was held by D. 4. 4 H. 8) to counterplead the Title before the King, and to have his Answer &c.; Rep. 26 a Patent.

11 t. Eliz. Cases of Quare Impedit —+ This Case is D. 1. b. pl. 8. Battry. v. Cooke, where the Patron claimed Title to the Advowson by the Ancello of the Patron; and the Incumbent would have pleaded the same Plea, but was ousted by this Statute, which enables the Poffessor to plead in Brad, but in this Case the Incumbent was not inducted, and before Poffessor he is not Incumbent, and so could not pleads so far in this Case, &c.

[The below note is incorrect, as it is intended where Action is commenced; for if an Incumbent be in, and is ousted by Abjuration and Indemnity of the Incumbent of the King, he has no remedy but to sue by Petition to the King. Br. Incumbent, pl. 2. cites H. 4. 17.

The particular Case of this Law, is for the Relief only of the Ordinary that hath-collar'd by Laple, and of the Clerk that is so collar'd, that they may both plead to the Title against the King, which, was always so given, by a necessary Law and hath the King, and so all Common Patrons; for the King not being bound by Laple of Time, if the common Patron oufted a Laple, and the Bishop collar'd lawfully, yet if the King pretending himself Patron, brought a Quare Impedit against the Ordinary and Incumbent, there was no Means for them to save themselves, since they could not deny the King's Title and Incumbent, in which shape the Laple took Place; but the Statute gives Remedies likewise in like Cases, by expressly Words, so that Cases of like Nature are rather rendered by Letter than Elsewhere. And therefore that the Clerk of the King, a common Person might by Practice have turned out. An lawful Collar'd in one only Case, and that was this, a Common Person, to true Patron, pretendwithin 6 Months, and the true Patron himself presents an Action; whereas the Ordinary Collar'd by Laple, against whom the Pretender brings a Quare Impedit, because his Clerk was oustered, wherein he must needs prevail, if his Title be good, and must be taken for good, because neither Ordinary nor Incumbent could deny it; for he not apparently & de non existentibus cadit eff ratio. This is one of the like Cases mean in the Statute; for all other Cases the Laple is an equal Title against all common Patrons. But the common Person like Case, and that which extends farther, is the Patron; for every Incumbent that is called a Poffessor, as well by Precentment as by Collation, is allowed by the Words of the Law to counterplead the King's Title, and to shew and defend his own Right upon the Matter, the he can claim nothing in the Patronage in the Case aforesaid; Note all the Words, for they have all an special Word; for first the Incumbent must be a Poffessor; so that if he have his Precentation, Admission and Institution upon the lawful Title, yet he remains as he was before, under the Mitre of the Common Law, because he is not a Poffessor according to the Letter of the Law, but by Institution. And further, that the he be a Poffessor, to must by, the Letter and Meaning of this Law, as well because of his own Right as counterplead his Adversary's; and therefore clearly he cannot make himself Patron Impassible of the Precentation of J. S. and defend himself by the Title of J. D. under whom he claims not, though that were sufficient to destroy the Plaintiff's Title, by Confessing and Avoiding, or the like; Neither can he counterplead the Plaintiff's Title, but must also make a Title to himself by the Word and Meaning of this Law, which I speak not to bind the Incumbent by the Patron's Plea, whereof I will talk better when I come to the Incumbent's Plea; but, to come back to this Ordinary upon this Statute, I hold plainly that he can no otherwise plead than he could at the Common Law, but only
Presentation.

be forth called officially by Lasso; for tho' the Incumbent in by Pretenation be also admitted to plead by the Meaning of this Law under the Word (Like Case,) because the Case is like indeed, yet the Ordinary's Case before Actual Collation, is no ways like in Case; for he hath gotten no Interest for him- self nor his Clerk in the Church. And therefore if the Incumbent, intimated only at the Pretenation of another, be not within the Relief, much less shall the Ordinary, that hath no Interest, but an Office only, that ought to be indifferent to all Patrons, and maintain no Side. And yet more, if the Incumbent which is intimated, be Defendant in Quare Impedit (which may plead by the Statute) and do now hange the Writ, be first left his Privilege of pleading to the Title by the Statute; for as it was granted him to defend his Possession, so when his Possession is gone, there is no Case for him to sue it, which Relation also turns strongly against the Ordinary, where there is no Possession under him; for yet that Incumbent that hath resigned may plead, as he might have pleaded at the Common Law. And Note that Case of the Person preferring haging the Writ, which the Person may plead against him, to confer him of his Pleas that he might once again have haging the Writ; whereas in a Precept you redact, if the Tenant plead a Relation, the Defendant cannot say that he had aliened haging the Writ, but is et poeplo; the Difference is, because in that Case of the Precept, the Defendant by his Writ admits him Tenant, but in the Quare Impedit he is not named an Incumbent, but a Differter only. Neither is the Suit for the Incumbency directly, but for the Patronage or Pretenation; and therefore in the Writ of Right of Adsvowson, the Incumbent is never named: neither, if the Defendant recover against his Patron, shall he be removed. Per Hunter Ch. J. who said that he had been the larger in this Difference, because he saw the Inherences of Adsvowson to Incumber'd by wilful Surplications, and Disturbances of pretended Patrons, Ordinaries and Clerks, and the Multiplicity and Perplexity of several Pleas of the Defendants, they be never so many, whereas, if any one pass against him, he is barred, and the Uncertainty and Variety of the Learning upon it, that it is almost impossible, if a true Patron be put to his Action, but he will be tired. Hob. 319. 320. Sir William Ellis v. Arch Bishop of York.

Fr. Quare Impedit, pl. 66. cites S. C.—Br. Encumbent, pl. 9. cites S. C.—

2. The Incumbent should not have anwsered to the Title of the Patron by the Common Law in Quare Impedit, but now by the Statue he shall plead if the Patron pleads fairly; but where his Patron is bound by Judgment, or such like, the Incumbent is bound likewise. Br. Encumbent &c. pl. 8. cites 38 E. 3. 31. Per Thorpe.

S. P. But if it had ap- pears, then he should not be permitted to plead her or the Patron pleads, and therefore both Issue were, taken; and to see that the Statute is not intended that the Incumbent shall plead, but where the Patron makes Default, or will not plead; quod nom, quod Reuion. Br. Encumbent &c. pl. 15. cit. 59 E. 3. 59. — S. C. Cited 7 Rep. 26. a. in Case of Hall v. the Bishop of Bath and Wells.

So the King in a Quare Impedit contended that the King himself was seised, and presented one B. who at his Prelentment was received &c. and that B. died, by which it belonged to the King to prefer; The Defendant being the Incumbent pleaded that the said B. is still alive; and that Plea was allowed without any other Title made to himself. Arg. Le. 46. pl. 58. cites 43 E. 3. 19.

King H. was seised, and presented an A. and that King H. died, and so the Adsvowson descended to himseff; that A. died, and he presented B. and that now B. is dead, and so it belongs to him to prefer. The Defendant being Incumbent, received the Inquisition and Indication of B. without making Title to himself. Arg. Le. 46. pl. 57. cites 44 E. 3. 8.

In Quare Impedit by the King the Count was, that the King himself was seised, and presented one B. who at his Prelentment was received &c. and that B. died, by which it belonged to the King to prefer; The Defendant being the Incumbent pleaded that the said B. is still alive; and that Plea was allowed without any other Title made to himself. Arg. Le. 46. pl. 58. cites 43 E. 3. 19.

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5. Note, by the Opinion of all the Juries that in Quare Impedit brought by another than the King against Patron and Incumbent, the Incumbent shall not have Answer to the Title of the Patron, because the Statute does not give it but against the King. Contra, it is held at this Day by the Equity of the Statute. Br. Encumbent. pl. 3. cites 44 E. 3. 12.

In Quare Impedit by the King the Count was, that the King himself was seised, and presented one B. who at his Prelentment was received &c. and that B. died, by which it belonged to the King to prefer; The Defendant being the Incumbent, pleaded the Inquisition and Indication of B. without making Title to himself. Arg. Le. 46. pl. 58. cites 43 E. 3. 19.
Incurament shall plead all Pleas save those which go to the Right of the Patronage, and this it seems by the Common Law, but now by the Statute, he may plead of the Title of the Patronage. Per Brudenel Ch. J. 11. cites 14 H. 6. 31.

7. If the Patron would confess the Action or Title, yet the Incurament may plead in Bar. Br. Encumbent &c. pl. 11. per Brudenel Ch. J. cites 14 H. 6. 31.

8. Quere Impedit, the Defendant said, That T. H. is seized of the Manor of D. to which the Advowson was and is appurtenant, and the Church voided by the Death of G. and T. presented him, by which he was admitted 6 Months before the Writ purchased, Judgment Si Actio. And per Dunby he is only Incurament, and therefore the Plea does not lie in his Mouth; but per Newton & Car. Patrons may have the Plea, and so may the Incurament, because in much as by the Statute the Incurament may plead. Br. Quere Impedit. pl. 146. cites 22 H. 6. 14. But Br. Quere Impedit, pl. 134. cites 16 E. 4. It was held per rot. Car. this is no Plea for the Incumbent, nor for any other, but for him against whom the Writ of Right of Advowson lies, which lies only against the Patron; for to be Writ it is no Plea, because he does not give a better Writ against any Person certain; and to the Action it is no Plea, because he who pleaded it does not intitle himself to the Patronage. Br. Plenarly, pl. 9. cites S. C.


10. Quere Impedit by the Abbot, and counted of a Voidance by Deprecation of one J. The Defendant said that the Church was full of benefic 6 Months before the Writ purchased, and the said J. made Default in the same Writ, and non allocaatur, without answering to the Deprecation; and after he fled he no more Repel, and that he was in, and because he did not plead certainly, therefore Non Allocaatur. Br. Quere Impedit. pl. 113. cites 39 H. 6. 19.

11. In Quere Impedit against two, the one pleaded as Patron &c. and the other pleaded the same Plea, and that the Patron presented him to the Bishop, who would not Admit nor Inhabit him, which is the same Disturbance &c. and demanded Judgment Si Actio. And per Brian and Hawes it is a good Plea; For he cannot say, He did not disturbe; For in Fact this is a lawful Disturbance, and at Common Law Incumbent might plead against a Common Person, but not against the King, queere inde. But this is now remedied by the Statute; But Keble contra, and that he cannot try the Right of the Patronage, and that Diffuser, Verno, Incumbent &c. shall have Plea to escaute them, but not to try the Right of the Benefice; Quere, and see the Statute of Westminster 2 cap. 5 of Plenarly. Br. Quere Impedit. pl. 157. cites 2 H. 7. 14.

12. The King brought a Quere Impedit against the Bishop and his Collate by his Lapel; The Bishop pleaded a Plea, which was held good, and the Collate pleaded that he is Parson Impartial of the Church before Ex Præfatio Episcopi in Firma, & ex Caufa praesidential. It was said by Yaxley, That it should be Ex Collatione, and not Ex Præfatione; For that there is no more than Collation; And Coningsby said, That the Plea of Ex Caufa praesidential is not good by the Incumbent where he does not join in Plea with the Bishop, but shall move the Matter as specially as the Ordinary, because he is a Stranger to the Plea of the Ordinary; And the Juries said plainly, That the Plea of the Incumbent is not good, Pro Caufa antedicta. Br. Quere Impedit. pl. 91. cites 14 H. 7. 21. 15 H. 7. 6. & 7. & 8.

13. Where a Clerk is in without Presentation (as where the Dean and Chapter of Paul's presented the Dean by the Name of B. and not by the Name of Dean, and this Presentation was also without Writings) or by Prayer to be admitted, such Incumbent is not aided by the Statute to plead in Bar; For there is no Presentation in either of these.
Capes; And the Statute requires an Incumbent presented. Jenk. 199, 200, pl. 18. cites it as resolved.

14. An incumbent presented and indented may at this Day plead the Right of Patronage of his Precentor, where the Patron confessed, or made Default, or pleaded faintly; But cannot plead the Right of Patronage in another, than in him who presented him, Jenk. 200 pl. 18. says it was so resolved; And that so are 16 E. 4 & 14 H. 8. to be understood.

15. When the incumbent pleads the Precentment of a Stranger, he must shew that the Stranger had a Title, and that he was seised of the Advowson &c. or that he was seised of a Manor, to which &c. But where he pleads that he was in for 6 Months of the Precentment of the Plaintiff himself, or by Collation by Loppé by the Ordinary, there he need not not make any Title. Agreed per Cur. Noy 30. in the Case of Litter v. Cramel.

16. In Quare Impedit, the Defendant, the incumbent, pleaded, That he is Persona Imperfonata of the same Church Ex Precentitntes Regis &c. Exception was taken, because he said he was Persona Imperfonata, and does not say Tempore Impractionis Brevis; sed non allocatur; For it is inferred by the Writ brought against him, and if he be Parson Imparfonee before the Writ brought against him, it is sufficient, and divers Precedents were cited in the New Book of Entries, as Fol. 494, 495, 497. to that Purpose. Cro. C. 104. 105. pl. 6. Hill. 3 Car. C. B. Lady Chicheley v. Thompson and the Bishop of Ely.

17. Adjudged that the incumbent cannot plead to the Title of the Patronage, that he is Persona Imperfonata of the Precentation of the Patron, and the saying that Fact is not sufficient. Agreed. March. 159 Hill. 17 Car. Palmer v. Huddle.

(B. d. 13) Double Pleas.

1. The King brought Quare Impedit, and intitled himself to the Mooty of the Advowson, because the Father of the Defendant was seised and presented &c. and died, and the Defendant, Heir to him, was outlawed in Trepass, and the Church voided by the Death of the Incumbent of the Father &c. The Defendant said that the Church is seised into 3 Parts, and shew'd certain, Abique hoc that the said Incumbent was in the Precentment of the Father of the Defendant, and the Plea awarded Double, viz. the Church divided into 3 Parts, which by the Justices, is a good Plea to the Writ, and the Traverse goes in Bar of Action; quod nona. Br. Double. pl. 85. cites 22 All. 33.

2. In Quare Impedit, the Defendant pleaded, That N. the Tenant granted the Lnad, and the Advowson to him, who presented twice, and seised who, and so is seised of the Advowson &c. and note the last Precentment goes to the Writ, and the Deed of the Grant to the Action, and so Double; but because he concluded upon the one Matter viz. the Seisin &c. therefore it is not Double. Br. Double. pl. 56. cites 24 E. 3. 37.

3. In Quare Impedit, the Plaintiff intituled himself as Appendant to his Land in Ward, the Defendant said, That after the Death of the Ancestor, he entered, and is seised, Abique hoc, that the Plaintiff is possessed of the Land, and that the Ancestor of the Infant held of one A. who held over of the Plaintiff, Abique hoc, that he held immediately of the Plaintiff. This is Double. Br. Double. pl. 115. cites 24 E. 3. 55.

In Quare Impedit, the Plaintiff made Title by Gift in Tail, and alleged one Precentment in the Donor, and another in the Donee; And the best Opinion was, That it is not Double; For to say that no donative answers to all, and so of several Precentments; 15 H 6 And it was said that one Precentment may be alleged in the Ancestor, and another in the Guardian by Chivalry by Nomage of the Heir, and good. Br. Quare Impedit. pl. 101. cites 4 E. 4.; — Br Double pl. 97. cites S C.
5. In *Quare Impedit* the Plaintiff counted that the Abbot and his Predecessors have used Time out of Mind at every Avoidance of the Churches of C. to present a Clerk to the Plaintiff and his Ancestors, and he over to the Bishop, and alleged Possession that he had so presented C. B. who was admitted and instituted; and that C. B. after refused, and the Abbot has presented to the Ordinary now Immediately, and jo disturbed him. And Per Gren and Skip: Possession and the Possession alleged by the last Presentment is double; and the same Law of 2 Presentments, quod condordatur in the Case of *Suing.*


answer to all; Quad nota Br. Double, pl. 57. cites 14 H. 7. 26. — S. P. For he may allege as many Presentments as he will; quad nota; Per Cur. quia Rex &c. per Prerogativam. Br. Double, pl. 52. cites 58 H. 6. 53.

7. In *Quare Impedit* the Defendant pleaded to the Writ, That where the Plaintiff supposed the Avoidance by the Death of B. it ceased by the Death of W. Judgment of the Writ, and that the Brother of the Plaintiff, whose Heir he is, aliened one Acre and the Advowson appellant to the Brother of the Defendant, whose Heir he is, and his Brother presented, and the Church voided &c. and not double; for he who pleads to the Writ in *Quare Impedit* ought to make Title; for otherwise they shall not have Writ to the Bishop; quad nota. Br. Double, pl. 23. cites 43 E. 3. 25.

8. *Quare Impedit by the King by reason of the Avoidance during the Temporalities of the Bishop being in his Hands; the Defendant finds, that the Church did not void their Temporalities were in the King's Hands, and pleaded Ratification of the King of the Presentment; this is double. Contra, if he relies upon Ratification of the King; but after he waved the Plea, therefore quære. Br. Double, pl. 125. cites 7 H. 4. 37.

9. *Quare Impedit by the King against a Prior who had taken Gift of a sum Brooke Manor and Advowson in Fee to hold in proper Use without Licence, and the Prior pleaded Letters Patents of the King made to him then Tenant of the Manor, and this by Concessions & Confirmavitum, and by Judgment this Presentment is tingle enough; for by reason it was pleaded to the Prior, then Tenant with Warranty, it can't enure by way of Grant, but by way of Confirmation only. And Per Cheney and Welbuth, because 'tis all by one Deed which is entire, it cannot be double. Br. Double, pl. 9. cites 6 H. 6. 22.

Br. Double, pl. 9. cites 6 H. 6. 22.

10. *Quare Impedit brought by H. against B. and the Bishop and the Br. Double, Incumbent, and counted that he was seised of the Advowson as in Gros, and this as of Fee and of Right &c. and presented T. his Clerk who was admitted &c. in Time of Peace &c. and died &c. and the Church now void; and be presented, and the Defendants disturbed him. B. said, That W. was seised of the Manor of D. to which the Advowson was appertained, and presented his Clerk, and after W. interfeid S. &c. who gave in Tail to the Baron and Premise who were seised, and presented, and convey'd the Manor to the Defendant as Heir in Tail; and that he leas'd to Q. for ten Years, during which Term the Plaintiff presented by Ulteration, and now the Term is determined, and fo now it belongs to him to him to present; And so by the Title and Ulteration he contents, and avoided the Plea of the Plaintiff. The Plaintiff said, That during the Gift in Tail F. his Ancestor, whose Heir &c. presented one D. his the Manor or Clerk, who was admitted &c. Allege he that the Church was appertained to the said Manor at the Time of the Gift, or ever after; And the Opinion of the
the Court was, That this is double; for the Prefentment before the Gift made the Advowson in Grofs against all; and the Traverfe of the Appen-
dancy is another Matter, and therefore double. But by all the J u t i-
ces, if the Plaintiff had said, That he be himself presented, as he declar'd, Abjure hoc that the Advowson was appendant at the Time of the Gift; this had been a good Plea. Br. Quare Impedit, pl. 12. cites 33 H. 6. 12. 32. 34 H. 6. 11. 38. And 35 H. 6. 18. 

And Per Pri-
for 2
others, of Ad-
vowson in
Grofs, if the
Plaintiff
claims of se-
ceral Prefen-
tments, this is
not double; for
none is
travera

12. In Quare Impedit the Defendant cited Convoyance of Estate in Tail, viz., Seisin in Fee in M. who made a Prefentment in Fee of the Manor and Ad-
vowson appendant, and retook in Tail; and after discontinued the Manor, and after presented to the Advowson & C. his Clerk, and then he died, and so con-
vey'd Remitter to the Estate in Tail; and this Matter is not double, for he cannot convey the Remitter without expressing these Matters, which are the Convoyance of it, and can't aver the one without the other; and therefore it is not double. Per Vavifor, Davers, and all; for the one cannot appear without the other. Br. Double, pl. 92. cites 5 H. 7. 36.

In Quare
Impedit the
Plaintiff al-
leg'd, that N
had of him
certain Land and an Advowson, in Chivalry, and presented & C. who was received & C. and that a Guardian in Right of the Heir presented & C. and that N. Tenant is now dead & C. the Heir in his Ward, and so it be-
longs to him to present & C. and the Count awarded good notwithstanding the 2 Prefentments, for it is pre-

13. In Quare Impedit the one Prefentment in the Ancestor of the Plaintiff, and the other in the Guardian is not double. Br. Double, pl. 150. cites 4 E. 4. 3. and 7 E. 4. 20.


15. Quere Impedit by M. and counted that J. was seised of a Manor ad

quod 
and after convoy'd the Manor to the King by Act of Parliament, and the Church voided, and the King granted the same Avoidance to the Plaintiff; and by the same Patent granted to him the Fee Simple of the Advowson; and that the Plaintiff presented after the Grant, and the Defendant disturb'd him; and the Defendant demurr'd for Doubleness, and yet the Plaintiff recover'd by Award; for the first Prefentment, and the Act of Parliament, the Grant, and the Prefentment of the Plaintiff, is only Con-

(B. d. 14) Pleas in Bar.

1. T
THE King brought Quare Impedit, and counted of a Prefentment by
 J. the Ward of the Heir of the said J. S. and that the Church is now void, and it belong'd to him to present, and the Defendant disturb'd him. Caund
said,
said, *The Clerk alleg'd by the King to be instituted &c. by the said J. S. was not received nor instituted by the Presentation of J. S. And it seems to be a good Plea; for the 2 Prettiments of the King during the Custody does not make Title to him nor to the Heir, without alleging Seisin by Presentment in the Ancestor of the Heir, or in the Feoffor of the Ancestor of the Heir, &c Adjudgatur.* Br. Quare Impedit, pl. 143. cites 42 E. 3. 4.

2. A Man may plead *Warranty* and *Affets* defended to bar the Plaintiff Br. Affets in Quare Impedit, or to have *Scire facias* after, if he has not Affets now, *Per Finch, Quod Monbray Concezitt.* Br. Quare Impedit, pl. 31. cites 43 E. 3. 24.

3. Lettice may recover twice in two *Quare Impedits* against several Disturbers, *by several Writs of Quare Impedit.* Br. Parliament, pl. 8. cites 46 E. 3. 4.

4. *Release of Actions Real* is a good Plea in Quare Impedit. Br. Quare Bar Per Rolfe, If one recovers in Quare Impedit, and dies, his Heir shall not have Execution, and therefore it is not an Action Real. Ibid. *Release of Actions Personal* is a good Bar in Quare Impedit. Br. Quare Impedit, pl. 83. cites 52 H. 6. 25.

5. If the Plaintiff be *non suitated* in Quare Impedit after Title made, this is a good Bar in another Quare Impedit, as Non suit in Writ of Right after Appearance. Br. Quare Impedit, pl. 83. cites 52 H. 6. 25.

6. The *Ordinary cannot plead in Bar in Quare Impedit as Ordinary; Per Bingham. Br. Quare Impedit, pl. 83. cites 22 H. 6. 25.

7. There were several Persons and their Wives Plaintiffs in a Quare Mo 455 pl. Impedit, the Defendant pleaded the *Release of one of the Husband's parts;* adjudged, that this goes only in Bar of him who made it and his Feme, and that the Writ shall stand good for the rest. 5 Rep. 25 & 29 E. 97. Mich. 39 & 40 Eliz. C. B. The Counties of Northumberland & al v. Hall & al. S. C.

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1. In Quare Impedit, if the Plaintiff makes *Title as appendant to such Land*, the Defendant shall not say that it is in Gros's or Appellant to other Land, without saying How, and traversing the Plaint. Br. Quare Impedit, pl. 7. cites 9 H. 6. 56.

2. The Plaintiff in Quare Impedit said, *That he was seized of two Acres* S. C. cited in *D. with the Adversion appendant, and presented &c.* and now the accordingly. Church is void again, and he presented, and the Defendant disturbed him; the Defendant said, *That after the first Presentation of the Plaintiff he himself was seized of the Adversion as of Gros,* and the Church voided, he and his Clerk, and now it is void again, and he presented, *Prouit et licent &c.* and well, without traversing the Appendancy. Br. Contes & avoid, pl. 60. cites 15 H. 6. and Fitzh. Quare Impedit 77.

without answering to the Appendancy alleged by the Plaintiff, which is in *Elict* avoided by the Defendant's Presentation after, and that in this Case the Plaintiff was without Remedy, (unless he could traverse the Presentation alleged by the Defendant) otherwise than by his *Writ of Right of Ad- version.*

5 Y 3. In
3. In Quare Impedite, the Plaintiff contended, That the Advertisement is in Grofs, and intited himself &c. The Defendant said, That the Manor is to him Appendant to his Manor of D, and intitled himself to every 2d. Presement, and the Plaintiff to every second Presement as in Grofs, and that this is his Town; this is no Plea without Traverse that the Advertisement is not in Grofs, Prout &c. for otherwise it is only Argument; for he has not Confessed and avoided, nor Traverfed. Br. Traverle per &c. pl. 31. cites 35 H. 6. 32. 33.

4. Between common Persons the Defendant may traverse the Title of the Plaintiff without intitling of himself, but then he shall not have Writ to the Bishop. Br. Quare Impedite, pl. 138. cites 21 E. 4. 1. 3. Per Noting. Ch. Baron.

5. In Quare Impedite the Plaintiff said, That he presented J. S. who was admitted, instituted &c. and after J. S. resigned, and he presented, and the Defendant disturbed &c. The Defendant said, That before the Presentation of the Plaintiff he himself presented the said J. S. who was admitted &c. and after the Plaintiff presented this same J. S. the said J. S. then being incumbent there, and so the Presentation of the Plaintiff void, and no Plea; Per Brian and Valior; in as much as the Defendant did not traverse that the Church was not void at the time of the Presentation of the said Plaintiff; but Townend contra, in as much as the Lay Gents cannot take Conuance of the Voidance; but at last Keble took the Traverse. Br. Quare Impedite, pl. 164. cites 11 H. 7. 17.

6. Where the Plaintiff makes Title by Appendency, and the Defendant alleges two Presements after, there he need not traverse the Appendency; For Utrurpation is sufficient Title in Quare Impedite. Br. Quare Impedite, pl. 149. cites 12 H. 8. 12.

7. In Quare Impedite the Plaintiff contended that he was seised in Fee as of Grofs, and presented A. &c. and after he died, and he presented now and is disturbed &c. The Defendant said, That before this he was seised in Fee as of Grofs, and presented B. who was admitted &c. and after he granted the next Presentation to the Plaintiff who presented A. and he died, and so now it belonged to the Defendant to present, and did not traverse the Selim in Fee of the Plaintiff; and well per Fitzherbert clearly, for he has confessed and avoided it; quod mirum; Br. Confess and avoid, pl. 1. cites 26 H. 8. 4.

(B. d. 16) Pleadings. Traverse. Good; in what Cases.

1. In Quare Impedite, the Eft Presement is traversable, and not the Prescription alleged; Quod Nota. Br. Traverle per &c. pl. 99. cites 22 H. 6. 26.

2. In Quare Impedite, where the King is intitled to the Manor and Advertisement Appendant by Ward of the Heir of his Tenant, and alleges Presement in the Ancestor of the Plaintiff, and that the Ward fell to him, and the Defendant makes Title to him as in Grofs, and traverse the Presement, this is not
not good; For he shall traverse the Appendant; because this is the Title of Verdict, and the King; Quod Nota, by all the Justices after great Argument. Br. Traverse per Ecc. pl. 257. cites 20 E. 4. 13. & 14.

3. In Quare Impedite, the Plaintiff made Title that his Mother was seised and presented, and the Church voided, and the Bishop voided; and the Bishop said, that the Church voided in the Time of the Mother of the Plaintiff, by which is presented by Laspe, abique hoc that the Church voided after the Death of the Mother of the Plaintiff, and the Court held the Abique hoc good. Br. Traverse per Ecc. pl. 175. cites 1 H. 7. 9.

4. In Quare Impedite, the Plaintiff said, that he was seised of the Ad- S. Cited vescovon Ecc. and presented, and now the Church is void. The Defend- S. Cited tant said, That it is appellant to the Manor of D. whereby his Ancestor was seised and presented, and conveyed the Manor to himself by Affirm that the Advo- wion is in Grofs; and no Plea, by reason that he did not deny the presentment of the Plaintiff, which is material if the Advo- wion be in Grofs or not, and therefore it was adjudged, that he should traverse the presentment, and not the being in Grofs. Br. Traverse per Ecc. pl. 384. cites 10 H. 7. 27.

35. In Quare Impedite, the Bishop by Vaughan against the Bishop of Chichester, and T. Bickley, for the Vicar- age of Welffield, and counts, that the Advo- wion of the Vicarage "opposes" to the Rectory of Welffield, whereby he was seised in Fee Ecc. and presented. T. Bickley, who was admitted Ecc. and included, and that the Vicarage was of the yearly Value of 8l. and said by his Acceptance of another Benefice, and the Plaintiff presented, and the Defendants distrusted him Ecc. The Bishop pleaded, that Richard his Predecessor was seised of the Advo- wion in Grofs, as of an advowson in Grofs, and committed to it (being void) one Maurice Berkley, who was induced; that the said Bishop died; that the Defendant was created Bishop, and so became seised of the Advo- wion, and being so seised the Church became void, the said M.S. having taken another Benefice with Cure, and he collated the other Defendant T. Bickley, and traversed that the Vicarage opposed to the said Rectory; and the said Bickley pleaded the same Plea. And upon a Special Demurrer to these Pleas, for that the Appendant was not traversable, the Court agreed. That though in many Cases the Books are, that the Appendant is traversable, yet, this Case is here, the Appendant is not traversable; for the material Parts of the Declaration are the Sec- tion in the, the Presentment, the Admission and Institution of his Clerk, and the Acceptance, so that it is not material, whether the Advo- wion was Appendant or not to Grofs; and therefore when the Appendant shall be traversed, it shall be, upon the Matter shewn, to be material, or else the Traver- trable is ill. As if the Plaintiff counts of a benefice of an Advo- wion in Grofs, and that he so seised; and the Plaintiff became void, and the Defendant says, that he was seised of the Manor to which the Advo- wion belongs, which became void, and so traversed; the Bishop, that the Advo- wion was in Grofs; the Court held this to be no Plea, and cited to H. 7. 27. And it was said, That notwithstanding the Book there, the Law will be the same, where the Plaintiff makes Title as to an Advo- wion appellant, and divers Books were cited; the Court adjudged the Plea ill. 35 H. 6. 32, and there were also cited 21 H. 9. 21 H. 6. 12. 32. 42. 44. Nota of the other Books. And. 266. pl. 276 Paeb. 75 Bla. Lord Buckhurst v. Bishop of Chichester and Bickley. S. C. cited Vaughan to and T. Vaughan says, pag. 11. that the Cate of 10 H. 7. was principally relied on as warranting the Judgment, which he says it fully does, it being adjudged for the same Reason there, that the Seignior Ecc. Advo- wion in Grofs was not traversable, but the Presentment was, as it was in this Case adjudged that the Appendant was not traversable, but the Presentment. And L. Vaughan said he observed, that in 4 E. Bickhurt's Cate it is admitted, that the Plaintiff in the Cate of 10 H. 7. did say that he was seised of the Advo- wion in Grofs and presented, whereas he so said, he noted that the original Cate in the Books is, that he was cited upon his Presentment, and says, that probably it was for the Reasons given by Lord Hobart in Digby's Cate, that a bare Presentment is only onlirion when it alleged by the Plaintiff, and may be in such a Case as may prove the Defendant to have a Right of presentment as the present Reasons, if no Right be alleged by the Plaintiff why he should present; whereas he collects, that in both these Cates of 10 H. 7. and this of the Lord Buckhurst, though there were a manifest Inconsistency in the first Cate between the Plaintiff and the Defendant, that he was seised of a Manor to which the Advo- wion was Appendant (for it was impossible it should be app- endant for the Defendant, and in Grofs for the Plaintiff) and in the 4 E. Bickhurt's Cate, who counted that he was seised of the Rectory of Welffield, to which the Advo- wion of the Vicarage be- longed, and the Defendant made Title, that he was seised of the Advo- wion in Grofs, which Titles were
were directly inconsistent, yet neither the Seisin in Gros in the first Case, nor the Appendancy in the last Case were traversable, but the Presentation of the Plaintiff in both, which made their immediate Titles to present at the next Avoidance, whether there were a Seisin in Gros, or an Appendancy or not when they first presented. As in these two Cases the true Reason of the Law appears, why the Seisin in Gros of the Advozion, nor the Appendancy of the Advozion alleged by the Plaintiff were not traversable, but only the Presentation, by these Cases the Lord Hobart's Scruple in Div. Up's left is baffled, where he thinks, that if a Man have gained a Title by Ulteration, at the next Avoidance he must not declare, that he was feited in Fee formerly of the Advozion, and professed; but must declare specially of the true Patron's former Presentation, and then the Church coming void, that himself presented, least otherwise by declaring that he was seised of the Advozion in Fee, the Defendant should truce him by traversing his Seisin, which was false, when in Truth he had a Right to present by Ulteration; For by these Cases it is clear, that the Seisin in Gros nor Appendancy are traversable, though alleged by the Plaintiff when he had gained a Title by Ulteration, but the Presentation ought to be traversed,—but if the Plaintiff declare the Advozion to be appendant to Manor, and which last forth in his Declaration the Letters of Presentation to the Church as appendant, then the Defendant may traverse either the Appendancy or the Presentation, for though the Advozion were appendant, yet if the Plaintiff presented not, he had no Title. Whence he takes, that if the Plaintiff had couned of a Seisin of the Manor, to which the Advozion was appendant, without showing the Presentation to be to the Church by Virtue of the Advozion, the Traverse of the Presentation had been good; but it must have been of the Presentation, which might have been by Ulteration, notwithstanding the alleging barely of the Appendancy, as is resolved before in the Point in the Lord Weckhurst's Case in Andover, and in the principal Case of 16 H. 7. But when the Court is of the Appendancy of the Advozion, and all of the Presentation to it as appendant, there could be no Ulteration according to the Resolutions in Sir Effingham Gaudie's Case in the Lord Hobart and in Ch. in the 6th Report of the Lord Coke; and he finds, that the not observing of this Difference made the Reporters at the End of the Lord Weckhurst's Case deny this latter Part of the Case in 16 H. 7; because it was clearly against the Reason of the principal Case in 16 H. 7, and against the Resolution of the Lord Weckhurst's Case, if the Words of showing the Presentation to have been as appendant had been omitted in the Case; but those Words make the latter Case in 16 H. 7, exactly to agree with the Judgments both in Sir Henry Gaudie's Case in Hob. and Green's Case in the 6th Rep. Per Vaughan Ch. J. Vaughan 15. in Case of Tufton v. Temple.

Br. Quare 5. Where the Title of the Plaintiff is to the Manor and Advozion Appendant, and that the Defendant dispossessed him of the Manor, and the Deed cites S. C. Appendant says, That it is Appendant to four Acres, whereof J. N. was seised and informed him, there the Difference of the Manor is not traversable, but cited by Vaughan Ch. if it was appendant to the Manor or to the four Acres; Quod Nota. Br. J. Vaughan 12. Traverse per &c. pl. 8. cites 27 H. 8. 29. Hill. 17 & 18. Car. 2. and fors. This Traverse was adjudged not good; For the Difference or Non-difference of the Manor was no material to intitle the Plaintiff to the Qua Imp. but all his Title was by the Appendancy of the Advozion to the Manor, and therefore the Traverse ought to have been, and was so refused, to the Appendancy which destroyed the Plaintiff's entire Title to present, and was also inconsistent with the Defendant's Appendancy of the Advozion to his 4 Acres.

S. C. Latt. Rep. 14. argued but not presented in Case Vaughan. 16. in the Case of Sir John Tufon v. Sir Richard Temple, cites S. C. and says, That because the Defendant doth admit the Advozion to be in Gros, or Appendant, in the Plaintiff, and that neither of them is inconsistent with the Title made by the Defendant, he shall not traverse the Seisin in Gros, nor the Appendancy; but he...
caused somewhat else is necessary to give the Plaintiff Right to present, viz. the Vacancy of the Church, either by Death or Resignation, or Deprivation, which the Plaintiff must allege, and which are inconsistent with the Defendant's Title, who claims not by Vacancy by Death, Resignation, or Deprivation, but by the simony, therefore he shall traverse the Vacancy alleged either by Death, Resignation, or Deprivation, as the Case falls out. Without one of which the Plaintiff makes no Title, and if the present Vacancy be by either of them, the Defendant hath no Title.

7. Sir Henry Gawdy Knt. brought a Quare Impedit against the Archbishop of C. Sir W. B. and H. R. Clerk, and counted that Sir R. S. was feised of the Manor of Popemho in Norfolk, to which the Advowson was held by the Appellant, and presented M. his Clerk, who was intituted and inducted, and that Sir R. S. held, bargained and sold the Manor to one Barrow, who being feised, the Clerk became void by the Death of M. and so continued for 15 Months, whereby the Queen, in Default of the Patron, Ordinary, and Metropolitan, presented by Laple one Shell, and by mean Conveyances devolved the Manor, to which the Advowson is Appellant to himself, and that by Shell's Death it belongs to him to present, and is disturbed by the Defendants; The Arch Bishop claims nothing but as Ordinary Seede vacant of the Bishop of Norwich. Sir W. B. pleaded No Disturb to the present incumbents pleaded, That he was Parson by the King's Presentation, and that long before Sir R. there anything had in the Manor, Sir Elizabeth was feised of the Advowson in Gros in Right of the Crown, and presented Shell, and that the dying feised, the Advowson defended to King James, and he, being feised, and the Church becoming void by Shell's Death, presented the Defendant H. R. who was intituted and inducted, Abjurer loc. that the Advowson was Appendant to the Manor of Popemho, and thereupon an Injunction was joined. Hob. 301. pl. 330. Hill. 17 Jac. Gawdy v. the Arch Bishop of Canterbury & al.

8. In a Quare Impedit &c. the Plaintiff counted of a Seisin in Fees, and S. C. Jo, that be presented &c. the Defendant pleaded, That he is Paymon Importance &c. and that long before the Plaintiff any thing had in the Advowson, adjudged a King H. S. was seised in Fee, and prefeated, and died seised; And that it was in the Jure Corona, presented one B. and after his Death, the new Plaintiff presented by Indictment the Defendant; That Queen Elizabeth died seised, and it was in the Jure Corona, presented to King James, who granted to one under whom the Defendant made Title, and the Defendant was intituted and inducted. The Plaintiff presented,
reply, and took Pretention of the Seisin of St. Mary, St. Elizabeth, and the New King, and for Plea confessed the Seisin of the Plaintiff &c., and the Seisin of H. 8. and Ed. 6. and then derived a Title to himself under a Grant made of the Advowson by Ed. 6. And that Queen Elizabeth presented, but that the same was by Lapte; and that by the Death of her Predecessor, it now belongs to the Plaintiff to pretend, Abjicisse, that King Ed. 6. died seised &c. And upon Demurrer it was objected, That he does not traverse the Seisin of Queen Mary and Elizabeth, and their dying seised, nor the Pretentions alleged by reason of the Seisin in Fee, but only says, That they were by Lapte; But as to this Point, the Court held the Replication well enough; For the Dying seised was the principal Matter to be traversed, and the other were but the Consequences thereof, and the Plaintiff may traverse any Part of the Defendant's Plea; And to a former Judgment was affirmed in Error; But because the Plaintiff in the first Action died pending the Plea, the Entry of the Judgment was Void. Cro. J. 650. Mich. 20. B. S. Savil v. Thornton.

9. In a Quare Impedir, the Plaintiff entitled himself by Grant of the next Avoidance, and that T. C. was presented, admitted, instituted, and intituled; And that the said Church became void by Acceptance of a second Benefice above Value; The * Archbishops pleaded a Plea, to which there was a Demurrer; and S. the Incumbent pleaded a Plea, and traversed that T. C. was admitted and instituted therein; and upon this they were at Htue, and a Writ awarded to the Archbishop for that Trial; But afterwards the Plea of S. being adjudged ill, a Repleader was awarded, because the Induction, being alleged, ought also to have been traversed; whereupon S. amended his Plea, and traversed the Admission, Institution, and Induction; If Htue was joined thereupon, and found for the Plaintiff; Afterwards Error was brought, and among other Things it was alleged, that the Repleader was not well awarded; For that the Htue, which was joined before the Writ awarded to the Archbishop, was well awarded, and needed not any Repleader; But all the Court Contra, and that the Repleader was well awarded; For the Induction being alleged, as well as the Institution, there ought to be a Traverse to it, which alters the Course of the Trial according to the Cafe in 22 H. 9. 27. & 2 H. 4. 17. so as it shall be tried Per Pais. Cro. C. 379, 380. pl. 6. Mich. 10. Car. B. R. Stevens v. Facone.

2. Jo. 3. S. C. by the Name of the King v. Wilts, adjudged for the Defendant. Mod. 7. 6. Trim. 29 Car. 5. This Argument of
Presentation

hent, and so continued for 2 Years; whereupon the Queen presented the suit W. Wilm, Archer, and Tyrell.

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Quare Impedit, if the Defendant makes a Title by Grant by Deed, and does not shew it, by which the Plaintiff demurs for the not shewing, which is adjudged against the Defendant, and that he ought to have shewn the Deed, this is peremptory, and the Defendant shall lose the Presentation. Br. Peremptory, pl. 70, cites 19 E. 3. and Fitzh. Montrans 172.

2. In Quare Impedit by the King against the Bishop and Patron, it was agreed, that the Bishop need not to shew the Letters of Presentation. Br. Quare Impedit, pl. 65, cites 38 E. 3. 8, 9.

3. If the King makes Presentation to the Bishop by his Letters Patents, the Patent belongs to the Ordinary. But if he makes Collation, it belongs to the Incumbent, and he shall shew it. Br. Montrans. pl. 70, cites 9 E. 4. 16.

4. In Cafe of an Advowson, if the Party makes Title where it is by way of Defence, he shall shew Title. Per Brian. Br. Montrans, pl. 60, cites 15 E. 4. 16.

5. In Quare Impedit the Plaintiff made Title, That J. S. was seized of the Manor of B. to which the Advowson is and was Appendant, and granted the next Presentment to B. and the said B. granted it to A. which A. granted to the Plaintiff; the Plaintiff must shew all the Deeds of the Grants. Per Fineux and Vavilour, Quod fuit Concessum. Br. Montrans, pl. 159, cites 9 H. 7, 16.

6. In Quare Impedit the Plaintiff declared, that A. his Ancestor was seized in Fee of the Vicarage of B. in Goffs &c. and so seized granted the next Advowson to E. who granted it over to F. and that the Church becoming void by the Death of the Incumbent, the said F. preferred J. N. who was admitted &c. that afterwards A. by Deed granted the said Advowson to Trustees and their Heirs, to the Use of A. for Life, then of B. his Son and Heir, and the Heirs Male of his Body; and for Want of such lile, to the Use of the Heirs Male of the Body of B. And that during the Time of the Troubles in 1659, the Church voided, and that one W. R. by Ufeaslon preferred T. S. who was put into Possession by the Persons then in Authority, and was afterwards by the 2 Car. 2. confirmed in the said Church for his Life; that the Church became void, and that it belonged to the Plaintiff as Heir in Tail of B. to present. The Defendants demurr'd, because the Plaintiff had not pleaded the said Grant by A. to the Trustees, with a Profert; for that here the Deed is necessary Ex Institutione Legis, to make it a good Grant, because without the Deed the Advowson will not pass. But it was resolved, That in this Case the Plaintiff shall not be compell'd to produce it. 1st. Because it does not belong to him who is only Cofly que Trust, but it belongs to the Grantees. 2dly. Because he has no Remedy in Law to get Possession of it. 3dly. He is in merely by Operation of Law, and not in the Per. Carth. 315. Trin. 6 W. & M. Reynell v. Long.
Presentation.

(B. d. 18) Iluie. Upon what to be taken, and of what Things the Jury must inquire.

1. In a Quare Impedit, besides the Point in Iluie, the Jury ought Ex Officio to inquire. 1 De Plenitudine Ecclesiae. 2dly. Ex ex Causis presentatione. 3dly. Si tempus fendi ece prcretis. 4thly. De Valorae Ecclesiae per Annum. Jenk. 206. pl. 36.

2. In Quare Impedit by the King, who made Title by Seisin of the Temporalties of the Bishop of R. and that R. late Bishop of B. presented to the Hospital of C. R. his Clerk, who was received and instituted, and voided by Permutation made between R. and a Prelatory; and the Defendant said that the Hospital is not Permutable. And the Court said they would not try the Cause of the Voidance, but whether it voided while the Temporalties were in the Hands of the King, or not; quod nota. Br. Quare Impedit, pl. 69. cites 21 E. 3. 6. 7.

3. In Quare Impedit by the King against the Bishop of S. of the Prelacy of H. he pleaded, That after the Voidance, the King presented E. who was received and instituted, and the other that he was not received and instituted, and the others contra. Br. Quare Impedit. pl. 65. cites 21 E. 3. 55. & 40 E. 3. 17.

4. In Quare Impedit the Defendant pleaded, that the Church was full by 6 Months before the Writ purposed of his own Prefentment, Judgment of the Writ; and there the Iluie was taken if it was void or not, and not if it was full or not; quod mirum. Br. Quare Impedit, pl. 21. cites 40 E. 3. 20.

5. In Quare Impedit the Defendant said, That he is in of the Prefentment of the same Plaintiff, and he said that he did not present, Prift &c. and the others contra. Br. Quare Impedit, pl. 25. cites 42 E. 3. 8.

6. In Quare Impedit the Defendant said, that there is No such Church in S. that Not in the same County; and held a good Pleas by Reason of the Vilne. Br. Quare Impedit, pl. 33. cites 45 E. 3. 6.

cipe quod reddat of the Manor of D. to say that there is No such Manor in the County, and after Iluie was taken if there is a Church known by such Name in the same County or not. ibid.

7. Quare Impedit by the King, and made Title by Tenure of his as Appendant to the Manor of D. The Defendant said, but Not appellans, Prift, and the King said that he and his Ancestors Time out of Mind, have presented it to as appellans, Prift &c. and was not suffer'd to have such Iluie, but to rely upon the Appendant, viz. Appellant or Not Appellant &c. quod nota. Br. Quare Impedit, pl. 38. cites 46 E. 3. 30.

8. Quare Impedit was Prefentare ad Ecclesiam de R. The Defendant said that it was only the Chapel of B. and Time out of Mind had been, and is within the Parish of C. and because the Writ did not say Ad Capellam, he prayed Judgment of the Writ; and the Court being of Opinion that the Writ should abate, the Plaintiff said that the Church is Parochial, and the other said that it is a Chapel and Not Parochial. But the Court said they would be advis'd it this be an Iluie. Br. Quare Impedit, pl. 77. cites 81 H. 6. 37.

8. Where a Man presents, and his Title is found upon a True Patrocinus, and he finds he have his Clerk admitted, and after another presents, there, if the Bishop might have admitted the Clerk of him who had the Perfit, and 
Presented.

12. In Quare Impedit the Plaintiff counted that his Ancestor was seized of the Advowson, and his Clerk in, and after he granted the Advowson to J. S. for Life, the Church voided, J. S. presented, and his Clerk in, and J. S. died, and after the Church voided, by which the Plaintiff as Heir of the Ancestor presented, and the Defendant disturb'd him. And it was held that he shall allege the one Presentation and the other; for the Presentation of the Tenant for Life does not make Title to the Plaintiff, nor the Presentation of a Guardian nor Tenant, and the Defendant shall answer the first Presentation, and have Issue thereupon, and not upon Both. And per Littleton, He ought to answer to Both, but the Issue shall be upon the first only, and the Plaintiff shall not reply to him as to the second Presentation. Br. Quare Impedit, pl. 129. cites 7 E. 4. 20.

II. Quare Impedit of a Chantery where the Composition was, that if the Patron does not present within one Month, that then the Ordinary shall present; and the Jury was compell'd to inquire if the Month was put, and of the Value of the Chantery; and if it was void or not. Br. Quare Impedit, pl. 131. cites 13 E. 4. 3.

(B. d. 19) Judgment. When and How, and of the Entry thereof.

But if he makes Default after Continuance taken, he shall have

Diftrefs. 6 R. 2. Which seems to be Diftrefs Ad Audienium Judicium. Br. Proces, pl. 27.

1. IN Quare Impedit, if the Defendant makes Default after Appearance, the Plaintiff shall recover immediately, and his Damages. Br. Proces, pl. 27. cites 2 H. 4. 1.

And if it had been brought against the Patron and Incumbent, and found against the King, the Judgment should be

*It should be 3 b. pl. 11.

2. Quare Impedit by the King against the Incumbent alone, and at the Nisi Prius it was found against the King. It was objected that Judgment ought not to be given; for the Patron is not named in the Writ; and yet Judgment was given that the Defendant Estat, 5 do. for not entering any Cause: So that by force, the Judgment shall be intended to be for the not naming the Patron, and to the King at another Time at no Prejudice; quare inde; for it seems that it shall have Relation to the Matter pleaded. And it was prayed that the Cause of the Judgment be entered. But per Thirn, It shall not be; for it appears in the Record; for if a Man takes Exception to a Count or to a Prefentment, or Indictment, by which it abates, Judgment shall be viz. Pro eo quod it is insufficient in Law, therefore Nihil capiat; and the Cause shall not be entered, because it appears in the Record, quod Mark. conceiveth. And fo it feemes that the Words of the Judgment are all one to the Writ, to the Count and to the Bar; but this shall be expounded by the Matter which is pleaded, when it goes to the Writ or Count, and when in Bar. And Hull and Ham agreed that this Judgment shall have Relation to the Plea. Br. Judgment, pl. 14. cites 3 H. 4. 2.

If the Sheriff returns Nihil upon the Summons Per & Distrefs, the Plaintiff shall recover by the Equity of the Stants; but Martin and Strange contra. Br. Quare Impedit, pl. 152. cites 11 H. 6. 3.

In Quare Impedit, yet the Plaintiff shall recover. Per Ashton. Br. Judgment, pl. 6. cites 2 H. 6. 5.
Presentation.

4. In a Quare Impedit against an Archbishop, Bishop and others, the Archiepiscopal and Bishop plead that they claim nothing but the one as Metropolitan, and the other as Ordinary, the other Defendants plead other Pleas, the Plaintiff has a Judgment against the Archbishop and Bishop to have a Writ to the Bishop; but in this Judgment against them, there is an Omission of the usual Clause: Sed ceteris executioni sine qua the other Illiues are tried, and in Truth no Writ issued before the Trial of the other Illiues; the Illiues are found for the Plaintiff, he had Judgment affirmed in Error. In this Case the said Omission was not erroneous; for it was after Judgment; and if it be Error, it is Error in Executione Judicato; and in this Case no Writ of Execution was issued out against them. Jenk. 323. pl. 36.

5. Quare Impedit by H. against B. and the Bishop and the Incumbent; and as to the Bishop, whole Plea was allowed, Judgment was given that the Plaintiff take nothing by his Writ, and all the other Defendants confess'd the Action; and the Jury, which was ready to have pass'd upon the Illuie, were put to inquire of the Value of the Church per Annum, which found 20 l. and therefore Judgment of double Damages (that is to say) of 40 l. was given for the Plaintiff against the other Defendant and the Incumbent, and the Judgment entered as well against the Incumbent as against the other; for now it was fully Laps'd. Br. Quare Impedit, pl. 12. cites 33 H. 6. 32 & 32. 34 H. 6. 11. 35 and 35 H. 6. 13.

6. Where a Man has a Quare Impedit against one, and the Defendant has a Darrein Presentment against the Plaintiff, and recovers in the Darrein Presentment, and the Plaintiff is Nonjust in the Quare Impedit; the Defendant shall have two Judgments against the Plaintiff to have Writ to the Bishop in both Actions. F. N. B. 39. (D.)

7. In a Quare Impedit the Bishop pleaded, That he examined the Presence, and found him to be Schismatix in reverentia, of which he gave the Plaintiff Notice, who did not present within 6 Months &c. and upon Demurrer the Court gave Judgment, that the Plaintiff recover against the Bishop his Presentment to the Church, and a Writ to the Metropolitan &c. because the Bishop is Party, Et idem Episcopus in Acheirodita; afterwards a Writ of Enquiry of the Value of the Church was awar'd whereupon the Value and other Points of the Writ were found and return'd; and thence Judgment was entered again, viz. That the Plaintiff should have a Writ to the Archbishop ut supra, and that he recover Damages against the Bishop. Et Prad. Episcopus in Acheirodita; and this was assign'd for Error, because the Bishop was twice awar'd, which he ought not to be by Law. But it was anwer'd, That the said Judgment was but a Reversal of the first, and so to give a full Judgment of all, with the Damages, and not a new Judgment; for he can no more have two Writs to the Metropolitan than he can be twice amerc'd; but if it was erroneous, yet the first Judgment is good and perfect in it fell, and shall not be impeached by any Error in the second, because the first was the Judgment which was at Common Law in a Quare Impedit; for before the Statute of W. 2, the Plaintiff never recover'd any Damages in a Quare Impedit, and now he may waive the Benefit of that Statute, and take the Judgment at Common Law, if he will. Quod fuit concemissum per terr. Cur. And so the first Judgment was affirm'd. 5 Rep. 58. b. Hill. 32 Eliz. upon a Writ of Error in B. R. Specoc's Case.

8. Where the King has Judgment by Default in a Quare Impedit, he, as well as a Subject, must &c. Suggestum in the Roll: for if his special Titre. Per Holt Ch. J. 2 Salk. 559. pl. 2. Trim. 5 W. & M. in Case of The King &c. Bishop of London and Dr. Lancaster.

(B. d. 20.)
Presentation.

(B. d. 20) Judgment. What recover'd, and who shall have Execution, and the Effect thereof.

1. BY Quare Imped a Man shall not recover the Action but the
Presentation; but if he has Execution, all others besides the Incumbent, are thereby out of Possession. Br. Quare Imped, pl. 7. cites 9 H. 6. 56.

2. If a Man recovers in Quare Imped, and dies, his Heirs shall not have Execution, and therefore it is not a Real Aotion. Per Rolf. Br. Quare Imped, pl. 7. cites 9 H. 6. 56.

(B. d. 21) Of Damages and Costs &c.

Before the making of this Act the
Provisions of
Qua Imp re-
covered no
Damages, left any Pro-
fit, the Patron
should take, should fa-
vour of Si-
mony, which
the Common Law did to detest; and this is the Cause that the King in a Quare Imped recovers no Da-
mgages, because he could recover none by the Common Law; and the King is not within the Vefow of this Act for the Causes shew'd in Boiswell's Case. 2 Init. 362. — S. P. Co. Litt. 17. Q.
The King shall not recover Damages in Quare Imped for Losses or Difficulties. Br. Damages, pl 15. cites 54 H. 6. 5. — S. P. Br. Prerogative, pl. 115. cites Pitt, Quare Imped 45. — S. P. For Damages are given only where there may be an Utpartition by W. 2. 5. And there can be no Utpartition upon the King. Jenk. 281 pl. 7.

The King declares Ad Damnum &c. yet he is not within the Statute. The first Part of the Clause for Recovery of Damages is, 'Si tempus benefacie transeat &c.' Now he is not within this Part of the Clause for Recovery of Damages; for by his Prerogative he cannot lose his Right of Prerogation, that the Bishop has collated. And then the second Clause (viz. Et nonn timec Senecfus non transacte &c.) is only dependent on the first; and so, as he is not within the 11th, he cannot be within the 21st. 6 Rep. 51. Mich. 3 Jac. Boiswell's Case — S. P. Le. 149, pl. 207. Trin. 56 Eliz. B. R. The Queen v. Lugbeard. — Cro. E. 162. Bugbeard v. the Queen.

Some think that the King shall recover Damages in a Quare Imped; and it seems to them to be weak Reasoning, that he shall not recover Single Damages, because he can't recover double; for a single Action ad minus Nonze, virtus e converso. The King shall have Benefit of any Statue tho' he be not named in it. Costs are given at Common Law in a Quare Imped in the Time of E. 1. Pitt. Quare Imped 161. Damages were given to the King in a Quare Imped, and those Judges were living when the said Statute of Wembturne 2 was made. Jenk. 281 pl. 7. cites Brooke's Cases 22 H. 11. And forasmuch as no Damages were in a Quare Imped at the Common Law, and this Act after the Statue of Gloncenler giveth Damages only, the Plaintiff shall recover no Costs. 2 Init. 262. — S. P. Br. Colts, pl. 1. cites 27 H. 6. 10. For where Damages are given by Statute after the Statue of Gloncenler in certain out of the Courts of the Common Law, a Man shall recover that which is limited in the Statue, and not otherwise ; As in Decies tantum, the Plaintiff shall recover no Costs. Contr, it is said in Raviiment of Ward; and therefore he shall not have Costs in Quare Imped. Br. Colts, pl. 1. cites 27 H. 6. 10. — At Common Law a Man should recover Costs in Quare Imped, but contrary after the Statue, because the Statue gives now great Damages in Quare Imped. Per Newton; But all the Argument there was for Damages. Br. Colts, pl. 25. cites 9 H. 6. 55. — But H. 52 H. 8. Spitalif, agreed with Newton — S. P. Jenk 254. pl. 36. — S. P. Jenk 281, pl. 7. Ad Pinen — S. P. Br. Damages, pl. 182. cites 9 H. 6. 50. — But Trin. 11. Ann. It was held Per rot. Cor. That where Judgment is given for the Defendant upon a Demerit in Quare Imped, the Defendant shall have his Costs. Rep. of Pracd. in C. B. 4. Anon. [This seems to be by Reason of the Stat. 8 & 9 W. 3 cap. 11. S. 5.]

In a Quare Imped against a Prior, Patron, and Incumbent, the Prior pleaded in Bif, and the In-

cumbent pleaded the same Plea, whereupon Illaes are joined, the Prices bies and the IJiae is found for the Incumbent, he shall not recover Damages by this Act, for he cannot have a Writ to the Bishop and he continued in Possession. 2 Init. 362. — S. P. 15 Mod. 54. In the Case of Parfr v. Rodey — S. P. Br. Damages, pl. 182. cites 9 H. 6. 50. — Br. Quare Imped, pl. 6. cites S. C. — But Per Newton 11
Quare
Quare Impedit against Patron and Incumbent, if the Patron dies, and the Plaintiff is Nosieod, the Incum-

bent shall recover Damages by the Statute of Westminster 2. For the Incumbent may plead. Br. Quare Impedit, pl. 52. cit. 22 H. 6. 25. —— And where Patron and Incumbent plead one and the same Vice, there both shall recover Damages if the Incumbent was admitted; for otherwise he shall not recover Damas-
eges; per Newton. Br. Quare Impedit, pl. 53. cit. 22 H. 6. 25. —— so where an Abbot claims to hold in Propriis Utrius, he shall recover Damages, for he is Patron and Incumbent. Br. Quare Impedit, pl. 6. cit. 9 H. 6. 2.

* If upon the Foundation of a Countrie the Composition is, That if the Patron present say will in a Month the

Ordinary shall collate; In a Quare Impedit brought for this Countrie, if the Month be past, the Plaintiff
shall recover Damages for 2 Years within the Equit of thisi Statue; for that the Patron, in this Case, 

soleth the Presentation, although the Words of the Statue be Per temporis benedium, and this is Per tempus

A'mbit. transact. 2 Inf. 251, 262.

5 Here [Conferg] is to be taken for Legttime Conferg. 2 Inf. 365.

Although the Bishop hath not collated, yet if he hath Jesi Confered, the Plaintiff shall, if he will, re-

cover double Damages within the Meaning of this Act. 2 Inf. 365.

But albeit the 6 Months be past, so the Bishop hath a just Title to present by lape, yet if the 

Church remaineth said, the Plaintiff at his Peril may pray a Writ to the Bishop; but then he shall not recover 

double Damages, for half a Year only; because, in that Case, he shall recover his Presentation; So 

that it is in the Plaintiff's Election, in that Case, eithet to lose his Presentation and have double Damages, or 
to have his Presentation and single Damages. 2 Inf. 365. —— If he takes a Writ to the Bishop at his Peril, 

he shall not have Damages after 2 Years to the Value of the Church, tho' the Bishop has presented by Lape, 

for he takes Notice thereof at his Peril. Br. Damages, pl. 189. cit. 11 H. 4. 32. —— Br. Quare Impedi-

lit, pl. 54; cit. S.C.

The Plaintiff in a Quare Impedit, after Appearance, was nosieod; whereupon the Court awarded a 

Writ to the Bishop for the Defendant, and a Writ to the Sheriff to acquire when the Church became void, 

the yearly Value thereof, and whether the Church was full &c. The Sheriff returned the time of the 

Voidance, the yearly Value, and that the Bishop had collated by Lape; yet that he appeared Tempest Se-

mebre was past before the Writ could be forcess, yet seeing the jurisdiction was given within 6 Months, he 

could recover the Damages but for half a Year. 2 Inf. 365. —— S.P. Br. Damages, pl. 151. cit. 24 E. 

d. S. 25. Br. Quare Impedit, pl. 92. cit. S.C. Brooke says, The Relection seems to be, inasmuch as 

where the Bishop makes collation within 6 Months, his Clerk shall be removed, and therefore only Damages 
of Half a Year, but since the Bishop has made collation after the 6 Months, and the Jury has judg-

ment after the 6 Months, there the Clerk shall not be removed, and therefore he who recovers shall have 


And it is to be obserhed, That albeit the Bishop hath collated, yet if his Incumbent is removed by Judgment 

within the 6 Months, or after, the Plaintiff shall recover the Damages but for half a Year; for the Words of this 

Branch are Versus Patronum et vice Prestonationem summi military. so that it he lose not his Pretention, the Collation of the Bishop is not material. 2 Inf. 365.

* This shall be accounted according to the very true time, as the same may be Lett. 2 Inf. 365.

2. In Quare Impedit, if Writ is awarded to the Bishop, who will not receive 

the Presence, this is a Contempt to the King, and the Plaintiff shall re-


3. Quare Impedit against the Bishop of N. and another Quare Impedit against 

J.T. of the same Church. The Bishop confess'd the Disturbance; and 

J.T. recovered the Title of the Plaintiff, and found for the Plaintiff, and 

the Value of the Church 40 Marks, and that the Church is full of the 

Preseiment of J.T. and the Bishop is Ordinary, and the 6 Months are 

paft. The Plaintiff pray'd Writ to the Bishop, and Value of the Church by 2 

Years; but per Thorp, You cannot have the Value of 2 Years and 

Write the Bishop. And because the Ordinary cannot have the Lape where 

he confesi the Disturbance, therefore it was awarded, That the Plaintiff 

shall have Writ to the Bishop, and Damages of Half a Year &c.


4. In Quare Impedit they were at Hife, and 'twas found, That Br. Quare 

at the Time when the Jury was charged the Church was void, and we 

the Time that they gave their Verdict it was full of the Preseiment of the 

Bishop by Lape; and the Plaintiff recovered Damages of 2 Years by J udg-


went and Damages for 2 Years, notwithstanding the Defendant alleg'd, That the Plaintiff had re-

covered Damages of Half a Year in another Quare Impedit against A.B. —— If the 6 Months pass reading 

the Writ, so that the Bishop prefers by Lape, now the Plaintiff cannot have the Preseiment, and yet the 

Writ is not above, but he shall recover in Damages; and therefore, to prevent this, it is usual to name the Ordinary in the Quare Impedit. Br. Quare Impedit, pl. 45; cit. 9 E. 4. 39. —— S.P. Br. 

Brief, pl. 220. cit. 9 E. 4. 39. Per Choke.
5. In Quare Impedit the Plaintiff recover'd, and if there be no other Disturbance but the Presentation of the King, who has receiv'd it, and there was no other Disturbance by the Incumbent, the Plaintiff shall not have Damages. Br. Damages, pl. 171. cites 44 E. 3. 35.

6. Quare Impedit by A. against 2. One made Title to have Turn, and the other the like ; and "Twas found, that it was the Turn of one Defendant, and likewise against the Plaintiff, and against the other Defendant; and by the bill of Opinion he shall have a Writ to the Bishop against both, and Damages against the Plaintiff and the other Defendant. But Brooke makes a Quare; for there is no Original between the 2 Defendants. Br. Damages, pl. 173. cites 43 E. 3. 3.

After the other, each may recover against the other. Contra of one of the Defendants against the other, and therefore shall have judgment against the Plaintiff only. But Finch Contra; and that the one Defendant shall have Attaint against the other. And Per Kirton, Where two Defendants are in Quare Impedit, and the one can have Title to bar the Plaintiff, there it shall not be inquired if the other be a Disturber or not. And in Quare Impedit against two, if the one comes and pleads to líne, the Issue shall be taken between the Plaintiff and him, tho' the other does not come; and if it be found for the Defendant against the Plaintiff, it shall not be inquired if Title made against the Plaintiff; but Finch deny'd it, and said that the one Issue shall not be taken against the other. And is in Ward upon Priority the one Issue shall lay the other etc. Br. Quare Impedit, pl. 53. cites S.C.

7. In Quare Impedit after 6 Months pass, "Twas awarded, That the Plaintiff should recover Damages for 2 Years as well against the Incumbent as against the Defendant, because both had counterpleaded the Plaintiff's Title and the Disturbance; and yet it did not appear, whether the Ordinary had presented by Lapie or not. Br. Damages, pl. 185. cites 45 E. 3. 15.

8. "Twas admitted, That in Seive facias in Nature of Quare Impedit upon Composition to present by Turn between Perceivers the Plaintiff shall recover the Pretenment and Damages. Br. Damages, pl. 36. cites 50 E. 3. 23.

9. In Quare Impedit the Plaintiff shall recover, and shall have a Writ to the Bishop, and Damages upon the Default of the Defendant after Appearance. Br. Damages, pl. 192. cites 2 H. 4. 1.

10. In Quare Impedit the Plaintiff made Title by the Hire in his Word, the Defendant made Title by Coparcenary to present by Turn; to which the Plaintiff said, That saving to him his Cousin at another Time that No Disturbance pass'd; Wherefore Hull awarded for the Defendant a Writ to the Bishop, and a Writ of Enquiry of Damages against the Plaintiff; for it does not lie in the Mouth of the Plaintiff to plead this Plea. Br. Brief de Enquire &c. pl. 12. cites 5 H. 5. 10.

11. In Quare Impedit, if one sues Execution of the greater Damages, he shall make Mention of all the Record. Per Prior. Br. Pleadings, pl. 51. cites 30 H. 6. 5.

12. In Quare Impedit the Bishop pray'd Damages. And Per Ailton, Danby, Newton and Forring, he shall recover Damages; But by others he shall not recover Damages, unless he can have Writ to the Bishop, which he cannot have. Br. Quare Impedit, pl. 83. cites 22 H. 6. 25.

And where Judgment is given, and Exequias, yet he shall make Mention of this also, tho' it be against him. Ibid.

13. If I present, and my Clerk is inducted, and J. N. brings Quare Impedit against me for this and after is nonsuit'd, I shall have Damages, and yet cannot have Writ to the Bishop. Br. Quare Impedit, pl. 83. cites 22 H. 6. 25. Per Ailton.

15. A Man may recover Damages for two Years in Quare Impedit, and yet the Church is not fill by the Bishop, for it was a Chantery by Creation, and without Care of Souls. Br. Damages, pl. 164. cites 13 E. 4. 3. C.

16. In Quare Impedit, if the Defendant pleads, that Ne disturba, the Plaintiff shall have Write to the Bishop immediately, and Write of Enquiry of Damages, and Judgment thereof after, per tot. Cur. except Brian. Br. Judgment, pl. 122. cites 13 E. 4. 7.

17. In Quare Impedit against three, the Plaintiff recovering by Default against one, and Judgment was, that he have Write to the Bishop, and Damages for half a Year, and Ceilct Exequio till it be try'd against the other Defendants; for otherwise this Execution against the one alone, shall abate the Write against the others; for he cannot recover the Presentation against the others when he has the Presentation by the first Judgment; as in Trespass against two, and it is tried against the one, and he takes Execution against him, the Write shall abate against the other. Br. Quare Impedit, pl. 137. cites 20 E. 4. 1. and 10 E. 4. 11. 13.

18. Where a Man has a Quare Impedit against one, and the Defendant has a Darerem Presentation against the Plaintiff, and recoverers in the Darerem Presentation, and the Plaintiff is Nonsuited in the Quare Impedit, the Defendant shall have two Writs to enquire of the Damages, but he shall not render double Damages for one Disturbance. F. N. B. 39. (D)

19. Damages for half a Year were adjudged, where it appeared that the Summons was not Devised within the 6 Months, and held good. D. 77. pl. 35. Mich. 6 E. 6. Henlow and Stanby v. Bishop of St. Alban and Keble.

20. In Quare Impedit the Jury found the Value of the Church only. The Omission of the other three Points may be supplied by Writ of Enquiry of Damages. D. 135. Marg. pl. 12. cites 10 Rep. 118. fol. 119.

And such a Precedent is in the Book of Entries, fol. 118. Et quod Lambertus et Robertus the Bishop relinquished his Damages, and had Judgment and Writ to the Bishop; Quod Nunt. D. 135. pl. 12. Mich. 5 & 4 P. & M. Popey v. Charleton and Charels. And the reason, why such Omissions in the finding by the Jury in a Quare Impedit may be supplied by a Writ of Inquiry of Damages, is, because as to the 4 Points to be inquired, no Answer lies of them; For as to them it is only an Impediment of Office. 12 Rep. 119. Mich. 10 Jac. per Cur. in Cheyne's Case cites 11 H. 42. 85.

21. The Patron Defendant died pending the Quare Impedit for a Presentation to a Prebend, yet the Plaintiff had Judgment to recover the Presentation and Damages to 10 l. only, and to remove the Incumbent and a Writ to the Bishop Ad Petitionem Querentis dirigendi. D. 194. pl. 33. Mich. 2 & 3 Eliz. Bishop Litchfield and Merrick's Cafe.

22. In Quare Impedit against the Archbishop, the Bishop of Lincoln, D 211. and one G. they all made Default at the Distrefs, and Judgment was given 28 Feb. 1707. Eliz. S. C. and the Incum-ent are supposed to be Disturbers; but the Plaintiff was compelled to make found that
23. Error of a Judgment in Quaere Impedite, the Judgment being for the Plaintiff, and the Value of the Church found to be 80 l. per Annum, a Writ of Error being brought of the Judgment before the Exigis Fac. and after the Record removed, and the Judgment being affirmed, and having depended a Year and more, the Defendant in Error should have Damages for a Year, during which Time the Writ of Error was depending according to the Value of the Church found by the Verdict, which was 80 l. per Annum, and they awarded him 80 l. besides Costs, according to the President in 6 Edw. 6. D. 77. Cro. Car. 145. Mich. 4. Car. pl. 24. Anon.

24. If upon a Writ of Error brought Judgment be affirmed, the Defendant in the Writ of Error shall have Damages; Per Whitlock J. Godb. 439. Trin. 5. Car. Earl of Pembroke v. Bottock.

25. In a Quaere Impedite there was a Dammerer and an Issue. The Plaintiff had a Verdict, and the Jury who tried the Issue found the Value of the Church, and that it is yet vacant, and taxed Damages for the half Year; and the Plaintiff had Judgment likewise upon the Dammerer. It was moved, that the Church being yet vacant, and that the Patron might have the Fruit of his Presentation, he ought not to recover Damages for the Value of the half Year; And the Prothonotaries said, that it is the constant Course, that the Plaintiff shall not recover Damages for the half Year where the Church remains void; And though the Jury tax Damages, yet in such Cases they enter a Remittitur of the Damages where the Church remains void, and so they would have done in this Case without troubling the Court, if the Parties had applied themselves to them. 3 Lev. 59. Trin. 34. Car. 2. B. Holt v.

26. In Quaere Impedite to present to the Vicarage of B. the Plaintiff set forth, that E. C. was seised of the Rectory of B. to which the said Vicarage belongs, and that the said E. C. presented one S. and then conveyed the Rectory to the Plaintiff F. and others Trusteess, and their Heirs, to the Use of the said E. C. and her Heirs, till Marriage had between Her and C. D. and after to the Use of the Plaintiff's for 500 Years, for raising 4000 l. &c. that the Marriage was had, and so the Plaintiff's presented &c. that the Vicarage became void by the Death of S. and so it belonged to them to present. The Bishop claimed nothing but as Ordinary. H. the Incumbent pleaded, that King James I. was seised of the said Rectory in Fee, and that it being void by the Death of L. he presented one Solbear, and so derived a Defect down to King William &c. abdque hoc, that E. C. was seised in Fee; there was Judgment against the Bishop, and the Plaintiffs took Issue upon the Traverse, which was tried at the Assizes at Exon, and the Plaintiffs had a Verdict; and the Jury further found, that the Vicarage was full of the Defendant H. Ex Pre-
(B. d. 22) Error. And Judgment reversed.

1. A certain Manor and Advowson Appellant had Issue B. and C. who died seised, and B. entered and enfeoffed M. his Mother of the 3d Part of the Manor, and the 3d Part of the Advowson to present by Town, and took S. to Wife, and demised two Parts of the Manor, and the Reversion of the 3d Part with his Part of the Advowson to D. who presented, and then D. relented to the Heirs of B. and to S. his Feme, all his Right. B. died, M. died, and the Church became void. S. to whom the Eftate was made for Life, ut supra, presented, and T. the Son of W. the Discontinuer, disturbed, and brought Affile or Darrein Prefentment against S. and recovered, and S. brought Writ of Error; and because the two Parts of the Advowson which remained Appellant may lie in Discontinuance by Demife of two Acres with the Advowson, yet the 3d Part of the Advowson which the Tenant in Dower had, which remained in Reversion and lies in Grant, this does not lie in Discontinuance, and therefore the Grant of B. was not good of this but during his Life, and therefore, because the Baron had two Prefentments, this 3d Prefentment belonged to M. if the had been alive, and now by her Death it belongs to S. to whom it was re-granted for Life, and therefore the Judgment erroneous which was given against S. For by the Death of B. his Baron, his Grant was void; wherefore it was awarded, that the first Judgment be reversed, and that S. have a Writ to the Bishop, and that the re-have for Damages left by the first Judgment and of the Damages after the first Judgment the Court took Advancement; and there it was agreed, that though a Man be non-suited in Writ of Error, he may have another Writ of Error. Br. Error, pl. 121. cites 23 Alis. 8.

2. In Quare Impedit, the Defendant appeared by Attorney who had no Warrant, and Writ was awarded to the Bishop for the Defendant, because the Plaintiff was demanded and did not come; and because it was perceived afterwards that the Defendant's Attorney had no Warrant, the Judgment and Execution were repealed, and Writ of Repeal awarded to the Bishop, and the Defendant's Attorney committed to Prison till they should consider further what to do with him. Br. Imprisonment, pl. 16. cites 38 Eliz. 8.

3. Error; the Proovt of C. brought Qua. Imp. against J. H. and counted, that the Advowson was Appellant to his Manor of D. and shewed a Presentation in himself, by which his Clerk was instituted and instituted &c. J. H. said, that one J. was Master of the Hospital of G. and was seised of the Advowson as in Grofs in Right of the House, and presented one P. who was instituted &c. and the Master died, and M. was made Master, which M. and his Confreres presented the said J. H. now Defendant; and

See (B. d. 19) pl. 4. Br. Preffentation, pl. 38. cites S. C.
the Plaintiff said, that the said J. Master, and the said J. H. Defendant, are one and the same Person, and not diverge; upon which they demurred, and the Provost Plaintiff had Judgment to recover in C. B. And the Defendant brought Writ of Error, and affirmed, because he brought. Quare Impedit to be without Pecus, and therefore ought to have Writ of Right of Advolucon, and he laid further, that no Patron is named in the Writ; and also, that by the Assertment that the said J. H. and J. the Master are one and the same Person, and that the Master and Converes professed the Master, he has by this confessed no Patron to be named &c. Br. Error, pl. 83. cites 14 H. 8. 2.

4. The Plaintiff had a Verdict in a Quare Impedit against the Ordinary and the Incumbent, and a Writ awarded to the Metropolitan, and a Fieri Facias to the Sheriff. Writ of Error was brought; and one of the Errors aligned was, that Damages were given for Half a Year, when it appears that the Nonjnnovm was not deriv'd within the six Months; but the first Judgment was affirmed. D. 735. b. pl. 34. Mich. 6 E. 6. Henlow and Stanoby v. Bishop of Sarum, and Keble.

5. A. recovers in a Quare Impedit against the Bishop and Incumbent by Verdict, and has Judgment before the Judges of Alliue, and Nili Prius by the Statue of Wgf. 2. 20. A. has a Writ to the Metropolitan, Qua Episcopas eit pars, the Church is in the Diocese of the Bishop Defendant; the Bishop and Incumbent bring a Writ of Error directed to the Ch. J. of C. B. to reverse the Judgment given there, whereas it was not given there; yet the Writ was good, for there is another Form, and the Original was returnable in C. B. and the Court, Plea and Alliue, and Venire facias for the Trial, are there. And this is not like a Judgment in an Alliue, and a Writ of Error brought upon it; for there the Original, and Proces and Verdict, are all before the Justices of Alliue. And in such Case a special Writ of Error is framed, and this Judgment in Alliue can only be reversed in the King's Bench; and so it is of a Judgment given by Justices of Nili Prius. Jenk. 256. pl. 36.

6. In a Quare Impedit by the Queen against the Bishop of Gloucester &c. and one S. the Bishop pleaded that he claimed nothing but as Ordinary; and the Queen recover'd; afterwards the Bishop and S. joined in a Writ of Error. It was intimated that they ought not to join in this Writ, because the Bishop had disclaimed the Patronage; and the Conclusion of the Writ was, Ad grace damnun Episcopo, which cannot be; for the Bishop cannot be griev'd by the Judgment, when he neither had or claimed any Thing in the Church. Wray said that it had better been left out, but that the Bishop shall join for Conformity and for Purity of Record; and the Plea of the Bishop is not so strong as a Disclaimer; for in Disclaimer the Judgment is, That the Plaintiff take nothing by the Writ, whereas here it is quad quenes recuperet Prafentationem faun verius dictum Episcopum ad Ecclesiam predictam. And afterwards the Writ of Error was awarded good. 3 Le. 176. pl. 29. Trin. 29 Eliz. The Queen v. The Bishop of Gloucester, by Name of Bishop of Gloucester and Savacres, to the Archbishop for Admission and Institution, and so he has Loss, and therefore may join. —Cro. J. 94 in Case of Lancaster and Lowe, was cited the Case of Jones v. Dixon, where Jones and the Archbishop of York sued a Writ of Error of a Judgment against them, and Jones only affig'd the Errors, and therefore held to be ill. —If the Bishop and Defendant join in bringing a Writ of Error, the Bishop, unless summo'd and sever'd, must join in the affixing them. Cro. J. 94 Lancaster v. Lowe.

If a Quare Impedit be brought against a Bishop and others, and Judgment be against them all, the Defendants must all join in a Writ of Error, unless where the Bishop claims only as Ordinary. 5 Met. 134. in Case of Hacket v. Herne.

Nov. 66, S. C. 7. The Queen had Judgment in Quare Impedit, by Reason of Lupus; but not S. P. Error was brought, but the Incumbent was summo'd and sever'd; and after Judge-
Presentation.

Judgment was revers'd at the Suit of the Heir and Executor, (being the same Person) and as Heir and Executor. It was said that the Incumbent might well enter, for by the Reversal there is no Record of the Recovery against him. Cro. E. 324. Patch. 36 Eliz. Pipe &c. v. the Queen. 8. In Error to reverse a Judgment in a Quare Impedit it was alleged. It. That a Stranger was palled for Years, and devised it to the Plaintiff, and that he had it by the Act of the Executor, but did not for Virtue Legitimate prid. 2dly. He states not how the Church became void, either by the Death or Deprivation of the Incumbent, nor for what Cause; and it might be such a Cause for which the Queen should have the Presentation as for Simony &c. 3dly. Because the Value of the Church is found to be 40 l. per Annum, And the Judgment is, Quod recuperaer Damnum, viz. Mediation deh. Valoris della Ecclesie per Domino unius Anni, que fo attingant ad 20 l. which is not according to the Precedents. But the Court being full, the Judgment was affirmed. Cro. E. 678. Trin. 41 Eliz. B. R. Bishop of Gloucester v. Veale. 9. Judgment was given against Dr. Harris in a Quare Impedit in C. B. 2 Build. 56. who brought a Writ of Error in B. R. and the Error alleged was, for S. C. and 58. that Allen the Defendant in the original Action had pleaded in Bar, that one Peaking was Incumbent, and that the Church became void by his Deposition (but no Time spoken when he was deprived) and that Queen Mary presented one Wood Usumpendo on the rightfull Patron, who was in for six Months &c. The Plaintiff replied, That after Wood was presented by the Queen, the Earl of Pembroke, who had purchased the Advowson before, brought a Quare Impedit against the Ordinary and the Incumbent; to which the Ordinary pleaded, That he claim'd nothing but as Ordinary, and the Defendant's Attorney pleaded Non sum Infirmatus, by which he recover'd, and the Incumbent Legitimo modo amatus fuit, and it doth not appear whether this Quare Impedit was brought within 6 Months after Wood was presented: It was intimated that this Plea should be taken strongest against the Pleader, and therefore the Quare Impedit shall be intended to be brought within 6 Months; for otherwise the Incumbent could not be Legitimo modo amatus: And the Judges being of this Opinion, the Judgment was affirmed. 1 Roll. Rep. 210. Trin. 13 Jac. B. R. Harris v. Allen. 13. Judgment was in Quare Impedit, and the same Term a Writ of Error was delivered to the same Court, before a Writ to the Bishop was awarded to admit the Clerk. Per tor. Cur. The Writ of Error ought to have been allowed without any other Superfedeas, because a Writ of Error is a Superfedeas in itsl. Godb. 439. Trin. 5 Car. Earl of Pembroke v. Bottoc. 11. In Error brought upon a Judgment in Quare Impedit given in Ireland, it was intimated that the Plaintiff must set forth both Seifin and Vacancy, but that here he had fail'd in both. For 1st As to the Seifin the Declaration stands thus, Seifitus fuit & in advertisement Ecclesie; here the (E) couples nothing, and Seifitus refers to nothing, 2dly. Vacancy; the Record is thus, Ecclesie praedit. vacavit per effesman &c. Now this is pleading a Consequence without setting forth the Act, of which this is a Consequence; it ought to have been pleaded thus, that the Parish was made a Bishop, or advanced to a Living incompatible &c. as the Fact was, Per quod Ecclesie praedit. vacavit. Third Exception taken to the Record was, That the Conclusion was, Et loc paratus eft verificare, instead of Inde product fallem, and so no Suit before the Court, and that this is not mere Matter of Form. But it was anwered that the Word (Et) may be left out or transposed thus, Et de Feodo & de Jure. And as to the Vacancy and the Paratus Verificare, Advantage might possibly have been taken of them by Demurrer, which Advantage is lost by taking Hufe. Per Cur. The Objection of the Seifin is the strongest, for it is Nofsenha at prent, and every Thing may be cured by Leaving out and putting
Presentation.

putting in. Possibly in Transcribing the Record (de) was omitted; and if the fact be so, it may be felt right by a Certiorari; De & in advoca-
tione would be well. As to the omission of the inde product fecon-
tam, this would have excused the Defendant in not anwering; but in fact he has answered it. And as to the objection about pleading the Vacan-
cy, it ought to have been pleaded as above objected that it ought to be,
but the vacancy is admitted by pleading a presentation under it. Adjourn-
tur. 7. Mod. 308 &c. Patch. 1 Geo. B. R. The King v. the Bishop of Meath.


1. In Quare Impedit by the King against the Patron be recovered, and after confirmed the estate of the Incumbent of the Defendant, and then the King had seire facias upon this judgment against the Patron; he can't plead this Confirmation made to the Incumbent, for the Incumbent had nothing in the Patronage. Br. Barre, pl. 96. cites 9 E. 3.

2. Where the King seizes the temporalities of a Bishop by judgment; and a precedent annex'd voids, the King shall have seire facias of the presentation, and shall have execution; quod nota. Br. Quare Impedit, pl. 71. cites 21 E. 3. 29.

3. A Man had proximam presentationem by Grant; the Church voided; a Stranger presented, and the Grantee brought Quare Impedit, and recov-
er'd, and had Writ to the Bishop, who returned that the presence of the Disturber refus'd, and another is in, and upon this the Plaintiff had seire facias to have execution, notwithstanding that it be a second avoidance now, because be recovered the first avoidance, and the Covin of the Defendant shall not prejudice the Plaintiff. Br. Presentation, pl. 33. cites 21 H. 7. 3.

4. Where partition is made betwixt coparceners, by license of the King, of an advowson in a court of record, as in the common pleas, and afterwards the Coparcener who hath the next Turn dieth, her heir within age, and in ward to the King, and the Church voids, the King shall have a seire facias against the other Coparcener &c. upon that partition; and yet he was a stranger to the partition. F. N. B. 34. (H.)

5. If 2 Coparceners make partition to present by turns, although that one of the Coparceners afterwards steps upon the other Coparcener, and presents in her turn, that partition shall not put her out of possession, but the shall have her turn when it falls again, and shall have a Quare Impedit or a seire facias upon the composition, if it be upon record, if the be disturbed to present &c. F. N. B. 34. (L)

6. Where a Man doth recover in a Writ of Right of Advowson, he shall present at the next avoidance, and shall have a Quare Impedit, without alleging any presentment to himself or his ancestors, but shall declare upon the record, or may have a seire facias upon the recovery, and so may his heir have a seire facias upon that recovery, against the heir of the other party, at the next avoidance after the recovery, but not after, as it seemeth. F. N. B. 36. (A.)

7. [50]
7. [5o] if a Man recover in Quare Impedit, he shall have a Scire facies [b] in the against the Patron and the Incumbent who made it, if he will sue Execution of this Recovery. F. N. B. 36. (B.)

Scire facies against the Heir at the next Avoidance. 59 E. 3. 25. But the Heir shall not have a Scire facies [c] in a Recovery in a Quare Impedit. 9 H. 6. 57. because in the Quare Impedit the Pretentment only is recoverable, and not the Adwortion.

8. If Coparceners make Partition in the Chancery, or in C. B. to present by the Tenant, and afterwards a Stranger intersteps in their several Turnus; yet after their Turnus come, every of them may have a Scire facies upon this Partition against the Stranger, when his Turn cometh, to know whereto he should not present, notwithstanding the Usurpation aforesaid. But other 55 E. 3. wife it feemeth it is if the Partition be of Record, then they shall be put Quare Impedit to their Writ of Right by Reason of the Usurpation. F. N. B. 36. (c) which seems not to be law; for there it was brought against an Efranger, and held, That tho' by such Usurpation he put the one Coparcener (whole Turn it was) out of Possession, yet it did not put the other out of Possession. 45 E. 5. 15. 22 E. 4. 9.

(C. D.)

Affise of Darrein Pretentment. Who shall have Sec (N. C.) it without any Pretentment before.

1. If a Tenant by Service of Chivalry presents and dies, his Heir in Ward, during which Wardship the Church voids, the Guardian in Chivalry may well maintain this Writ of Darrein Pretentment if he be defended, tho' he himself never presented before. 32 E. 1. 89. Admitted. Contra 50 E. 3. 14. Per dolt.

2. The same Law of the Grantee of the Ward, for he may maintain this Writ. 32 E. 1. 89. Admitted.

3. 13 E. 1. cap. 5. Enacts, That as often as any, having no Right, dies, Tenant for project during the Time that Heirs are in Ward, or during the Estates of Tenants in Dower, by the Courtey, or otherwise for Term of Life, or * of Years, or + in Tail, * at the next Avoidance, when the Heir is come to full and Granted Age, or when, after the Death of the Tenants before named, the Adwerson shall revert unto the Heir, being of full Age, he shall have such Action || by Writ of Adwerson Poffeffory, ** as the last Ancestor of such an Heir should have had the last Avoidance happening in his Time, being of full Age before and Meaning his Death, or before the Demise was made for Term of Life, or in Fee Tail, as before is said.

1 Tenant in Tail was of a Manor, whereinunto an Adwerson was appendant, and before this Statute an Efranger usurped, and then the Stat. of Denis Condid and this Act was made Tenant in Tail dies, and the Manor descends to his Issue; yet the Heir in Tail hath no Remedy, because the Adwerson was fevered by the Usurpation; and his Act extends not to Usurpation before this Act. 2 Inf. 550.

But if Tenant in Tail fail under an Usurpation after this Act, and death, his Issue shall have Remedy by Quare Impedit within the Purview of this Statute. 2 Inf. 550.

2 Note, Albeit the Heir hath the Adwerson by Defent, yet if he fullereath an Usurpation he hath no Remedy by this Act until after he cometh of full Age; this is to be intended when the Heir is in ward, for so this Act putteth the Cate; but if the Heir be out of Ward, he may have his Quare Impedit or his Affise of Darreins Pretentment during his Minority. 2 Inf. 550.

3 This is by a Quare Impedit or Affise of Darrein Pretentment. 2 Inf. 559.

** Then put Case, That one Person hath an Adwerson in Fee, and death before any Pretentment made by him, and this defends to his Heir until Age, the Church becomes void; if the Heir be in Ward the Heir may have his Quare Impedit at full Age; and if he be within Age, and out of Ward, he may have his Quare Impedit, and count of a Pretentment made by him of whom the Purchase was made; but he can have no Writ of Right of Adwerson, because neither his Ancestor nor he never presented. 2 Inf. 559.

4 Note, It is not said here Qualem habebat, but Qualem habet, as the Ancestor should have had it the Church became void in his Time, and his Title to present had accrued unto him; for there the Right, or at least the Possibility of Action eth defend. 2 Inf. 559.

One seized of an Adwerson in Fee, pretends to the Church being void, and grants the same to A. for Life, and after grants the Restorson to K. and his Heirs; A. Tenant for Life suferreth an Usurpation to the Church, the Heirs of K. having the Right of this Adwerson by Defent, shall, after the Death of A. the Church becoming void, present, and yet K. could not have had a Quare Impedit; but if A. had died before the Usurpation, then might K. have had a Quare Impedit, and therefore his Heir shall have at the
4. A Man shall have Affile of Darrein Prefentment, the he nor his An-
cessors did present to the left Avoidance; As if the Tenant for Life, or for
Years, or in Dover, or by the Cartes, suffers an Ufurpation unto a Church
&c., and dies, be in the Reversion, who is Heir unto the Ancestor who last
preferred, shall have an Affile of Darrein Prefentment, if he be disturbed.
F. N. B. 31. (G)

5. But if a Man presents, and then grants the Advowfon unto another
for Life, and be sufferers one Ufurpation, or 2 or 3 Ufurpations, now at the
next Avoidance he in the Reversion shall not have an Affile of Darrein
Prefentment, if he be disturbed to present; And that appeareth by the
Statute of Weftmonfer 2. cap. 5. That the Remedy of the Statute is given
for the Heir of him who made the Demife, who is in Reversion, and not
for the Leffer himself. F. N. B. 31. (G) cites 18 E. 2. pl. 20. 6 E. 3. 41.

6. If the Affile finds that Tenant by the Cartes, or Tenant in Dover
was the left who presented, by that the Heir shall have a Writ to the
Bishop, and yet he cannot make Title by that Prefentment. Contra, in a
Quare Impedit. And Seton gives the Reafon, becaufe he cannot convey
by them; But if the Heir do not allege the left Prefentment in herfelf, and
the Affile be to her by Default, and found at Supra, yet the Heir fhall
recover. Contra, If they be at Ilufie upon that Prefentment. F. N. B.
31. (G) The Note in the Margin.

7. If a Man uffurs upon an Infant, and presents which Infant hath the
Advowfon by Deferit; and afterwards the Incumbent dies, the Infant shall
prefent; and if he be disturbed, he shall have an Affile of Darrein
Prefentment. F. N. B. 31. (K) [according to the new Edition, but in the
old Editions it is (I) 8. 4.]

But if the In-
fant furfurf the
Advowfon
and present,
and after-
ward the
Church be-
comes void, and a Stranger presents and uffurs upon the Infant, and then the Incumbent dies, the In-
fant presents, and is disturbed by a Stranger, he fhall nor have a Darrein Prefentment, but fhall be put
to his Writ of Right. F. N. B. 31. (K) [according to the new Edition, but in the old Editions it is
(I) 8. 4)

(D. d) Who shall have it after Prefentment.

1. If a Guardian in Chivalry prefers, and after the Church binds,
hhe fhall have an Affile of Darrein Prefentment if he be disturbed.

2. So a Leifee for Years shall have this Writ if he has presented

3. So a Tenant at Will, after he has once presented, shall have this

4. If the King's Patentee of an Advowfon presents twice to the fame Ad-
vowfon, and his Clerk is instituted and induted, tho' the Patent is void in
Law, to that the Advowfon does not pass thereby, yet the Patentee has
Presentation.

so gain’d the Advwson by Usurpation against all Strangers, That if he be

in Wilt- D.

fiffir’d at the next Avoidance, he may maintain an Affid of Darrein

Prestentment against a Stranger that has no Title to it. Watf. Comp. Inc.

8vo. 222. cap. 13, cites Dyer 351. 18 Eliz.

(E. d) Affid of Darrein Prestentment. [In what Cases

it lies. Estate altered.] (Fol. 381.

1. He who will have this Writ ought to have the same Estate, or Watf. Comp.

Parcel of the same Estate which he had at the Time of the first

Prestentment.

2. If a Man being Tenant Pur auter vie of an Advwson presents,

and after his Estate is enlarged for his own Life; and after the Church

voids again, he shall not maintain an Affid of Darrein Prestentment

upon the said Prestentment, because it is not the same Estate nor any

Parcel of the Estate upon which the first Prestentment was, but a


in the Life of his Wife, who was settled in fee. Kellw. 118. b. —— See pl. 13.

3. So it is if Lefsee for Years of an Advwson presents, and after

his Estate is enlarged for Life or in Fee, and then the Church voids,

he shall not have Affid of Darrein Prestentment, because he has a new

Estate by Enlargement.

4. The same Law if Lefsee at Will presents, and after his Estate

is enlarged for Life or Years, and is more lengthy; for he

could not have this Writ upon the first Estate.

5. If Lefsee for Life of an Advwson upon Condition to have Fee

presents, and after the Fee accrues, and then the Church voids, it

seems that he shall have this Writ, because Parcel of the old

Estate continues, and he had the Possibility of Accrue at the time

of the first Prestentment.

6. If Lefsee for Years of an Advwson presents, and after the Term Watf. Comp.

incurs, and he takes a new Lease for Years of the Advwson, it

seems clearly that he shall not have this Writ, because he is in of

other Estate than that upon which the first Prestentment was made.

7. If the Grantee of a next Avoidance presents, and after purchases Watf. Comp.

the Advwson, and after the Church voids, he shall not have this

Writ, because this is merely a new Estate, and no Parcel of the Es-

tate upon which the first Prestentment was.

8. So if Lefsee for Years, or Pur auter vie presents, and after Watf. Comp.
purchases the Reversion, and then the Years expire, or Ceify que Vie Inc. Svo.
dies, and afterwards the Church voids, he shall not have this Writ, 431 cap. 22,
because he is in of other Estate.

9. So shall it be, though the Church voids during the Years, or if Watf. Comp.
rings the Life of Ceify que Vie. For the first Estate is extant by his

own Act, and therefore he shall not have any Benefit of the first Es-
tate.

10. If two Jointennants for Years, Life, or in Fee present, and Watf. Comp.
then one dies, and after the Church voids, the Survivor shall have

this Writ, because he has the same Estate which he had upon the

first Prestentment.
Preseentation.

11. If Tenant in Fee or in Tail of an Advowson upon Condition to have for Life or Years presents, and after his Estate decreases, he shall have this Writ when the Church voids again, because he has Part of the old Estate.

12. So if Tenant in Tail presents, and after becomes Tenant after Possibility, and after the Church voids, he shall have this Writ, because this is a Remnant of the Tail.

13. If the Baron settled in Right of his Feme of an Advowson presents, and after has Issue, and Feme dies, and after the Church voids, the Baron shall not have this Writ, because he is in other Estate than that upon which he presented before; for before he had not any Estate, but was only settled in Right of the Feme, and now he is settled of an Estate for Life, Subject to. left uncertain temporis. 118. b. cites Kitchin (but it seems it should be Kelw.) 118. that in this Case the Husband shall have Allife No. But the Case seems to be only the Arguments on either Side.

14. But if the Baron after Issue had, had presented, and after the Feme dies, and afterwards the Church voids, the Baron shall have this Writ, because he had an * Inception of an Estate for Life by the Court at the first Presentment, which is now completed.

15. If a Feme be Lefsee for Life, the Remainder for Life to the Baron, of an Advowson, and the Baron presents, and after the Feme dies, it seems that the Baron shall not have Writ when the Church voids again; because before, he presented in the Right of the Feme by reason of her Estate for Life, and now he is settled of another Estate.

16. If the Husband and Wife present to an Advowson in the Right of the Wife, which is appertinent to the Manor of the Wife's, and after the Husband alienates the Acre, Parcel of the Manor, with the Advowson in Fee to a Stranger, and dies, and the Stranger presents, and alienates the Acre to another in Fee, facing the Advowson to himself; and then the Church voids, the Wife shall present; and if the be disturbed, the shall have an Allise of Darrein Preseentment; because the Advowson was severed from the Acre; but if the Advowson were appertinent to the Acre, then the Wife ought to recover the Acre before the present to the Advowson. F. N. B. 31. (K) S. 2. [according to the new Edition, but in the old Editions it is (L) S. 5.]

17. Wherever a Man may have Allise of Darrein Presentment, he may have a Quare Impedita, but not e contra. Godolph. Rep. 643. cap. 44. S. 1. cites Terms of Law, Verb. Quare Impedita.

(F. d) What shall be good Preseentment to maintain it.

1. If J. S. presents in my Name, and by my Affent, and after the Church voids, this is a sufficient Presentment for me to have an Allise of Darrein Presentment against J. S. for this was my Presentment. Tr. 5. E. 1. b. Rot. 25. adjudged.

2. Where the the King or the Pope presents to my Advowson without Title, I shall have Allise of Darrein Presentment. Br. Darrein Preseentment, pl. 4. cites 3 H. 7. 7. So if a Man presents unto an Advowson unto which he hath Right, and afterwards the Incumbent dies, and a Stranger presents, and presents unto this Advowson in the Time of War; and after that Incumbent dies; Now, if he who hath Right presents again, and be disturbed, he shall have an Allise of Darrein Presentment, and this Presentment made in Time of War by the Stranger, shall not grieve him. F. N. B. 31. (I)
(G. d) In what Cases the Presentment. Of one shall be of others.

1. A Presentment by the Grandfather is sufficient for the Son to maintain this Writ without any Presentment by himself, this being the last Presentment. Tr. 5. C. 1. b. Rot. 25.

2. If a Tenant by Service of Chivalry presents and dies, his heir in Ward, during which Wardship the Church voids, the Guardian in Chivalry may well maintain this Writ if he be disturbed, tho' he himself never presented before. 32. E. 1. 89. Admitted.

3. The same Law of the Grantee of the Ward; for he may maintain this Writ. 32. E. 1. 89. Admitted.

4. An Heir who comes in by Defeunt shall maintain this Writ upon a Presentment made by any Ancestor, Britton, fol. 242. b.

(H. d) Affile of Darrein Presentment. What Person shall have it.

1. Tenant in Fee of an Advowson may have this Writ without Doubt.

2. Tenant in Tail of an Advowson may have this Writ as well as Tenant in Fee thereof, and is not necessarily put to his Quare Impedit. * 46. All. 4. Adjudged.

Affile of Darrein Presentment was brought by the Heir in Tail, who claimed it as appendant to a Manor. Cheere said, he claims in Tail, therefore he ought to have Quare Impedit, and not this Action. But per F. G. he may have the one or the other, therefore Anwer. Quare Impedit. And yet the Heir in Tail shall not have Affile of Mortadcellor, but Formedon, as appears in Formedon in F. N. B. and elsewhere. Br Darrein Presentment, pl. 1. cites 46. All. 4. Br. Quare Impedit, pl. 143. cites S. C.

3. Lessee for Years shall have this Writ, if he has presented before, the he has not a Frankenstein; for this Affile is not like to an Affile of Novel Dilectum. Fitz. Ns. 31. 3. Contra Bell. incerti Temperis 118. b.

4. Guardian in Chivalry shall have this Writ, if he has presented before. Fitz. Ns. 31. 3. 22. E. 1. 89.
Presentment.

* Upon this Branch, two Conclusions are to be observed, first, which do present, and after the Death of such Tenants the very Heir is disabled to present when the Church is void.

It is provided, That from henceforth it shall be in the Election of the Party disturbed, whether he will sue a Writ of Quare Impedit, or of Dar- rein Presentment; The same shall be observed in Advowson demised for Term of Life of Years, or in Fee-Tail.

For on this Writ the Advowson shall be recovered; But in Quare Impedit nothing shall be recovered but the Presentment or Damages; and if in Quare Impedit brought by the Patron alone, a Writ should be awarded to the Bishop against him, it would not bind the Feme, who is not Party. Br. Quare Impedit, pl. 41. cites 50 E. 5. 15.

S. P. Jenk. 7. The King may maintain an Affisle of Darrein Presentment. F. N. B. 1. pl. 1. For the Presentment only it is to be recovered. Understand that the King may maintain this Writ of any other Church, but not of a Prebend. Jenk. 1. pl. 1.

F. N. B. 8. Affisle of Darrein Presentment doth not lie for one Coparcener against the other, as appeareth M. 20. E. 3. & M. 15. E. 3. pl. 10. F. N. B. 2. Dar. Presentment 11 & 15. but says they seem to make a Difference, when the Disturbance is before the Communion to present by Turn, and when after.

* Both the Translations leave out the Word (Not) but it is in the French Original.

9. If a Parson be Patron of a Vicarage, and the Vicarage voids, and a Stranger presents, the Parson shall have a Quare Impedit, or Darrein Presentment; But if the Six Months pafs, he shall * not have a Writ of Right of Advowson; because that Writ is given only for him who hath the entire Fee and Right in him, and the Parson hath not the same; For the Right is in the Patron and Ordinary. F. N. B. 49 (K)


1. This Writ is all in the Possession, and the Presentment is the Possession. 21 E. 4. 2.


(K. d)
(K. d) What will be sufficient Seisin to maintain it.

1. In Vitiation of his Clerk without Indictment is sufficient to maintain this Writ. 38 H. 6. 16 b.

2. Where the King or the Pope presents to my Advowson without Title, I shall have Affidavit of Darrein Prefentment against the Incumbent alone without naming the King or the Pope; For Process cannot be made against either of them. Br. Darrein Prefentment, pl. 4. cites 3 H. 7. 7.

3. If a Man presents to an Advowson, and afterwards the Patron resigns or is depos'd, and the Patron presents again, and is disturbed, he shall have an Affidavit of Darrein Prefentment; and the Form of the Writ shall be Quis Advowson tempore Patris presentatus ultimum Personam, qui mortua est ad Ecclesiam &c. although he reign and be living. And the Form of the Writ is to suppoze, that the Defendant does defince him of the Advowson, and yet by his Count he counts, that he or his Ancestors last pre- sented to the Advowson, by which he does suppoze that he is in Possession of the Advowson; and yet the same is good. F. N. B. 31. (H)

4. If one Defendant in a Darrein Prefentment dies, the Writ is good by the Survivor against the other. F. N. B. 32. (B)

5. If a Disturber present to an Advowson, and the Patron bring an Affidavit of Darrein Prefentment, and pending the Writ, the Incumbent dies, if the Disturber presents another Incumbent and dies, yet the Patron shall have an Affidavit of Darrein Prefentment upon the 18. Disturbance against the Heir of the Disturber by Journey's Accounts; and so if the Disturber presents two or three times within the 6 Months, the very Patron shall have an Affidavit of Darrein Prefentment upon the first Disturbance. F. N. B. 32. (C)

6. A Man shall not tender a * Demy-mark against the King to enquire of the Seisin alleged in the King's Count or Declaration, as he shall in Cafe a Common Person brings the Writ; neither shall a Man have final Judgment against the King, although it be after the Mife joined betwixt the King and the Tenant. F. N. B. 31. (D)

7. In Darrein Prefentment it was pleaded in Abatement of the Writ, that the same Plaintiff had brought a Quare Impedit for the same Church against the same Defendants, which Writ was * returned, and that they did appear to defend it. The Court held the Plea good in Abatement of the Writ; For the Quare Impedit is a Writ of a higher Nature, it being for the Right and the Possession. And the Statute of W. cap. 5. says, It may be in the Election of one, whether he will have an Affidavit of Darrein Prefentment or Quare Impedit, and therefore he cannot have them both. Shrewsbur
Presentation.

---Brownl, both. And the Court awarded, that the Affile abate. Hutt. 3. 4 Mich.


So where Affile of Darrein Presentment was by Default against the Clerk, and the other Tenant pleded in Atestement of the Affile, that there was a Quare Impedi depending, the Plea was adjudged good, Brownl. 28. Trin. 12 Jac. Lovelace v. Lady Speaker.---- * Warburton J. cited to E. 5. Statham in Darrein Presentment 5. that it was urg'd by Hauk and Hill, that the Quare Impedi was not depending till Defendant had appeared. Hutt. 4, but the Book says, Vide 2 E. 4. fol. that it is depending when it is returned.


Ibid. 530. Cap. 28. cites S. C. ---

8. If Darrein Presentment be brought in Middlesex, at the Return of the Writ the Affile shall be there arraignd by the Serjeants at the Bar in French, and the Tenant shall be demanded, and if the Tenant do not appear, when he is demanded, a Re-summons shall be awarded, and if upon the Re-summons the Tenant shall not appear, the Affile shall be taken against him by Default; and if the Tenant appear, he may demand Oyer of the Writ and the Return, and the Writ shall be read to him in haste, and the Return thereof, and the Jury shall have the View, and the Tenant may take Exception either to the Writ or to the Return thereof, if there be Caufe; and if there be no Caufe, then may he pray a Day to plead; and if the Court give a Day, then the Jurors that appeared shall be discharged of their Attendance, and ought to appear upon a New Proces to be awarded against them. The Judgment in this Affile is to recover the * Presentation, Damages, and the Value for half a Year, and it 6 Months be pulld, the Value of the Church for 2 Years, by the Statute of Welfminster the 2d. and 6 of the Jury ought to have the View of the Church, to the Intent that they may put the Plaintiff in possesion if he recover; and in this Writ the Plaintiff shall not recover the Advowson but the Presentation. The Proces in this Writ is Summons, Re-summons against the Tenant, and Summons, Habeas Corpus and Disfrefs against the Jury, and the Proces shall be returned from 15 Days, to 15 Days, and no Eseigne nor Voucher lies after a Re-summons. Brownl. 160.

9. The Declaration in Affile of Darrein Presentment was Quod ipse Presentavit, without sayng Ad eandem Ecclesiam. Upon Error brought it was adjudged well enough; For it cannot have any other Intendment than that he presented to the same Church mentioned in the Plaint, And the Words after (Quod Admissitis &c. juit in eadem) refer to the Church mentioned in the Plaint, and therefore it was held good enough, and so affirmed a Judgment given in the Grand Sessions in Wales. Cro. C. 341. 348. Hill. 9 Car. B. R. Court v. Bishop of St. David’s, Owen, and Pritchard.

(K. d. 3) Verdict. Good, in Darrein Presentment.

It shall be intended, that it was well brought, and that there was no Pleinarity before the Writ purchased, unless it be.

1. IN Darrein Presentment Verdict found the Issue for the Plaintiff, and that the Church was juit of P. the Defendant, Per tempus semel et Mofo Pretentivum, and liewed not. When or how long it was void, so as it might appear to the Court; and it was objected, that this might be a long time before the Writ brought. But all the Court delivered their Opinions feriatim that the Verdict is good, and that it is not necessary to find When. But the Jury having found, Quod tempus semel et Mofo transtvivit, the Mofo transtvivit shall be intended that the 6 Months passed bang the Writ, which is the only Thing inquirable in respect of the Da-
(L. d) **Right of Advowson. Of what Thing.**

1. **Right of Advowson lies of an Appropriation.** A 44 E. 3. 34.

2. **The King brought Writ of Right of Advowson of the 4th. Part In Right of the Church of St. Dunstan in L. The Defendant put himself in Inquest in heu of Grand Aisle; for Pole, upon Grand Aisle Nili Prius is not grantable; Quod Nota.** Br. Droit de recto, pl. 14. cites 24 E. 3. 23. S. P. F. N. B. 50; (G) — But one shall not have a Writ of Right of Advowson of the Tithes of a Cure of Land, because it does not thereby appear, whether it be of the Value of the 4th Part of the Church. F. N. B. 50; (G) in the new Notes there (a) cites 18 E. 2. Brief 825.

3. **Writ of Right lies well of the * Moiety of an Advowson of a Church,*** S. P. Where or of a 3d or 4th Part thereof; and yet an Advowson is entire. Br. Brief, a Man claims to have Pay Simple in the Advowson. F. N. B. 50; (G) — S. P. Br. Quare Impedit, pl. 10. cites 55 H. 6. 11. Where two Advowsons in one Church are conflated into one Church, there each shall have Writ of Right De Advocacione Medietatis Ecclesiae; for now they are two Advowsons, and yet but one Church, where they were two before. Br. Quare Impedit, pl. 10. cites 53 H. 6. 11.

4. **Writ of Right quod reddat Advocacionem of the Tithes of 4 Acres, or of one Acre, and the like,** was at Common Law, and therefore the Statute was made, that Writ of Right of Tithes should not be granted of Jef Part than of the 4th Part of the Tithes. And so Precipite quod reddat Advocacionem Decimorum quarum Partis, tertiae Partis &c. Per Markham. Br. Prohibition, pl. 7. cites 38 H. 6. 19.


(L. d. 2) **Writ of Right of Advowson. By or against whom it lies.**

1. **WHERE a Partition is made between Parencers to present by Turn, they are all Tenants thereof, and Writ of Right of Advowson shall be brought against all.** Br. Quare Impedit, pl. 73. cites 21 E. 3. 30, 31.

2. **Tenant in Tail cannot have Writ of Right.** Br. Quare Impedit, pl. 31. cites 43 E. 3. 24.

6 F
Presentation.

3. Where a Prior was Person Imparisonce, and J. N. presented his Clerk to the same Church, who was admitted, instituted and inducted, yet by this the Prior is not out of Possession; for he * cannot have Right of Right nor Quare Impedit; for he is in Possession, and so he shall have no Allot men's Trepsay or Spoliation in the Spiritual Court, because the Church is adjudged always full of him. Per Prior. Br. Presentation, pl. 36. cites 39 H. 6. 20.

Br. Prohibition, pl. 7. cites 38 H. 6. 19. Per Danby, Dovers, and Morle: but Yelverton Contra — S. P. for Brooke says, Quare inde; for the contrary was held in the Exchequer-Chamber by Yelverton and Fortescue. That a * Person Imparisonce shall have Right of Right, and shall allow Esprees specially by their Hands. Br. Droit de Rette, pl. 22. cites 39 H. 6. 25. — S. P. Br. Spoliation, pl. 4. cites 38 H. 6. 19. that he may have it as Patron. Per Yelverton.


Judgment, pl 51. cites 59 H. 6. 25.

Put if a Man have an Advowson to him and the Heirs of his Body begotten, and for Default of such Issue & the Remainder to him and his Heirs in Fee Simple, or Right of Estate to him and his Heirs in Fee Simple in the Advowson; and if he be disturbed to present, then be shall have the Writ. F. N. B. 30. (B)

And therefore by Thorpe, If a Clerk be inducted but not inducted, he shall not have this Writ of Right of Advowson. F. N. B. 58. (B) in the new Notes there (b) cites 38 E 3. 9. a.

6. Where one asurps upon Lease for Years, by this the Usurper has the Fee, and against him the Writ of Right lies, and that descends to his Heirs. Hut 66. The first Resolution in the Case of Rudd v. the Bishop of Lincoln.

(M. d) Right of Advowson. In what Cases a Seizin is necessary.

1. E V E R Y one must * count of some Seizin. If Purchafor suffers an Usurpation, and suffers 6 Months to pass, he is without Remedy perpetually (for he cannot count of any Seizin) Co. 10. 124. b. 43 E 3. 15. 1 D. 4. 2. b. 43 Att. 21. Per Thorpe.

2. If Purchafor in Tail suffers an Usurpation before Presentment, he is without Remedy during his Life. 43 E 3. 15. Adjudg'd, (and by the Common Law the Title for ever before the Statute of W. 2.)

S. P. Otherwife the Writ does not lie. F. N. B. 58. (B)

Bro. Quare Impedit, pl. 40. cites S.C.

3. He ought to shew Possession in him or his Ancestors. 21 E 4. 1

1 D. 4. 2. 21 E. 3. 27. b.

Br. Quare Impedit, pl. 40. cites S.C.

4. Where the King has Title to an Advowson by Alienation in Mortmain, he cannot have Writ of Right where Presentment is got after, because this is upon other Possession, and also he has no Right but only a Title; and therefore shall have Quare Impedit, which is in the Possession, after di

...
(O. d) Right of Advowson. What Seisin shall be sufficient.

1. A Dismission and Institution of his Clerk without Induction, both not sufficient to maintain this Writ, because in this Writ he ought to allege Eiples in his Clerk, as in Perception of great Tithes, and this he cannot do without Induction; for before Induction he has no Estate in the Glebe. 38 E. 3. 9. Com. Hare and Bickley. Quere 38 P. 6. 17.

2. A Seisin before Time of Memory is not sufficient to maintain this Writ. 21 E. 4. 1. 2. b admitted.

3. If a Pan has once presented and his Clerk inducted, if there are after diverse Usurpations, yet this Presentment is sufficient to maintain this Writ. 43 E. 3. 15.


1. Quare Impedit was awarded good, notwithstanding an Omission of a Missae in the Conveyance; Contra in Writ of Right; and it may be that he in whom Omission is alleged, was never seised; and therefore the Writ awarded good. Br. Quare Impedit, pl. 32. cites 44 E. 3. 21.

2. In Writ of Right of Advowson, the Tenant shall come and make Defence, and may join the Mise by Battel, or Grand Affiliate &c. F. N. B. 30. (C.)
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Presentation.

3. If two being Writ of Right of Advoeation, or if it be brought against two, and the one dies of the one Part or the other, the Writ shall abate. Contra in a Quare Impedit; for there after Title made, the Defendant is become Actor, and he may recover Damages against the Plaintiff. Br. Quare Impedit, pl. 6. cites 9 H. 6. 30.

In this Writ the Summers shall be made on the Glebe, and the Glebe shall be taken into the King's Hands at the Grand Cape. F. N. B. 30. (B) in the new Notes there (c) cites 11 H. 6. 3.

4. In Writ of Right of Advoeation, the Sheriff may summon the Defendant in the Church. Per Dunby & Cott. Br. Quare Impedit, pl. 152. cites 11 H. 6. 3.


6. In Right of Advoeation the Tenant said that the Demandant was seis'd of the sixth Part of the Advoeation at the Time of the Writ purchase'd. Et per tot. Cur. It shall abate the whole Writ; for the Advoeation is intire, and not feverable, and he cannot adverge his Demand, nor he cannot recover the entire, according to his Demand; and therefore he ought to have brought his Writ of 5 Parts. Br. Brief, pl. 316. cites 5 H. 7. 7.

* Patron by the Canon Law, as also in the Feuds, (where with our Common Law doth herein accord) doth signify a Person who hath of Right in him the free Donation or Gift of a Benefice, grounded originally upon the Pecuniary and Benevolence of such as Founded, Erected or Endowed Churches with a considerable Part of their Revenue. Godolph. Rep. 178. cap. 16. S. 1.


If two Patronies, each preseating a Right or Title to the Presentation, shall prese a one and the same Person severally to the Bishop, to be Admitted and Infruenced to the Church, the Bishop cannot admit him generally, but must in his Admixture of the Incumbent admit him Infruenced of the Presentation only of one of them; and if they make such several Presentations, claiming by several Titles, the Bishop is to direct his Writ De Jure Patronatus, for that in such Case the Church is become * Litigious, yet the Bishop is not to award the said Writ but at the Instance and Request of the said Parties. Godolph. Rep. 180. cap. 16. S. 5. — S. P. Warf. Comp. Inc. 8vo. 427. cap. 28. cites Parlia Law. 190. cap. 13.—* Br. Quare Impedit, pl. 8. cites 11 H. 6. 44. S. P.

Where two Patrons present, the Bishop is wont to decree a Process commonly called Negotium De Jure Patronatus, (that is) a Day fixed and certain is appointed by the Bishop to sit in the Church that is void, and a Mention doverd to be levied on the Patrons preseating, and the Clerks preseating, then and there to be present to see Proceedings in the said Business according to Law, to which End a Citation issues to 12 Persons, whereof 6 of the Clergy and 6 of the Laity, all of the Neighbourhood of the said vacant Church, to be there and also present by Way of an Infruement, and on their Corporal Oaths, to inure on certain Articles then minuted to them, touching the Right of Presentation to the said Benefice. These Articles consist chiefly of these four Heads, viz. (1) Whether the said Church, when it was void, was also for the last two or three Times when it was void, (2) Whether the Parson or Persons who last preseated, or their last two or three Times were taken, at the Time and Times of Vacancy of the said Church, did preseate in his or their own proper Right and Title. (3) Whether either of the Clerks now preseated be known or suspected of any Notorious Crime, or of Hereby, Perjury, Adultery, or Drunkenness. (4) Whether either of the Clerks now preseated, had been given or promised, either by himself, or any other, for him and in his Name, or by or with any Consent or Knowledge, any Money or other Gratuity directly or indirectly, for obtaining of his Presentation to the said Benefice to the Patron thereof, or to any other who preseated the said Clerk.

(P. d) Jure * Patronatus. What. [In General.]

1. If one Man preseates his Clerk to the Bishop within the 6 Months, + and another also preseates his Clerk; in this Case the Church is Litigious, and the Bishop may award this Writ of Jure Patronatus to inquire to whom the Right belongs.

2. This Writ issues out of the Chancery of the Ordinary. 34 D. 6.

b. Per Boyle. 39.
Clerk, or caused him to be presented. On which Articles, if it be found by the Verdict of the said Jury, that such or either of the said Patrons was in the Possession of the Presentation at that Time, when the Church was left void, then is his Clerk to be admitted, if there be no other legal Impediment to hinder it, that is, nothing to affect him with, contained in the 3d or 4th last precedent Articles. Godolphin, Rep. 179. 180. cap. 16. Sect. 2.—S. P. Watf. Comp. Inc. Svo. 422. cap. 22.—S. P. Mal. Qta. Imp. 199. cites Gibl. Cod. S. 16. And says further, that the Jury Patronatus being awarded, is to be executed according to the Forms of proceeding in the Ecclesiastical Courts; That the Bishop, if he pleases, may sift himself as Judge; but that the usual Way is by Commission inlaid to his Chancellor, or to such other Person or Persons as he shall judge proper; That a general Citation of all Opponents be also affixed to the Door of the vacant Church in Time of Divine Service; That there shall be a Citation of a Jury of 6 Clergymen and 6 Laymen of the Neighbourhood, or, if as many more as the Bishop pleases, the Proportion being observed of Clergy and Laity, that there be as many of one Sort as the other; And that these be bound to appear under Pain of Spiritual Censures, the Clergy of Sequestration, and the Laity of Excommunication; and if there be 6 of each, the rest are pronounced Contumacious, and the Court proceeds. That the Clergy and Laity, who are of the Jury, be sworn to make Faithful Examination, viz. 1. A Clerk, and then 6 Laymen; The Articles or Heads of Examination are to be delivered to them, as, (besides others mentioned above) Whether the Church became vacant, and if vacant, how it became so? Who hath the Inheritance of the Advowson? Who ought to present to the vacant Turn? With such other Circumstances as the Bishop shall see Cause to inquire into; That the Parties or their Counsel do for their Titles, and produce their Evidences; and that the Verdict be given, either the same Day, or at such Time and Place as the Judge shall assign.

3. The Bishop ought to make this Inquisition at his Peril. 34 H. 6. Br. Nugas. tion, pl. 3. cites 33 L. 6. 11. That the
4. This shall be set at the Cour of the Ordinary, because it is
5. To his Clerk, and for his Case. 5 H. 7. 22. Per Ebor; but Rebo
could have been
6. But it seems contra, because the Ordinary is not bound to award
7. For when the Church is Litigious, he may suffer the Lape to
8. If the Ordinary be required when the Church is Litigious, to

11. b. Per Ebor.
12. This shall be set at the Court of the Ordinary; because it is
13. For his Clerk, and for his Case. 5 H. 7. 22. Per Ebor; but Rebo
14. But it seems contra, because the Ordinary is not bound to award
15. For when the Church is Litigious, he may suffer the Lape to
16. If the Ordinary be required when the Church is Litigious, to

8. If the Ordinary be required when the Church is Litigious, to
9. 22 H. 6. 30. It is said that the Party, at whose Suit
10. If one only prefers, yet the Bishop may award a Juris Patro

6 G
11. If
but one present, yet if
makes Duty of his Title, as in many Cases he may justly, being a Stranger to it, he may require Satisfaction by Jure Patronatus; for if a Nonstare Neminis, if not to imply divers Parties, is a Juris Ursum doth, it is like a Que Jure. And therefore the Case to be, that a Patron is deprived by the Ordinary, or reads not his Articles, in which Cases the Church is void, and yet Notice must be given to the very Patron for that Time, or else the Laple incurs not (which is inconvenient for the Church, and a Prejudice to the Ordinary) how shall he now assure himself of a sufficient Notice? for if he give Notice to him that is not Patron for this very Turn, his Notice is vain, and the Patron perhaps knows not of the Deprivation, or if the knows it, needs not present without Notice given him. I hold, in this Case, his Way is to award a Jure Patronatus, with solemn Premonitions eternum Interesse, and then Inquiry being made who is Patron, then to give him Notice; and if he presents not within 6 Months, then the Ordinary may collate, though that shall not bind the very Patron, yet it shall excite from Disturbance upon special Matter theewed. Hob. 318. pl. 391. in Case of Elvis v. Archbishop of York.

If 2 present, there ought to be awarded a Jure Patronatus's.

12. But if 2 present, there ought to be awarded a Jure Patronatus's.

13. If the Ordinary admits the Clerk of him, for whom the Right is found upon this Writ, this shall excite the Ordinary; For he shall not be a Disturber, tho' the Right in a Quare Impedit be after found for the other. 34 H. 6. 11. b. Per Priori. 34 H. 6. 38.

If the Commissioner certify otherwise than is found before them, yet if the Ordinary does according to the Certificate he is excused 22 H. 6. 30. Per Newton; For the Vice is between the Ordinary and Patron, which was the Certificate of the Commissioners.

If the Right be found for the Patron upon this Writ, and the Ordinary after admits the Clerk of the other Patron, it shall be at his Peril; For he may well enough admit him, notwithstanding the Commission, and finding for the other. 34 H. 6. 11. b. For it seems that it is but for his better Information: But fec 22 H. 6. 30. where the Ordinary alleges a certain Certificate by the Commissioners for a Patron, and the Plaintiff in a Quare Impedit, before the Right tried in it, travels that the Commissioners did not certify the Right for the other Patron. 34 H. 6. 41.

15. But if the Right be found in the Writ in this Writ, and the Ordinary after admits the Clerk of the other Patron, it shall be at his Peril. For he may well enough admit him, notwithstanding the Commission, and finding for the other. 34 H. 6. 11. b. by Prissott.

16. But when the Right in this Writ is found for one Patron, and the Ordinary admits the Clerk of the other Patron, if it be after found in Quare Impedit, that the Right appertains to the Patron for whom it was found in the Jure Patronatus, he shall be a Disturber. 34 H. 6. 11. b. by Prissott.—And though the Bishop in going against the Verdict Chances to admit the Clerk of the true Patron, yet this will not excite him from Disturbance in Quare Impedit by the Peron for whom the Verdict was found; For it is no Plea to say that he admitted the true Patron's Clerk. Walf. Comp. Inc. Svo. 419. 420. cap. 21.

17. Otherwise it is where it is found for him who is presented, Quare whether the Ordinary may offer Laple to incur after it is found for one in this Writ. It seems that he cannot; For 35 H. 6. 19. by Prissott he shall not have any Laple after it is found for one; For he is bound to admit his Clerk. 21 H. 6. 44, 45.
by the Inquisition de Jure Patronatus, if in presents after the verdict, whether he presented before the Commission or not. Br. Quare Impedit pl. So. cites 21 H. 8 44 per Newton, Patton, and others.

Watt Comp. Inc. Svo. 405. cap. 20.

18. If it be found in this Writ for one Patron, the Ordinary is not bound to admit his Clerk without a New Request made by the Clerk, and it needs not for the Patron to make a New Request or S. C. Presentation. 34 H. 6. 12. Per Curiam.

19. If a Disturber presents without any other, the Bishop may in- quire by the Writ. 34 H. 6. 40.

Watt Comp. Inc. Svo. 421, 422. cap. 21. cites

20. But if in the said Case it be found that another Stranger has Right, if this Stranger presents within the 6 Months, the Ordinary is S. P. Br. Quare Impedit. pl. 12. cites 34 H. 6. 11, & 58, 35 H. 6. 18. — In such Case the Ordinary is not bound to admit such Patron's Clerk if he does not present him, and labour to have him admitted. Br. Quare Impedit pl. So. cites 21 H. 6. 44. Per Newton, Patton, and other Jurisprudences.

(P. d. 2) Ne Admittas. Lies for whom, when, and in what Cases.

1. Where one hath an Action of Darrein Presentment, or of The Course Quare Impedit, depending in the Common Pleas and he supposes to stop that the Bishop will admit the Clerk of the Defendant pendant the Plea, otherwixt them ; He may sue a Ne admissa, directed to the Bishop. F. N. B. 37 (F)

Interestingly, the Bishop is, after the Quare Impedit is depending, to sue a Ne Admissa to the Bishop, and if the Bishop then admit the Clerk of any other pending that Suit, and the Plaintiff recovers, he shall have a Quare Incumbement, and thereby remove any that comes in hanging the Writ by whatsoever Title, he comes in, and shall force him, who hath Right, to recover by Quare Impedit; but if he fies not such Writ, if then the Incumbent of a Stranger should come in by good Title Pending, he shall bar him in Sive Factis, and shall hold him out. Per Popham Ch. J. Cro. J. 95 Mich. 5 Jac. B. R. in the Case of Lancelot v. Lowe. — Watt Comp. Inc. Svo. 428, 429. cap. 22.

2. This Writ of Ne admissa leak for the Plaintiff in a Quare Impedit, a S. P. But not for F. N. B. 37. (F)

If the Writ be returned, and not Meezine between the Tefe and the Return in Bank; For no Plea is pending. Br. Quare Impedit, pl. 124. cites 2 E. 4. 172 Per Mollie. J. — Watt Comp. Inc. Svo. 428. cap. 28. cites S. C.

It seemseth that the Defendant may sue his Writ as well as the Plaintiff, if the Defendant do suppose that the Bishop will admit the Clerk of the Plaintiff pendant the Writ. F. N. B. 37. (H)

3. Ne Admittas ought to be sued within the 6 Months after the Avo- dance ; for after the 6 Months he shall not have this Writ, because then the Bishop may present for Lapce; And therefore it is in vain then for the Plaintiff to sue this Writ, because the Title to present is then devolved unto the & Regist. Bishop; But the King may sue this Writ after the 6 Months, where he hath Org. 51 b. a Quare Impedit depending, or Allize de Darrein Presentment, because that Nullum occurrit Regis. But there is a Rule in the Regester, thus, Notandum et, quando Rex pretendent ut in Jure Coronae, tunco incurrit ei Tempus. But this is not Law at this Day. F. N. B. 37 (F)

4. Ne
4. Ne Admittas does not lie, it the Plea be not depending in the King's Court by Quare Impedit, or Affile of Darrein Prelemt. And therefore there is a * Writ in the Register directed into the Chief Justice of the Common Pleas, to certify the King in the Chancery, if there be any Pleas depending before him and his Companions by Writ betwixt such and such Persons &c. and therefore it seemeth the Writ of Ne Admittas shall not be granted before the King be certified in the Chancery, that such Pleas of Quare Impedit or Darrein Prelemt be there depending in the Common Pleas. But yet the Writ of Ne Admittas may be granted out of the Chancery directed into the Bishop, that he do not admit &c. before the King be certified in the Chancery, that such Pleas of Quare Impedit, or Darrein Prelemt is depending in the Common Pleas, and then the Party grieved may require the Ch. J. to certify the King in his Chancery, that no such Pleas is depending there, and thereupon the Party grieved shall have such Writ. F. N. B. 37 (H)

* Writ to the Bishop to admit a Clerk is a Judicial Latitat. 12 Rep. 50. cites Dyer. Wilt Comp. Inc. Svo. 524. cap. 27. cites S. C. that the Plaintiff shall not have Writ to the Bishop until and unless it be also adjudged against the Patron.

Wilt Comp. Inc. Svo. 525. cap. 27. cites S. C. — If two Defendants plead severally in Quare Impedit, and the one is found against the Plaintiff, and the other with the Plaintiff, the Plaintiff shall not have any Writ to the Bishop. Tho' the Pleas of one be tried first, and found for the Plaintiff, no Writ to the Bishop shall be awarded till after the other shall be tried. Jenk 55. pl. 85 — Wilt Comp. Inc. Svo. 525. cap. 27. cites S. C.

3. If the King recovers in Quare Impedit against J. S. by Nient Direde, having another Quare Impedit pending at the same Time against the said J. S. and W. N. he shall have Writ to the Bishop immediately, against J. S. upon the Recovery before the Plea in the other Time determined, because those are several Originals. 17 C. 3. 58.

4. But if the King recovers against an Incumbent of a Provendary, because he claims of the Collation of the Bishop of the Diocese, per if the King has another Quare Impedit against the Bishop alone of the same Provendary, no Writ to the Bishop shall be granted against the Incumbent till the Plea be determined between him and the Bishop, tho' those are several Originals. 25 C. 3. 47. adjudged.

5. Before Writ issues to the Bishop, Writ shall be awarded to the Bishop to inquire if the Church be void, and also of the Value of the Church, and if the 6 Months were past'd, or not. Br. Quare Impedit, pl. 49. cites 7 H. 4. 34. 36.

6. In Quare Impedit against 2, Proceeds continued to the Diocese at which the Plaintiff recovered by Default against the Party, and Judgment was that he have Writ to the Bishop and Damages for half a Year, Br. celft Execution till it be tried against the other Defendant; for otherwise this Execution against the one alone shall also

(Q. d) * Writ to the Bishop. At what Time it shall be granted.

1. In a Quare Impedit against the Patron and Incumbent, if a Writ to the Bishop be adjudged against the Incumbent upon his Plea, yet Writ shall not issue till the Plea between the Plaintiff and Patron be determined. 25 C. 3. 34. b. adjudged twice.

2. In Quare Impedit against two, if Judgment be given against the one upon Nient Direde, no Writ to the Bishop shall be granted against the other, till the Plea of the other be determined; for he may foreclose him of the Writ. 17 C. 3. 58.

3. If the King recovers in Quare Impedit against J. S. by Nient Direde, having another Quare Impedit pending at the same Time against the said J. S. and W. N. he shall have Writ to the Bishop immediately, against J. S. upon the Recovery before the Plea in the other Time determined, because those are several Originals. 17 C. 3. 58.

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Preseantry.

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abate the Writ against the others; for he cannot recover the Preseantry against the others, when he has the Preseantry by the first Judgment; as in Trepasses against two, and it is found against the one, and he takes Execution against him, the Writ shall abate against the other. Br. Quaere Impedit, pl. 157

cites 20 El. 4. 1. and 10 E. 4. 11. 13.

7. A Man sued divers Quaere Impedits against the Bishop, and he was Non-suit in all but one Writ; the Defendant had not a Writ to the Bishop until that Writ was determined. F. N. B. 38. (R.)

cap. 27. cites 12 R. 2.

Brief al Evesdige 16.

8. A. recover'd in a Quaere Impid against B. and C. and had Judgment to have a Writ to the Bishop. And a Writ of Enquiry of Damagesstill. Now the Defendants brought Error. And by the Court that Writ shall abate, because Judgment is not given upon the entire Record, and that a Writ to the Bishop shall not issue til the Writ of Enquiry of the Value be return'd, unless the Plaintiff release the Damages; And that by the Court and all the Clerks. Noy 66. Mich. 59. 40 Eliz. C. B. The Bishop of Gloucester & al. v. Veal.

(R. d) W rit to the Bishop. What Court may award it. (Fol. 786)

1. TheER who hold Plead in a Franchise, cannot award a Writ to the Bishop. 11 P. 6. 3.

2. In Wales a Writ cannot be awarded to the Bishop by the Justices. A Writ was awarded to the Archbishops of Canterbury, because the Bishop of St. Davids was Party; and it was assigned for Error for that the Justices of the Grand Sessions have no Power to write to him, they having no Power to punish him if he does not obey. And the Court doubted of that Point; but it seems prima facie, that they well may write to him; for it is ver-a Court of the King's, and a Quaere non Admissit leges, if he does not admit. But when they were the Marches in Wales, they had no such Power; and for that Reason a Quaere Imped did lie in the adjoining Counties, but not so at this Day. But they would advise. Cro. C. 142. Cov v. Bp of St. David's, Owen and Pritchard.—Warf. Comp. Inc. Svo. 520 cap. 28. cites S. C.—11. 352. S. C. Judgment was affirm'd Perrot Cur. Sbl. 92. at the End of Annin's Cafe, the Reporter says it seems that the Grand Sessions of North Wales cannot write to the Bishop; and that this is the Reason that Quaere Impid does not lie there.—

(S. d) W rit to the Bishop. Who shall have it.

1. A Quaere Impid the Defendant shall have Writ to the Bishop, if it be found for him; for he is Actor as well as the other. S. P. Warf. Comp. Inc. Svo. 525.
cap. 20.

P. 6. 31. 18 E. 3. 15. 1.

2. In a Quaere Impid, if the Defendant makes Title to himself and a Stranger to the Church, and after the Plaintiff is Non-suited, yet the Writ to the Bishop shall be awarded only for the Defendant, and not for the Stranger also, because he is not nam'd in the Writ. 13 E. 3. S. P. F. N. B. 39. (A) and there in the New Notes (a) cites S. C. And says, See also for this 11 H 6 8. where A. B. and C. Parters brought a Quaere Impid against C. who recover'd, and afterwards A. and B. were Non-suited; C. shall not have a Writ to the Bishop without Title shewn, and yet on the Title shewn the Title would appear for the Plaintiff. See 13 E. 5. pl. 20 & 25.

3. Baron and Feme brought Quaere Impid, and the Feme died pending the Writ; yet the Writ remained good, and the Baron had Writ to the Bishop.
Presentation.

Bishop as Tenant by the Cartesy. Br. Quare Impedit, pl. 67. cites 38 E.

3. 35.

4. The Incumbent shall not have a Writ to the Bishop where his Plea is sought for him, if the Patron makes Default, and will not plead. Br. Encumbent, pl. 9. cites 7 H. 6. 36.

(U. d) In what Cases the King shall have a Writ to the Bishop, [tho' he be] Not Party to the Writ, [or tho' the Issue be not found for him.]

(Watf. Comp. 1.) 1 Br. Quare Impedit by the King, if the Issue be, Whether the King has all the Advowson or not, and the Jury finds, That he has only a 3d Part, but that now it is his Turn to present; tho' the Issue is found against the King, yet because it appears that the King has Title, the Writ shall be awarded for him. Ibid. 14 Ga. B. adjudge between the King and the Bishop of Rochester. Dobart’s Reports 169.

Same Case. For this Matter, which is found, is not out of the Issue.

2. In Quare Impedit by the University upon the Statute, because J. S. was a Recusant, if Defendant pleads in Bar, That J. S. was convicted for a Recusant, and that the Manor, to which this Advowson is attendant, was feigned for the King, for his Part for the Recusancy, and after the King granted to him the Manor with the Apparances &c. Upon which the University comes and acknowledges the Plea to be true. In this Case a Writ shall be awarded to the Bishop for the King, because nothing passed out of the King by the Grant without naming the Advowson, and to the Right remains in the King. Ibid. 14 3d.
Preseutation.


for where the Title to the King appears upon the Record, there the Court will award a Writ to the Bishop for the King; but not where the Title to the King appears upon Evidence. 

3. If an Abbot brings Aisle of Darvein Presentment, and it is found for S in Quere the Abbot, and inquiring after the Title to the Church is found, the King upon this Matter shall have Writ to the Bishop without other Presentment. 21 E. 4. 3. b. pl. 5. Per Chock. 


Title, that the King has Right to present, he shall have Writ to the Bishop without other Matter shown. 21 E. 4. 5. b. pl. 5. Per Chock. 

4. In a Quere Impedit * between 2 Strangers, if there dots appear to the Court a Title for the King, they shall award a Writ into the Bishop for the King. + F. N. B. 38. (E) 

Per Chock. 11 H. 4. 71. Per Hankf. And so if it shall issue if it be found against the King in a Quere Impedit; and yet if the Right appears for the King on a Special Verdict, he shall not have a Writ to the Bishop. Rex verius Epic. Rullin. See 4 Eliz. 244. 16 H. 7. 12. F. Brief al Eccles. 15. Bro. S. C. & P. Arg. cites in the Case of the Defendant in the Quere Impedit. 21 E. 4. 5. b. Per Chock. and Boll. But Culpeper contra. And Brooke makes a Quere. 

* S. C. cited by Walmesly. Le. 63. 64. pl. 84. in Case of Brevity v. Cornwall. Mich. 29 Fl. and said, that the Judges shall in no Case rejeet the Title of the King being a Stranger to the Writ, but where a Title appears for him upon the [Pleading or other wise within the record, and so is 11 H. 4. 223 [11 h. b.] by Hankford. But if a clear Title for the King be confest by the Parties upon a Pleading, a Writ to the Bishop shall issue for the King, so if such Matter appears in Evidence etc. the Land is transferable into the Hands of the King, — S. P. d'odderidge J. Mo. 901. cites 53 H. 6. 34. 16 H. 7. 12. 

11 H. 4. 71. b. pl. 5. F. N. B. 38. (E) 

Hobart Ch. I. b. said, That the King has a Prerogative, that where Clear Title appears for him, Writ to the Bishop shall be awarded for the King. But he said, This is to be intended where his Title appears, by the Confession of the Parties, or by Title without Difficulty or Question; for upon Nihil dictit Writ shall not issue for the King, nor upon Title appearing by Evidence to the Jury, as was held in the Case of the Annals of Culpeper v. Chocke and Boll. But if it appears upon the Record of the Pleading, or by the Confession of the Parties, the Writ shall issue for the King; otherwise, to. Mo. 904. in the Case of Craynor and Geltish. 

+ S. C. & P. Arg. cites 21 E. 4. 50. and 12 H. 7. 12. But where the Title appearing was only Matter of Fact suggested by Plea of the Attorney-General in a Writ of Error brought of a Judgment, the Court held, That the Plea ought to be rejected for that Reason of its being Matter of Fact only, and especially in this Writ of Error, the Judgment being given in C. B. and Execution for the Damage being given in the Case, and increased by the Statute of 3 H. 7. which is not to be stopped, nor the Parties to be deba'ed by such bare Surmises, not being grounded upon any Matter of Record. And after further Argument by Counsel all the Court Satiratam delivered their Opinions, That the Pleading is merely void, it being upon a Surmise, and without any Record been. And that there ought to be a clear Right and Title appear for the King, and confused by the Parties in Pleading or otherwise fully apparent; For if not, the Court ought not to give the King a Writ of Error in such a Case. 10 C. 102. pl. 4. Mich. 16 Car. B. R. Refuted by all the Justices of B. R. in the Case of Ydor. Sir John Dryden & al. — The Case was this; A Quere Impedit was brought by A. B. and C. against Y. and the Bishop of B. in which Y. the Incurant pleaded, That he was Perfect Impotence of the Preceptor of the King, to whom he derived a Title as seised in Fee of an Advowson in Gods. Upon Hise point, a Verdict was found for the Plaintiff, which likewise found the several Points of the Writ. The Plaintiffs had Judgment to recover, and if a Writ were awarded to the Bishop to remove the Incurant, and admit the Clerk of the Plaintiff, and then a Judgment of Damages for Hall a Year amounting to 1001. The Defendant brought a Writ of Error against appealing that Writ, the King brought a Writ of Right of Adowson; And by Motion to the Court, the Proceedings upon the Writ of Error were Day'd till the Writ of Right should be tried. Thereupon a Special Verdict was found contrary to the Verdict in the Quere Impedit. After this Verdict, the Tenants died. The Counsel for the King indicted strongly, That the Verdict in the Writ of Right of Adowson (being a Writ of the highest Nature) should control the Verdict in the Quere Impedit, and the Verdict in Quere Impedit found, That James Ellis, who was alleged by the Defendant in the Quere Impedit to have been admitted, is turfed and indicted Ad Ecclesiæ Prelato dictæ suæ Regionis Elizabetha modo & Forma proona the Defendant had alleg'd, was not so admitted &c. and the Special Verdict in the Writ of Right, That the said James Ellis was so admitted &c. ad Ecclesiæ Prelato dictæ suæ Regionis, which being a more high Action, and express contrary to the former Verdict in the Quere Impedit. destroys the Plaintiff's Title; for the Queen had gained Right to him all by the Presentment, but him who had the very Right; and that the last Jury had found, That the Queen had Minus jus habendi Prefactationem, yet for as much as the Queen had alleged she had gained the Polleison; and then had Majus jus than he who had not any Title; and it appears not that the Plaintiffs have any Title, and therefore prayed a Writ to the Bishop. The Court held, That the Verdict in the Writ of Right being but a Special Verdict it does not appear (if the Writ had not abated by Death) whether Judgment should have been given for the King or for the Defendant, as this Case is, And no clear Title appears, for by the Death of one of the Tenants the Writ of Right abated.
5. In a Quare Impedet the Issue was, If the Advowson was appendant to the Manor of D. or in Gros; and the Jury found, That it was appendant; and further found, That the Queen had Right and Title to present, for the had presented at the two last Avoidances. And Per Anderfon and Periam J. If it appears unto the Court upon the Pleading, that the King had Title to present, the Court shall award a Writ to the Bishop for the King; but here appeareth no Title for the Queen upon the Pleading, but only upon the Verdict, so as the one Part or the other may answer to it; And because the Jury found for the Plaintiff, the Title found for the Queen shall not be respected, but as mefr Nagation and Surplusage; for the fame was out of their Issue and their Charge; and it is no more than if one comes into the Court, and informs us of any Title for the Queen, there the Court ought not to regard it. 1 Le. 323. pl. 455. Trin. 31 Eliz. C. B. Norwood v. Dennis.

6. If in Quare Impedet by the King the King and Party are at Issue, which is found against the King, and Title appears for the King by Necessity of the Party, yet the Court shall not adjudge for the King. Otherwise it is where the Party confesseth the King's Title. Cro. J. 216. Hill. 6 Jac. B. R. The 3d Resolution in the Case of Cumber v. the Bishop of Chichefter and Green.

See (Y. d) (X. d) Writ to the Bishop without Title. In what Cases.

S. P. Br. 1. In a Quare Impedet, if the Writ abates by Pleading of Misnominator of the Plaintiff, the Defendant shall not have any Writ to the Bishop. 31 H. 6. 15.


S. P. Br. 2. So if Defendant pleads Misnomer of himself he shall not have any Writ to the Bishop. 31 H. 6. 15.


S. P. Br. 3. So if the Writ abates for Insufficiency, the Defendant shall not have any Writ to the Bishop.


But if the Defendant pleads in Abatement of the Writ by Matter in Fact, he shall not have Writ to the Bishop, if he does not make Title. Br Brief al Evesque, pl. 9. cites 12 H. 4. 11. Per Hank clearly.

S. P. Br. 4. But if the Writ abates for Default in the Count, the Defendant shall have Writ to the Bishop. 31 H. 6. 15.

S. P. Br. Brief al Evesque, pl. 26. cites S. C. — Wattf Comp. Inc. 8vo. 519. cap. 27. cites S C

5. In
5. In a Quaere Impedit against diverse Patrons, if the Writ abates because one of the Defendants was dead before the Writ purchased, the Defendants shall have a Writ to the Bishop. 11 H. 6. 53.

6. In a Quaere Impedit against Patron and Incumbent, if the Patron makes Default, and the Plaintiff and Incumbent are in Peace upon Plea in Abatement of the Writ, (tell) Whether the Plaintiff was made Knight after the last Continuance, and found for the Defendant, the Writ shall abate, but Defendant shall not have Writ to the Bishop.

*6 H. 37. 6. Vacuum.

Plea had appeared and the Defendant made Default, and Writ in * H. 6 53. 14 H. 4 16. upon Peace of the Incumbent a Writ was awarded to the Bishop. * Br. Brief al Evens. pl. 50. cites S. C. that the Plaintiff and Incumbent were at Peace, but takes notice what the Peace was. — Walf Comp. Inc. Svo 532. cap. 27. cites S. C. — S. P. Br. Brief al Evens. pl. 15. cites * H. 6 15. the Writ was abated without Writ to the Bishop by Advice of the Justices of both Benches.

7. But if such Peace had been found for the Patron he should have Writ to the Bishop. Brack Brief al Evens. 30.

8. In Quaere Impedit for the Church of D. if Defendant faith, No such Church within the same County, the Plaintiff shall have a Writ to the Bishop. 8 H. 6. 37. 9 H. 6. 17. Curia. Contra 34 C. 3. 6.

Inc. Svo. 532. cap. 27. cites S. C. For this can be no Damage to the Defendant; for the Writ must be to the Church named in the Declaration; and if there be no such Church the Plaintiff can have no Right or Advantage by his Writ; and if there be such a Church the Defendant has no Prejudice, for he is to go from Claiming Title to that Church that he knows nothing of it. Quaere Br. Brief al Evens. pl. 1. S. P. cites 9 H. 6. 16.

9. If one Tenant in Common brings Quaere Impedits against the Walf Comp. other, and this appears in the Count, and the Defendant demands Judgment of the Count, because it appears therein that they are Tenants in Common; whereupon the Count abates it. See the D. 532. 53. Defendant shall not have any Writ to the Bishop, because he has not cited S. C. made Title, for tho' it appears by the Count, that the Defendant has Right to the advancement, yet this is in Common with the Plaintiff, and it is ought to have the Writ. 20 G. 3. Quaere Impedit.

10. But in Quaere Imp. if the Plaintiff counts, and Defendant Walf Comp. demurs upon the Count, and it is answered against the Plaintiff upon the Count, upon the Patron, a Writ shall be granted to the Defendant without making of any Title, because upon the Count the Plaintiff made Title to the Defendant appears. D. in 20 H. 6. 24. 53. 13 cited (cap. 27. cites a Judgment in Blank. 1 D. 8. Rot. 537.

11. In a Quaere Imp. if the Defendant makes Default at the grand Jury, Ditrells, the Plaintiff ought to make Title to the Patronage. D. 7 Cl. 241. 48 to both.

The Defendant comes not at the Hearsings returned in Quaere Impedits, the Plaintiff shall have Writ to the Bishop without Title made, and this by the Statute; Qua 1 Nota. Br. Brief al Evens. pl. 2. cites 53 H. 6. 1. — See Br. Hol. 163 in Case of Mr. Glover B. the Bishop of Courtryp C. Eys. That in a Quaere Impedits both Plaintiff and Defendants are Actors one against the other, and therefore the Defendant shall have a Writ to the Bishop as well as the Plaintiff, but not without a Title appearing to the Court; and therefore if the Defendant never appears, yet the Plaintiff must make out a Title for the former's sake, and so must the Defendant if the Plaintiff be NonSuit.

12. He who pleads to the Writ in Quaere Impedits, and does not make S. P. Br. Title, shall not have Writ to the Bishop; Quod Curia Conceedit. 1st. Quaere Impedits, pl. 31. cites 43 E. 3. 24.


6 1 15. Where
13. Where Plaintiff in Quare Impedit is esfoigned which is adjourned, and at the Day it is found that he had Attorney in Court not esfoigned, the Defendant shall have Writ to the Bishop. Br. Quare Impedit, pl. 526. cites 14 H. 4. 12. 13.

14. In Quare Impedit, the Sheriff returned Nihil to the Summons, Attachment and Distrefls; Writ to the Bishop shall flile though no Writ be served. Br. Brief al Evefque, pl. 15. cites 21 H. 6. 56.

15. In Quare Impedit the Plaintiff was nonfuiet, and the Defendant if the Defendant had made Title in his Bar, and the Plaintiff after this had been Nonfuiet, there the Defendant shall have Writ to the Bishop without other Title. Br. Brief al Evefque, pl. 2. cites 33 H. 6. 1.

16. Quare Impedit against two, the one is esfoigned, the Plaintiff made Default, and the other Defendant made Title, and prayed Writ to the Bishop; he shall have it. Contra it seems if he will not make Title. Br. Brief al Evefque, pl. 19. cites 38 H. 6. 14.

17. Quare Impedit against two; Process continued till the Distrefs, at which Day the one appeared, and the other made Default; and by the Opinion of the Court, Writ to the Bishop shall flile against him who made Default; and the other shall be compelled to answer. Br. Brief, al Evefque, pl. 17. cites 14 H. 7. 19.

18. In Quare Impedit, the Plaintiff recovered by Default, and the Plaintiff appeared by Attorney, who had no Warrant, and after the Judgment was received in B. R. by Writ of Error for this Cause; by which the Defendant prayed Writ to the Bishop, and could not have it without making Title. Br. Brief al Evefque, pl. 20. cites 1 H. 7. 13.

19. If the Sheriff returns upon a Quare Impedit, Quad Queres non invent Pleas, then the Plaintiff may find Pledges in the Common Pleas, and shall have a new Quare Impedit in the Common Pleas; and if the Sheriff return upon that Writ Yards, and the Defendant appear, and the Plaintiff be called and appeareth not, the Defendant shall not have a Writ to the Bishop, because that no Writ is served against the Defendant. F. N. B. 38 (O)

See (X. d) (Y. d) Writ to the Bishop upon Title made. Upon what Plea.
Presentation.

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Isd, he shall not have Writ to the Bishop upon Title made. 13 H. 4. 7.

2. If the Defendant abases the Writ for false Latin, he shall not have Writ to the * Bishop upon Title made. Co. 7. Sir H. Portman, *Fac. 128.


56. cites 4 H. 4. 10, 11. per Hanke — S. P. E. N. B. 58. (H)

(2) If the Plaintiff be Nonsuited after Appearance, the Defendant shall have Writ to the Bishop upon Title made; For this is a precedent to the Plaintiff. Co. 7. Sir Hugh Portman, 27. b. though it be within the 6 Months.

pl. 16. cites S. C. — So if the Plaintiff discontinue his Suit. Pep. 27. b. cites Hob 138. — * Theo, it be before any Court made, yet if the Defendant will make Title he shall have Writ to the Bishop. Br. Quare Impedit, pl. 138. cites 19 E. 4. 9.

3. [So] if the Plaintiff be Nonsuited in a Quare Impedit, after the Defendant has pleaded in Bar, the Defendant shall have a Writ to the Bishop, 39 C. 3. 8. b.

4. If the Plaintiff be Nonsuited in a Qua. Imp. the Defendant shall not have Writ to the Bishop without Title made. 9 D. 6. 4.

b. 11 D. 6. 8. 2 H. 5. 6. per Curiam.

—Br. Quare Impedit, pl. 84. cites 22 H. 6. 44. 41 — Br. Brief al Eveque, pl. 16 cites S. C. —

F. N. B. 38. (K)

5. So upon Nonsuit, Defendant shall not have Writ to the Bishop without Title made, tho' he cannot make Title, because one of the *Parties is Plaintiff. Because he held in Coparcenary, so that if he should make Title it should be contrary to the Action, which shall not be indeed. 11 D. 6. 8. Abjudged.

be one of the (Plaintiff.) Though one of the Defendants be one of the Parties; For it was brought by 2 acciti. 2, because they held in Coparcenary, so that if he should make Title, it would be contrary to his Action, and yet the Opinion of the Court was as afo. Br. Brief al Eveque, pl. 25 cites B. C. And Brooke says, Quare, If he may not make Title by a strange Name, and then it aids the whole Matter.

6. If at the Distrefs returned Defendant makes Default, the Plaintiff shall not have Writ to the Bishop without Title made. 10 D. 6. 58. (N) says,

That if the Defendant does not appear at the Distress returned against him, the Plaintiff shall have a Writ to the Bishop, without a making Title — But ibid in the New Notes (b) says, That if he appears at the Grand Distress, and after makes Default, a Distressings shall issue, and then a Writ to the Bishop. 13 F. 3. Brief al Eveque 19.

and altho' Not be returned every Part at the Proceeds, viz. on the Summons, Attachment, and Distress, yet the Plaintiff shall have Writ to the Bishop, 12 H. 4. 4. 21 H. 6. 58. 11 H. 6. 3.

In Quare Impedit the Defendant pleaded to be made, and after made Default, and a Writ was awarded upon the Bishop for the Plaintiff. F. N. B. 38. (S)

If at the Distressings returned against the Defendant, he comes, and has Day by the Prayer of the Parties and afterwards makes Default; The Plaintiff shall not have a Writ to the Bishop, but a new Distressings. F. N. B. 38. (T) — Note, The Defendant came at the Grand Distress, and pleaded to the Bishop, contra, where he comes not at the Pone per Vadius &c. F. N. B. 38. (T) in the New Notes where (c) cites 16 E. 3, Brief al Eveque 18. See 8 E. 2 Quare Impedit, 163. 16. E. 3. pl. 17. 13 E. 3. pl. 19. Brief al Eveque 19. See 2 H. 4. 1. according to the Diversity.

He that will have Writ to the Bishop for Default shall make Title And nota, that the Plaintiff cannot release his Damages in Quare Impedit before they are made; But it was recorded that the Plaintiff would not have Damages, and upon this he had Writ to the Bishop. Br. Brief al Eveque pl. 52 cites S. C.

7. If before Qua. Imp. and after 2 of them are nonsuited, per the Defendant shall not have any Writ to the Bishop; For precedent the 3D has the Right. 12. R. 2. Brief al Eveque 16.

S. F.
Presentation.

8. If a Man brings 2 Writs of Qua. Imp. and after is nonsuit in one, yet the Defendant shall not have any Writ to the Bishop upon this two Title he makes 12 R. 2 Bruef, Eves. 16.

9. Qua. Impedit by the King against the Priores of D. and A. B. the King made Title by Voidance during the Temporalities in his Hands; The Priores said, That he could not Tempore Vacantis, Pritf; and the other e contra, and A. B. said, That he is in as Purson Impariss of the Presentment of the old Priores; Judgment, if Writ lies against him, by which the King shall have Writ to the Bishop against him, and Celfet Exeuint quale the Issue be tried between the others. Br. Brief al Eves. pl. 31. 24 E. 3. 34.

10. In Qua. Impedit against 2, the one as Incumbent, and the other as Patron, the Incumbent intitled the King by a Writ, and the Church voided, and the King presented him, and the Defendant made other Title, and the Plaintiff was demanded, and did not come; and therefore, per Hank. Hill, and Culpepper, the Defendant who has made Title, to which the Plaintiff has not answered, shall have Writ to the Bishop. Br. Qua. Impedit. pl. 59. cites 14 H. 4. 15. 16.

If the Defendant
12. Where the Defendant pleads an insufficient Plea, the Plaintiff shall have Writ to the Bishop, Br. Briefal Eves. pl. 1. cites 9 H. 6. 16.

Writ is in Qua. Impedit, he ought to make Title; For otherwise he shall not have Writ to the Bishop, per tot. Cur. quod nota. Br. Briefal Eves. pl. 5. cites 4; E. 5. 25.

Z. d) What shall be said a sufficient Title.

1. In Qua. Impedit against 2, one pleads that he does not claim for, but conveys a Title to the King, who presented him, and the other makes Title. If the Plaintiff be afterwards nonsuit, the Presentee shall not have a Writ to the Bishop; For what he pleads was but in Curte of the Tort, and not to have Writ to the Bishop, but the other shall have the Writ. 14 H. 4. 16.

2. In a Qua. Impedit against the Bishop and others, if the others make Default, and the Bishop appears, tho' the Plaintiff shall not have Writ to the Bishop against the others, who make Default without Title, yet if he counts against the Bishop, this shall be a sufficient Title against the others 10 H. 6. 5.

(A. e)
(A. e) Writ to the Bishop. *Upon what plea it shall be granted.*

1. *In Quare Impedit, if the Defendant, faith, That Ne Disturba pas, the Defendant shall have Writ to the Bishop. 17 C. Writ. Comp. Inc. Svo. 521. cap. 37. cites S. C. ——

Brief al Evefque, pl. 14, cites 21 H. 6. 47. —— pl. 22, cites 21 E. 4. 65. —— S. P. Where the King was Plaintiff. Br. Quare Impedit, pl. 48. cites H. 4. 32. And Brooke says, That so it seems that this Plea will only save the Defendant his Damages. —— S. P. Br. Brief al Evefque, pl. 4, cites S. C. —— Some held, that tho' the Patron pleads this Plea of Ne Disturba pas, yet this shall not conclude the Bishop, but that he shall say, that he presented, and his Title was found by Jure Patriarchal, and he presented his Clerk. Br. Quare Impedit, pl. 80. cites 21 H. 6. 44.

In Quare Impedit, the Plaintiff made Title by the issue of the youngest Daughter, the Defendant made Title as Tenant by the Curtesy by Marriage of the eldest Daughter; To which the Plaintiff said, That Ne Disturba pas, by which the Defendant had writ to the Bishop, in as much as the Plaintiff relinquished his Title. Br. Brief al Evefque, pl. 29, cites H. 5. 10. —— Br. Quare Impedit, pl. 62. cites S. C. Ne Disturba pas, in, in Effell, the General Issue in a Quare Impedit, and every Defendant may plead it without more; Because it is only a Defense of the Wrong with which he stands charged, and leaves the Plaintiff's Title not controverted, but in Effect confessed, and therefore upon that Plea the Plaintiff may presently pray a Writ to the Bishop, or (at his Choice) maintain the Disturbance for Damages. Hub. 162. In the Case of Colt and Glover v. Bishop of Coventry and Lichfield.

2. *In a Quare Impedit, if the Defendant, faith, that pending the writ the Freeholder of the Plaintiff is admitted, instituted, and inducted by the Bishop, the Plaintiff shall have a Writ to the Bishop, because he does not suffer the Disturbance, nor the Right of the Patron.* 11 R. 2, Quare Impedit 144. Adjudged.

3. *In Quare Impedit against the Ordinary and others, if the Ordinary faith that he claims nothing but as Ordinary, the Plaintiff shall have Judgment against the Ordinary presently, to have Writ to the Bishop, but Cefi Est Executo &c. 17 D. 7 Bell. 43.*

Ordinary, the Plaintiff shall recover this Presentment, per Paffion; But per Markham he shall not have Writ to the Bishop; For the Presentment to the Ordinary shall be Sufficient to the Party; Quod Curia concipit. Br. Quare Impedit, pl. 80. cites 22 H. 6. 23, 29.

4. Quare Impedit by the Queen, and Counted that the Minor to which &c. was held of one S. in her Ward, and intituled herself as by Ward for Cause of Ward; the Defendant said that the Ancestor of the Infant hold of N. who held over of S. Albina box, that he held of S. immediately, and a good Plea; For there the Queen had Title. Br. Quare Impedit, pl. 96. cites 24 E. 3. 54. —— And the same Year, fol. 75. it was found for the Plaintiff, and Damages &c. and that the Church was full, and this seems to be by Lapte, and the Plaintiff recited the Damages, and prayed only Writ to the Bishop, and had it as his Peril without Damages, and this was to have Advantage to out the Incumbent. Br. Quare Impedit, pl. 96. cites 24 E. 3, 54.

5. Quare Impedit by the Prior against the Bishop of C. and others, one pleaded Grant de Proxima Advocatione to J. N. by the Prior and Convent, who granted it to the Defendant, and so it belonged to him to present, and prayed Writ to the Bishop, and after Writ to the Bishop was awarded for him who had the Grant. Br. Quare Impedit. pl. 49. cites 7 H. 4. 34, 36.

6. Between Common Persons, the Defendant may traverse the Title of the Plaintiff, without intitling of himself, but then be shall not have Writ to the Bishop. Br. Quare Impedit. pl. 138. cites 21 E. 4. 1, 3.

6 K (B. e)
(B. e) Writ to the Bishop. In what Cases it shall be granted.

1. To a Quare Imped. against Patron and Incumbent, if the Incumbent pleads that he is Patron impertinent, as that he is presented instituted and induced, and pleads a good Bar, and the Patron also pleads his Title, but does not acknowledge any Plenary of the Prebend, and Judgment is given against the Plaintiff, the Patron shall have a Writ to the Bishop; For the late Plea of the Incumbent shall not conclude the Patron, because the Patron could not contradict the Plea of the Incumbent in this Point. Hobart's Reports 262. Pilkington's Case.

2. If a Quare Impedite be brought against the Incumbent of the King, and he pleads that he is Patron impertinent and pleads a good Bar against the Plaintiff, setting Title to the King to present by reason of Simony, upon which the Plaintiff demurs, and it is adjudged against him. Though in this Case the Defendant has pleaded that he is instituted and induced, yet the King may suggest to the Court, that he is not instituted and induced, contrary to the Plea of his Prebendee, because Title appears for the King who is a 3d Person always present in Court, and shall not be bound by the Plea of his Prebendee, and upon this Suggestion entered he shall have a Writ to the Bishop. & 34 & 35. between Benedict and Winchcomb, and Paley, adjudged per Curiam, except Burton, who seemed contra. Hobart's Reports 261. same Case.

3. But it seems, that without this Suggestion the King shall not have any Writ to the Bishop. & 19. & 20. In the said Case the Court was divided.

4. In Quare Impedit the Plaintiff shall recover, and shall have a Writ to the Bishop, and Damages upon the Default of the Defendant after Appearance; Quære if it had been after a Continuance. Br. Damages, pl. 192. cites 2 H. 4. 1.

5. The King shall have Writ to a Bishop to indit one into a Prebend which the King has given unto him, and to give him a Seat in the Quire, and a Place in the Chapter-House. F. N. B. 34. (D)

6. And a Man shall have a Quare Impedit of an Hermitage, and a Writ to put him into corporal Possession. F. N. B. 39. (E)

7. F. N. B. 38. (C) the Note in the Marg. says, That if in a Quare Impedit the Defendant disclaims, there the Plaintiff shall have a Writ to the Bishop; Contra in Disclaimer in a Writ of Right of Advowson. 6 E. 3. 7. Error 78. The Reason is, because he cannot remove his Clerk after the 6 Months past.

8. At the Diffrefs returned against two, one appears, and the other makes Defaults, the Plaintiff shall have a Writ to the Bishop against him who made Default, and yet it may be that the other Defendant may bar the Plaintiff; and it is so used at this Day; but the contrary was adjudged. H. 7. E. 3. for the Cause before said. F. N. B. 39. (B)

Lib. Entry Quare Impedit in Judgments 4, fol. 551. But a Celler Executive quoad Breve &c. quiuque. Vide contra. E. 5. 4 (expressly) in a Writ against the Bishop and others. Where the Bishop disclaims, the Plaintiff shall have a Writ to the Bishop; Sed. after Executive quiuque Patrimonio &c. sec. 17. E. 8 Brev. al Evelyn 38. If the King brings a Quare Impedit against B. and another Quare Impedit against
9. Upon a Recovery within 6 Months against the Incumbent in Quare

Plaintiff re-Impeild the Recoveror may present his Clerk to the Bishop without any

Writ to the Bishop; Per Coke, Dodderidge and Haughton. Roll. R. 213.

Trin. 13 Jac. Harris v. Auldin

found, that the Church was full of the Collation of the Metropolitan, it was doubted if in this Case the Plaintiff should have a Writ to the Bishop; for the Court cannot adjudge whether the Metropolitan has done wrong or not, but this shall come in Trial in Quare non admitit. Br. Quare Impedit, pl. 52. cites 11 H. 4. 80 — If a Man recovers an Action, and the 6 Months pass, yet if the Church is said, the Patron may pray a Writ unto the Bishop, and shall have it; and if the Church be void when the Writ comes in the Bishop, the Bishop is bound to admit his Clerk. F. N. B. 38. (P) — Where the Plaintiff recovers by Verdict in a Quare Impedit, and it is found by the same Verdict, that the 6 Months are past, and that the Metropolitan has presented, whereas the Ordinary ought to have preferred &c. and that the

Year is now past &c. yet the Plaintiff shall have a Writ to the Bishop. F. N. B. 38. (P) cites 38 B. 5. 12.

10. In a Quare Impedit against A. and B. and the Bishop B. made Title, and the Bishop pleaded that he claimed nothing but as Ordinary. The

Bishop died; A. forged this on the Roll, and prayed that the Plaintiff might reply; and for want of a Replication, the Entry was made Quod

practic. Queres licet Solemmitter exactus non venit nec eft profectus

Breve fuam, ideo Confedetum et &c. Et Breve Episcopo. Upon this a Writ of Error was brought, and the Judgment was affirmed; because it is a Nonnulli after Appearance, which in a Quare Impedit is peremptory. 2 Salk. 559. Almich. 3 W. & M. B. R. Rot. 569. Berkley v. Hanlard.

(C. c) Writ to the Bishop. To whom it may be granted, Sec Trial (U)

or awarded.]
Presentation.

...So in the Patron, and a Writ to the Bishop granted against him, this may be directed to the same Ordinary, though he be Party to the Writ; because he is not found a Disturber. Co. 6. Bofwell 49. New Entries 494. to the Guardian of the Spiritualities of the same Ordinary. (When a Dispensation, the Plaintiff made Details, and the other Defendant made Title, and proved Writ to the same bishop, upon the Default of the Plaintiff, and had it; Quod Non, after the Title made, and not before. Br. Quare Impedit, pl. 110. cites 58 H. 6. 14.

4. And in the said Case the Writ to the Bishop may be awarded to the Metropolitan, because the Ordinary is Party to the Writ. 8 P. 4. 22. b. Res judicata in B, and this assigned for Error in Writ of Error; But there it was found that the Bishop had collated by Lample to the Church. Contra 5 D. 7. 22. But Quare.

5. In a Qua. Imp. for a Church within the Jurisdiction of York, if the Writ to the Bishop be awarded to the Archbishop of Canterbury, this is not void, but only erroneous. Tr. 3 Ja. B. per Curiam.

6. In a Qua. Impedit, if the Archbishop of York be found a Disturber, the Writ shall be awarded to the Archbishop of Canterbury, Tr. 3 Ja. B. laid to be the usual Course. D. 16. Eliz. 327. 7. Adjudged. Coke's Entries 496. c. a. 8 in the New Notes there (M. H.) cites D. 527, 528 & D. 76, 77 19 E. 5. Quare Impedit 155.

7. In a Qua. Impedit he brought against Patron Incumbent, and the Archbishop of Canterbury, Guardian of the Spiritualties of Chichester, Sede Vacante of the Bishop, and after a Bishop is created, and after Judgment upon Non sum Informatus is given for Plaintiff, the Writ shall be awarded to the Bishop of Chichester, because he is Immediate Ordinary and Officer to the Court. H. 3 Ja. B. Sir Thomas Pelham, per Curiam.

8. When the Inferior Ordinary is found a Disturber Sede Vacante of the Archbishopprick, the Writ shall be awarded to the Guardian of the Spiritualties of the Archbishopprick. Time of C. 1. 83. But for a Rule.

9. In Quare Impedit if the Plaintiff recovers, and has Writ to the Metropolitan, there cannot have Writ to the Bishop after; per Thorp. Br. Briefal Eveque, pl. 12. cites 38 E. 3. 12. 22. But in that Case he has a Sicut Alias to the Metropolitan; And yet the Bishop was never found a Disturber. F. N. B. 38 (Q) in the New Notes there (d) cites S. C. —— Watf. Comp. Inc. Svo. 346. cap. 28. cites S. C.

10. The Metropolitan had certified, That it is out of his Jurisdiction, and that the Bishop is out of the Realm, and has made a Vicar his Lieutenant, to...
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do all things for him, and prayed Writ to him. Per Thorp, we are not
apprised, whether he has made such Lieutenant, and till we are certified
that he has done so, we will not write to any but to him who is immediate Of-

11. Quare Impedit lies in Durham, and Writ shall be awarded to the
Bishop there; contrary in Wales, Guernsey, and the like. Br. Quare Impedi-
\[12.\] t, pl. 152. cites 11 H. 6. 3. per Danby and Marten.
12. If a Man recovers his Presentation in C. B. against the Bishop, then S. P. or to
he may have a Writ to the same Bishop to admit his Clerk, or to the the Vicar
Metropolitan. F. N. B. 38 (B)

Realm. F. N. B. 38 (Q) — Ibid. in the New Notes (d) says, see 16 E. 3. Quare non admittunt; F. N. B. 38 (B) the Note in the Margin, cites H. 8. 32. S. H. 4. 22. — A Writ shall issue to the Metropolitan, if the Bishop be Party; Quare, for the Bishop did dispute as Patron in S. H. 4. F. N. B. 38. (B) the Note in the Margin.

13. Quare Impedit was brought against the Archbishop, the Bishop, and Roll Rep.
defendants; The Archbishop pleaded, That he claimed nothing but S. C. — as Metropolitan, the Bishop pleaded, That he claimed nothing but as Jank. 384. Ordinary; The Defendants made a Title; Judgment was given for the Plaintiff; It was, among other Things, assigned for Error, That the Writ was awarded to the Archbishop, where it should have been to the Bishop. All the Court agreed, That all the Books are, That he may have his Writ to the one or the other, where the Ordinary is a Disturber. And cites S. C.

Coke Ch. J. faid, He had always observed this, if he be Party to the Suit or not, it is in the Party's Election to have his Writ to the Bishop, or the Metropolitan. 3 Bull. 174. Pauch 14 Jac. Grange v. Dennis.

(C. c. 2) Writ to the Bishop. Proceedings, Pleadings &c.

1. In Quare Impedit against the Bishop, the Plaintiff recovered, and had Writ to the Bishop to dismember the Church, viz. Dissipations Episcopum; the Sheriff returned in Issues 20 s. and the Plaintiff prayed another Sheriff, and had it. Br. Quare Impedit, pl. 72. cites 21 E. 3. 38.

2. If the Sheriff returns Nihil at the Summons in Quare Impedit, and the like at the Attachment, and the like at the Distress, yet Writ to the Bishop shall be awarded. Br. Quare Impedit, pl. 81. cites 21 H. 6. per Ardern, & P. 15. E. 3. by him.

3. The Plaintiff had Writ to the Bishop, which was returned Not served, S. P. And Alias & pluribus awarded. Br. Quare Impedit, pl. 123. cites 5 E. there shall be an Attachment against the Bishop, if need be, F. N. B. 38 (C) — Note on this Writ there lies an Alias, Pluribus & Attachment, and thereon the Parties shall plead as in a Non Admiss. (D) (N) 38. (E) in the New Notes there (a)

4. If the King recovers in C. B. any Pretense, or Sub-deanery, or Dignity against the Bishop, and gives the same by his Letters Patents to another Clerk, The Clerk shall file the Letters Patent in C. B. and thereupon shall have a Writ unto the Bishop to admit him, and to induce him; And if the Clerk dies before he is admitted and indulged, and the King gives the same by other Letters Patent unto another Clerk, that Clerk shall have a Writ
Presentation.

out of the Chancery, directed unto the Justices of C. B. reciting the Recovery, and how that the other Clerk died before he was admitted, and that he has now granted the same to this Clerk by his Letters Patent, commanding the Justices, That they send another Writ to the Bishop, that he admit his Clerk, notwithstanding the King’s Collation before made to the other Clerk. F. N. B. 38 (D)

5. Note; This Writ is expressly judicial, and therefore shall issue out of the Place where the Record is. If Judgment be given at the nisi Prius the Justices of nisi Prius shall award the Writ to the Bishop (yet it seems the Writ is not returnable) And when it appears that the Record is sent into C. B. it shall issue from thence. F. N. B. 38. in the New Notes there (M. H) cites Dyer 194.

6. Where Judgment is given in C. B. in a Quare Impedid, and a Writ of Error is brought, the Court of C. B. may award a Superfedeas to the Writ, which had been awarded there to the Bishop, before the Writ was delivered, and the King’s Bench may award the like. Jenk. 266. pl. 36.

(D. e) Writ to the Bishop. Return by the Bishop.

The Bishop is not entitled to make such Return, inasmuch as he is not privy to the Verdict, or any Plea connected with the Plenary of the Church; But if the Matter which is return
for his Exe
of not serving a Writ be false, the Plaintiff may have his Quare Non Admitte, and also Scire facias against the first and New Incumbent, to have Execution accordingly. D. 260 a. pl. 21. Patch. Eliz. Baffet’s.—Writ Comp. Inc. 8vo 535. cap. 28. cites S. C. And the Doctor says he supposes that in this Case the first Clerk was not induced, and so the Church remained open to the King’s Presence, else his In- tution &c. must be void.

And the Plaintiff was not permitted to relinquish the Title facias, and tender Assur-
ment against the Bishop that he did not repine for the Bishop is only an Officer to the Court, and has made his Return, and has no Day in Court; but he may have his Quare non Admitte against the Bishop. Ibid.

2. A Man had Proximam Preestationem by Grant; the Church voided, a Stranger presented, and the Grantee brought Quare Impedid, and recovered, and had Writ to the Bishop, who returned that the Preestee of the Defender repug’d, and another is in; and upon this the Plaintiff had Scire facias to have Execution, notwithstanding that it be a second Avoidance now, because he be recovered the first Avoidance, and the Covin of the De- fendant shall not prejudice the Plaintiff. Br. Presentation, pl. 33. cites

3. In Quare Impedid it was found for the Plaintiff, and a Writ issued to the Bishop, which was not return’d; upon an Alias brought, the Bishop returned that after Judgment given in the Quare Impedid, the same Incum-
4. In Quare Impedit Judgment was given for the Plaintiff, who was presented to a Church void by Simony; whereupon a Writ was awarded to the Bishop of Winchester, who returned, That before the Writ received, viz. Such a Day (which was after the Judgment) the Church was fully Presentation out of the Court of Wards, because a Livery was not filed. It was laid these Returns of the Church being full before the Receipt of the Writs, are always rul’d to be insufficient; for the Bishop ought to execute the Writ when it comes to him; and cites 9 Eliz. Dyer [150. pl. 2. Baffler’s Cafe] and 18 E. 4. 7. but says the Difference here is that the King presented. And Harvey J. being only present, agreed that the Judgment ought to be executed. Whereupon it was agreed, that the Bishop should have Day to amend his Return, not that a new Writ should be taken. Het. 130. Mich. 4 Car. C. B. Sir John Hall’s Cafe. And it being mov’d again in the Term following, it was held by Yelverton and Richardson, that the Bishop ought to obey the King’s Writ. Het. 131. S. C.

5. If a common Person recovers, and has a Writ to the Bishop, and the Ordinary returns that it is full before of his own Presentation, it is good; As if one recovers, he may enter, if he will, without a Writ of Execution to the Sheriff. Het. 130. in Sir John Hall’s Cafe.

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(E. e) Write to the Bishop to Remove. Who shall be Removed. [In what Cases by Judgment without Writ.]

1. If a Man recovers against the Patron, leaving out the Incumbent, S. P. 6 Rep. he shall not out the Incumbent, because he was not Party to the Suit; for he shall not be outted without Answer. * 9 H. 6. 56. 5. Cafe.

Dub. † 19 H. 6. 68. b. S. P. Cro J., 93. in Cafe of Lancaster v. Lowe. — S. P. Jenk. 28t. pl. 7. says it was agreed by the Justices of both Benches — S. P. Jenk. 234. pl. 56. — Incumbent that it is a Stranger, shall not be outted by Writ to the Bishop without Some Jurisdiction. Sid. 92. Hall v. Bread. — S. P. Br. Quare Impedit, pl. 49. cites 7 H. 4. 54. 36. Per Huls, And if the Incumbent be outted, he shall recover by the Spiritual Laws. — * Br. Ind. pl. 6. cites S. C. — * Br. Quare Impedit, pl. 79. cites S. C. and P.

Brooke says, that it seems that where one recovers in Quare Impedit against the Patron alone, without naming the Incumbent, that this Recovery will hold him in Possession, tho’ the Incumbent shall not be removed, because he recovers the Presentation; quod sufficit. Br. Quare Impedit, pl. 39. cites 47 E. 3. 4.

2. But if a Man recovers against the Patron, he shall out the Incumbent presented by the same Patron pending the Writ, because the Recoveror could not name him in the Writ. 19 H. 6. 68. b. Co. 6. S. 4. — S. P. Jenk. 281. Bofwell 51. b. was agreed by the Justices of both Benches — S. P. Jenk. 234. pl. 56. — 2 Ind. 237. — Contra per Twilden J. who said, and it was not denied by any, that a Writ shall not go without a Some Jurisdiction against the Incumbent; for Res inter alios atque alteri Nocere non debet, and to strip one of his Possession without Action would be inconvenient; for he has no Day in Court, and it would encourage vexatious Actions; and he said that Bofwell’s Cafe had been often derided; and he knew that Writ of Error was brought to reverse it, and Error in Law abated, but the Writ abated; and Lord Coke in the End of the Cafe seems to confute the principal Judgment. Sid. 93. 94. in Cafe of Hall v. Bread. — Watt. Comp. Inc. 310. 535. cap. 28.

3. If
3. If a Stranger usurps by Pretenement pending the Writ of Quare Impedit, his Clerk shall be removed by the Judgment in the Quare Impedit.

4. So if the King presents without Title, pending a Quare Impedit against another Disturber, and the Clerk of the King is instituted and induced, yet he shall be removed by Judgment in the Quare Impedit, Co. 6. Bovell 51. Resolved.

5. So the King presents to my Church, and the Clerk is instituted, whereupon I bring Quare Impedit against the Incumbent only (as I ought) and pending this the King presents another Clerk (the first not being induced) who is instituted, yet this Clerk shall be removed by the Judgment in the Quare Impedit, Co. 6. Bovell 51.

6. If pending a Quare Impedit against J. S. the Plaintiff be Outlaw'd, by which the King presents, and his Clerk instituted and induced, and after the Outlawry is reversed, and the Plaintiff recovers in the Quare Impedit, he shall remove the Incumbent of the King; for now by the Reversal of the Outlawry the Pretenement of the King was without Title. 30 El B. R. Cornwall's Case. Abjudged. cited 9. 3. B. R.

7. If two Patrons present, and the Bishop refuseth both their Clerks, the one Patron brings Quare Impedit, and pending the Writ the other files a Duplex Querela in the Archdeaconry against the Bishop, upon which Process is made, and upon Default of the Bishop the Archdeacon receives the Clerk of this Patron, and he is instituted and induced, and in 6 Months, and after the Plaintiff in the Quare Impedit recovers, he by Writ to the Bishop shall remove the Incumbent of the other Patron who comes in pending the Writ. Gr. 41 El 25. R. between Bennet and Edwards adjudged. 9. 3. B. R. cited.

8. If the King usurps upon me, and his Clerk is instituted and induced, against whom I bring a Quare Impedit, and pending the Writ the Incumbent resigns, and the King presents another, who is also instituted and induced, and then I recover after Six Months, in this Case, upon a Writ to the Bishop for me, the last Incumbent of the King, tho' he has been in by 6 Months, shall be removed, because he comes in Pendentia lite. Cont'd. D. 21. El 364. 23.

9. Pending a Quare Impedit against J. S. if a Stranger presents a Stranger upon good Title, and his Clerk admitted, instituted and induced, and after the Plaintiff recovers, yet he shall not remove this Incumbent. 9. 3. B. R. Bovell's Case. P. 9. B. Dubrutiur 18 D. 7. Kell. 49. Ser Curiam, because he is a Stranger to the Recovery.

10. A brings...
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A. brings Quare Imped against B and then the Clerk of C, who has the Right is admitted pending the Quare Imped against B. If A recovers, his Clerk shall be admitted ally, and the Clerk of A and of C shall try their Right in Equity, Trebits or Assizes. Jenk. 281. pl. 17.

12. So if the Stranger presents the same Defendant upon good Title pending the Writ, yet he shall not be removed, tho he be adjudged a Disturber upon the first Presentation upon which the Quare Imped is brought. B. 3 V. B. R. Bayle's Case contra.

11. If A, seised of a Manor, to which an Advertisement is appurtenant, be outlaw'd in a Personal Action, and after the Church voids, and A presents his Clerk, and the Bishop upon a Disturbance made by B, who pretends some Title thereto, refuses to admit, whereupon A brings his Quare Imped against the Bishop and B and declares thereon which Presentation B. is admitted, instituted and indicted, and after the Outlawry is reversed, and all this appears upon Pleading; in this Case A. shall have Judgment against B. because he comes in, pending the Writ, upon a Title which is avoided also pending the Writ; and also because B. was not Incumbent at the Time of the Writ purchased, and to could not plead to the Title. Mich. 16. Car. 3 between Risby and People. Adjudged per Curiam.

12. In a Quare Imped against B., if the Plaintiff is non-suited, whereupon B. has a Writ to the Bishop, who was not Party to the Writ of Quare Imped. In this Case, tho the Bishop had collated before the Writ served, yet unsuited as he had not collated before the Judgment for the Writ to the Bishop, which was within the 6 Months, the Clerk of the Bishop shall be removed. Co. 8. Dagnon Charta. 363.

13. If a Man recovers in a Quare Imped against Patron and Incumbent within the 6 Months, he shall remove the Incumbent. 19 P. 6. 68 b.

14. So if a Man brings Quare Imped against Patron and Incumbent within the 6 Months, and recovers after the 6 Months pass, yet he shall remove the Incumbent. 39. E. 3. 15. Adjudged.

Quare Imped, be brought after the 6 Months, the Incumbent shall not be removed. Roll R. 211. Harris v. Austin.

15. In an Assize of Darrein Presentation or Quare Imped against Patron and Incumbent brought after the 6 Months pass, if the Defendant do not plead, strictest, the Plenary by 6 Months before the Action brought, but pleads other Matter in Bar, upon which Issue is joined and a Verdict for the Plaintiff, the Incumbent shall be removed upon the Judgment upon this Verdict, because the Incumbent was Party to the Writ, and might have pleaded it, and did not do it. B. 9. V. B. R. between the Bishop of St. David and Lort. Adjudged in Writ of Error upon a Judgment in an Assize of Darrein Presentation in Wales, and the first Judgment affirmed, in which it was not inquired when the Church became void, but Qued tempest Semitum modo transitum, and yet for the Reason aforesaid not material to be inquired; and also because the Jury found Quem tempus Semiter modo transitum and Damages to Half a Year, it shall be intended that the 6 Months passed pending the Writ, and not before the Action brought. D. 8 Car. 5. Rot. 454.

16. If a Man brings a Quare Imped, the Church being full of his own Presentation, and the Title is bound for the Defendant, yet he shall not remove the Clerk of the Plaintiff, because he might have abated 6 M. the
the Writ, because the Church was full of the Presentment of the Plaintiff himsift the Day of the Writ purchased. 19 H. 6. 68. b.

17. Where a Man recovers in Quare Imped, and a Clerk is in by the Bishop by Use, there he shall not be removed; for therefore it is good to name the Bishop also, as it seems, and then he shall not prej its by Use.

Br. Quare Impedits, pl. 79. cites 19 H. 6. 68.

18. In Quare Impedits, if the Bishop says, That he did not present by Use, and claims nothing but as Ordinary, the Plaintiff may pray Judgment, and shall recover the Presentment. Per Patton. Markham saith, This is true, but he shall not have Writ to the Bishop. Brook says, The Reason seems to be, inasmuch as he shall not remove the Bishop's Clerk, and the Plaintiff pray'd Writ to the Bishop at his Peril, and had it, and refused the Damages of 2 Years.


20. Where a Pardon is gained by the Presentment, Admission, and Inffitution of a Clerk, the Patron must be named with the Incumbent in the Quare Impedits; and if the Incumbent be not named, he shall not be removed. Jenk. 200. pl. 18. says, It was so refolvd.

21. R. W. and F. P. brought a Writ of Error against the Bishop of H. and Blower upon a Recovery had in a Writ of Deceit by the said Bishop and Blower against the said R. W. and F. P. for that the said R. W. had before brought a Quare Impedits against the said B. and the Bishop, and had recovered against them by Default, whereupon R. W. had a Writ to the Metropolis to admit his Clerk, and in the Writ of Deceit Judgment was given for the Plaintiffs; for it was found, that the Summons was the Friday to appear the Tuesday after, and for an insufficient Summons; and in that Writ of Deceit the Defendants W. and P. pleaded, That the Incumbent was deprived of his Benefice in the Court of Audience, which Sentence was affirmed upon Appeal before the Delegates; and notwithstanding that Plea, Judgment was given against W. and P. Defendants in the said Writ of Deceit; And upon that Judgment this Writ of Error was brought, and among other Things it was assigned for Error, That upon Suggestion made after Verdict, That B. was Incumbent and in, of the Presientment of the Lord Stafford, and that he was removed, and that Griffin was in by the Recovery in the Quare Impedits by Default, a Writ to the Bishop was awarded without any Scire facias against Griffin; for he is Petitioner, and so the Statute of 25 E. 3. calls him, and gives him Authority to plead against the King, and every Recalfe or Confirmation made to him is good. But to this it was anwer'd, That as to the Scire facias there needs none here against the new Incumbent, for he comes in pendant the Writ, and that appears by the Record; but if he had been in before the Writ brought, then a Scire facias would lie, and cited 9 H. 6. It was adjourned. Le. 293, 294, 295. pl. 452. Hill. 27 Eliz. B. R. Williams v. Blower. D. 145 b. pl. 22, Mich. 18 & 19 El.

S. C. That B. being under the Age of 24, and a mere Layman, took a Benefice, whereupon a Citation was fi ed out of the Delegates to deprive him, pending which R. W. brought Quare Impedits against the Bishop of H. and Blower, naming him Clerk, and recovered by Default at the Grand Jury, and brought a Writ to the Metropolis to remove B. and admit the Clerk of R. W. whereupon one Griffin was admitted, instituted, and inducted. The Bishop and B. brought a Writ of Deceit in C. against R. W. and the Sheriff, and the Summoners for Non Summons; R. W. and the Summoners appear, but not the Sheriff. The Summons being examined, denied that there was any sufficient Summons, by reason of the Sheriff's of the Time and the Distance of the Place, the Benefice lying in Wales. R. W. pleaded in Bar of this Writ of Deceit, this Disability of B. and Sentence of Deprivation by the Delegates, supposing thereby that he cannot be refold to his first Title and Interest in the Church &c. The Bishop and B. demurr'd. And Note this was pleaded in Bar as well against the Bishop as against B. and so not good; Whereupon Judgment was given, That the first Judgments be set aside, and the Plaintiffs referred to all which they left &c. For the Incumbency is not in Suspense, but the Disbursement of the Plaintiff in the Quare Impedits to present to the Church, which was void by the Supremacy of the Writ; and the Matter of the Deprivation and Removal of B. from the Church is not in Suspense by this Recovery in Quare Impedits by the Defendants by which
22. If the Clerk comes in under the Title of the Plaintiff, and since the same, he shall be removed; but if he come in by Title Paramount, he shall not be removed. And for that the Clerk comes in hanging the Write, it seems that he shall be removed. Per Anderson Ch. J. Quod Periam J. Concelfit. Goldsb. 105. in the Cate of Beverley v. Cornwall.

23. If the King recovers his Prefentment unto a Church, and has a Write and it appears by the Register, That another Person is Paramount the Title of the Plaintiff, such Presence shall be removed upon a Recovery by the Plaintiff. Per Anderson Ch. J. 5 Le 126. pl. 158. Mich. 28 Eliz. C. B. in the Cate of Moore v. the Bishop of Norwich. — S. C. & P. by Anderson. Goldsb. 5. pl. 7.

24. Letwaver was removed for not officiating in Person as the Foundation required. MS. Tab. &c. cites 1720. Phillips v. Walter.

For more of Presentation in General, See Andwauit, Collation, Simony, and other proper Titles.

(A) Presumption.

1. If the Eldest Son be beyond Sea at the Death of the Ancestor, and the youngest enters into the Land, he is not accounted in Law a Difeiitor; because the Law presumes, that he preservs the Possession for his Brother; but if upon his Brother's Return he keeps him out of Possession, then the Law looks upon him as a Difeiitor. Per Doderidge. Lat. 68. Paffh. 1 Car. in Mayow's Cafe.
3. Powell Judge fays, he does not know any Cafe where a Man shall be made a Tortfeiitor by Presumption only. 2 Lutw. 1568. Mich.
4. Where the Law intrudes Persons as (Justice of Peace) with the Execution of a Power, the Court ought to give Credit to them in the Execution of that Power; tho' if they make a false Return whereby the Party
Privilege.

Party and Justice are abused, they may be punished. 19 Mod. 382. Hill. 3 Geo. B. R. the Queen v. Simpson. 5. Otiosa & Ingratia, non sunt in leges Presumptione & in facto quod se habet ad Bonus & Malum magis de Bono quam de Malo presumptione ejus. See Maxims. 6. Sententia pro Sententia & pro Legitimatione puerorum. See Maxims. Stabilit Presumptione ducet petentur in Contrarium. See Maxims.

For more of Presumption in General, See Length of Time, Trial Evidence, and other proper Titles.

Privilege.

(A) Of Officers in Courts [from Offices and Duties]

If an Attorney of B. R. be made a Churchwarden of a Parish, he shall have a Writ of Privilege out of B. R. seeking his Privilege to be discharged thereof for his Attendance in the said Court. 13 Car. B. R. Felix Wilson being an Attorney of B. R. was made Churchwarden of Harwell, and refused it, and he was tried in the Spiritual Court to execute the said Office, and Prohibition granted.

2. Cr. 15 Car. B. R. Mr. Barker's Case being elected Churchwarden of St. Albemary in London, and such Writ granted.

3. Clerks of the King's Courts are not privileged from Watch and Ward, for they may send others to do it for them, and there needs not any Personal Attendance. Cr. 15 Car. B. R. in the said Case of Barker, said by Justice Jones.

4. An Attorney of B. R. was elected Tythingman of Taunton, in which Town a Custom is pretended, That every one should be Constable, or Tythingman in his Turn, according to their several Houses, and he having purchased two Houses in the Town was chosen Tythingman at the Leet there; he brought his Writ of Privilege to be discharged; because he is to be attendant in B. R. It was moved, that it might not be allowed, because here was a special Custom, and should an Attorney purchase many Houses, there might not be Perfons enough to do the Service, as here he has actually purchased Seven. But all the Court held, That this cannot be a good Custom; for then a Woman, being an Inhabitant in one of the said Houses, it might come to her Courte to be Constable, which the Law will not allow. It was ordered, that he be discharged. Cro. C. 389. Mich. 10 Car. B. R.; Prouse's Cafe.
Privilege.

5. S. an Attorney of B. R. having Land within the Manor of H. in the County of Middlesex, Ratione tenurea ought to serve as Reeve when elected, and he being now elected, prayed a Writ of Privilege that he should not be compelled to gather the Rents of the Lord; Per Kelling Ch. J. this Writ lies here, and is a stronger Case than Troubles's Cafe Cro. Car. 389. Twidten J. said, A Tenure may be created to such Intent to collect the Rents of the Lord; Er Adjournatur. Raym. 179. Pech. 21 Car. 2. Stone's Cafe.

Thought it was objected, that he was a Copyholder, and by Custom ought to serve, as a Thir-ge incident to his Elibe created by the same Custom, and though it was also said, that he might execute this by Deputy, yet the Court granted the Writ; For to the 1st it was said, that the Privilege of this Court is as ancient as the Custom of any Manor; and to the 2d. he is responsible for his Deputy. Lev. 265. S. C—

Vent. 16. & 29. S. C.

6. Such as have Privilege of Chancery sometimes have a Superfedeas of Privilege granted them as a Prote&ion; the most extensive of which Sorts contains both an Injunction and Superfedeas, directed to all and singular Justices, Judges, Sheriffs &c. injoining them not to molest or vex a Clerk of one of the six Clerks of this Court in his Privileges, and amongst other Things not to put, or cause him into any Office of Collector, Churchwarden, or other common troublesome Office; and if any Diligence has been made upon him on that Account, without Delay to release it. P. R. C. 287, 288.

(A. 2) Of other Persons.

1. Sir W. H. was seified of the Manor of R. in Essex, in which he preferred to have a Lect. An Alderman of London lived within the Precepts thereof, and was presented by the Homage to be Constable, and this Preemption was removed by Certiorari into B. R. and the Alderman was discharged; because he was obliqged as Alderman to be present at London for the Government of the City. Jo. 462. pl. 4. Trin. 16. Car. B. R. Alderman Abdy's Cafe.

Custom of the Manor, yet Non Allocatur; And thereupon a Writ was awarded to be directed to the Lord of the Manor to discharge him. Cro. C. 535. pl. 3. 16 Car. B. R. S. C.

2. Captain of the Guards is not privileged from being Reeve of a Manor. Lev. 253.

Sid. 335. Hill. 19 & 20 Car. 2. Sir Walter Vane's Cafe.

3. A Doctor of Physick was chose Constable, and the Court thought Persons of Quality should be privileged against such Offices, and therefore made a Rule that he should be discharged of the said Office Nii &c.


4. A Writ of Privilege was prayed to exuce one from the Office of Expenditor in the Leseel of Romney-Marsh; 1st. For that he was an Ecclesiastical Person. 2dly. Because all the Land he has in the Marsh is in Leafe for 99 Years; The Writ was granted by Rainisford and Moreton—S. C. J. they only being in Court, Moreton for the first Reafon, and Rainisford Mod. 283. for the 2d. Lev. 303. Mich. 22 Car. 2. B. R. The Archdeacon of Rochester's Cafe. Dr. Lee's Cafe.

Ven. 165. S. E. Expenditor in the Leseel of Romney-Marsh; 1st. For that he was an Ecclesiastical Person. 2dly. Because all the Land he has in the Marsh is in Leafe for 99 Years; The Writ was granted by Rainisford and Moreton—S. C. J. they only being in Court, Moreton for the first Reafon, and Rainisford Mod. 283. for the 2d. Lev. 303. Mich. 22 Car. 2. B. R. The Archdeacon of Rochester's Cafe. Dr. Lee's Cafe.
Privilege.

5. High Constable was discharged from serving the Office of Overseer of the Poor, during his High-Constableship. 2 Mon. 46. Pacht. 28 Car. 2. High-Constable of Wanstead's Cafe.

6. The King's Officers, thought they may execute the same by Deputy, are privileged from Parthi Offices, though they drive Trades in the same Parish, and such Privilege is grantable out of Chancery as well as the Exchequer. 2 Chan. Rep. 196. 32 Car. 2. Raymond v. Parish of St. Botolph's Aldgate.

7. Note, a Writ of Privilege was moved for to have a Clergyman, who appeared to have no Cure of Souls, privileged from the Office of Overseer of the Poor. And though Holt Ch. J. seemed against it, because he thought their Privilege of Exemption was only extendible to their Spiritual Revenues, and if in any Cafe they were Personal, it was only from Common Law Offices, and specially if they were without Cure, as here, yet the other three Justices were strongly against him; But however, for his Lordship's Satisfaction, desired it should be stirred again. 6 Mod. 140. Pacht. 3 Ann. B. R. Anon.

(B) Privilege. For what Causes.

1. If a Man be arrested coming to Westminster to answer an Action there, he shall have the Privilege. 2 H. 7. 2. b. 9 H. 6. 44.

2. So if he be arrested returning from the Court he shall have the Privilege. 2 H. 7. 2. b.

3. If a Man be sued in Bank, and he goes to another Place by Leave of the Court to inquire for Evidences concerning this Matter which he has there, he shall have the Privilege if he be arrested there. 13 H. 4. 1. b.

4. But in this Case, if he has not Leave of the Court to go there, he shall not have the Privilege. 13 H. 4. 1. b.

5. If the Defendant, in a Writ of Trespass, be arrested in another Court, in coming at the Return to answer the Plaintiff he shall have his Privilege. 4 H. 6. 8.

6. If a Man be arrested upon a Writ returned in Bank, if he goes 40 Miles out of his Way to another Place, to buy a Horse to come to London, and he is there arrested, yet he shall have his Privilege. 9 H. 6. 7. b.

7. If
Privilege.

7. If I have an Action pending in B. and my Goods are arrested in Lon-
den, which ought not to have Privilege, if I render my Body Volun-
tarily to free my Goods, I shall not have the Privilege, because it was
my own Act to render my self free. 20 H. 6. 3 b. Anjudged, Br. Privi-
don, his Goods are attached by the Custom, and he renders his Body to Prison to disfouc the Attachment, yet he
shall have the Privilege of the Bank, if he was impleaded there before, notwithstanding that the Ren-
der to Prison was his own Act; For he was in by virtue of the Act. Br. Privilege, pl. 29 cites 39 H. 6.
12. — S. C. cit 8 Rep. 143. b. in Dr. Drury’s Case. — See pl. 23.

8. If a Man be arrested in going to London, tho’ he has an * A-
c tion pending in Bank, yet if he was not coming to this Court, he shall
not have the Privilege. 2 H. 7. 2. See pl. 1.

9. If the Plaintiff, in a Suit in Bank be arrested in London by De-
fendant upon a Plaint there, before the Return of the Writ in Bank,
he shall have the Privilege. 11 H. 6. 52. A. implead-
ed B. in C.B. and had Days. to appear,
and the Defendant arrested the Plaintiff coming toward the Court to prosecute his Suit, the Plaintiff shall
have Privilege for his own Suit. Br. Privilege, pl. 57; cites 11 H. 6. 7.

10. If a Man, having an Original depending returnable in Bank, comes to London 3 Weeks before the Return for this Cause and no other,
and there is arrested, he shall have the Privilege. 11 H. 6. 3. But if he
comes so long before the Time, because he is sick, to be refreshed,
he shall have the Privilege. 11 H. 6. 52.

11. But if a Man does not come to London to take a Suit at the
Common Law, but is there remaining, tho’ he has an Action pending
in Bank, yet he shall not have the Privilege if he be arrested there.
11 H. 6. 3.

12. This is true, if he be arrested 2 or 3 Weeks before Return of the
Writ in Bank; For then he could not be in coming to the Bank. 11 H. 6. 52.

13. But if he was arrested there but 2 Days, or such little Time be-
fore the Return, he shall have his Privilege, tho’ he be staying there; For by this Arrest he cannot keep his Day in Bank. 11 H. 6. 52. See pl. 12.

One im-
pleaded in Bank came to London 12

Days before the Term, and is arrested in London; Upon Oath that he came so long before the Term, to
retain Council in his Matter in Bank; the Privilege was allowed him. Br. Privilege, pl. 28 cites 39 H. 6. 4.

4. — In Debt, Exigent was awarded in Trinity Term returnable in Hillary Term, and Nature, viz. in Mich. Term the Defendant came to London, and was arrested, and prayed Privilege; Per Bryan Ch. 1. he shall have the Privilege, if he came for Counsel in the time Cause; And therefore the Plaintiff in Lon-
don took out an Original in Bank against the Defendant, and he was compelled to answer to it imme-
diately, and had Privilege; quod not. Br. Privilege, pl. 45. cites 20 E. 4. 12.

14. A Man who dwelt in London was impleaded at Westminster, and after
was arrested in London, and was dismisled by the Privilege, tho’ he dwelt
in London, as well as if he had been arrested in London coming out of the Country to Westminster, to have appeared at a Suit there; But Brook
says it seems that this was in the Term; For contra, it seems if he had
been arrested in the Vacation. Br. Privilege, pl. 55. cites 11 H. 6. 52.

15. A
Privilege.

15. A Man said a Replevin, and the Defendant affirmed Plaintiff in a Base Court by Covin to have the Goods disquieted to be attached, so that Replevin should not be thereof made; and the Sheriff returned it, and the Plaintiff prayed supersedeas for him and his Goods, because the Court of Bank has the elder seisin by the Replevin, and they have not Privilege by Supersedeas for his Goods, but only for his Body; but per Lanion he shall have it for both; but by several, the Plaintiff may have Certiorari for all if he will, and see elsewhere, that the Attachment shall not disolve the Dictrefs taken before. Br. Privilege, pl. 51. cites 16 E. 4. 8.

16. Where Matter is continued for a Year, by reason that it is in Arrearsment, a Man shall have Privilege. Per Brian. Ch. J. Br. Privilege, pl. 45. cites 20 E. 4. 12.

The Plaintiff coming up to follow his Suit after his Year after his Bill exhibited, was arrested in London, and had his Privilege. Toth. 218. cites 1583. Marshal v. Moor. S. C. cited P. R. C. 285. it appearing, that he came up only for the following his Suit. —— Cert. Cane. 496. S. C.

17. A Man brought Corpus cum causa, to be removed out of London, because he is indicted of Trespafs in B. R. And by the best Opinion he shall have the Privilege. Br. Privilege, pl. 47. cites 2 R. 3. 16.

And per Sullative, if a Man claims the Privilege by Affirm, brought by himself, he shall be examined whether it be brought by Covin. Ibid. Where the Action is brought in the same Term, he shall be examined of the Covin; but if it be in a former Term, the Record shall be credited, and the principal Cause was put off 4ec. therefore quære. Ibid.

18. He who has Attorney, and comes to communique with him, and is arrested in London shall have Privilege. Br. Privilege, pl. 34. cites 2 H. 7. 2. Per Townfend.

19. And he who comes to a Vill to merchandize, and after has Notice that Pluris Capitis is infixed against him, and it is returned, and that he does not appear Exigent shall issue, there if he would appear, and in the mean Time he is arrested, he shall have the Privilege. Per Townfend; quære. Br. Privilege, pl. 34. cites 2 H. 7. 2.

20. Note, that where Coffy que Ufe comes to Westminster to maintain the Suit of his Feoffee in Ufe, and he is arrested, he shall have the Privilege. Br. Privilege, pl. 1. cites 27 H. 8. 20.

21. If the Baron alone be impeached in C. B. and in coming to defend the Suit be and his Feme are both arrested, they shall both have the Privilege. D. 377. Trin. 23 Eliz. Anon.

Sein Detts against Baron and Feme, Superfederas of Chancery was cause for the Baron; and because the Feme cannot answer without her Baron, and they are one Person in Law; therefore Per Cur. It shall serve for both. Br. Privilege, pl. 17. cites 22 H. 6. 38.

22. The Defendant, coming to execute a Commission, was arrested, and had a Corpus cum causa to set him at Liberty. Toth. 218. cites Trin. 23 Eliz. Jackon v. Vaughan.

23. Action of Battery was brought in C. B. and upon Not Guilty pleaded, the Parties were at Illue; and when the jury went out to consider of their Verdict, the Defendant said the Plaintiff to be arrested by Proces out of B. R. for a Battery done to him before by the Plaintiff. The Court being inform'd of this, would have discharge'd the Plaintiff, but that he having put in Bail, they said they could not, but commanded the Plaintiff in this new Action to release his Arrest, which he did; and they set a Fine on him, which he immediately paid in Court. And they said, that the Suitsors ought to safely to come and go by the Privilege of the Court, without Vexat ion elsewhere. Goldsb. 33. pl. 5. Mich. 29 Eliz. Leo's Cafe.

24. A
Privilege.

24. A Defendant coming up upon an Attachment would have had his Privilege against a Citation in the Arches, and could not; because a Citation is no Stay of his Person. Toth. 218. cites Pach. 39 Eliz. Cook v. Dix.

25. The Plaintiff was arrested when he came up to examine Witnesses, and was discharged by Superfederas of Privilege. Toth. 218. cites Trim. 1591. or 32 Eliz. fol. 738. Barnardilton v. Bawd.

26. The Plaintiff was released out of Prison, tho' detained at other Men's Suit, because he was arrested when he was going about his Business or Suit in Chancery. Toth. 211. cites 8 Car. Smith v. Garby.

27. When a Person complains to the Court of B. R. of a Misdemeanor, and it is adjudged that his Complaint is vexatious; this Court will not allow the Privilege of protecting him in his Return. 11 Mod. 79. pl. 13. Pach. 5 Ann. Anon.

(C) For what Things. And in what Action.

1. If a Man was condemned in London, and taken before the Writ purchasers in Bank, he shall not have his Privilege, but shall be remanded. 10 H. 6. 10 b.

2. If a Man, who comes to London to answer an Original against him returnable in Bank, be, before the Return, arrested upon a Plaint in London prior to the Date of the Writ, he shall not have the Privilege. * If after his being impaled in Bank, he is arrested in London upon a Plaint, he shall have the Privilege, tho' the Plaint be Nonadjudged or Exsized, or will not appear, to that the Writ be returned, and the Telle of the Writ prior to the Plaintiff upon which he is arrested; but if the Writ be not returned, he shall not have the Privilege; for the Court has not any Record; but upon Plaintiff affirmed before the Telle of his Writ, he shall not have Privilege. Br. Privilege, pl. 5. cites 8 C.

3. So if the Plaintiff was the 4th Day of October, and the Writ bore Date the 1st Day, yet if it be found upon Examination that the Writ was delivered the 5th Day, he shall not have the Privilege. 9 H. 6. 54 b.

4. If a Man, coming to answer an Original, be arrested upon a Plaint in London subsequent to the Date of the Writ, but before the Return, if the Original be after returned, he shall have his Privilege, tho' the Plaintiff in the Original has not yet done any Thing in the Writ; for by the Return of the Writ the Original was pending from the Date, as Intu'to. 9 H. 6. 54 b. Curia. 10 H. 6. 10 b. here, he cannot be sued elsewhere; Per Twiflet. Mod. 66. Mich. 22 Car. 2. B. R. Anon.

5. So shall it be tho' the Plaintiff in the Original be outlaw'd at the Return. 9 H. 6. 55 b. Curia.

6. But if a Man sues an Original against me, but does not deliver the Writ to the Sheriff, nor any Writ is returned; and I supposing the Writ to be returned, come to answer it, and in coming am arrested, I shall not have the Privilege; for here no Writ is depending against me. 9 H. 6. 54 b.

7. If I am arrested in an inferior Court coming to answer a Capias sued against me in Bank, I shall have the Privilege, tho' the Writ be returned Non eit Inventus. 20 H. 6. 4.
Privilege.

8. A man who is coming to prosecute a suit shall have the privilege for all his goods necessary for the journey. 20 H. 6. 4. cites S. C. pl. 15. cites 9 E. 4. 47. That it was touched there, that he should have privilege there for his horse and servant who comes with him—ibid. pl. 27. cites 21 H. 7. 29. That he shall have privilege for his horse and other goods—It was laid by Atchough and Pulfhop, when a man comes to London about his suit, he and his horses and his goods necessary to his journey shall be privilege'd. And by Newton, he shall have the privilege for all his goods brought with him, tho' he brings surplusage, and to of all his other goods, Quere inde; And to after he was remitted as before. Br. Privilege, pl. 6. cites 22 H. 6. 4. * S.P. And also for his expenses. Br. Privilege, pl. 29. cites 58 H. 6. 12. Br. Privilege, pl. 55. cites S. C.—pl. 8 cites 54 H. 6. Per Privot. Quid non Negatur. [And see the Notes at pl. 8. Per Newton]


11. If defendant in an action of debt in bank be arrested in London for the same debt by the same plaintiff, he shall have the privilege; and when he comes into bank upon the habeas corpus, tho' the plaintiff be non-suited, yet he shall be discharged. 12 D. 4. 21. Br. Nonuit, pl. 13. cites S. C.—Gilb. Hist. C. B. 168. cites S. C. If it appears to the court, that it is the same plaintiff, defendant and action, the defendant shall be discharged; because at the time of filing out the 2d action, they were legally attached in the superior court.

12. He who rides with his master to London, to bring back his horse, shall have the privilege. Br. Privilege, pl. 40. cites 10 E. 4. 4. 13. If a man comes to sue original, and is arrested before he can sue it, he shall be examined, and shall have the privilege, tho' no plea be pending. Br. Privilege, pl. 1. cites 27 H. 8. 20. 14. A clerk of B. R. was sued, after the statute of 21 Jac. cap. 23. in an inferior court, for a sum under 51. And per Jones and the chief justice, a writ of privilege shall be allowed; for the statute, being general, never intended to take away the privilege of the clerks of this court. And it was ruled accordingly. Palm. 493. Pach. 1 Car. B. R. Armington's cafe.

15. A serjeant at law was plaintiff in the admiralty, and the defendant there mov'd for a prohibition in B. R. the court doubted, whether privilege should be granted in prohibition, Ideo Quere. Sid. 65. pl. 38. Mich. 13 Car. 2. B. R. Serjeant Morton's cafe.

16. If a man comes to B. R. as a witness, he is protected cumdo et recto. Per Twifden. Mod. 66. Mich. 22 Car. 2. B. R. pl. 13. Anon. For S.P. For since they are oblig'd by the process of the court to appear, they will not suffer any one to be molested whilst he is paying obedience to their writ. A witness was arrested as he was attending the court to give testimony in a cause. Roll Ch J. bid them take a superfluous, and ordered the parties to shew cause why an attachment should not go against them who arrested him. sty 395. Mich. 1653. Anon. If a witness coming to testify in a cause in Middlesex be arrested in London by one knowing the cause, he has no remedy but by habeas corpus to examine and deliver him thereby; but if there be any contempt by the officer &c. an attachment may afterwards be awarded against him; for they are as well to have privilege as the parties. Keb. 220. Hill. 15 Car. 2. Vandevelde v. Luelin.

17. In debt, upon a penal statute, qui tam &c. against an attorney in C. B. the question was, if he shall have his privilege or not? And adjudged that the writ S.C. 5 Lev. 596. Adjudged that the writ.
Privilege.

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&c., because it is only the Suit of the Party; tho' in Information he shall have Privilege, and it was said to be the Suit of the Party, tft. — 193. S. C. — Because he may be Nonuit, which he cannot be in Information. S. P. 1. 3dly, He may pray a Tales without Warrant of the Attorney General. 30. Trin. 32dly, This shall not be determined by the Demise of the King. And W. B. R. cited Cr. Car. 10. Farrington's Case there adjudged to be merely the Suit of the Party. Skin. 549. Trin. 6 W. & M. B. R. Baker v. Duncomb.

(D) What Persons shall have the Privilege.

1. The Farmer of the Chief Clerk of B. R. shall not have the Privilege of the Court, because he is not any Necessary Attend atant upon him. 3d. 1. 3a. B.

2. The Steward of his Lands shall have the Privilege. 20 H. 6, Defendant moved to be discharged out of Execution, being Steward of the Household to Baron Borch, a Foreign Enemy, and obtained a Rule to shew Cause, which was afterwards discharged on hearing Council on both Sides, it appearing that the Defendant was a Trader, that he resided at his own House in the Old Palace Yard, Westminster, and that the Enemy was at Hanover at the Time of the Affrees. Notes in C.B. 28t. Hill 9 Geo. 2. Caius v. Molinet.

3. If a Man be not retained with a Clerk in Chancery, but is his Servant to do his Commands only at this time of the Suit, yet he shall have the Privilege. 11 H. 6. 8. b. Quere.

Privilege, but those who are Attendants at the Office, or upon their Master, as Cooke, Butler &c. Per Littleton. Br. Privilege, pl. 3. cites 34 H. 6. 15. — Servant of the Chancery shall have the Privilege, at the Command of the Servant. Br. Privilege, p. 9. cites 54 H. 6. 29. — But per Prior, Servant of a Gentleman, who is Servant of the Chancery, shall have the Privilege, but this is at Servant of the Chancery, and not as Servant of the Servant. Ibid.


5. Debt against H. S. who ca Walsh Superfedeas of the Exchequer as Servant of the Lord Cromwell, Chamberlain of the Exchequer; Pole said, that the Privilege extends to those who are Accountants in the Exchequer, and to the Treasurer of England, and other Assistants of the Court, and their familiar Servants who are about the Offices and Business of the Account in the Exchequer, and to their personal Servants dwelling in their House, and to others; and that the Defendant is Deputy to the said Lord Cromwell at Hull, and is accountable there, and not in the Exchequer, and that he is not a Household Servant of the said Lord Cromwell, which Newton agreed; For the Privilege does not extend to the Shepherd nor Carter, but to the Servants who are about his Person, or attendant at the Court, and they demurred upon the Superfedeas, because the King recorded by the Writ, that he is continual Servant to the Chamberlain, and Day given over to the next Term, and there he caled another Superfedeas, rehearting him to be menial Servant. Per Newton, by the Day given over, the Jurisdiction is affirmed but for the first Superfedeas only; Per Portington, He who pleads a Plea to the Jurisdiction of the Court, shall not plead other Plea to the Jurisdiction after; but here is no Plea pleaded, but Day given over upon the Superfedeas; therefore the last Writ may well serve. Br. Privilege, pl. 16. cites 22 H. 6, 19.

6. If the Sheriff's Bailiff of H. who comes to bring the Writs to Court, and to receive others &c. be arrested, he shall have the Privilege; Per Littleton. Br. Privilege, pl. 24. cites 9 E. 4, 47.

7. In
Privilege.

7. In Debt, Coop., Butler of Officers of the Court &c. shall have Privilege, and yet Bill does not lie against them; For they are not bound to be attendant in the Court as Officers and Attorneys are. Br. Privilege, pl. 42. cites 11 E. 4. 3. Per Littleton J.

8. And a Magistratus shall have Privilege; Per Choke J. and yet Bill does not lie against him. Br. Privilege, pl. 42. cites 11 E. 4. 3.

9. Bill by Attorney of B. R. was rejected and abated; for no Attorney is there of Record, nor his Attendance necessary; But otherwise it is in C. B. For there he, who is Attorney of Record, shall have the Privilege to plead by Bill. Br. Bill, pl. 24. cites 1 H. 7. 12.

10. G. brought Debt against T. Warden of the Fleet, by Bill of Privilege, and he would not appear, and the Court was in great Doubt what Remedy the Plaintiff had to compel the Defendant to appear; for he cannot be forejudged the Court, because he has an Inheritance in his Office. And after it was surmised to the Court, that the said T. had made a Leave of his said Office to another for three Years, and then the Court was clear of Opinion, that the said T. should not have the Privilege; for now during the Leave he is not Officer, but the Lessee. 2 Le. 173 Trin. 29 Eliz. C. B. Gittinson v. Tyrrel.

11. A Writ of Privilege was signed by all the Justices of the Court of C. B. for G. V. a Clerk under the Carys Brevium, to free him from being a Soldier, reciting, that it is the Custom and Privilege of that Court, time whereof &c. that neither the Attorneys nor Clerks shall be prefed for Soldiers, nor chose in any Office Sine Voluntate but, ought to attend the Service of the Court. Cro. Car. 11. pl. 1. Trin. 1 Car. C. B. George Veneable's Cafe.

12. Debt on Bond of 100 l. Defendant pleaded to the Jurisdiction, that none of the Privy Chamber ought to be sued in any other Court, at the Suit of any Person, without special Licence of the Lord Chamberlain of the Houhold, and that he is one of the Privy Chamber. Plaintiff demurred, and a Respondes Outler awarded; for the Plea is ill; and the Court seemed to be offended with the said Plea. Raym. 34. Mich. 13 Car. 2. B. R. Barrington v. Veneables.

S. C. Frem. Rep. 589. pl. 501. accordingly; But by Twidten J. if upon Examination the Joining appears to be by Civin, he shall have his Privilege. —

13. In Assault and Battery against A. and B. A. pleaded Son Assult Demnehe, B. pleaded his Privilege as a Serjeant at Law, to be sued only in C. B. The Plaintiff demurred, because he is not the sole Defendant, but joined with another; And it was said, That though, where the Action is joint and cannot be severed, he shall lose his Privilege if he be sued with another; but otherwise where the Action is severable. But per Cur. a Sejeant at Law has no Privilege against any Court at Westminster; for he may practice in any Court there, and it is not confin'd to C. B. But if he be sued in any Court elsewhere than at Westminster, he may then plead his Privilege. Whereupon a Respondes Outler was awarded. 2 Lev. 129. Hill. 26 & 27 Car. 2. B. R. Deakins v. Sir William Scroggs & al.

Name of Lambeth v. Scroggs & al. in the Exchequer Chamber, and there North Ch. J. said, That he al- ways took it to be an uncontroverted Point, that a Serjeant at Law should be sued only in C. B. by Bill; that he is bound by his Oath to be there, and when he brings a Writ of Privilege, it is always out of that Court and no other. Patc. 50 Car. 2. Curia adiuvare voluit. — An Action was brought by Bill against a Serjeant at Law for Work done, the Defendant pleads in Abatement that he ought 'to be sued by Original, and not by Bill; on this Demurrer was joined; and after many Arguments and Cases cited, the Court said, The Case of a Serjeant and Prothonotary's Clerk are upon the same Foot, neither of them being bound to personal Attendance, as Prothonotaries and Attorneys are, so that he ought to have been sued by Original; and therefore the Court gave Judgment for the Defendant, that the Bill should abate.
Privilege.

Notes of Cases in C. B. 258. S. C.

14. The Clerk of the Clerk of the Crown Office is not privileged. 2 Show. Ent the
287. Patuh. 35 Car. 2. B. R. Ward v. Lawrence, Clerk of the

15. It was adjudged, that an Attorney's Clerk has no Privilege. Comb. 12. Hill 1 & 2 Jac. 2. Gardner v. Strode.
16. An Action was brought against a Proctorary's Clerk by Original. He pleaded, that he ought to be sued by Bill ; to which Plaintiff demurred. And the Court gave Judgment, that the Defendant should answer over. Notes in C. B. 280. Trin. 7 & 8 Geo. 2. in the Case of Swain v. Girdler, Serjeant at Law. Cites it as Mich. 10 Geo. C. B. Rot. 360. Baker v. Swindale.
17. That the Defendant is an Attorney, or a Clerk in the Courts of Chancery or Exchequer &c. may be pleaded in Abatement. R. S. L. 6.

(E) Against whom he shall have the Privilege.

1. If a Man be coming to a Court, yet if he be arrested in another Court at the Suit of the King, he shall not have his Privilege. 9 H. 6. 44. Curn.
2. Bill of Privilege lies not against Attorney and his Feme; for the Feme is not privileged. Per Littleton and Prior. Br. Privilege, pl. 9, cites 34 H. 6. 25.

has the Privilege of Chancery, this shall not serve for his Feme. Br. Bill, pl. 39, cites 35 H. 6. 5.

(F) What Court shall have the Privilege, and against whom.

1. If a Man coming to answer an Action in Bank be arrested in the Marshalsea, he shall have the Privilege of the Bank; yet the other is an Ancient Court. 4 H. 6. 8.
2. So a Man shall have the Privilege of the Bank if he be arrested in London. 4 H. 6. 8. 6.

A Man was implicated in Bank, and at the Exercit was sullied in London by Action of Debt against Caffie of L. upon a Conveyance equitable, and had Writ of Privilege, and was dismissed, note is taking that it was alleged that it was a customary Action which does not lie at Common Law; for after this Action determined in Bank, he may have new Action in London; for he cannot be attendant at two Courts simul & semel, and he must dwell in London and is arrested there, where he is implicated in Bank, shall have the Privilege. Br. Privilege, pl. 30, cites 38 H. 6. 29.

If a Man be implicated in any Court of Westminster, and after is arrested and committed in London, where he ought to have the Privilege of Westminster, he shall be dismissed. Brook saw Square side; for the Plaintiff cannot have Action at another Time, if he was in Execution. Br. Privilege, pl. 44, cites 16 E 4. 5.

3. If a Clerk of B. R. be sued by Bill there for Land in a Corporation, of which the Corporation has Constance of Pleas, yet they shall not have Constance of this plea, but the Defendant shall have his Privilege of B. R. for otherwise he shall be drawn to the Attendance
5. If a Prisoner remains in the Fleet by Command of the Barons of the Exchequer, and Action is brought against him in C. B. the Court may command the Warden of the Fleet to bring him into Bank to answer. Br. Judges, pl. 29. cites 18 E. 3. and Fitzh. Office of C. 16.

6. Trespass was brought by A. against B. who was return'd Nihil, and the Plaintiff came to London to sue other Capias, and the Defendant arrested him in L. and the Plaintiff return'd in Bank by Writ of Privilege, and other Plaints and Surety of Peace, and Attachment of the Chancery were return'd; and he pray'd to be dismissed; and he who demanded the Peace was demanded and came not, by which he was dismiss'd of the Surety of the Peace, and of all the Plaints, and not of the Attachment, and the Defendant made no Plea. Br. Privilege, pl. 33. cites 4 E. 4. 15.


8. If an Accountant in the Exchequer be imploaaded in C. B. the Exchequer may send Superfedeas to them to ferroca. Br. Superfedeas, pl. 33. cites 9 E. 4. 57.

And if he be imploaaded in B. R. those of the Exchequer

will take the Record of Account &c. For they cannot make Superfedeas to the King; for there the Pleas are held Coram Regis, and not Coram Justiciaruis; and he shall be dismiss'd. Ibid. One who was Receiver General of the Revenues of the Crown in the Counties of W. L &c. being sued in C. B. brought a Writ of Privilege out of the Exchequer; but it was not allowed. D. 358. pl. 9 Mich. 15 & 16 Eliz. Hunt's Cases.

Where the Sheriff returns Quo

ante Adventum brevi, the Exchequer document was taken by him.
One S. was impleaded in C.B. at the Suit of a Widow in an Action of Debt, and now came an Injunction or Writ of Privilege out of the Exchequer, reciting the said S. to be one of the Grooms of the Queen's Privy Chamber, and Keeper of the Privy Purse, and so accountable to the Queen; that they do not hold Plea of the said Action, but that the Plaintiff sue in the Exchequer, but the Writ was utterly disallowed by the Court. 3 Le. 223. pl. 290. Hill. 39. Hill. in C.B. Seekeford's Cafe.

11. Diggs being committed by the Court of Requests for not answering a Bill there for the same Matter for which he had a Bill here in Crown, had a Corpus cum causa. Toth. 219. cites 36 Eliz. Lib. A. fo. 539.

12. In Trepass in R. the Trepass was laid in Cornwall, the Defendant pleaded in Abatement, and set forth the Charter of King Edw. 1., granted to the Stannery-Court, thereby enabling the Stannery-Workers to plead and be impleaded in the Stannery Court; and so prayed the Privilege of its being tried there; upon Denruror the Court agreed, That it may be here in Castrum Marchalli, he is not to be setled away, and if being in Custodia Marchalli, he should not answer here, none then could have Remedy against him; and therefore he was intioled to answer. 2 Bult. 122. 123. Mich. 11. Jac. Parke v. Lock.

13. One that is privileged in Chester, has Craft against A. who inhabits in Chester, and against B. who inhabits in London. He cannot sue in the Exchequer in Chester, tho' he is privileged there; for by such Means as might bring one from Dover to answer to a Suit in Chester. Hutt 59. Grigg's Cafe.

14. There are three Sorts of Privilege in the Exchequer, 1. as Debtor; 2. as Accounatant; 3. as Officer of the Court. Against the first of these any Man who hath a special Privilege in another Court, as an Officer of the Court, or an Accounatant shall have his Privilege; Because the Privilege of a Man as Debtor is only a General Privilege; But if an Accounatant begin his Suit here, no Privilege shall be allowed elsewhere; Because he has a Special Privilege, by reason of his Attendance, to pass his Account, in which the King hath a particular Concern, the same holds in an Officer of the Court, if he commences a Suit here, no Privilege in another Court shall prevail against him; Because his Attendance here is requisite, and his Privilege here is attached first by commencing his Suit. But where the Accounatant hath finished his Account, and reduced it to a Certainty, to that it is become a Debt, then he hath only a Privilege as a General Debtor has; So a Servant to an Officer, or Minister of the Court, has no Privilege against a privileged Person elsewhere. Per. C. 11. 365. Patch. 16. Car. 2. in the Exchequer Clapham v. Sir J. Len- thall.

15. A Member of the University of Oxford sued in the Exchequer, and pleaded his Privilege, but it was not allowed. Hard. 118. Patch. 13. Car. 2. Wilkins v. Shackerott.

16. Lattot was sued out of B. R. against the Defendants being Commissioners of the Treasury, thereupon Sir John May Pashe Baron of the Exchequer came into B. R. and proved the Red Book, which is an Ancient Book, and required a Record in their Court, wherein it was laid, that the Treasurer should have the Privilege of being sued only in that Court, and the Patent under the Great Seal, which constituted the Defendants were, and granted to them Office of a Receiver of England was produced, and thereupon they demanded their Privilege might be allowed, and after some Debate, it was granted; And tho' it was urged, That there ought to have been a Writ of Privilege, bought, and the Sheriff would have returned somewhat of it &c. yet the Court said there was a Record to judge

Atorney of C. B. was indebted to B. in 134. who was indebted where he facis him. G. Hist. of C. B. 169.

D. according to the Custom of London, att h d the Money in the Hands of L, who was R's Attorney. L brought a Writ of Privilege, which was allowed by all the Court; except Harper J. because the Attorney was not indebted to D. but only to Cullom; And the Privilege of the Courts at Westminster ought not to be impeached by any Cullom, and the Prothonotaries cited one Underhill's Case, where such Privilege was allowed. 2 Le. 166. pl. 190. 20 Eliz. C. B. Lodge's Cafe.

T. an Attorney of B. R. recommended to try Newson 225 L when he would make him a good Title of certain Lands, purchased of him. N. made a Concession to T. but there being some Improvements not discharged. Some Creditors of N. hearing of this Conveyed the Money (according to the Custom of Foreign Attachments in T's hands as a Debtor) by him to N. whereupon T. filed his Write of Privilege; and the Court was moved in Behalf of the Creditors, that this Write of Privilege would not lie in B. R because the Plaintiffs in the Sherrif's Court, who were Creditors of N. could have no Remedy against T in B. R. or elsewhere, out of the Sheriff's Court, because this was a customary Way of Proceeding there, not warranted by the Common Law; one can any Action at Common Law be brought in such Manner; And for those Reasons the Privilege was disallowed. 1 Sm. 67. Patch. 19 Car. 2. Turbills Cafe. — S. P. Gilb. Hist. of C. B. 169 and items to intend S. C.—Sid. 762. S. C by Name of Crollin 1710, alias Turbills Cafe accordingly, And that if such Privilege should be allowed a Debtor, by putting his Efface into the Hands of an Attorney, would bar his Creditors; And the Lodge's Cafe, 2 Le. 156 was initiated upon, yet the Court paid no Regard to it, but disallowed the Privilege.

If a Writ of Entry, or another real Action be brought against an Attorney of B. R. he cannot plead his Privilege; Because, if this should be allowed, the Plaintiff would have a Right without a Remedy; For B. R. hath not Cognizance of Real Actions, G. Hist. of C. B. 169 —— So if an Attorney of C. B. be sued in an Appeal, he shall not have his Privilege, for his own Court has not Conscience of this Action, and by this Protection he should go unimpaired. G. Hist. of C. B. 196.

(G) Of the Chancery, [and of other Courts.] In which Cases it shall be granted.

1. If an Action be brought against 2, whereof one is Clerk of the Chancery, who ought to have the Privilege, yet if the Action cannot be severed, the Clerk shall not have his Privilege, Because the other cannot be fixed in the Chancery, and so the Party should be without Remedy, if it should be granted for both. 14 D. 4. 21. be admitted. 20 D. 6. 32. b.


2. As in Debt against 2, if the one ought to have the Privilege of the Chancery, if he had been such alone, yet he shall not have it in this Cafe, because the Duty is entire. 14 D. 4. 21 b.

3. The same Law of a Conspiracy against 2, whereof one is a Clerk of the Chancery, if he had been such alone, yet he shall not have it in this Cafe. 14 D. 4. 21 b.

4. But if an Action he brought against 2, and the Action may be severed, there, if the one be a Clerk of the Chancery he shall have the Privilege. 14 D. 4. 21 b.
5. If a Trespas be brought against a Clerk of the Chancery or another, the Clerk shall have the Privilege, For he may be tried there, and the other at the Common Law. * 14 H. 4. 21 Stiglatur; 20 H. 6. 32. V.

— Br. Brief. pl. 131. cites S. C. per Hill, that the Writ shall abate against the other; but that it was held Contra 25 H. 6.

In Trespas against two, where the one is Clerk of the Chancery, and he calls Superfideas; if shall not be allowed for the one nor the other. Br. Privilege. pl. 9 cites 54 H. 6. 25.

Trespas was brought against B. an Officer of the Chancery and 6 others. B. calls his Privilege, and it was disallowed, because the others are joined with him, and they are not there pleaded. D. 677. pl. 25. Marg. cites Hill 42 Eliz. C. B. Bacon's Case. —— So in Trespas against C. and others, C. pleaded his Privilege as Clerk to one of the Prothonotaries of B. Plaintiff replied, that this Trespas was done by them jointly, and that he had taken out an Original against them all, and that this Declaration against C. was upon that Original, and that he still proceeded to the ref, to which the Defendant demurred, and Judgment was given (Witliden and Jones only present) Good retort dat; et al. For C. being joined with others in the Action shall bar no Privilege. Vent. 298 Mich. 28 Car. 2. B. R. Molyn v Cook & al.

6. If A. be arrested at the Suit of B. upon a Latiitat, and A. is detained in Petron for Default of Bail, and after B. removes himself in B. R. and there the Plaintiff declares against him in Custodia Marechalli. If A. be a Clerk of the Bank he shall have his Privilege upon his Plea, that he is a Clerk attendant to one of the Prothonotaries of B. tho' he be actually in Custodia Marechalli; Because he comes there upon this Sutt. Mich. 11 Car. B. R. between Reeve and Fassy. Per Curiam.

— S. P. Gill. Hild. of C. B. 112. cites S. C. For being once entitled of his Privilege at the Suit of A. as he can no longer attest as an Attorney of the other Court, but is fixed in the King's Bench, and therefore cannot by the Supposition of the Necessity of his Attendance ont the Plaintiff of his Action.

If the Clerk is brought in at the Suit of A. upon Bail, this doth not hinder him from claiming his Privilege; because he had no Opportunity of doing it before, and then it is absurd to say, That he shall not have Privilege against B. But if the Privilege had been exercised as to the Act, it would have been waived as to the 2d; in 12. Salk. 2. pl. 2. Hill S. W. 3. B. R. Jones v Bodemer. —— And it is a Waiver in all other Actions commenced in that Term. Carii. 47. 8. Bands v Bodmer, S. C.

But if an Attorney of C. B. is brought into B. R. at the Suit of an Attorney there, B. is an Ex Cepell to Eelandant's Priorities, even in such Case in other Actions commenced against him in B. R., because the Jurisdiction of his R. was attached upon him in the first Action. Per Cur. Carii. 57. 8. in the Case of Fands aforesaid Jones v Bodinner.

But Patil. — Ano where an Action was brought against an Attorney of C. B. who was under the Marital of the King's Briefs, at the Suit of another, and in this Action they declare against him in Custodia Marechalli, and the Defendant pleaded his Privilege as Attorney to C. B. the Court directed that the Defendant should be removed by Haste Corpus to the Common Pleas, and that an Action should be brought against him there. 11 Mod. 167, 168. Turton v Prior.

8. Trespas against the Baron and Feme, the Baron Oaf Writ of Privi. And the Banco for him and his Feme, because he was Servant of the Chancellor; Et per Car. Curi. it was disallowed. Br. Privilege, pl. 9. cites 34 H. 6. 25.

And there was a joindem, and after the principal Case of the Baron and Feme was adjudged against the Defendant, and he was ordered to answer, because the Feme shall not have the Privilege, and therefore the Baron shall not. Ibid. — Br. Bile. pl. 2. cites S. C. — S. F. Thos. 212. cites 52 Eliz. Barkley v. Hulley. 34 H. 34. For her Attendance is not requisite in his Case, nor is the impeachable here in the Petty-Bail; and besides, where the Common Law and a private Law, or Privilege enters not another, the Common Law shall have the Preference; And therefore it is, That where an Action is brought against 2, one of them only having Privilege, his Privilege shall not be allowed him. P. R. C. 290 — Curt. Carii. 47. S. C. 52
Privilege.

So in Trespass in B. R. against Baron and Feme for Trespass done by the Feme, the Baron prayed his Privilege, being an Officer of the Exchequer, and to this Purpose delivered the Court his Writ of Privilege; but it was here disallowed. For the Baron is only joined for Conformity, and they cited the Book of —— H. 6. —— and Lord Dyer 307 a. accordingly: But the Court gave Day to hear Counsel. 2 Sid. 157; Palef. 1649. Anon.

So in Debt against A. and his Wife, as Executrix to the Debtor &c. the Husband comes in upon the Exigent, and prays his Privilege, as Servant to the Lord Keeper of the Great Seal; But per Cur. he shall not have it, because the Wife was joined with him in this Action; and the Case is without any Privilege. Nov. 65. Exchequer v. Admon & Ur. —— S. P. where a Clerk to Chancery, and his Wife Executrix, were sued in C. B. the Privilege was disallowed by all the Justices, because they could not have the Privilege, and therefore he could not. Godb. 18. pl. 13. Mich. 24 Eiz. Pole's Cafe. —— And it is there laid to be adjudged by the whole Court accordingly in 34 H. 6. 29 & 35 H. 6. 3. —— D. 377. pl. 30. S. C. by Name of Powell's Cafe. —— S. C. cited Vent. 299 in the Cafe of Molin v. Cook & al. So where A. Clerk to a Recombination in the Exchequer had married M. Widow, and Executrix of one J. and brought Action of Debt by Privilege of the Exchequer against one for a Debt due to the Trespasser, because the Cause acceeded for Debt due to the Executrix, no Privilege is grantable; per Cur. Sav. 20. pl. 49. Pale. 24 Eiz. Lowe's Cafe.

So where the is returned Capt. Corpus; For the cannot be Prisoner at two Courts Simul & Semel. Ibid And a Man, who was outlawed, and went to Calais, and came back to sue his Pardon, and was arrested, he had his Privilege. Ibid. —— So of one who is outlawed, and comes to sue Wit of Error, and is arrested, he shall have the Privilege of the Court where the Outlawry is, viz. of C. B. and the Arrest was in B. R. and yet the Privilege was allowed. Ibid.

9. In Trespass, Exigent was awarded against the Baron and Feme, and she rendered herself to the Sheriff, and, as she was coming, she was arrested in London upon Plaint against her and her Baron, upon the ffew of Feme sole Merchant, of which the Plaintiff cannot have Remedy at Common Law; But Quare thereof; and the Feme notwithstanding this was diffmiffed; But per Choke insuch Cafe of the Custum, where the Party arrested is in such Plight that he may make Attorney in the Action in Bank, he shall be remanded to London; But in this Cafe he came by Redditt fe upon Exigent, and therefore ought to have the Privilege; For the cannot make Attorney. Br. Privilege, pl. 22. cites 9 El. 3. 4. 35.

10. A Man was arrested in L. and after came a Latitat out of B. R. by which he was arrested again, and the Arrest by the Latitat was discharged, because he was imprisoned before by the first Arrest, and he cannot be imprisoned in 2 Courts Simul & Semel. Br. Privilege, pl. 24. cites 9 El. 4. 47.

11. A Man brought Debt in Bank, and after brought Action of Debt in London for the same Sum, and arrested the Defendant there, and he came now by Habeas Corpus, and prayed to be discharged; Per Yaxley, the Plaintiff is nonfituated in the Action here in Bank; & per cot. Cur. this is not material, because he had Cause of Privilege at the Time of the Action commenced in London: Quod not; But where it appears by Examination that the Suit in Bank was by Cause, there he shall not have Privilege; and where the Plaintiff, who has Suit in Bank, impleads the fame Defendant in any other Court for this or other Cause, he shall make Fine; per Fineux & Reade. Br. Privilege, pl. 19. cites 24 H. 7. 6.

12. A Man brought Action in Bank, and at the Phuries Capias he and his Feme were arrested in a base Court coming towards Westminster; and because the Baron had Privilege, therefore his Feme shall be in the fame Condition, and no both had Privilege; and yet the Suit in the base Court was for a Debt of the Feme before the Coverture; Quod nota. Br. Privilege, pl. 2. cites 27 H. 8. 20.

13. The Defendant appeared upon a Subpoena, and answered the Plaintiff's Bill, and after attended upon the Lord Keeper for a Matter in Controversie between him and one Ellen Wryne; and in the mean Time was arrested in London at the Suit of one Anthony Brisket, contrary to the Order and Privilege of this Court. It was ordered, That a Subpoena of Privilege be granted to the Mayor and Sheriffs of London for the Discharge of the said
Privilege.


14. If any Officer, Clerk, or Attorney of any of the 4 Ordinary Courts, who ought to be Attendant to the Court, be arrested in London, or other Place, in Time of Attendancy, he shall have a Writ of Privilege, with a Positive Superintending therein, directing the Plaintiff quod Sequitur in Curia Ubi &c. if Voluerit, where he may have the Remedy of his Suit as well as elsewhere; In which Case no Procedendo shall be awarded to the inferior Court. Otherwise it is where the Party arrested has Privilege by reason of Suit depending in the superior Court, by him or against him, and this is the Cause only of his Privilege. Note the Diversity, by all the Justices and Prothonotaries of both Benches. D. 287. a. pl. 48. Hill. 12 El. Anon.

15. The Defendant got a Writ of Privilege as Servant to the Lord Keeper, and removed several Suits against him by the Plaintiff in London; forasmuch as the Lord Keeper declared in open Court, That the Defendant is not now his Servant, therefore ordered, That the said 2 several Causes be remanded into London, and the Defendant not to be allowed the Privilege of this Court. Cary's Rep. 149. 21 Eliz. Warner and Clerk v. Maynard.


17. P. was arrested by Process out of B. R. and after the Arrest procured himself to be made an Attorney of C. B. and after he pleaded, That Die imperations Billa, he was an Attorney of C. B. and pray'd his Privilege. The Question was, If the Privilege should be allow'd? for a Privilege which accrues pendente lite shall not be allow'd, and here the Plea is true, but there is special Matter to avoid it; And Ley Ch. J. demanded if he was Attorney at the Time of the Bail put in, that being the material Point; for 'till then no Writ can be put in, and by the putting in of Bail he is in Custodia Marechalli. 2 Roll. Rep. 432. Trin. 21 Jac. B. R. Goldborough v. Perrymen.

18. Lord D. Tenant in Tail of a Forest rendering Rent, Reversion to the King, exhibited an English Bill against a Clerk to the Register of the Chancery, to discover if such Lands were of the Forest. Defendant pleaded the Privilege of the Chancery and the Letters Patents of the King, by which he granted to the Register to be sued in no other Court. And it was Ruled by all the Court, That in this Case the Privilege shall not act the Clerk, but that he ought to answer over. And their Reason was, because the Reversion being in diverse other Things to privileges the Possession, that it is as the Possession of the King; and also the Privilege is granted to the Register himself, and not to his inferior Clerks. Lit. R. 97. Trin. 4 Car. in Seace. Lord Derby v. a Clerk to the Register of the Chancery.

19. A Suit in Chancery was against several Defendants. One of the Defendants died. The Survivors pleaded the Privilege of the Eschequer. But because this Suit was joint at first against the Deceas'd and the others, and for any Thing appearing he had no Privilege in the Eschequer; so that the Court of Chancery being lawfully polled of the Plea, his Death ought not to give any more Privilege to the other Defendants to draw the Cause from this Court than they should have had at the Beginning, or while he lived; and therefore his Lordship did adjudge the Defendants Plea to be insufficient, and ordered the Defendants to make a direct Answer to the Plaintiff's Bill in this Court. 1 Chan. R. 69, 70. 9 Car. 1. fol. 135. Lake v. Philips.

20. The Defendant was arrested at the Plaintiff's Suit as he came about putting in his Answer, and imprison'd, and after several other Actions charged
Privilege.

charged upon him, were all discharged, it being done in the Breach of the Privilege of this Court. Chan. Rep. 92. 11 Car. Altsbury v. Troughton.

21. A Bill was brought, setting forth, That R. being arrested and imprisoned at the Suit of C. upon mean Proceeds, and after made an Escape, and upon a treth Pursuit being taken, is in Custody again; But the said R. making it appear to this Court, That he had a Cause depending here, and be attending the same, was arrested and detainted, contrary to the ancient Privilege of this Court; whereupon this Court ordered the Bailiff, who last took him, to be committed to the Fleet for retuning to discharge him. The Court ordered Meynol and Sterling Sheriffs of Middlesex to discharge the said R. out of Custody. The Sheriffs acquainting the Court, That the Case is as stated, and that the said C. threatens to bring an Action of Escape against the Sheriffs, the Court again ordered the said Bailiff to be committed close Prisoner, and that the Sheriffs should forthwith discharge the said R. out of Custody, and that a Writ of Privilege be awarded in that Behalf, whereupon the Sheriffs discharged the said R. and thereupon the said C. brought his Action against the Sheriffs for the Escape, and would enforce the Sheriffs to pay the Debt, and fo consequentlly invalidate and overthrow the ancient and undoubted Privilege of this Court. The Court ordered that the said Action against the Sheriffs, touching the Arrest and setting R. at Liberty be discharged, unless C. should Cause. Whereupon C. offered several Reasons for Cause, but the Court disallowed the same, and confirmed the writ Order; and that the said Action be discharged, and all Proceedings at Law against the Sheriffs be stay'd. But the said C. insisted that his Debt is great, and if the said R. be under Protection of this Court, C. is like to lose it. The Court declared C. may, notwithstanding the former Orders, proceed against R. in order to the Satisfaction of his Debt, as he should see Cause. 1 Chan. Rep. 217, 218. 13 Car. 2. 1. 677, 664. Meynol and Sterling v. Cooper.

22. The King's Attorney of the Marches in Wales brought his Action there as Executor to another, and intimated to have his Privilege, because he was bound to give his Attendance there; But the Court said, He should not have it here, because he sued as Executor. Latch. 199. Ewer's Case.

23. The Privilege of Chancery belongs to the Lord Chancellor or Keeper; to all the Matters, Ministers, Officers, and known Clerks of the Courts; and to the usual Servants of the Chancellor or Keeper, and of the Matters, Ministers, and Officers; And they may, as the Case requires, be impleaded here, either as at Common Law in the Petty-Bag Office, or in a Way of Equity by English Bill. P. R. 284.

24. Persons who have Privilege of Chancery are not to be sued elsewhere than in this Court, either by Lartin Plea in the Petty-Bag Office, or by English Bill, as the Case requires, save in Cases where the Queen is immediately concerned. P. R. C. 285.

25. A Defendant in Chancery refused to answer, because he was an Inhabitant of the County Palatine of Lancaster, but was over-ruled, the Plaintiffs being Ministers and Servants of this Court, and as such intitled to Privilege here. P. R. C. 286.

26. The Lord Chancellor Egerton declared, That no Crouch Men is privilege'd against a Subpoena of this Court. And several Pleas by Officers there, as Register, Receiver &c. have been over-ruled. P. R. C. 291.

27. The Plaintiff as Debtor to the King, and Treasurer of the Navy, exhibited his Bill in the Exchequer. The Defendant plead'd his Privilege, as one of the Six Clerks in Chancery, under the Great Seal. Hale Ch. B. and the Court held, That a general Privilege, as Debtor, will not hold against a special Privilege, but against a general Privilege it will. But a Privilege as *Accountant will hold against a special Privilege in another Court as Officer of the Court, or other wise, tho' it be not alleged that he has

has enter'd upon his Account. And in this Case the Plaintiff being
Treasurer to the Navy, is Eo ipso an Accountant. Hard. 316. Mich
28. The Warden of the Fleet moved for a Writ of Privilege sitting the
Parliament, alleging that he was obliged to attend the House of Lords,
and therefore ought to be privileg'd from Suits, and produced Prece-
derents where Writs of the like Nature had been granted; and upon
hearing Counsel of both Sides, the Court inclined to grant this Writ;
but it afterwards appearing that he was sued for Ejectees; and considering
the ill Consequences that might happen, and thinking that it was in
their Discretion whether to grant the Privilege upon Motion, or not (for
they could not judicially take Notice of this Privilege of Parliament)
the Court said he might plead it if he would, but they would not grant
it upon Motion; or otherwise, if he thought his Privilege infringed by
any Prosecution against him, he might complain to the House of Lords
for Breach of Privilege. 2 Vent. 154. Palech. 2 W. & M. C. B. The
Warden of the Fleet's Cafe.

(G. 2) Allowed. How.

1. N London, the Privilege shall not be allowed but upon Writ brought An At-
thereof, and not by Way of Plea; but in Bank the may plead it by

Court will not discharge him without pleading his Privilege. 2 Salk. 544. pl. 3. Hill. S W. 3 B R.
Lane v. Saltmarsh.

2. Thomas Younge Justice sued Bill in the Exchequer against the Clerk S. C Chel 2
of the Hanaper upon his Account, and the Defendant cited Superfedeas of the
Privilege of the Chancery, because he was Clerk of the Chancery; and by
all the Justices in the Exchequer Chamber, the Superfedeas shall not be
allowed; for even one who is accountant ought to be attendant and pre-
sent, and there he shall be sued; for it is an Advantage to the King that
he shall attend, and shall account; and Accountant may have Bill
against his Debtor, and this is for the King's Advantage, Quod citius
folvat Regii; and if Accountant be sued in C. B. they shall lend Superfe-
deas to forcause; and if be be sued in B. R. those at the Exchequer shall
shew the * Record that he is Accountant &c. and shall not have Superfe-
deas to the King; for the Pleas there are Coram Regis &c. and he shall be
dismiss'd, and shall be sued in the Exchequer. Br. Privilege, pl. 25.
cites 9 E. 4. 53.

* An Account-

ants to the King, and that the Defendant was one, and prayed the Privilege of the Court of Exche-
quer, that the Suit might be stay'd: the Court demanded at the Secretary what the Court was in
such Case, whether to grant it upon such bare Averment of the Baron, or that it ought to be pleaded
and prayed by the Party: Upon his informing the Court that it had been usually allowed without Plead
Prayer, it was granted accordingly. But J. was strongly against it, and said that there are
many Books wherein it was adjudg'd in Point that it ought to be upon the Party's Plea and Prayer, and
that without this the Court cannot certainly know whether he be the same Party for whom the Privilege

A Serjeant at Law was Plaintiff in the Admiralty, and the Defendant
there moved for a Prohibition in B. R. It was pray'd that B. R. would
not grant it, but would allow the Serjeant his Privilege of its being
mov'd for in C. B. But the Court doubted if Privilege should be grant-
ed in Prohibition; but Fx attendit Partium it was ordered that the Plain-
tiff here sue his Prohibition in C. B. for the Speed of the poor Plaintiff.
But upon moving it there, the C. B. refused to grant Prohibition, and fo
6 R. 18.
Privilege.

it was mov'd again in B. R. and all the Court held that Prohibitions are grantable. Ex Debito Judicatae. Sid. 65. pl. 38. Mich. 13 Car. 2. Serjeant Morton’s Cafe.

4. An Attorney of C. B. was arrested in the Palace-Yard not for from the Hall-Gate, sitting the Court, at the suit of an Attorney of B. R. and both the Officer and the Prisoner were brought into the Court of C. B. and the Officer was committed to the Fleet, and the other was sent up to B. R. who being informed of the Cafe, viz. That the Attorney arrested was indebted to him in 200 l. the Court of B. R. discharged: the other upon common Ball. 2 Mod. 181. Hill. 28 & 29 Car. 2. Long’s Case.

5. Clerks of the Court must have a Certificate from the Master of the Rolls, or Office where they write, before a Writ of Privilege be granted them. P. R. C. 285.

6. H. came to confess an Indictment; and the Court held that he had no Privilege Bando & Redendo, because there was no Process against him. 2 Salk. 544. pl. 6. Hill. 2 Ann. B. R. Anon.

7. Menial Servants of a Master, Minister, or Officer of the Court, must make first Affidavit that he is to: The Writ for him must first he presented unto and signed by the Lord Keeper, and the Affidavit must be at the same Time annexed to it. And such Writ shall continue in Force no longer than he continues Menial Servant. P. R. C. 285.

8. If a necessary Officer, such as the Chancery cannot be without, as a Registrar, Master in Chancery, or such like, be in Prison upon Misdemeanors, the Lord Chancellor may enlarge him: But if he be in Execution for Debt or Damages, he shall have no Privilege; for the Plaintiff would be without Remedy if the Party be once set at Liberty. But this is to be understood with some Limitation; for where, by Order of this Court, one was discharged by Superseadas, and the Plaintiff brought an Action of Escape against the Sheriff, this Court ordered him to discharge the Action, and that he should stay all Proceedings against the Sheriff. P. R. C. 286, 287.

(H) In what Actions the Privilege shall be granted.

Of the Chancery. [And other Courts.]

A Clerk of Chancery shall not have his Privilege, unless he only has his Indebitatus Awtumpit for 100 l. against the Defendant.

1. THrt Officrs and Ministers of the Chancery shall not be imploied out of the Chancery in any Plea, unless it be in Plaine of Land, or of Treason or Felony; and if they are they shall have their Privilege. 3 H. 6. 30.

2. An Attorney of Bank being an Administrator, cannot sue another as Administrator by Writ of Privilege, because he lives En Aut. Droit, but ought to sue by Writ original. Hobart’s Reports 239. Cage’s Case adjudged.

3. So an Attorney being an Executor or Administrator, cannot be sued as Executor or Administrator by Bill, as Attorneys are sued to be sued, but ought to be sued by original Writ. Hobart’s Reports 239.

Indebitatus Awtumpit for 100 l. against the Defendant, he pleaded in Abatement that he was an Attorney of C. B. and pray’d his Privilege, but was ruled to answer over; for his Privilege extends only to Actions brought against him in his own Right.

1. Salk.
Privilege.

1 Salk. 2. pl. 4. Mich. 11 W. 2. B. R. Newton v. Rowland —— 12 Mod. 516. S. C. And there it was urged on Demurrer, that the Reason of Privilege in the Case of an Attorney, is by Reason of his personal Attendance, which is all one whether he acted in his own, or in Au ter Droit. But per Holt, The Authorities are of the other Side in this Case, and the Plaintiff had Judgment Nisi.——— S. P. Where Attorney was cited as Administrator. 1 Salk. 7. pl. 18. Hill 4 Ann. B. R. Lawrence v. Martin.

4. It was doubted if Privilege should be granted in Prohibitions. Sid. 65. pl. 38. Mich. 13 Car. 2. in Serjeant Morton’s Café.

(1) At what Time they shall pray their Privilege.
[And what shall be an admitting the Jurisdiction of a Court.]

1. If the Party has affirmed the Jurisdiction of the Court where the Privilege of Suit is, he shall not have his Privilege after. 11 H. 4. 68 b. B. R. as Carlos Bertum there, was pleaded after Bail put in; and refused per tot. Cour. That the putting in Bail being Subject to the Jurisdiction of the Court, he is general or special; for till Bail put in, he is in no Court to plead any Thing, nor is the Plaintiff obliged to declare against him. And to his Plea of Privilege was allowed. 3 Lev. 333. Dashwood v. Folke.

2. If Privilege be prayed by Serjeant of the Chancery after Verdict, A Man was before Judgment, it shall not be allowed. 11 H. 4. 68 b. Br. Privileges.

Trespass, and before Judgment he demanded the Privilege, because his Master was sued in appeal of Murder before he was arrested in London, and by Award he had the Privilege; Quod Mirum! For after Answer given, without demanding the Privilege, he ought to be sued thereof. Br. Privileges, pl. 27. cites 1 Itt. 7. 59.

A Man was impleaded in C. B. and in the Vacation came to London 12 Days before the Term, and was arrested in London and condemned; and became the other Writ of Privilege was delivered in London within the Term, and Judgment, and notwithstanding this they gave Judgment in L. and yet because it appeared by his Oath, that he came to London for purpose to retain Counsel in his Master in Bank, therefore the Privilege was allowed, and the Privilege admitted; Quod Mirum. After condensation, and the Reason seems to be, inasmuch as by the first Writ of Privilege delivered before Judgment, their Hands were closed, and to their Judgment after this was void, and to the Privilege allowed after Plea pleaded. Br. Privileges, pl. 28 cites 38 H. 6. 4 ——— Br. Judgment, pl. 35 cites S. C.

3. So if the Inquest was ready to pass, it shall not be allowed after upon Prayer. Contra 11 H. 6. 8, 11 H. 6. 8 b. where the Superintendent, that he shall not be sued one of the Chancery against his Will; For this is with his Will.

*Orig. is (Prift) but it seems it should be (Privit)

Br. Privileges, pl. 34. cites S.C. & P. by Wellburn.

4. So if the Party pleads to Illus, yet he shall not have Privilege before Nisi Prius granted. 11 H. 4. 68. 3 H. 6. 50.

5. So after Demurrer he shall not have Privilege. 3 H. 6. 30.

6. After Defence made, the Privilege of the Chancery shall be granted, because this is not properly a Plea to the Jurisdiction. * 3 H. 6. 32. Anjudged. 11 H. 11 Car. 2. R. between Reeve and Jacey, per Curiam ruled. Br. Privileges, pl. 3.

7. After Imparlance to another Term, in the other Term he shall have the Privilege of the Chancery by What. 20 H. 6. 33.

Salus, mor-
Privilege.

... affirmed the Jurisdiction of the Court; Quod Nota by Award. Br. Privilege, pl. 15. cites S. C.

Gib. Hill, of C. B. 170. cites 22 H. 6. 71 (But 71) seems to be misprinted for 77 and says, that the true reason seems to be, that by this Imparlance the Defendant had confined himself to take Advantage only of the Default in the Writ and Court; but had he obtained from the Court a General special Imparlance, viz., of all and in his own case and accord to him, he might then have pleaded his Privilege, &c. For that is not to confine the Court of its Jurisdiction, but is a Privilege, which each Court allows to the Officers of the other to be sued in their own Court only, and the modern Authorities are express, that Privilege may be pleaded after a general special Imparlance. —— S. P. P. R. C. 226

Debt in B. R. against an Attorney of C. B. who impropriated specially, Salvis fibi omnibus Exceptionibus, &c. and afterwards pleaded his Privilege. The Plaintiff's demurrer; Williams and Twidwell held, that this Plea was receivable upon this Imparlance; but admissor. And the next Term a Ropempoas Officer was awarded for want of Avenment in the Plea; but nothing further was said of the special Matter. Lev. 54. Hill. 15 & 14 Car. 2. B. R. Neave v. Nelson——— But Mich. 32 Car. 2. B. R. It was held per Cur. that Plea of Privilege comes too late after Imparlance. 2 Show. 145. Jenkens v. Lyon. S. P. Ryn. 54. Barrington v. Venables.

In Debt uren Bond, the Defendant in prima Persona impropri, viz, Salvis fubi omnibus & Omninois Exceptionibus & Advenientibus, &c. &c. &c. &c. and then pleaded his Privilege as one of the Clerks of the Exchequer. Exception was taken thereto, that such Imparlance Ad Jurisdictionem Curiae neuer been seen. And the Court said, that such Imparlance ought not to have been granted by a Prothonotary, and therupon awarded a Ropempoas Officer; But they resolved, that if the Imparlance had been in Cffham's Cafe, Hard 365. before the Plea, it had been good. Lutw. 43 to 46. Pack. 15 W. 3. C. B. Werten orth v. Squibb.—Trefpafts against divers, all impirded except one, and after at the Day, he ent. 24, the 5th of March and among two Officers, and imported, and after sentence Curiae was aulsed, the Chancery, because he was Servant of the Chancellor; and it was not adjudged whether he shall have the Privilege or not, because others are joined. Br. Privilege, pl. 7. cites 20 H. 6. 52.

A fixed B. in an Actio of Battery in London. B. removes it by Hadse Corpus to the King's Bench, and the Term after pays an Imparlance, and before the end of the Term prays the Privilege of the Exchequer. The Plaintiff Baron commences the Red Bill, and shows, that B. is Eichener, and to an Accompitant to the King, and at length Privilege was allowed. Nov. 49. Waiend v. Wayrell.

8. So, after Imparlance to another Day in the same Term, he shall not have the Privilege by Writ. 20 H. 6. 32. h. Dubitatur.

9. After Imparlance in B. R. by a Servant of one of the Examiners in Chancery being Defendant, if he pleads his Privilege of the Chancery, he shall not have it. 9. 1651. between Fiss & Kennedy, per Currant adjudged. Intratrat. Br. 1651. Est. 1260.

10. At the Exigent returned upon Process, Defendant shall have the Privilege of the Chancery. 20 H. 6. 26.

In Trefpafts, at the Exigent it is admitted, that the Defendant may have Privilege of B. R. at this time; but in Debt he shall not have Privilege of B. R. For Debt does not in there. Br. Privilege, pl. 45. cites 1 B. 4 4. A Clerk of the Chancery was sued in Bond, and Process against him, and to the Exigent, and the Clerk sued a Superfedeas to the Sheriff, Quia Impressa, and after sued a Writ of Privilege directed to the Justices of the Exchequer; requiring them to furcease; and upon a long Debate his Privilege was disallowed; and he driven to answer: For the Court was lawfully seised of the Plea by the Defendant's own Act, in as much as he bad, by the Superfedeas, affirmed the Jurisdiction of the Court; for every Superfedeas Quia Impressa requires an Appearance in Court of the Defendant by Attorney, and shews his Name, so that this is his own Default. But if he had not sued such Writ, noting the Exigent, the Privilege should have been allowed, and of this there were Precedents shewn, and then after the Writ of Privilege comes to the Justices, they ought to make a special Superfedeas of the Outlawry to the Sheriff, reciting the Privilege. Et hic nota diversitatem bene. D 35. pl. 18. Pack. 28 & 29 H. S. Amon.

11. At the Exigent returned, and after Mainprize found upon it, Defendant shall not have the Privilege of the Chancery, because by the Samprie he has affirmed the Jurisdiction. 20 H. 6. 28. Utter.

12. After Issue when the Inquest is ready at the Bar, if an absolute Superfedeas comes out of the Chancery, certifying that Defendant is a Clerk there, and commands them to surcease, it shall be allowed. 11 D. 6. 8.

13. He, who is arrested neepe between the Tete of the Original and the Return shall have the Privilege, if the Writ be returned after; For this shall have Relation to the Tete. Br. Privilege, pl. 4. cites 9 H. 6. 7.

14. Trefpafts against the Baron and Feme, the Baron owes Writ of Privilege for him and his Feme, because he was Servant to the Chancellor; and it was alleged, that pending the Suit the Chancellor was removed from his Office; but this was not regarded; For if he had once a good Cause of Privilege
Privilege, the Act of a 3d Per. shall not prejudice him. Br. Privilege, pl. 9. cites 34 H. 6. 29.

15. A Man was impeached at London long before the Term, and was arrested, and found Mainprize, and at the Term after an Original and Suit was taken against the Defendant at Westminster in C. B. and the Plaintiff declared, and the Defendant impleaded, and sued Writ Privilege, and had the Privilege, notwithstanding that the Suit in L. was the Prior Suit, because it was not adjudged by Recovery, nor Condemnation, but is pending yet in L. not divided, but if he had been condemned in L. he should not have the Privilege; Quod Nota Diversity. Br. Privilege, pl. 36. cites 5 E. 4. 44.

yet this shall not diminish the Execution. Br. Privilege, pl. 37. cites 2 E. 4. 8.

16. Littleton Justice, said, that one appeared by Capias and found Mainprize, and before the Day which he had, he was arrested in London, and was brought into B. R. by Capias cum causa, at which Day the Plaintiff was non-suited, and the Defendant discharged the Servant; For the Plaintiff, upon which he was arrested, was taken after the Imprisonment in confinement here, he should have been remitted. Ibid.

17. Any Plea of Privilege is good to a Declaration against one in Custody Mort. if he be there wrongfully; As if an Attorney of C. B. be arrested in a Litigant, and in Custody of the Marshal for want of Bail, or suppose he puts in Bail, it shall not hinder him of pleading his Privilege; because he can't plead 'till he puts in Bail, if he be not in actual Custody; and if we give Judgment, it must be for the Defendant. Per Holt Ch. J. 12 Mod. 535, 536. Trin. 13 W. 3. B. R. Wilbraham v. Lownds.

(K) Proceedings, and Pleadings.

1. Bill was brought against the Capias Breviam, because the Sheriff of S. returned a Capias Subsidium, which said Defendant beseech'd; And Exception was taken, because he is not named Now Capias; & non Allocutur, because it appears by the Return that he is yet Capiis. and then Bill lies. And another Exception was taken, because he bebeseech'd it at D. in London, and that Bill lies not but of an Act done in the same County where the Court is. And Skene offer'd to demur, because the Bill lies by his Presence. Br. Bille, pl. 4. cites 7 H. 4. 5.

2. Bill of Debt was such, viz. J. S. petit de W. M. sum Attorney. de Sc, and the Bill was challeng'd because it should be non Attornem &c. and the Bill awarded good. Brook says, Quare what is intended; for it is ill reported. Br. Bill. pl. 8. cites 7 H. 6. 43.

3. In Debt the Defendant called Superflueas of Privilege of the Chancery, and said, That the Day of the Writ purchased he was named Servant of E. Bishop of B. Chancellor of England, and yet is; therefore he demanded Judgment if the Court will take Conform; and the Plaintiff said, That the Defendant was not Servant of the Chancellor the Day of the Writ purchased, nor ever after; And for Want of Defence demanded Judgment; and the Defendant demanded Judgment, because the King recorded that he is Servant of the Chancellor, Ut Accipiam; And yet because the Plaintiff had traversed the Defence directly, to which he answered nothing, therefore it was awarded, That the Defendant answer without the Privilege; Quod nota. Br. Privilege, pl. 13. cites 21 H. 6. 26.
Privilege.

4. The Plaintiff said, That whereas it is contained in the Writ, that he is a 

4

The Plaintiff said, That whereas it is contained in the Writ, that he is a 

is mental Servant of R. S. Burchier of the Chancery, he is not a 

is mental Servant, Privi; and the other c contra. Br. Privilege, pl. 17. cites 22 H. 6. 38.

5. In Trespas the Defendant caft a Superfedeas of the Privilege of the Exchequer, and alleg'd the Usage, that the Officers there, nor their Servants &c, have not been impeached elsewhere but in the Exchequer, and that he is Servant of an Officer &c. The Plaintiff said, That the Officers and their Servants attending at the Office have used to have such Privileges, and that the Defendant is Servant in Husbandry in the Country, Abique hoc 

5

that he is Servant &c. And the Opinion of Privilof was, That this is a good 

that he is Servant &c. And the Opinion of Privilege was, That this is a good 

ifluce; which none deny'd but Laken, who was for the Defendant, and 

so he travers'd more than was tender'd; But quere if he ought not to tra-

verfe Abufe that the Privilege extends to all Servants, Prout &c. Br. Tra-

verfe per &c. pl. 27. cites 14 H. 6. 15.

* For per 

Privilof the 

Prefercation 

is not alleg'd 

for All Ser-

vants, there-

fore he may 

well say as here, and show that such Servants shall have Privilege, and the others not, and traverse as hers, 

without traversing the Prefercation. Br. Privilege, pl. 8. cites 8 C. Br. Prefercation, pl. 7. cites 8 C.

6. Bill against a Sheriff in the Exchequer upon his Account shall abate if 

6

he be not named Sheriff, et ratione Officii fui fcilicet veritus J. O. quondam 

Viccomitem N. qui praefens hic in Curia super compoto suo, ratione 


7. If Bill of Debt is brought by an Attorney upon the Privilege, the 

7

Defendant may say, That he is not named Attorney in the Bill, Judgment of 

the Bill, and a good Plea; Contra, if he sues by Writ. Note the Di-


8. If one demands Privilege as Warden of the Fleet, because he is Offi-

8

cer of the Court; it suffices if he be named Warden, tho' he does not 

fiat How he is Warden, As in Juex uxorius, or by Leaf for Years &c. but 

it suffices of Name of Warden only. Br. Privilege, pl. 23. cites 9 E. 4. 40.

Br. Privil-

lege, pl. 42. 

cites 8 C.

9. In Trespas the Defendant pleaded Privilege as Servant of a Filazer, 

9

and ifluce was taken. If the Party was Servant Attendant on the Filazer, or 

not, at the Time &c. And fo fee that the Ifluce is peremptory; for it is 


10. An Attorney of C. B. brought an Action there against a Stranger 

10

by Attachment of Privilege, and had a Verdict; But upon a Writ of Er-

ror brought, the Judgment was reversed for want of finding Pledge De 

Propensando, tho' several Precedents were shown, that an Attorney need 

not, because he is supposed always present in Court. And the Words of 

Si Querens ficeret sp Securum de Clamore suo &c. were wanting in the At-


11. It was agreed, That all Proceedings in an inferior Court after a Writ of 

11

Privilege delivered out of this Court are void, & Coram non Judice; 

and if they award Execution, this Court will dischage the Party. 2 Brownl. 101. Mich. 9 Jac. Anon.

12. Error was brought of a Judgment in C. B. in Debt on an Arbitra-

12

tion Bond by an Attorney of C. B. and Judgment upon Damrurc given for 

the Defendant, Quod querens nil Capiat per Brevi; whereas the Action 

was brought by Bill of Privilege, and not by an Original Writ; and there- 

fore it ought to be Nil Capiat per Billum. This was held a mani-

fested Error, because it was in the Judgment, which is the Act of 

the Court, and fo not to be accounted the Mifprison of the Clerk. Cro. C. 


Hard. 164, 

S. C. by the 

Name of 

Barrington, 

Cafe. And 

there the
Privilege.

Plea has the
Word (Omnes) viz.
That all the
Barons & their
Clerks
are not to be
pleaded
elsewhere; for
that doth not
prove but
that one of
their
Clerks may be
pleaded
elsewhere; And this was held
ill according to
the
Barons &c.

It was
initiated, That there was a
Diversity between inferior
Courts and the Courts of
Writmister; that the Privilege
of inferior
Courts must be
pleaded precisely, yet Privilege of the Exchequer, which
is one of the 4 Great Courts, need not, the Custom of those Courts
being
laws whereto all other Courts take Notice without pleading them.

But Per Cur. Plea to the Jurisdiction must be precise. 2 Sid. 164. Hill.


the same Person who is Auditor there; And to this Opinion the Court
seemed to incline; but the
Plaintiff's Council said, That the Precedents in the Exchequer were
without any such Averment; And
they made a Difference betwixt the Officers or Clerks of Courts, who are
upon Record there, and their
Servants, who are not. Et Adjudicatur. ——— In Debt upon an Obligation
brought against the
Defendant, he pleaded the Privilege of the Exchequer; And it was told by Mr. Justice (John) Powel, That
the Defendant needed not to have pleaded it, but that it was to be
allowed' upon producing the Red Book of
the Exchequer. Laww. 46. Patch 15 W. 5.

The Plea, that omits Attorneial of C. B. ought to be impleaded there, and not elsewhere, was held ill, and

14. The Caution of C. B. concerning Privilege was pleaded to B. R. by
the successors, and therefore was refused; for it ought to be certified

5. An Information was exhibited against the Caufos Brevium of B. R.
for Abuses and Misdemeanors in his Office. He refused at first to
appear in Peron, but would have appeared by Attorney. The Opinion of
the Court was, that he cannot appear by Attorney, because he is an Officer
of the Court, and presumed to be always present. It was agreed that
no Process should issue against him, but that upon the reading the
Information, if he doth not appear Judgment shall be given against him. Sid. 134.

have pleaded it in Prison persona; for pleading it by Attorney destroys the very Reason of his Privilege,
which is his attending the Court in Person; but the Opinion of the Court was, that an Attorney
may plead his Privilege by an Attorney, and no Inconvenience follows it; for he may be sick or have
Business in another Court, which he must necessarily attend. It is true the Precedents are both Ways.

The Plea was allowed Nito. Sty. 415. Hill. 1654. Higgs v. Harrison.

16. In Debt upon an Escape after Execution, the Defendant appeared,
Et detectit vim & injury quando &c. and impai'd specially, lying to
himself all Advantages and Exceptions Quoad Billam paid, and whether
after such Imparlanece he must be allowed his Privilege as Marshal of B. R.? The Court held, That after such Defence Privilege may be allowed; for it is not a full Defence, nor does he go about to ouilt the Court of
Jui-

ri-ficition, but only claims his Privilege. Likewise after a special Imparlanee of Sirker omnibus Advantages & Exceptionibus, a Man shall
have his Privilege; but if the Imparlanece be special Quoad Billam breve
Sen Narrarensum, it shall not be extended further; and after such Impar-
lanee Privilege is not allowable, as appears 22 H. 6. 7. 96. 4. 53. But
upon Defendant's Prayer it was adjourned. Hard. 365. Patch. 16 Car.
2. in the Exchequer, Chapham v. Sir J. Lenthall.

17. The Privilege of Chancery was pleaded by Way of Prescription; and In Indebita-

tion. The Defendant was pleaded with Et haec parattes eft verifice. And 2dly. No Place was alleged; for pleaded
they are 'Matters of Faet, and triable. 1 Vent. 264. Mich. 126 Car. 2.

concerning the Chancellor, and any the Clerks of the Chancery, ought to be pleaded and determined Conun
Canellaria, and not elsewhere, and aver he is a Clerk of the Innuorn Office. Unde non munda cont

141
Privilege.

532

Privilege.

Curiae pro loco, et, but not saying Prout patet per Recordum, nor where the Chancery is; which per Curiam is, and to the Chancellor, it is void; However, because he cannot be Judge and Pary, a Responsum Quo was awarded, and it should be only that they ought to be impleaded, without saying, to be determined there; for Rules between the Chancery-men are triable at Common Law, and the Plea must be averred, as was adjudged in Vare v. Jocelin. 3 Kg 2. 2d. 27.

All Proceedings in the Petty-Bag Office in Chancery, by original or any Minister of this Court for any Matter or Thing determinable at Common Law, are to be pleaded in Sine as at Common Law; and the Record thereof to be delivered Per manum Cancellarii into B. R. of Ch., at the Election of the Plaintiff. And after Trial had, the Record shall be remanded into this Court, and Judgment shall be given here. B. R. C. 209.


18. In a Case against an Attorney he pleaded his Privilege thus, viz. 

Et prædictus A. in propria persona fact dictum quod ipsa est & prædictum tempore exhibitus Bille suus Thome Stephens fact ut sit Clericoam Tuo, Winiford Ar. in. Proctor. Curia Demum Regis de Banco apud Westm. in Com. Midd. in Office suo quodsi intendat, et conclusionem inveniat, without annexing any Writ of Privilege to this Plea. To this the Plaintiff demurred generally, and two Objections were made to this Plea. 

For that the Defendant did not say * Venit as well as Dict, so he was not in Court when he pleaded. 2dly. For that he had not laid any Vifuns for as the Fact of his being a Prothonotary's Clerk might be tried; for it is a Matter in Marble, and the rather because the Defendant hath not shewed any Matter of Record to prove his Privilege. Et per Curiam, Both the Venit might be Objetted, and the laft was fatal, because this is Matter of Fact triable by a Jury; for Prothonotaries Clerks are not in-roll'd, wherefore it is necessary to lay a Vifuns in this Plea. Judgment for the Plaintiff, (viz.) that the Defendant answer over. Caren. 362. 363. Mich. 7 W. 3. B. R. Stephens v. Squire.

Skin. 582. S. C. says that the Defendant pleaded his Privilege in this Manner, viz. Et prædict. Ex. prædict. dict. Venit & dict. in Omnia. Venit & dict. in causa. Venit & dict. in omnia. That the Defendant putting in the Dict without saying Venit & dictum, or making any Defence, where the Dict was not put in, might be Objetted; but that he, Non Allocatur in the Dict, he being in Caufa dicta. Mack. and

before another Day of Continuance; but if it was at another Day of Continuance after the Day of Appearance, it ought to be Venit & dict., but for the Want of Defence the Court did not seem to regard it; and in the Case of Church v. Church in this Term, where the Defendant pleaded his Privilege as Attorney of C. B. and made no Defence Holt Ch. J. laid it was a Chip in Porridge. Skin. 582. Trin. 7 W. 3. B. R. Stephens and Squire. — And Holt Ch. J. said in this Case, that if a Prothonotary or other who is a Person privileged by Record, pleads his Privilege, and brings a Writ of Privilege attesting it, that this is conclusive, and the Plaintiff may not traverse it, but otherwise it is of a Clerk or Servant so such Person to privileged. Skin. 582. S. C.

* Per Cur. Venit is to Part of the Plea, but Dict begins the Plea. The Dict alone shews him to be in Court; and here it appears that he is in Custodia. 2 Salk. 544. pl. 2. Trin. 7 W. 3. B. R. Stephens v. Arthur, seems to be S. C.

To an Affirmation said, the Defendant pleaded that he is an Attorney of the Court of C. B. and that Attorneys of C. B. are not liable elsewhere. The Plaintiff demurred. 11th. Because this Plea is only in the Negotia, and no Jurisdiction is given to any other Court. 2dly, Because there is no Defence by Venit but Dict only. Per Cur. As to the Plea being in the Negotia, it is well enough; for the Privilege is not transferable and triable per Person, but a Matter of Law of which we take Notice, and Venit & Dict only are sufficient Defence in this Case. 2 Salk. 545. Trin. 7 W. 5. B. R. Kirkham v. Wheeler.

If he is actually in Custody, he is liable to all Actions, but if he be here only upon Bail, he may plead his Privilege; for the Sheriff cannot take Notice of his Privilege, so that he must give Bail. Per Holt Ch. J. Salk. 1. pl. 1. S. C.

19. A privileged Person in the Common Bench may be in Custody of the Mayor; for he may either waive or mislead his Privilege; and if he be actually in Custody, and it appears so by Pleading, he cannot have his Privilege. 12 Mod. 102. Mich. 8 W. 3. Duncombe v. Church.

If he is actually in Custody, he is liable to all Actions, but if he be here only upon Bail, he may plead his Privilege; for the Sheriff cannot take Notice of his Privilege, so that he must give Bail. Per Holt Ch. J. Salk. 1. pl. 1. S. C.

20. And if one pleads an exempt Jurisdiction from all the Courts of Westminster, and not to be tried in such particular Courts and Franchises, there you must shew that they have a Jurisdiction of the Matter, and that the Cause arises within their Jurisdiction. Special Imparlance should not be allowed without the Leave of the Court and Consent of the Parties. 12 Mod. 102. Duncombe v. Church.

21. Defendant pleaded that he is one of the Attorneys of the Court of B. R. without saying that he was at the Time of the Writ purchased, and a Re-
Privilege.  533

22. Defendant pleaded that he was an Attorney of the C. B. and ought; Mod. 9; not to be sued elsewhere without his Consent; the Plaintiff replied, n.s.c. that he did consent &c. but laid no Venue to bere; and therefore bad. Per Car. 1 Salk. 4. Mich. 1 Ann. B. R. Ode v. Norcliff.
23. The Defendant pleaded Privilege of C. B. in Abatement, without concluding to the Record. Holt said he need not do it, but he may leave Plaintiff at Liberty to reply, and deny his being a Person privileged there, which Plaintiff cannot do if Defendant conclude to the Record, and his not saying Prout patet is no good Cause of a general Demurrer, and upon Prout patet per Recordum, there shall go a Certiorari to certify the Record; and if they produce one and thieve that they have Privilege, the Plaintiff is etnopp’d. 7 Mod. 106. Mich. 1 Ann. in B. R. Clifton and Swayne.
24. In Debt upon Bond brought in B. R. the Defendant pleaded his Privilege as Attorney of the Court of C. B. &e. and that there is a Custom in that Court, that no Attorney of this Court shall be compelled to answer by Original Writ, unless he is prejudged. The Plaintiff replied, that for five Years last past, before the Original filed, the Defendant had withdrawn himself from the Office and Practice of an Attorney. Upon a Demurrer to this Replication, it was objected, 11th. Against the Plea, that the Defendant did not far forth that he had any Clients, whose Suits he prosecuted or defended; for the Reason why an Attorney should have his Privilege is, that he might be attendant on the Business of his own Clients; and when the Reason ceases, the Privilege ceases. 2dly. That he had alleged this Custom In Fieri, and not In Facto; for it is that an Attorney should not be compelled to answer &c. whereas he should have gone on and alleged, Nec a tempore quo &c. For Usage in Facto is essential to every Custom, Compelli confuenit. But the Opinion of the Court was, as to the first Objectio, That the Plea prima facie was good, and not avoided by the Replication, and that as long as the Defendant is an Attorney upon Record, he ought to have his Privilege. And as to the 2d Objection, it was said, the Court would take Notice of the Privilege of Attorneys of the Court, and therefore the Custom mean not to be so strictly alleged as other Customs. And Judgment was given for the Defendant. 2 Laww. 1664. Hill. 2 Ann. C. B. Routh v. Weddell.


To a Plea that he was an Attorney of C. B. it was objected on Demurrer, That he ought to produce his Writ, and conclude

with a Prout patet per Recordum; and also that he laid no Venue, alleging no Place where he was Attorney, nor where the Court of C. B. sits. Etc per Car. viz. Holt Ch. 1. to which the Rest assented; An Attorney may plead Privilege with a Profer of his Writ, if he will, or with an Exemplification of the Record of his Admission, or he may plead it as he does here, and it is well enough; for so are the Precedents, and the Plaintiff may reply Nulliue Record 2dly. There was no Need of a Venue to try where he was Attorney, for it being a Matter concerning his Person, was triable where the Writ is brought. A, to the 2d. 'He wondered how that ever came to be allowed; for that this Court finds Writs to the Ch. J. of the C. B. by that Name; and unless where this is held to be Part of the Description of a Record, it can never be necessary. 2 Salk. 343. Seawen v. Garret.

26. The Defendant pleaded in Abatement, that Tempore quo Memoria non extat, all the Clerks of the Queen's Court of Exchequer were privileged from being sued elsewhere than in that Court; and this the Defendant was 6 T. Clerk.
Privity.

Irivity. Rep. There But Pleaded; he Privy. Trefpafs. Spe-... to the Court, cannot take Notice of it any more than we. The
other Way, if he be an Officer on Record, then to produce a Writ of Privilege at the Time of the Plea pleaded, and then no Habe can be join’d upon it; but here the Custom is ill pleaded; for Tempore quo non extat Memoria is Nolumen, and it should be Cujus contrast Memoria non &c. But he having shew’d that he is one of the Clerks of a Baron, the Court ask’d whether they ought not to take Notice that he ought to have Privilege? But it being answer’d, That he did not ever that he was Clerk to one of the Barons of the Queen’s Exchequer, but De Secario neflo, a Respondeas Outler was awarded. 6 Mod. 305. Mich 3 Ann. B. R. Phipps v. Jackson.

27. If any who have Privilege of Chancery be arrest’d in a civil Plea by the Proces of any other Court, he may have a Writ of Privilege, containing an absolute Superfedeas, and requiring the Plaintiff, Quod sequatur in Carta Ubi &c. jurisdict. P. R. C. 284.


For more of Privilege in General, See Arrears, Attorney, Parliament, Peers, and other proper Titles.

Privity.

(A.) The several Sorts of Privities and Privies, and of what they may take Advantage.


2. Trefpafs against two, and the one appears first, and the Plaintiff’s counts, and after the other Defendant appears, and the Plaintiff counts of another Day, and yet he shall not take Advantage of the Count affirmed by his Companion contrary of Plea to the Writ, Releas, Discontinuance &c. For he is Privy to the Writ, but not to the Count. Br. Trefpafs, pl. 56. cites 46 E. 3. 25.

3. There is no Privity between the Incumbent of the Bishop who is collated by Laph, and the Bishop, as there is between the Master and Servant. Br. Incumbent, pl. 12. cites 16 H. 7 6.

4. There are three Sorts of Privities, viz. Privity in Estates, in Blood, and in Law. Privies in Blood are intended of Privies in Blood inheritable, and this is in three Manners, viz. inheritable as General Heir, or as Special Heir, or as General and Special Heir. Privies in Estates are as Joint-tenants, Baron and Feme, Donor and Donee, Leil and Leilhee &c. Privies in Law are when the Law without Blood or Privy of Estate calls the Land upon one, or makes his Entry lawful as Lord by Echear, Lord that enters for Mortmain, Lord of Villein &c. 8 Rep. 42. b. Hill.

Estates only, Contra& only, Echear and Contrat together. Privity of Estates is, As if the Lessee grants as his Repre-... (or if the Rentes renseats) Now between the Grantee (or the Lord by Echear) and the Leilee, there
there is Privity in Estate only. So between the Leesor and Assignee of Leesor; For no Contract was made between them. Privity of Contract only, is personal Privity, and extends only to the Person of the Leesor, and to the Person of the Leesee, as in the principal Case when the Leesee assigned over his Interest, notwithstanding his Assignment the Privity of the Contract remained between them, though Privity of the Estate be removed by the Act of the Leesee himself; and the reason of this is, that, because the Leesee himself shall not prevent by his own Act such remedy which the Leesor had against him by his own Contract, but when the Leesor granted over his Reversion, there, against his own Grant he cannot have Remedy; because he has granted the Reversion to the other, to which the Rent is incident. 2dly, The Leesee may grant the Term to a poor Man, who shall not be able to manure the Land, and who will by Indigence, or for Malice permit it to lie fresh, and then the Leesor shall be without Remedy, either by Dilref, or by Action of Debt, which shall be inconvenient, and will concern in Effect every Man, (because for the rent part every Man is a Leesor, or a Leesee,) and for those two Reasons all the Cases of Entry by Tors, Eviction, Suspemion, and Apportionment of the Rent are answered; For in such Cases it is either the Act of the Leesor himself, or the Act of a Stranger, and in none of the said Cases, the sole Act of the Leesee himself shall prevent the Leesor of his Remedy, and will introduce such Inconvenience as has been said. Privity of Contract and Estate together, is between the Leesor and Leesee himself. 3 Rep. 25. Hill. 29 Eliz. in Walker's Case.——Lat. 265. Iremoner v. Newlam S. P.

5. Privities inheritable, As Heir General, shall take Benefit of the Infancy, Prories in as if Infant Tenant in Fee Simple makes Feeoment and dies, his Heir shall enter. The same Law of him that is Heir General and Special, and also of him that is Heir Special and not General. But Privities in of Nonage Estate (unless in some special Cases) shall not take Advantage of the Infancy of the other. 8 Rep. 42. b. 43. Whittingham's Case.

in Leases Privities in Estate. Arg. 5 Puls. 272. cites 8 Rep. 42. Whittingham's Case.

6. A Surrender by an Idiot of an Estate for Life to destroy a Contingent Remainder is void ab initio, and therefore any Person may take Advantage of it, as well Privity in Estate as Heir at Law. But a Feeoment and Livery made Properis Manibus of the Idiot not being merely void, makes a Difference. Carth. 436. Hill. 9 W. 3. B. R. Thompson v. Leech.

For more of Privity in General, See Ad. Assignment, Confirmation, Covenant, Descent, Fines (X. 2) and other proper Titles.

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Proces.

(A) Judicial. How it ought to be made.

1. If an Action of Battery be brought against B. C. and D. and J. S. and J. D. are Bail by Recognizance for B. and C. and not for D. and after Judgment against B. C. and D. for Costs and Damages a Scire Facias is sued to have Execution against J. S. and J. D. the Bail, and the Scire Facias recites the Action and Judgment against B. C. and D. and that they were Bail for B. C. and that the said B. and C. have not satisfied the Judgment, nor rendered themselves to the Prifon, and therefore they shall have Costs why Execution shall not be awarded against them, and the Scire Facias is not, that D. against whom the Judgment to also, has not satisfied the Judgment as it may be that he has, nor that B. and C. has not
not satisfied it Nec corum aliqui, as is usual, yet this is a good Writ, 
For in as much as they were Bail only for R, and T, it is sufficient 
to say, according to the Condition of the Recognizance, that they 
have not rendered themselves to Prison, without having Nec corum 
aliqui, and without saying nor the faid V for if R. or T, have 
paid it, it is the Pavement of both; And if D. has paid it, it ought 
to come of the other Part to be flown. P. 11 Car. 2.R. between 
Barons and Hill. Adjudged upon a Demurrer. Intr. ATT. Hill. to 
Car. Rot. 897.

2. Debt by the Executors of one Person against another Person upon 
Yeares of Annuity accruing in the time of their Testator, the Defendant said, 
That he had found his Church discharged, and prayed Act of the Patron and Or- 
dinary, and had it. The Prothonotary was in a Doubt, if he should 
make the Summons ad Auxilland to the Sheriff of L. where the Writ was 
brought, or to the Sheriff of E. where the Church was; And per Martin and 
Hals, because this is a Judicial Process he shall pursue the Original, 
and it shall be brought first in the County where the Original is brought, and 
if they are returned Null there, then Process shall be made upon a Teg- 
atum to a Foreign County. Br. Processes, pl. 3. cites 2 H. 6. 8.

(B) Distriingas. Distriingas upon Testatum at the Com- 
mon Law.

1. UPON a Distriingas, if the Sheriff returns a Null upon a 
Testatum of Allts in other County, by which he may be dis- 
strained, a Distriingas shall issue into the other Country; For other- 
wise there should be a Failure of Right. 3 H. 4. 5 C. 4. 11. 
27 H. 8. 22. b.

2. So if upon a Distriingas the Sheriff returns Petit Issos, so that 
the Parties do not appear upon a Testatum of Allts in other County, 
a Distriingas shall issue for the Benefit of the King to have greater Issues, 

(C) Upon the 25 E. 3. cap. 17. Capias or Exigent.

Distiinosa a

1. *A Distine of a Cholt with Charters a Capias and Exigent 

Distriinga of a 

Capias, and the Plaintiff counted of a Box with Charters concerning Land, and therefore the Defendant 
prayed to make Attorney; And became row it appears by the Count, that it touches the Realty, there- 
fore Capias does not lie, by the Opinion of all the Court; and therefore now he shall make Attorney. 
Br. Exigent, pl. 15. cites 2 H. 4. 2. —Note, per Monmbry, that Ca 8a. lies for Exigent or De- 
ринosa of a Box or Charters, because the Box is only a Charter, and Capias lies upon the Original 
thereof, and therefore Capias may be Execution: Quire ilinde. And from hence fée, that where Capi- 
as is not the Proces upon the Original, that there Ca 8a. is not the Execution, & lie dixit Belk ibi- 

The Capias 
it not by this 

2. 25 E. 3. Stat. 5. 1. —Proces shall be made in a Writ of Debt and 
Distiinosa of Cheltts, and taking of Buffs by Writ of Capias, and by Proces 
of Exigent by the Sheriff's Return, as is used in a Writ of Account.

See Manwood Ch. B. 2 Le, SS. pl. 112, in Case of Opin at Walton.

3. If
If the different be found with Force and Arms, Capias pro fine shall be awarded, and Exigent thereupon. Br. Proces., pl. 32. cites 7 H. 4. 39.

4. In Replevin Witherman was awarded for the Defendant against the Plaintiff; the Sheriff returned, Quod Aederea Elongata fuit; there Witherman was awarded for the Defendant of the Goods of the Plaintiff, and the Sheriff returned Nihil, by which 3 Capias's issued, and at the Places returned, Exigent issued; Quod Nota, that the Plaintiff may be outlawed upon his own Suit. Br. Proces., pl. 34. cites 11 H. 4. 10.

5. Justices to the Sheriff to hold Plea upon Obligation of 1000 Marks, the Justices was removed into Bank by Pone, upon which the Defendant was returned Nihil; the Plaintiff prayed Capias; And per Martin and Cockain. the Capias does not lie, For the Statute which gives it force, in Wirr of Debt Capias lies, which is intended Original, and this Justices is not Original, but a Commission to the Sheriff to hold Plea beyond 40 s. And the Sheriff upon this cannot award Capias in the County, nor Ca. Sa. Br. Exigent, pl. 5. cites 3 H. 6. 54. 55.

6. In Trespass the Defendant appeared and had Day by Dies datus &c. and at the Day made Default, by which issued Diffringas, and he is returned Nihil; there shall issue 3 Capias's & Exigent; Quod Nota after Appearance. Br. Exigent, pl. 6. cites 19 H. 3. 1.

7. In Trespass upon he Cave the Plaintiff had proceeded against the Defendant in the old way by Pone & Diffrefis, and the Defendant moved to stay the Proceedings, suggesting the same to be contrary to the Method prescribed by the late Act of Parliament to prevent vexatious Arrears, 12 Geo. & 2 Geo. 2. And the Question was, Whether by these Statutes the old Method of Proceeding be taken away, and another Method instituted, or not? It was urged for the Plaintiff, That before the Statue of Marlbridge no Capias lay, that the ancient Course of Proceeding was by Original, and where the Party was returned attach'd no Proces lay, but a Diffringas, except in Trespass Vi et Armis. In this Cafe the Party is returned attach'd upon the Original, and no Proces of Outlawry lies. The Act of Parliament 12 Geo. prescribes a Method in Cases where the Cause of Allion is under 10 l. and the Plaintiff proceeds by way of Proces against the Person; but here the Plaintiffs do not proceed by way of Proces against the Person, and after the Original returned as aforesaid, no Proces against the Person can issue, and consequently the Party cannot be served with Proces. There is also an Exception in the Statute 12 Geo. as to Peers and privileged Persons, who are to be proceeded against as by the Statute 12 W. 3. but that can relate only to Caves where the Proceeding is by way of Proces against the Person, and not by Method of Pone and Diffingas, which is a dilatory Method in the Defendant's Favour, where Elfinns may be cast, and remains as it was, not affecting by any of these Statutes. Per Cur. The Statutes of Marlbridge and 13 El. 3. do not take away the ancient Method of Proceeding by Original and Diffringas; But where it is returned upon the Original, That the Defendant hath nothing whereby he can be attach'd, a Capias against the Person may be issued, and a Proceeding to Outlawry carried on. The Words of the Statute 12 Geo. extends only to Proceedings by way of Proces against the Person, and seems to admit Plaintiffs may proceed otherwise, as before; And it would be hard to say, This Clause hath repealed the Law by Implication. As to Proceedings against privileged Persons; a new Method by Bill is prescribed by the Statute of 12 W. 3. but the Law not alter'd. Let the Rule to ilew Cause why the Proceedings should not be itay'd be enlarged. Notes in C. B. 292. Trin. 10 Geo. 2. Bias and Wife and Goodfleth v. Lyell.

6 U (D)
In like Imprisonment the Defendant justified by a Capias directed to him upon a Suit commenced against the Plaintiff in an inferior Court; the Plaintiff demanded because it was not shown that a Summons issued first, and inferior Courts can award no Capias but upon a Summons full return'd. Hale Ch. J. said, That the ordinary Practice of those Courts to grant a Capias without a Summons is a great Abuse, so that the Party is driven to Bail in every trivial Action; and tho' upon a Writ of Error this Matter is not answerable, because a Fault in Process is aided by Appearance &c; yet like Imprisonment lies upon it, and the Officer cannot justify here as in Process out of the Courts of Wellminifter; and Judgment for the Plaintiff. Vent. 23d. Trin. 24. Cr. 2. B. R. Read v. Wilmot — S. C. of Read v. Wilmot was cited by Powel J. in the Case of Glantine v. Pool & al. who said, That tho' he has as great Respect as any Man for the Opinion of Hale Ch. J. yet he cannot agree to this Judgment, which he said was given upon the first Argument upon a Dilemarch conceiv'd against the Male Practices of Inferior Courts in this irregular Way of Proceeding, but that it certainly is only a Process Inverso Online, and erroneous only; and that in the Case of Ward v. Gliard, Cro. J. 261. it was held to be Error, and that so is Margot and Antiroy's Cafe Palm. 449. and that no Custom of any inferior Court will make this Process good; but that by the Custom of London, which is confirmed by Act of Parliament, this Process is held good in Spackallop's Cafe 9 Rep. 65. But it there appears, That without this Custom it would be only erroneous Process; And says, He sees no Reason why Officers of the inferior Courts should be thought more knowing than those of the inferior. Lutw. 1564, 1565. Mich. 4 W. & M.

(E) Who may award the Process.

1. If a Man be outlaw'd before the Justices of the Peace in their Sessions, the Justices of the Peace may award a Capias Urgagatum thereupon; for the Court which can outlaw a Man may also award Process of Distraint. M. 16 Ja. B. Per Curiam.


(F) Execution.

1. If a Special Bailiff, by Force of a Warrant upon Capias in Process, enters into the House of J. S. the Door being open, and there takes J. D. against whom the Writ is, the Process is well served as to J. D. and all Strangers; And if any Stranger resists him, he at whose Suit he is arrested shall have his Action against the Stranger. Cr. 16 Ja. B. R. between Hodges and Markes. Adjudged upon De morte.
At what Time the Process may be executed.

1. If a Latitut returnable Die Lunæ proximo Post Trinitæ, which was this Year the 10th of July, comes to the Sheriff to arrest J. S. the Sheriff may arrest him the said 10th Day of July. Cr. 3 B. R. between May and Hopper, by Fenner and Belverton agreed.

which is returnable, and is not executable that Day any longer than the Court sits. Salk. 322. pl. 6. Patch. 3 Ann. B. R. in the Case of Perkins v. Wollaston. —— 6 Mod. 159. S. C.

2. So a Capias in Proces may be executed the Day of the Return thereof.

3. So a Capias ad Satisfaciendum may be executed the Day of the Return thereof.

4. If a Writ of Enquiry of Damages be returnable Octabis His, Cro E. 468. S. C. and cites the Cafe of Backler v. Ludlow. Adjudg'd. And there is cited to be adjudg'd accordingly in * Bagster's Cafe, which was Mich. 11 Car. B. R. between Satisly and Waterman in Replication, the Writ to inquire for Damages for bearning of Rent executed the same Day of the 12, pl. 98, Return, that is to say, the Eveson Day, and Per Curiam good. But new Writ was awarded, because the Damages were execrable.

Woolley v. Moolley ——- But if the Inquest had been taken the 2d Day of Craft. Trin. and before the 4th Day of Craft. Trin. it had not been good. Cro. E. 180. Patch. 52 Eliz. Bagster's Cafe.

5. If upon a Writ to inquire of Damages, the Inquest be impanne* S. C. & P. well'd the Eiloin-Day, and the Jury then hear their Evidence, but give their Verdict 2 or 3 Days after, yet this is well executed. Mich. 11 Car. B. R. in the said Cafe of Satisly and Waterman, had by the Jury Jones and Backler, That this was adjudg'd in * Bagster's Cafe.

at the first Day, tho' they gave not their Verdict 'till 2 Days after, it shall not prejudice the Party; but the Verdict being given, shall relate to the first Day of the Return, and shall be laid to be executed upon the first Day, to which it shall have Relation; And for that Reason, Popham Ch. J. who before suffer'd, agreed in the principal Cafe, That the Writ was well executed. Cro. E. 468. (bis) Patch. 38 Eliz. B. R. pl. 26. Gawen v. Ludlow.

6. If a Nisi Prius be taken after the 1st Day of the Return, and before the 4th, it is not good; for the Justices have no power to take it after the Day of the Return. 33 H. 6. 45. b. Adjudg'd. Cr. 38 El. B. R. Agreed.

7. But if the Nisi Prius be taken the Day of the Return, or before, and the Jury do not give their Verdict 'till 2 or 3 Days after, because they cannot agree, yet it is good enough; because otherwise the Jury may prejudice the Parties by their Disagreement. Cr. 38 El. B. R. Per Popham.

8. So it is of a Writ of Inquiry of Damages taken in such Banner. Cr. 38 El. B. R. Per Popham. And there said, That it was to adjudg'd in Bagster's Cafe.
9. If a Man be outlawed after the first Day of the Return of the
Writ it is erroneous. 33 H. 6. 46. Said to be oftentimes to adjudged
by the Advice of all the Justices.

10. The Sheriff upon a Capias in Process cannot arrest the Party
is one and the same Day in Effect, and when the first Day is past, his Authority is expired. Br. Procels, pl. 169. cites S. C.
—In Trepsas for Battery and Imprisonment, Defendant justified by Execution of a Writ, but upon the Plea it appeared to be executed after the Day of the Return, but before the Quarta Die post. The Execution was adjudged illegal, and Judgment for the Plaintiff. Lev. 143, Mich. 16 Car. 2. B. R. Ellis v. Jackson. —— Bid. 229. S. C. accordingly.

11. If a Man vanishes into the one of all Age, the other within
Age, and prays that the Parol demur, and the Demandant says that he is of full Age, and prays Venire facias to be viewed, Procels shall issue against him of full Age; Per Markham; but Newton e contra; and that no Process shall issue till the other be adjudged to be of full Age. Br. Procels, pl. 61. cites 19 H. 6. 5.

12. A Writ by the Roll was awarded returnable on Wednesday, but was made returnable on the Thursday, and executed on the Thursday. The Writ was ordered to be amended according to the Roll, and the Execution upon the Thursday void. Cited by Windham J. Lev. 143. Mich. 16 Car. 2. B. R. in Cafe of Ellis v. Jackson.


(H) Who may execute it.

1. Statute of Lincoln, 11 E. 2. in Magna Charta, fol. 169. b. and that the Executions of Writs which shall come to the Sheriff be made by the Hundredors known and sworn in full County, and not by others, if it be not in great Default, or notorious Disturbance of Hundredors, and then let them be made by others covenanted and sworn, so that the People might know who shall serve such Executions, having all Returns of Writs to those who have and ought to have them.

2. Trepsas of Battery in Middlesex, and the Plaintiff counted in the Palace of Westminster where the Sheriff has no Jurisdiction; And per Marten the Count shall abate; For it is Infras, and not De; for the Palace is no Part of the County, for Process shall issue immediately from the Court to the Warden of the Palace, and not to the Sheriff, and therefore he may direct Precept to the Warden, as in Cafe of a Liberty within the County. Br. Count, pl. 77. cites 2 H. 6. 7.

3. Writ shall not be served part by the Sheriff, and part by the Bailiff of the Franchise by Parcels; Quod Nota. Br. Procels, pl. 53. cites 8 H. 4. 17.
(1) What shall be said a good Arrest in Law.

1. If three Writs of Capias in Process at the Suit of J. S. against J. D. be directed to the Sheriff, and the Sheriff makes three special Warrants to one special Bailiff, and he comes to J. D. and arrests him generally, without showing in which Action, nor is it demanded of him; but immediately upon the Arrest a Stranger refuses him, Action upon the Caeue lies against the Stranger for all three Requeses; For this was an Arrest in Law upon all. Cr. 16 Ja. R. R. Adjudged between Hodges and Parks.

2. So if the Writs and Warrants were at the Suit of three several Persons, and the Bailiff arrests him generally as before, this is a good Arrest for all, and all shall have Actions for the Rescue. Cr. 16 Ja. R. between Hodges and Marks per Curtian.

3. If a Warrant be directed by the Sheriffs of London to certain Serjeants there to take A. B. a Counterfeiter upon a Warrant ad Satisfa- ciendum, and the Serjeants, for Fear of a Rescue, procure the Party Plaintiff to enter an Action of 1000 l. against the same A. B. by the Custum of London, whereupon they would arrest him, and carry him to the Comptuer, and there charge him in Execution, And after the Serjeants come to A. B. and say that they arrest him, without saying more; This General Arrest cannot be by force of the Writ of Execution; For when the Sheriff or other Person by his Authority makes Arrest of the Person of another, [he] ought upon the Arrest to shew at whole Suit, out of what Court, for what Cause he does it, and when the Process is returnable, to the Intent, if it be for any Execution, that he shall pay it and free his Body, or agree with the Party, or put in Bail according to the Law, and to know when he shall appear. Co. 6. Counts of Rialand. 54. Revised.

Appearance comprized in the Writ, otherwise the Arrest is not good. And yet a known Officer shall not be compelled to shew his Warrant as a special Bailiff shall, but though he has a Warrant and will not shew it, yet he shall declare to the Party the Cause of the Arrest. No. 57: pl. 1063. Mich. 3 Jac. in the Star-Chamber. S. C.

If Process be delivered to the Sheriff, and he takes the Party without saying anything, it is good: for otherwise the Sheriff shall be a Treasurers, which the Law does not intend, and the Sheriff has a lawful Authority so to do; and so if it is, though the Sheriff had not the Process about him at the time of the Arrest Nov. 35. Beale v. Taylor.

4. Upon a Capias in Process at the Suit of J. S. if a Special Bailiff by force of a Warrant to him directed, arrests the Party, and does not lay at whole Suit, nor is it demanded of him at whole Suit it is, but immediately upon the Arrest a Stranger refuses him, this is a good Arrest, and an Action lies against the Stranger; For he had not time to shew at whole Suit it was, nor is he bound to shew at whole Suit it is, before that he has peaceably submitted to the Arrest. Cr. 16 Ja. R. R. between Hodges and Marks. Adjudged upon Demurrer.

And though the Warrant was in his Pocket, and he only laid, Here I do arrest you by Virtue of a Warrant which I have, but did not shew him the Warrant, nor had it in his Hand, yet it was resolved, that this was a good and legal Arrest, and that he needed not to shew the Warrant till the other obeyed and demanded it. Cro. J. 489, 486. Trim. 16 Jac. B R S C.
Pro Confesso.

5. A Man who is Sheriff of London and Middlesex, or of Essex and Hertford, cannot take a Man in the one County, by Capias directed to him in the other County, but a Man taken in Middlesex shall be brought to Newgate in London; for this is the Goal of both Counties. Br. Procesis, pl. 168, cites 16 E 4. 5, 6.

6. A comes to the Sheriff, and tells him he has a Writ against B. who is then present, and on this the Sheriff says, I will take his Word for his Appearance, this cannot be taken for an Arrest. Arg. Vent. 118. Patch. 23 Car. 2. B. R. in Case of Methvin v. Hundred of Taftoutworth.

7. A Bailiff caught one by the Hand at a Window whom he had a Warrant to arrest. This was such a Taking, that the Bailiff might justly breaking open the House to carry him away. Vent. 306. Hill. 28 & 29 Car. 2. Anon.

For more of Procesis in General, See Arrestit, Contempt, Execution and other proper Titles.

Pro Confesso.

(A) In what Cases a Bill shall be taken Pro Confesso.


Where the Defendant has not appeared, Chancery can't decree the Bill Pro Confesso, but ordered a Sequestration against his Real and Personal Estate till he cleared the Contempt. 2 Ch. R. 284. 33 Car. 2. Nodis v. Battle.

The Court of the Court now is to take a Bill Pro Confesso after the Party has once appeared, and stands out in Contempt till the Plaintiff has got to the End of the Line, and has run thro' all the Processes of the Court against him; yet formerly this Court did not do it even in that Case without putting the Plaintiff to prove the Substantive of his Bill. Arg. Vent. 224. Hill. 1685; in the Case of John-son v. Dehinsere.

2. Two Defendants, the one having answered, the other refuses, he shall be bound by the other's Answer, if the Cause passes against them. Toth. 74. cites 7 Jac. Matthew v. Matthew.

3. Defendant being a Prisoner in the King's Bench, refused to answer. The Bill can't be taken Pro Confesso, unless he was in the Prison of this Court; whereupon he was removed by Habeas Corpus into the Ear., and having a Day given him to answer, and he still refusing, the Bill was taken Pro Confesso, and he was ordered to be kept close Prisoner. N. Ch. R. 50. 1653. Thomas v. Jones.

4. Where
Pro Confello.

4. Where the Defendants were not brought in upon any Process of Contempl, but they app. to the Subpœna to answer, and could not be taken, the Bill was taken Pro Confello, and a Decree upon it decreed to be well grounded, and a Bill of Review ordered to be diinitis'd. N. Ch. R. 64. 14 Car. 2. Denny v. Filmore.

5. In a Suit for Tithes the Defendant was in Contempl for not answering, and was brought by several Orders to the Bar; and being a Quaker related to answer on Oath, but pray'd to answer without Oath. Finch C. admonish'd him of the Peril, viz. That the Bill must be taken for true entirely as 'tis laid, if he answer'd not; and he say'd as before, the Lord Chancellor pronounc'd the Decree, tho' Sir J. Churchill, as Amicus Curiae, said, That this Cause for Tithes, especially small Tithes, was not proper for this Court, and had not been used; but decreed for the Plaintiff, and refer'd the Valuation to the Matter. 2 Chan. Cases 257.

6. Defendant having appear'd, and afterwards flood in Contempl till Sequestration was return'd, It was infit that the Bill ought to be taken Pro Confello; but the Lord Keeper said, He would consider of it till the next Term. And it being alleg'd, That Baron and Fene were Defendants, and that it was the Wife only who had appear'd, and that without the Husband's Privity, Lord Keeper refer'd it to a Matter to examine the Fact, and said, If it should fall out to be so, he could not decree against the Husband, but they must proceed and lay on the Sequestration to bring him in. Vern. 247. Trin. 1684. Gibbon v. Sceavengton.

7. A Defendant refusing to answer, and being without all Contempts till an Order was made for a Sequestration; it was pr'y'd by the Plaintiff's Counsel, That the Bill might be taken Pro Confello. To which it was objected by the Counsel on the other Side, That this could not be done, because the Sequestration was neither under Seal nor executed, and also because the Plaintiff did not produce the Original itself, but only a Copy of it. Lord Chancellor Parker held the last Objection certainly a good one; but as for the other, there seem'd to him to be no Reason for it; for the Putting the Seal to the Sequestration, and actually Executing it, seems to be then only necessary when the Plaintiff is not ripe for a Decree upon his own Bill, but wants some Discovery from the Defendant's Answer, upon which the Decree may be founded; and therefore the actual Executing a Sequestration to extort an Answer, of which the Plaintiff has no Occasion, seem'd to him very unnecessary. 10 Mod. 431. Pach.


5 Geo. 2. cap. 25. 8t. Enacts, That if in any Suit in Equity any Defendant, against whom Proceeds shall issue, shall not cause his Appearance to be entered according to the Rules of the Court, in Case such Proceeds had been served, and Affidavit shall be made, that such Defendant is beyond the Seas, or that, upon Inquiry at his usual Place of Abode, he could not be found, so as to be serv'd, and that there is just Ground to believe that such Defendant is gone out of the Realm or abstrait to avoid being serv'd, the Court may make an Order, appointing such Defendant to appear at a Day therein to be named, and a Copy of such Order shall, within 14 Days, be inserted in the London Gazette, and published on some Lord's Day, after Divine Service, in the Parish Church where such Defendant made his usual Abode within 30 Days next before his Absenting, and a Copy of such Order shall be posted up, viz. A Copy of such Order made in Chancery, Exchequer, or Dutchy-Chamber, shall be posted up at the Royal Exchange; and a Copy of every such Order made in any of the Courts of Equity of the Counties Palatine, or of the Great Sessions in Wales, shall be posted up in some Market-Town within the Jurisdiction of the Court, nearest to the Place where such Defendant made his usual Abode, such Place of Abode being also within the Jurisdiction of the Court, and if the Defendant do not appear within such Time as the Court shall appoint, then on Proof made of such Publication of such Order as aforesaid, the Court may

Mr. Serjeant Barnardton in his Reports of Cases in Chancery 712. tells us, That the Opinion of the Court was, that it is not sufficient upon this Statute to make Affidavit, That the Party making the Order was the Plaintiff, and believes that the Defendant could not avoid being serv'd, and that upon the Service of the Copy of such Order, the Court was not satisfied with what was done, and that the Defendant had no Appearance, and that the Defendant did not appear within the Time appointed, and that on Proof made of such Publication of such Order as aforesaid, the Court may
order the Plaintiff's Bill to be taken Pro Confesso, and make such Decree thereupon as shall be just; and the Court may order such Plaintiff to be paid his Demands out of the Estate sequestred according to the Decree, such Plaintiff giving Security to abide such Order touching the Restitution of such Estate, as the Court shall make upon the Defendant's Appearance. But in case such Plaintiff shall refuse to give Security, then the Court shall Order the Estate sequestred to remain under the Direction of the Court until the Appearance of the Defendant to defend such Suit.

Provided, That this Act shall not affect Persons beyond the Seas, unless Affidavit be made of their being in England within 2 Years before the Subpoena.

Nor extend to Courts having a limited Jurisdiction, unless Oath be made of Personal Residunce in such Jurisdiction one Year before the Subpoena.

9. The Defendant appeared and stood out to a Sequestration, and afterwards, on getting Time, put in an Answer, which was reported insufficient in near 20 Exceptions, and was served with Subpoena to make a better Answer. The Defendant put in another Answer alike insufficient. It was intituled for the Defendant, That the Practice of taking Bills Pro Confesso is not of long standing, the ancient Way being to put the Plaintiff to make Proof of the Substance of the Bill; and that, in this Case, taking all the Bill Pro Confesso, where Part had been sufficiently answer'd, seem'd very strange. But it was answer'd, That an insufficient Answer is as No Answer, and therefore the whole to be taken Pro Confesso; And the Matter of the Rolls decreed for the Plaintiff. But Lord Chancellor King, on an Appeal, said, He would consider how Matters stood at the Time of such Decree, and that it was sufficient that there then was an Answer, and which the Plaintiff had admitted to be so by filing Procefs for a better; and that to lay the Defendant confes'd the whole Bill true, when, by the Matter's Report, (which was a Record of the same Court) that he had answer'd the greatest Part; and when the Plaintiff himself had taken the first Answer to be an Answer in Part by leaving the Defendant with Procefs to put in a better, is against Common Sense; and revers'd the former Decree. 2 Williams's Rep. 356. Mich. 1729. Hawkins v. Crook.

10. If a Defendant obstinately insists upon his Demurrer, and refuses to answer where the Court is of Opinion, That sufficient Matter is alleged in the Bill to oblige him to answer, and for the Court to proceed upon, the Court will decree the Matter of the Plaintiff's Bill; for by the Demurrer are concedes all Matters of Fact that are alleged. Cuf. Canc. 209

For more of Pro Confesso in General, See Contempt, Sequestration, and other Proper Titles.
Procuration.

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considered, the Plaintiff shall recover the Value thereof in Damages, together with his Costs of Suit. The like he shall recover at the Common Law, when the same is thereby determinable.

Provided, If the King hath demised any of the said Lands with a Conven- nant to discharge the Tenant of such Charge, that then the Party claiming the same shall sue for them in the Court of Augmentations, and not elsewhere.

Procurations and Proxies; the Suggestion was, That by the Statute all such Archbishops &c. as have a Right to any Proxies &c. against title to whom the King should grant any Lands charged therewith, with a Clause in the Grant, That the said Lands should be discharged, should sue for the same in the Court of Augmentations, now annexed to the Exchequer, and not elsewhere; that in the present Case the Lands were granted by Patent discharge of Proxies &c. Sed non Allocaturs, because this Statute extends only where particular Estates are granted over, as appears by the Words, Any Sale &c. for Life, Lives or Years, and not where the Fee is granted, as it was in this Case. Hard. 588. Mich. 16 Car. 2. in saec. the King v. Luke.

2. An Archdeacon brought his Bill in the Exchequer against the Defendants, being Parsons and Vicars in London, for certain Sums of Money due for their Proxies by Prescription. The Defendants demurred, for that the Thing in demand was merely of Ecclesiastical Cognizance; and if the Title by Prescription altered the Case, then the Plaintiff ought to have his Remedy at Law, and not in Equity. But of this the Court doubted, Et Adjournat. The Chief Baron cited Lindw. That there are 3 Sorts of Proxies, Rationes Visitationis, Confisctudinis, and Poeti; that the 2 last were recoverable at Law, but because in this present Case the Matter was doubtful, the Defendants were ordered to answer, and this Matter should be tried to them at the Hearing. Hard. 180. Patch. 13 Car. 2. in the Exchequer. Dr. Parker v. Seabrook & al.

3. Liber against K. for Procurations due to him as Archdeacon of York; yet forth, That for 10 20 &c. Years there hath been due and paid 6s. yearly by the said K. and his Predecessors, Parsons of D. But K. urged for a Prohibition, That the said Duty hath not been payable, and denied the Prescription, and that the Ecclesiastical Court cannot try Prescriptions. Per Curiam, A Conslitution is granted Quod Procurationes demanded generally; But if the Plaintiff denied the Quantum, then a Prohibition. Raym. 366. Patch. 32 Car. 2. B. R. Kirkton v. Guardian. If the Difference be about the Quantum, then they ought to have filed in the Suggestion. That so much is due, and no more; But here the whole is denied. But the whole Court agreed, That a Suggestion cannot be amended after a Prohibition is gone, nor in this Prohibition.

4. Adjudg'd, That Procurations are an Ecclesiastical Duty, and therefore properly liable for in the Spiritual Court. 2dly, Where it was claimed by and from an Ecclesiastical Person, it is so much the stronger. 3dly, Tho' there was an Impropriation in the Case, still there must be a Curate to take Care of the Souls of the Parish; and Curates as well as when due, other Persons must stand in need of Bishops or Archdeacons Instructions and Visitations. Consequently, 4thly, That the + Ordinary or Arch- deacon ought to be allowed for his Procuration what had been usually paid, being for it, which in the Principal Case appeared to be 6s. 8d. 5thly, That where a Thing is claimed by Curton in the Spiritual Court, it must be intended according to their Confrontation of a Curton, and by their Law 40 Gibt. Cod. 63d. 90. Years make a Custom or Prescription. 6thly, That the Payment of 6s. 10½d. 8d. for 70 or 80 Years is an Evidence of an Immemorial Payment. But if it could not be strictly Immemorial, as taking the Archdeaconary to have been founded in E. 6th's Time, yet since that Period it might become due by Endowment, which might in this Distance of Time have been lost. Williams's Rep. 657, 663. Mich. 1720. B. R. Saunders v. Claggart.

Procurations, ad

* Procurations, Sy- nodals and

Pentecostals

able in the Spir- itual Nature.

Thus explained by the Canonists:

Hec Manus idem Procurationis Rectetur ex Ecclesia Estatica processum, i.e.,

Curate, absent, as mentor. 2 Gibt. Cod. 1016 —— Donatives & Free Gifts pay no Procuration to any Ecclesiastical Ordinary, because they are not visible by any. Ibid.
Profession.

(A.) Profession. Derelgument.

1. A Monk under Obedience may be discharged of the Obedience by the Archbishop, with Licence of his Sovereign. 3 H. 6. 24.

2. A Man profess'd cannot be made able for Things Temporal, as to purchase Land, or to have Advantage of an Obligation, by any except the Head of the Church, not by the Archbishop. 3 H. 6. 24.

3. But the Ordinary may make him able to take Advantage of Things Spiritual without the Head of the Church, as to be Vicar or Parson; for this is not contrary to the Profession, which is Spiritual. 3 H. 6. 24. b.

4. Mortdiance; for because his Mother had taken upon her the Habit of Religion. The Tenant said that before the Entry into Religion, the Mother espous'd W. N. who is yet in full Life; for if he be alive, the may be Deraignment. Contra if he died after. Br Deraignment, pl. 9. cites 5 E. 4. 3.

(B.) What will be good Cause of Deraignment.

1. If a Man marries a Wife, and the before Carnal Consubstance enters into Religion, yet the Marriage is not good Cause of Deraignment. 18 H. 6. 33.

2. Otherwise it is if she enters into Religion after Carnal Consubstance; for then by this the Marriage is compleat. 18 H. 6. 33.

(C.) Profession. At what Time a Man shall be said a Dead Person, and Profess'd.

1. If the Freres put my Son, being an Infant, into the Habit without my Affent before his full Age, he may come back to me with my Affent, or I may retake him from them; for he is not profess'd by the Habit. 11 H. 4. 31. b.

4. So
Profit Appender.

2. So I may retake him after his full Age. 11 D. 4. 31. b. before he is professed.
3. If a Man enters into Religion, and is under Obedience, yet he is not a dead Person before Profissi. 3 H. 6. 24.
4. For Land may descend to a Man after Entry into Religion before Profissi, and may have Action for it as heir. 3 H. 6. 24.

For more of Profissi in General See Fait, (C) Grants, (C) pl. 1.
Trial, (A) pl. 3. (O) pl. 12. 13. 14. and other proper Titles.

Profit Appender.

1. Profits appender are saved by the Third Saving of the Statute of Uses. 2 And. 26. pl. 52. in the Case of Lord Cromwell v. Andrews.
2. If I grant to the heirs of Evers and Hay, or such like, to be taken annually, or Common for 10 Beasts annually, to be taken in such a Place for Term of Life or Years, or otherwise, and he does not take any Thing of it for 3 or 4 Years there, in the 5th Year he shall not take 40 Beasts, nor can he put 40 Beasts in the 5th Year; for then and adventure the Grantor cannot take any Thing himself this Year; for it is not like to a Rentcharge. By the Opinion of the Court. Br. Parson de Profits &c. pl. 2. cites 27 H. 6. 16.
3. Præcipue quaed reddat does not lie of Common, but Quod permitte and the like of other Profits appender, which lie in Prender and not in Render; for at the Common Law no Action lay of Profit appender, but the Quod permitte. Br. Precipe, pl. 13. cites 4 E. 4. 1.
4. A, as Tenant of a Manor has Right by Prescription to take Clay &c. yet he can't take that which another has dug. The fame of Evers. Mo. 411. pl. 561. Trin. 37 Eliz. Stile v. Butts.
5. If the Lord had refer'd Decimam partem of the Corn &c. he shall have Assize of it, as of Profit appender. Mo. 531. pl. 699. cites 44 E. 35. 40 Eliz. says, That he may have Decimam &c. but not Decimam &c.

6. Such Manner of Profits (though they are Appendant to a Frank- tenement) cannot be divided; For if such Heritage descends to Parceiners, one alone shall have the entire Profits, and the other Parceiner shall have an Allowance; also female shall have for her Doer but an Allowance. Finch. 36. b.

Turf to make Allen &c. the Assistants must work together, with the same Stock and Workmen belonging to both. Godd. 18. pl. 24. Patch. 23 Eliz. C. B. the Lord Mountjoy's Cafe.

7. Libertas Falcandi is a Profit Appender, but a Man is not thereby Tenant or Occupier, nor can precribe to be discharged of Tithes as such. Bull. 249. Suckerman & Coates v. Warner.
8. Licence to take a Profit in Alleno folio need not be by Deed, where it is only Unica Vie, there passing no Estate in it. Vent. 25. Patch 21 Car.

B. R. Rummel v. Rawlin.


For more of Profit Appender in General, see Common, and other proper Titles.

Prohi-
Prohibition.

(A) The Antiquity of Prohibitions.

1. 3 El. I. Rot. A Prohibition was granted, and after an

Claudatium, &c. Attachment against the Bishop; and the

Official for holding Plea after the Prohibition.

(B) Of what Things or Actions, and for what what Causes

it lies [where] the Judges, [before whom the Cause is

brought] have not any Jurisdiction.

1. If the Collector of the Pope in England holds Plea in England

of Spiritual Matters, a Prohibition lies; for he has not Juris-

diction here to do it, for this belongs to the Spiritual Judges of the

King in England. 3 H. 4.

See (J. a) pl. 7. S. C. B. N. B. 46

(A) in the

New Notes

there (a)

1. If a Man owes unto another Man a Marks, and he has several Plaists for the same in the

County-Court, or in any other Court, against the Debtor, he shall have a Prohibition thereof, and re-

hears the Matter, and that he would defraud the King's Court of its Jurisdiction, and also the Party of his

Answere & commanding them that they do not proceed &c. and that he command the Party to sue at

the Common Law in the King's Court; And if they will not sue, he shall have an Alias and

Pleas, and Attachment upon the same &c. F. N. B. 46 (A)—So if the Executor faits in the County,

or in a Court-Baron for a Debt of 5 Marks, by divers Plaists, whereas the Debt is upon a Contract, or

upon an Obligation, now the Defendant may sue the same, and plead unto the Jurisdiction of the Court,

or he may have a Writ of Prohibition directed unto them, that they do sue &c. and if he have

Judgment in any of the Plaists sued for Parcel of the Debt, yet in the Prohibition, he may prohibit him in

the Plaints, which are depending, and that Execution of Judgment costs for the Residue. F. N. B. 46. (A)

If there be several Contrasts between A. & B. at several Times, for several Sums, each Sum under 40s.

and they do all amount to a Sum sufficient to entitle the Superior Court, they shall be there put in Suit, and
Prohibition.

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not in a Court which is not of Record: And so it was resolved in the Case of the Bishop Court, and St. Albans, 44 Car. 2. Vent. 65. pl. 1. Patch 22 Car. 2. in B. R. Anon.

In a Prohibition to the Court of the Honour of Eye the Case was, one contracted with another for diverse Parcels of Malt, the Money to be paid for each Parcel being under 40 s. and he levied divers Plaints thereupon in the said Court: Wherefore the Court here granted a Prohibition; Becaule, though there be several Contracts, yet for as much as the Plaintiff might have joined them all in one Action, he ought to have done it, and sued here, and not the Defendant to an unnecessary Vexation, any more than he can split an entire Debt into divers, to give the inferior Court Jurisdiction in Fraudem Legis. Vent. 73. Patch 22 Car. 2. B. R. Girling v. Alders.

3. If one sues another in the Spiritual Court for a Chattel or Debt, the Defendant shall have a Prohibition. F. N. B. 40 (H)

4. If none sues for Trespass in the Spiritual Court, Prohibition lies for the S. P. F. N. B. King or the Party unto the Judge or the Party, or both. F. N. B. 40 (M) 46 (G) — Trespass Vi & Amis sued in the County Court &c. the Defendant may sue a Prohibition to the Sheriff or Plaintiff, F. N. B. 47. (A)

5. If Bailiffs, Mayors, or others, who claim Jurisdiction to arrest a Man upon a Plaint before them, or to attach his Goods &c. do arrest one for Trespass or Contrav, who was not within their Jurisdiction, the Party arrested &c. shall have a Prohibition directed unto them &c. F. N. B. 45. (F)

6. If a Man sue another in the County Court for Debts or Chattles which do amount to the Sum of 40 l. then the Party shall have a Prohibition against him who is Sheriff, that he shall not hold Plea thereof, and that he tell the Party that he sue in the Common Pleas. F. N. B. 46. (A) - Trespass unto his Damage of 40 s. or more, the Party shall have a Prohibition for to surcease, and thereupon an Alias, Pluries, and Attachment &c. F. N. B. 46 (A)

7. If a Man sue in the County a Plaint of 20 l. and hath Judgment to recover in that Court, yet the Defendant may sue a Prohibition, commanding the Sheriff and the Suitors not to execute the Judgment, although he has before admitted the Jurisdiction. F. N. B. 46. (A)

So after Judgment given, and Execution awarded in the County, or in other Court-Baron, which hath not Power to hold Plea of Debt of the Sum of 40 s. &c. or of Damages in Trespass amounting to such Sum, or more, the Party Defendant shall have a Writ of Prohibition unto the Bailiffs, or the Under Sheriff or Officer of the Court, that they make not Execution; and if they have distrained the Party to make Satisfaction, that then they release the Debtor, and that they revoke what they have done therein. F. N. B. 45 (A)

8. If one Man sue another in a Court-Baron, or other Court, which is not a Court of Record, for Charters concerning Inheritance or Freehold, he shall have a Prohibition, F. N. B. 47. (B)

9. A Prohibition was moved for to the County Court to stay a Suit &c. 2 Keb. there in Debts for Tribes on a Jurisdiction; For that it is not Debtitian ex Coium. 416. 42. and that he was informed the Court inclined strongly that the Defendant might plead or demur, and so the Matter might come judicially before the Court. 1 Lev. 253. Mich. 20 Car. 2. B. R. Bishop v. Corbett.

10. An Action of Debt on a Judgment in B. R. was brought in the Mortgage, and therefore a Prohibition was granted. 2 Salk. 439. in pl. 2. an Anonymous Cafe, cites it as Trin. 11. W. 3. B. R.
(C) Jurisdiction Spiritual.

Prohibition.

1. If the Farmer of the King files in the Exchequer against a Parson for detaining of Tythes parcel of the Possessions laid to him in Farm by the King, though the Right of Tythes comes in Debate between them there, yet the Court shall not be ousted of Jurisdiction. 38. Stat. 20. Abjudged: But the Report lays, Quod mirum.

Protest against A. Parson of O., who had Part of his Goods, by which he could not pay, and he came and proved his Tithes by the Exchequer, who came and prayed for and against D.S. of the King in the Exchequer, and the other claimed them as his Tithes, and the other claimed them as his Tythes, as Parson of S. and the other thereupon pleaded to the Jurisdiction, Et non Allocatur; but the Exchequer held Plea, because it was the Suit of the King, and in his himself; but it is laid there, Quod mirum nulli! and that B. R. nor C. B. will not hold Plea of Tithes as here. Br. Jurisdiction, pl. 95. cites S. C. — Br. Prerogative, pl. 74.

The King has Tythes in the Forest of Inglewood &c. which are not in any Parish, and grants them to another, who brings Sure Fæces against those who received them before; in this Case the Temporal Court shall have Jurisdiction. Br. Prohibition, pl. 25. cites 22. Aff. 75. —— But if they be in Variance who ought to pay the Tythes and who ought to have them, the Spiritual Court shall have thereof Jurisdiction. Br. Prohibition, pl. 23. cites 22. Aff. 75.

2. A Libel was against H. questioning some Matters as to the Validity of his Indulgence to the Church of S. but a Prohibition was granted, because the very Title of the Patronage in this Case came in Question, which they ought not to meddle with; besides, the Validity of Indulgence is triable at Common Law, and not in the Spiritual Court. 1 Bull. 179. Trin. 9. Jac. Holt's Café.

3. Suits for Adultery, unless exorbitant and notorious, ought to be brought before the proper Ordinary. Pet Hutton J. saith to have been so rul'd. Cro. C. 114. Trin. 4. Car. Isabel Peel's Café.

4. L. C. was excommunicated upon a Libel against him, founded upon a Prafentment by the Churchwardens for not receiving the Sacrament in his own Parish Church, and suggested for a Prohibition; that he had alleged and presented to the Official a Certificate that he had taken it elsewhere. The Court held that the Ecclesiastical Court had Conuniance of the Cause, and hadgiven Cause to proceed upon the Prafentment Prima Facie; and that it lies on his Part to prove that he received it elsewhere, and upon such Plea a Prohibition lies, but not else. And because it did not appear to the Court that this was pleaded in the Spiritual Court, nor was there any Affidavit made of it, the Court denied to grant a Prohibition, and being moved twice afterwards the Court denied to grant a Prohibition, because the Conferences are purely Spiritual, and they proper Judges of the Certificates; and if they refuse the Plea, an Appeal will lie, but no Prohibition; besides the Allegation in the Certificate, (viz.) that he hath received the Sacrament elsewhere, is not sufficient; because, by the Rubrick, he is to receive it three Times a Year, and so the Effect of the Libel not answered. Hard. 406. Pach. 17. Car. 2. in the Exchequer. Copley's Café.

5. A Libel was against the Plaintiff for keeping Conventicles &c. and this was ex Promotione A. B. Publick Notary; neither the Libel or Articles alleged any Prafentment of this Matter, but the Registrar swore that a Prafentment was made by the Curate of the Parish where &c. and that a Copy by him delivered into Court was a true Copy thereof. It was inquired for the Plaintiff in the Prohibition, that no Man ought to be prosecuted in the Spiritual Court to answer Articles ex Mero Officio as here he was, without a due Prafentment. And fo is the Statute 25 H. 8. cap. 14. as to the Prosecution for Hereby; but the Reason thereof extends to other things as well as to Hereby: Indeed that Statute is repeated, but my Lord Coke, in 12 Rep. 26. observes, that it was herein declaratory of the Common Law, and that this very reasonable that there should be a Prafentment and Accusation by some proper Person: For otherwise an imo-
cent Person, in Case of false Accusation, would not know where to have Remedy. A Prohibition was denied; And it was said by Wyld J. that they must judge upon the Suggestion only, and he suggested the Proceedings to be ex Officio, may be understood either of a proceeding Officer of his own Head; or, that it was according to his Duty; and here no thing appears but he did so. But if the Plaintiff had suggested that the Law required a Presentment by such Persons and in such a Manner &c. he might have brought that into Question. And of the same Opinion were the other Justices, and that Faith and Credit ought to be given to their Proceedings. But Tyrril J. held, that if it had been suggested, That No Presentment by a Curate was sufficient, Nor unless it were upon Oath &c. he should have been of Opinion for a Prohibition. And Vaughan Ch. J. said that if the Articles were exhibited merely ex Officio, viz. out of the Mind of the Chancellor himself, they were not warrantable; But that there is no Colour for this Suggestion, because they appear to be by the Information of a Publick Notary. 2 Vent. 41. Pacln. 22. Car. 2.

C. B. Grove v. Elliot.

6. The Plaintiff being Person of S. in D. and having a Disposition for two Benefices, agreed with the Defendant for 22l. to force the Care of S. The Defendant made his Application to the Bishop to enlarge his Stipend; the Bishop ordered that he should allow him 32l. per Annu. The Plaintiff paid him his 22l. according to Agreement; and he libelled against the Plaintiff for the Addition by the Bishop in the Spiritual Court, and the Plaintiff prayed a Prohibition. The Defendant's Counsel intimated, That this being an Allowance by Order of the Bishop, was properly fiable in the Ecclesiastical Court, and cited 3 Cro. 675. Nat. Br. 51. 4 Inf. 491. But the Court granted a Prohibition; For there being a Contradiction between the Parties, the Bishop had no Power to make any Order; But if the Curate had served the Care, and made no Agreement, then the Bishop might have allowed him what he thought reasonable, in the Nature of a Quantum meruit; and a Prohibition was granted. Freem. Rep. 70. pl. 84. Hill. 1672. C. B. Pierfon v. Atkinson.

7. Sr. O. B.'s Lady sued him in the Spiritual Court for Alimony; and he moved for a Prohibition, and suggested, That he had, by Indenture, conveyed over Lands to Trustees of the Value of 300l. per Ann., for her separate Maintenance, and that they refused to admit it &c. Per Cur. no Prohibition; For this Court cannot take Notice of a Deed of Trust; But if it be proper for them to move for a Prohibition any where, they must go into Chancery, for the Execution of Trusts properly belongs to them. But besides, Alimony is a Thing that the Ecclesiastical Court has properly Constance of; and if there be a separate Maintenance already, they will take it into Consideration, at least by Way of Delegation in Alimony; and if the Party be charged too hard, he may have his Appeal. Freem. Rep. 282, 283. pl. 324. Trin. 1673. C. B. Sir Oliver Butler's Case.

8. A. had llue 3 Daughters, B. and C. the two Plaintiffs, and D. and A. dying intestate, M. his Wife administered and dyed, and made the two Plaintiffs her Executrices, who had several Bonds, some in their own Names, and some in the Name of M. to whom they were Executrixes; they also took out Administration De Bonis Non to the Father. It was suggested in the Spiritual Court, that some Bonds which they had in their own Names were in Trust for their Father; and that some Bonds in the Mother's Name, were Debts owing to the Father, but the Mother, being Administratrix, had alter'd the Property, and taken them in her own Name; D. sued for Distribution of those Debts. As to the first Part, the Court were of Opinion that a Prohibition should go, For a Trust is not examinable in the Spiritual Court; for they are not a Court of Equity. Freem. Rep. 283, 284. pl. 327. Trin. 1674. C. B. Miller's Case.

9. The
9. The Mayor and Aldermen of Bristol presented A. to the Parish Church of C. in that City; and the Defendant libelled against him in the Arches, for that he was not 23 years old when made a Deacon, nor 24 years old when he entered into Priest's Orders; and the Statute of 13 Eliz. cap. 12. requires, that none shall be made a Minifter, or admitted to preach, under that Age. It was suggested for a Prohibition, that this Matter was triable at Law, and not in the Spiritual Court; because, if true, a temporal Loss, viz. Deprivation, might follow. But the Court denied the Prohibition, and compared the Case to that of a Drunkard or ill Liver, who are usually punished in the Spiritual Court, tho' a temporal Loss may ensue. 3 Mod. 67. Pach. 1 Jac. 2. B. R. Roberts v. Pain.

10. The Parson libelled against the Defendant for not coming to his Parish Church on Sundays. Defendant pleaded that he went to another Church more convenient for him. A Prohibition was granted, and Plaintiff declared therein. The single Question was, Whether a Parsonioner is compellable to go to his Parish Church? It was insisted that he was; because every Parson is obliged not to allow a Parsonioner of another Parish to partake of Sacraments with him, and by the Act of Uniformity every Man is required to refer to his Parish Church. To this it was said, that the Distribution into Parishes was by the Common Law, and if in Consequence thereof the People were brought under a new Obligation, such Obligation ought to be examinable at Common Law. The Court agreed, That an entire Neglect to go to any Church, is punishable in the Ecclesiastical Court; that this Matter was of Ecclesiastical Consequence, and that Prima facie it was a good Charge, that a Man went not to his Parish Church. And they seemed of Opinion, that the Act of Uniformity be taken as introductive of a new Law, yet the thing being purely of Ecclesiastical Consequence, and proper for their Examination, a Confultation ought to go. But there was no Resolution. 1 Salk. 169. Hill. 3 Anne. B. R. Britton v. Standish.

was granted, and ordered to declare forthwith.

11. If a Man be proceeded against as an Heretic in the Spiritual Court, Pro Salute Anima; and thinks himself aggrieved, his proper Remedy seems to be to bring his Appeal to a Higher Ecclesiastical Court, and not to move for a Prohibition from a Temporal one, which, as it seems to be agreed, cannot regularly determine or discuss, what shall be called Herefy. Hawk. Pl. C. 4. cap. 2. S. 9.

(D) In what Cases the Court shall not be ousted. In Respect of Collateral Things.

1. In Trespass, if the Right of Tithes comes in Debate between a Parson and a Layman, being a Farmer of another Parson, the Court shall not be ousted of Jurisdiction. 20 H. 6. 17. b.

2. In an Annuity between spiritual Persons by reason of certain Churches chargeable, grounded upon the Deed of Grant of the Predecessor of one, tho' the Persons and Thing, out of which it issues, are spiritual, yet by Reason of the Deed the Court shall not be ousted of Jurisdiction. 29 C. 3. 39. b. Adjourned.

3. If the Patron has Indenture to go quit of Tithe of Cheefe &c. and is sued in the Spiritual Court for those Tithes, he shall have Prohibition upon this Indenture. Br. Prohibition, pl. 21. cites the Register 33.

4. If
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Prohibition.

4. If a Woman bath Title to sue a Can in Vita, and she swears unto the Tenant, that she will not sue the Can in Vita against him; if the afterwards sueth forth the Writ, for which the Tenant sueth her in the Spiritual Court for Breach of her Oath, the will have a Prohibition, because the Oath toucheth a temporal Thing, viz. Lands. F. N. B. 42 (1).  
5. If Slander, or * laying violent hands upon a Clerk, happen upon a Temporal Cause, and the other lies for it in the Spiritual Court, Prohibition will lie at Common Law, and therefore it seems that of these Defamations, by which the Party is damm'd, the Spiritual Court cannot hold Plea; For it is said, that Crimes of Falsity and Adultery appertain to the Spiritual Court, and Confutation shall be thereof granted; and the same it seems of Usury. 

Br. Aetion fur le Cafe, pl 115. cites the Register 54.

pl. 21. cites Regifler fol. 42 and Quere fol. 51. —— As because he gave Evidence against the Plaintiff who was indicted, and he lies in the Spiritual Court for Defamation, a Prohibition lies. Br. Prohibition, pl. 21. cites Regifler fol. 42.

6. When the Original begins in Court Christian, altho' that afterwards a Matter happens in Issue which is triable by our Law, yet this shall be tried there by their Law; As if one do sue there for a Horse to him delivered, the Defendant there pleads, that the Devisor did give this Horse unto him in his Life-time; this is triable by our Law, yet the same after the shall be try'd there. 2 Ball. 227. Pach. 12 Jac. Parker v. Kemp.

as an Award, and then prayed a Prohibition, for that an Award is Matter triable at Law; but it was denied by the Court. As if a Suit is for a Legacy, and the Defendant sugetts Payment; or if an Acquittance is pleaded, no Prohibition shall go; Because where the Spiritual Court has Cognizance of the principal Matter, there a Matter is determinable and dependent upon it, which is triable at Common Law, shall not deprive the Spiritual Court of their Jurisdiction; But it was said by Coke, and agreed by Doderige, that if that Court should adjudge another life upon an Acquittance, or an Award, than according to the Common Law, in such Cases a Prohibition should go. 1 Roll. Rep. 12. Pach. 12 Jac. B. R. Anon. S. C.

So where the Churchwardens libelled for a Church Rate which was sentenced against them, and then they appealed to the Metropolitan; but pending the Appeal, one of the Appellants related to the Appellate all Actions, Suits and Demands; but the other Appellant proceeded in his and his Partner's Name to reverse the sentence? whereupon the Appellee pray'd a Prohibition, and suggested this Release, supposing that it discharged the Appeal. But upon Demurrer it was adjudg'd by all the Judges Una Voe, that Prohibition lies not upon this Suggestion; Because the Temporal Court has nothing to do with the principal Matter, that being merely spiritual, and to be determined in Court Christian; And since the Ground of this Suit belongs to that Court, all Things dependent thereupon will belong to them also. And whether this Release will bar both the Churchwardens or not, shall be determined there, and not in B. R. Yevl. 172. Hill: Jac. B. R. Starkey v. Barton and Gore — Coq J. 254. S. C. but not exactly B. — Noy 129. S. C. by Name of Gore v. Stark —— So where Churchwardens after the Year, were cited into the Spiritual Court to make a Preceptum Per Viam Juramenti taken by them as Churchwardens, whereupon they presented F. for not coming to Court; and it being suggested for a Prohibition, that this was the same as citing one Ex Officio; For that the Determining of the Office determined the Oath, Atkins J. was of Opinion for a Prohibition, but North, Windham, and Scroggs v. Court; For if Where a Matter is wholly of Ecclesiastical Concern, there, tho' they proceed irregularly, no Prohibition shall go, but the Remedy lies by Way of Appeal. And here this Preceptum, tho' it be after the Party is out of his Office, yet whether this may not be by their Rules and Canons Non contrari to this Court. Where a Matter is of Ecclesiastical Cognizance, if a Matter determinable at Common Law intervene, they shall try that, except it be in Case of a Modus, which by Law they cannot try; as if a Legacy be fixed, and a Release pleaded, they shall try this Release; but then it must be with this Difference. That when they try an incident Matter determinable at Common Law, by Reason of their Jurisdiction in the principal Matter, there they shall be ruled up to the Rules of Common Law; As in the Case, if a Release be pleaded to a Legacy, and there be but one Witness, or else the Witness is dead, and they will not admit of proving Hands, nor allow one Witness for a Proof, they shall be prohibited; For aforesaid Matters come under their Cognizance as Ecclesiastical; but Matters originally of Temporal Cognizance, they shall go according to the Rules of Common Law. Freem. Rep. 235. pl. 247. Trin. 10. —— S. P. And so where Libel is in the Title of such a Case, and the Defendant pleads that it is not his Case, but the Case of another Person; this shall be tried in the Spiritual Court. Sid. 89. Mich. 14 Car. 2. B. R. Butler v. Yeaman.

Where an Ecclesiastical Court has Original Jurisdiction of a Cause, yet there is said to be a Difference in the Case of an Ecclesiastical and Lay Pris'on, viz. that in the Case of the former, their sentence may not be executable in the Temporal Court, but in that of the other it may; Quere taken Arg. Shin. 493. Trin. 6 W. & M. B. R. In the Case of Phillips v. Barry.

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Prohibition.

7. Where the Original begins here, and a Matter happens, the same shall be tried by our Law; as in a Quare Impedita, Able, or Not able. If it were otherwise, they should try nothing; this is belonging to them; but if they will thereby draw the Matter, Ad aliud Examen, as upon Proof of a Deed, they judge otherwise than we do, as in case of a Lease for Years or for Life, they hold the same must be Traditione, or void; and as of Grant of Goods to be delivered, or not good, in such Case we will prohibit them. 2 Bull. 227, 228. Patch. 12 Jac. Parker v. Kemp.

8. A Bishop granted the Office of Commiery and Vicar-General within his Diocese to Dr. B. for Life, with all Fees &c. thereunto belonging, which Grant was confirmed by the Dean and Chapter; Afterwards the Bishop inhibited the Registrar from entering Acts by the Doctor, or paying him any Fees, and thereupon the Doctor labelled against the Bishop for disturbing him in his Office; and the Bishop suggested for a Prohibition, that this concerned Freehold, viz. the Office which was granted for Life; but per Ley Ch. J. Doctor B. may have a Prohibition against the Bishop for a Disturbance. 2 Roll Rep. 306. Patch. 21 Jac. B. R. Doctor Barker v. Bishop of Oxon.

9. Prohibition was moved for to the High Commission Court, where a Person labelled for an Assault on him. And though they have an express Authority by their Commission to meddle in such Affairs, yet because this would make all the Ordinaries in England be to no Purpose, the Prohibition was granted. Herley 19. Patch. 3 Car. C. B. Giles v. Bulam.

10. A Prelacy who had a Peculiar Jurisdiction leased his Prebend with all Profits, Commodity, and Advantages &c. thereof belonging. The Question was, Whether the Ecclesiastical Jurisdiction passed to the Leesee, so that he might make a Commiery to hold Courts or not. The Ch. J. and Windham held, that he could not; for this is annexed to the Spiritual Perfon, and not to the Lay Corps of the Prebend; and Windham said, that the Commiery is only a Deputy of the Prelacy, which his Leesee cannot make for him; but Keeling and Twifden contrâ, and held it annexed to the Corps of the Prebend, and passed with it. But this being the first Motion, the Plaintiff was ordered to declare upon his Suggestion, and the Defendant to demur upon it, and so the Point to come judicially in Questian. Lev. 125. Hill. 15 & 16 Car. 2. She- rock v. Boucher.

11. Spiritual Court may proceed upon an All of Parliament, or other temporal Matter incident, so long as they proceed according to the Rules of the Common Law. 2 Lev. 64. Trin. 24 Car. 2. Juxon v. Bir- on.

12. A Proctor labelled for his Fees, and upon praying a Prohibition it was said by Vaughan Ch. J. and Windham J. That no Court can better judge of the Fees which have been due and usual there than themselves, most of which are appointed by Constitutions Provincial, and thereby they prove them. And they granted a Prohibition as to some Particulars in the Libel which were of temporal Cognition, but not as to the Suit for the Fees. Windham said, that if there had been an actual Controversy upon the Retainer, the Plaintiff ought to have sued at Law. But Atkins J. thought a Prohibition ought to go for the whole; because, as he said, Fees had no Relation to the Jurisdiction of the Spiritual Court, nor to the Cape in which the Proctor was retained; that the Proctor might have
have Action on the Cafe, the Retainer being an implied Contract. But a Prohibition was granted Quoad &c. Mod. 167, pl. 5. Mich. 25 Car. 2. C. B. Horton v. Wilton.

&c. which being at Things grounded on a Contract, or Quantum Meruís, the Spiritual Court cannot try them, but as to the customary Fees they may; though if the Custom be controverted a Prohibition shall go. And that Ackyns J. who was for a Prohibition for the whole land, that Fees differed from Cafe; for they may give Costs, which are Part of the Suit and Decree, as at Common Law it is Part of the Damage of the Party, and in the same Judgment; And repose, that Windham doubted, whether the Proctor could recover his Fees by an Action of the Cafe.——But upon a like Question it was held per Cur. That it is Custom and not the Authority of Constitutions, which intitles Proctors &c. to their Fees, and that an Action will lie for them at Common Law, and therefore the Spiritual Court ought to be prohibited; And the Rule was, That they should declare upon the Prohibition. 4 Mod. 254. Hill. 5 W. & M. B. R. Johnston v. Oxenden.

13. Libel in the Spiritual Court by Clark of a Parish for 4 d. per Ann. due to him by Custom from every Matter of Family in a Parish; Defendant denied the Custom; Prohibition was granted, because Custom is not triable there except in Cafe of Penions. 12 Mod. 260. Hill. 11 W. 3. B. R. Pollard v. Awker.

14. Administration was committed to a Woman as Widow of T. S. and a Libel was in the Spiritual Court to repeal the Administration, upon Suggestion that T. S. had a former Wife living at the time of his Death; a Prohibition was granted. Per Holt Ch. J. 12 Mod. 432. Mich. 12 W. 3. in Cafe of Hemming v. Price, and cited 7 Rep. 43. b. 44. a. Kenn's Cafe; and Style's Rep. 10.


16. A Libel was for Easter-Offerings, suggesting that they had, Time out of Mind, used to be paid in that Parish. The Defendant made no Defence at all in the Spiritual Court; but after Sentence against him moves the Court of B. R. for a Prohibition. The Motion was granted Nisi. The Reason why the Court doubted, whether the Prohibition was to be granted or not, was their Ignorance of the Practice of the Spiritual Court; for the Court seemed clearly of Opinion, that if the Practice of the Spiritual Court was agreeable to that of the Courts at Law, viz. to take every Thing Pro Concesso against a Defendant that makes no Defence, and to give Sentence for the Plaintiff without obliging him to prove the Truth of this Cafe, then the Prohibition was not to be granted; because the Custom set forth by the Plaintiff was not denied by the Defendant, and consequently no Occasion for Trial of the Custom. But in Cafe the Practice of the Spiritual Court was not to give Sentence for the Plaintiff, even in Cafe of no Defence made by the Defendant, without Proof made to the Court by the Plaintiff of the Truth of his Cafe; that then a Prohibition was to be granted; because then the Sentence of the Spiritual Court was founded plainely upon Proof made before them of a Custom, which is not to be permitted, because the Proof required by them, is very different from that required by Common Law. Doctor Pinfold, who spoke against the Prohibition, ingenuously owned, That it was the Practice of the Spiritual Court to require Proof. However, the Court took Time to consider, and would not make the Rule absolute. 10 Mod. 440. Trin. 5 Geo. B. R. Doctor Bows v. Jurat.
(E) What Pleas shall oust the Court of Jurisdiction.

1. If the Issue be whether the Place where the Tithes were be in the Parish of one Parson or of another, the Court shall not be ousted of Jurisdiction. 50 C. 3. 20. b. 20 H. 6. 17. b. 22 C. 4. 22. 38 E. 3. 5. b. 39 C. 3. 23. b.

2. That because they were at Issue upon the Place, the Issue was accepted, and the Defendant compelled to answer, where he should have answered to the Jurisdiction. Br. Jurisdiction, pl. 32. cites 5 H. 5. 10.

3. If the Issue be, whether the one Parson has by Prescription a Portion of Tithes in the Parish of the other Parson, this shall not oust the Court of Jurisdiction, because 40 Years by the Spiritual Law is good Prescription, which it is not at the Common Law. 29 H. 6. 17.

4. If a Parson sues for Tithes in the Ecclesiastical Court, and the Defendant lays, that the Place, for which the Tithes are sued, is in another Parish, a Prohibition lies.

5. In Trespasses by the Abbot against the Parson, of Corn carried away, the Defendant pleaded Composition, and concluded to the Jurisdiction for Tithes; Per Morrice, the Composition goes in Bar, and therefore you have affirmed the Jurisdiction. But per Thorpe and Monbray, No, where he concludes to the Jurisdiction and not in Bar. Quere. Br. Jurisdiction, pl. 35. cites 38 E. 3. 19.

6. In Trespass of Corn the Defendant claimed them as Tithes, if his Plea and Conclisiori goes to the Action, the Common Law shall take Cognizance; Per Finch; Quod non Negatur. Br. Jurisdiction, pl. 12. cites 46 E. 3. 9.

7. If a Man sues in Court Spiritual for a Legacy or Devise, where the other alleges a Gift of it, yet the Spiritual Court shall have Jurisdiction; and this, notwithstanding that the Party be not Executor nor Administrator. Br. Jurisdiction, pl. 13. cites 46 E. 3. 32.

8. Prohibition was awarded upon a Suggestion, that the Defendant was a Clerk, and assaulted the Plaintiff's Servant, whereupon the Plaintiff peaceably laid his Hands on the said Clerk, and that he had agg'd the facts in the Spiritual Court, and they would not allow it. And it was rul'd and adjudg'd, That the Prohibition should stand, notwithstanding the Statute De Articulis Cleri, cap. 3. Mo. 915. pl. 1297. Mich. 31 Eliz. B. R. Kelly v. Walker.

9. S. C. Cro. E. 64. pl. 18. Hill. 41 Eliz. B. R. reports, That the Defendant in the Spiritual Court pleaded further, That on his laying his Hands peaceably on the Plaintiff there (the now Defendant) the Plaintiff there made an Assault upon the now Plaintiff; and the now Plaintiff defended himself; and that if the Defendant here had any Hurt, it was De non Assault demerit. The Defendant here confest'd, That the Plaintiff here pleaded such Plea there; but they'd, That the Plaintiff here was condemn'd there for Non-Attend-
That this Cafe was out of the Statutes of Articular Clerks, and of Circumstances against, for here the Party had good Cause to beat the Clerk; and as to the Traverse, it is not good, for the Surmise is not traversable. And adjourn'd for the Plaintiff.

9. A Preliminary was Ex Officio in the Ecclesiastical Court, for not frequenting his Parish Church; he pleaded, That this was not his Parish Church, but that he had used to frequent another Parish Church, and to refer to this. And upon Surmise of this Plea he had a Prohibition, for that Court cannot determine the Precincts of Parish Churches, nor judge what shall be said a Man's Parish Church; And so was the Opinion of the whole Court, and therefore a Prohibition was granted. Bult. 159. Trin. 9 Jac. Anon.

10. The Executors gave Bond to Legates for Payment of his Legacy. It was held by Dodridge J. That the Obligee might either sue in the Court Christian for the Legacy, or at Common Law upon the Bond; for that the Taking of the Obligation for the Payment had not totally destroy'd the Nature of the Legacy. 2 Roll. Rep. 160. Pach. 18 Jac. B. R. Gardiner's Cafe.

Court there was of a contrary Opinion; for that the Legacy was drown'd in the Bond, and that the Opinion of Judge Dodridge was not good.

11. Upon a Libel for Tithes, the Defendant suggested, That the Lands where &c. are Parcel of Hackney Man's; and that Time out of Mind there was a Medus of 18. The Defendant had a Prohibition. A Confinement was prayed, because the Defendant had not proved his Suggestion within 6 Months according to the Statute; for he brought 2 Witnesses, who proved only, That they heard that for 40 or 50 Years last past, no Tithes in kind had been for these Lands, but a certain Sum of Money. But Per Lea. J. in many Cases, by the general (Word) (Proof) is to be understood (Concluding Proof) such as may persuade a Jury &c. But by him and Dodridge J. the Chief was, That Penions were delay'd by false Suggestions, and therefore the Statute ordain'd, That all Suggestions should be prov'd; But this means, That it should be by a Probable, and not by a Strict and Concluding Proof. And by Dodridge, the Strict Proof shall be afterwards upon the Traverse before the Jury; And Confinement was not granted. 2 Roll. Rep. 454. Trin. 21 Jac. B. R. Pagett's Cafe.

12. A Surmise that the Tithes belong to the Vicar, and not to the Parson, will not be a good Ground for a Prohibition; for the Right of Tithes is conferred by it, and whether they belong to the one or the other, is merely Spiritual. Nov. 147. Randal v. Knowles,— And cites it as so rul'd in one Buthell's Cafe. And in one Milbray's Cafe.

13. In any Plea in the Spiritual Court, where a Caffion is alleged and denied, a Prohibition shall be granted. Per Jones. Lat. 48. Anon.

14. The Court on a Prohibition was, That all Caffions are triable at Common Law, and that the Defendant libell'd against him in the Ecclesiastical Court, shewing That All Farmers of such a Farm have used to find Cakes and Ale at the * Perambulation of the Parish, to the Value of S. 8. and that there is no such Caffion, and that he alleged it to the Plea, but they refuted the Plea. The Defendant pleaded, That there is such a Caffion; Upon which the Plaintiff demur'd. Adjourn'd, That no Confinement shall go; for the Caffion in — But afterwards Ex- 


eptions was taken, That this Preemption by a Parish for a Poss. Appendix is void, and the Value being certain or not is not material, the Recourse repair

The Court at first inclined strongly, that the Caffion was good; But after

Keb 6.6. pl. 15. S. C.

Farmers is no more than a Prescription in Occupiers, which, according to Cattilane's Cafe, is not good in Matters of Charge on the Land. 2

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15. A. procured a Will out of the Prerogative Court, and gave Bond, with Condition to redeem it by such a Day; but he not doing it, the Spiritual Court proceeded against him Pro Lege sine Fide, and to have the Will adven into Court; The Defendant pleaded his having given Bond, and that a proper Remedy lay thereupon; but the Court rejecting that Plea, A. moved for a Prohibition; But it was objected, That the Witness to the Bond was dead, and probably, if put in Suit, they might not recover, besides, the Penalty might fall short of the Damages sustained by those interested in the Lands conveyed by this Will, by not having it produced, so that a Power to enforce the bringing it in fees necessitari; Besides that, it is in the Party's Election either to put the Bond in Suit, or to sue in the Spiritual Court. The Court inclined to grant a Prohibition. 8 Mod. 327 Mich. 11. Geo. 1. Cuban v. Dewsbury.

(F) Jurisdiction Spiritual. Jurisdiction of the Thing.


6. If one sues another in the Spiritual Court for a Lay Fee, which is Lands or Tenements &c. he shall have a Prohibition to the Court, and may have another Writ to the Party himself. P. N. B. 40. (1)

2. Mirror of Justice, fol. 27. cap. 2. B. 13. because he held Plea against the Defence [Prohibition] of the King, and in Prejudice of the dignity of his Crown, for as much as it belongs to no Judge Ecclesiastical to hold away secular Plea, except of Testament and Matrimonial in Prejudice of the Power of the King.

3. If a Man be admitted, instituted, and inducted to a Church, and after he is sued in the Spiritual Court for the Institution, opposing it not to be good, and so to have it to be defeated, a Prohibition shall be granted; Because by the Induction, the Patron has the Church as a Lay Fee, and therefore the Common Law shall be preferred before the Spiritual Law, and shall draw the Trial of the whole to it; For otherwise by this all Duties Imputed shall be overthrown; For by this Means they may try all Rights of Patronages in the Spiritual Court. Ex. 15. Ja. B. a Prohibition was granted in the Wilton's Café accordingly. Hill. 15 Ja. B. between Hitchin and Glover, Resolved, per toman Curiam.

4. Mich. 15 Car. B. R. between Phips and Heyter, per Curiam, Prohibition granted for the Church of Clifford Gibbs in the County of Wiltshire, where the Suit was in the Arches after Induction to avoid the Institution, because the Institution was made after a Caveat entered, not to institute &c. For this does not make the Institution void.
Prohibition.


5. If a Man be Admitted, Instituted, and Inducted to a Church, and after he is deprived, because he was instituted against the Course of the Ecclesiastical Law; This is a void Sentence of Deposition, because it is now a Cap Fee by Induction. Hill. 15. 1a. 2. R. adjudged between Hitching and Glover.

6. 35 E. 1. Rot. Patentium Demembr. 25. Elem. W. S. adap\texttild{tes} hine Possessionum Thelauraria in Ecclesia Mtrti Petri Etuirum, upon Collation of the King by Judgment in the King's Court, and he is now disturbed in his Possession by Citations and Appeals. Nos velentes Inu nostris produci, & Facias in Curia nostra Rite reddita in omnibus manentiis bodis \texttild{m} mandamus, quod datum Ecclesiam in Possessione manantieatis \texttild{s} qui fuissa Provocatione, Citatione, Appellatione, but alia Impeachment interponere preeumpeisse, per quae ec. true as accrescat & in Persona custodie sitatis dente aldud \texttild{s}.

7. If a Town creates a Common School, and gives Allowance to a A Prohib. Schoolmaster, the Bishop cannot remove the Schoolmaster, and put another at his Pleasure. But if he be a Recantat he may remove him by the Statute of 23 El. cap. 1. 20. 13. 2. B. The Bishop of Carlisle's Cafe. Per Curiam.

Richmond to play a Suit against a Schoolmaster for teaching School without the License of the Bishop, Prohibition was granted, because they endeavored to turn him out, whereas they can only enjoin him, because he comes in by the Prefentation of the Founder. Vint. 41. Mich. 21. Car. 2. B. R. 1669, Bay's Cafe. — Mod. 4. pl. 11. Mich. 21. Car. 2. Bayvel's Cafe. S. P. to the Ecclesiastical Court at Chatter, and the Prohibition denied. — There was a Libel in the Spiritual Court against Wood, a Schoolmaster and Rector; And a Prohibition was granted as to the Examination of any Matters relating to the Office of Schoolmaster. For when the Bishop hath once granted his Licence, he hath executed his Authority (especially in this Cafe where the School is of the Foundation of Queen Elizabeth, and the King's Chancellor is Visitor) but they may proceed upon the Article, and ask him for being drunk &c. which is Contra bonos Mores. Comb. 534. Patch. 3. Will. 5. B. R. Wood's Hill.

8. If Administration be granted to A. where it ought not to be granted to him, and after the Administration is repeated and granted to B. because he is next of kin, B. may sue A. in the Ecclesiastical Court, to account for the Profits of the Churhels of the Exalter during his Time, and no Prohibition shall be granted; For B. cannot have Action of Trespass against A. nor has any Remedy for them at the Common Law. Hill. 15. 9. 2. R. Amended between Wardworth and Andrews.

9. King 12. 4. confirmed a Church which was incorporatated before by the Name of Custos et Collegium in the Diocess of Exeter, and ordained certain Number of Singing-men, in which were some Spiritual and some Lay. The Dean and Chapter, with the Bishop, abridged the Number to 24 in all, and after to 10, 4 Spiritual and 12 Lay, and now they will add 2 more to the Number of Spiritual Men, by which their Livings shall be less, yet no Prohibition shall be granted, because it appears that the Number was greater, and after made less. 12. 8 9. 2. B. per Curiam, between Withers and Owen.

As to Accounts in the Ecclesiastical Courts, see Ecclesiastical Court.

10. 8 in law lies in the Spiritual Court for Perjury, where the Principal, upon which, or for which the Oath was made, does not touch, nor is Spiritual Matter, of which the Spiritual Court ought to have Jurisdiction, Prohibition lies. 12. 10. 10. 9.

Prohibition in a Caufe of Matrimony, Tithe, Testament, or Legacy, or of any other Thing of which the Contumacy belongs to their Jurisdiction, that Court shall have Jurisdiction in such Cafe of Perjury, and no Prohibition lies; But it is otherwise where the Perjury concerns a Temporal Matter. By all the Judges of both Benches. Jenk 184. Cae. 2. 6. 9.

Note, by a Man being a False of me, and forces upon the Evangelist to pay 101. for him at such a Day, and he does not pay, I shall have Debt at Common Law, and Citation Prohibition File at the
Prohibition.


13. V. 2. ordered, that it should not be lawful for a Bishop to punish any Man for Perjury or Breach of Faith. Speed 458. b.

14. If a Man promise another to pay Debts, or to make a Pleadment, and does not perform it, the Ordinary may Ex Officio cite him for Breach of his Faith, and award him to Penance.

15. 15 E. 3. cap. 6. It is acceded, that the Ministers of holy Church for Money taken for Redemption of corporal Penance, or for Proof or Account of Testaments, or for Travail taken for the same, nor for Solemnity of Marriage, nor for other Things touching the Jurisdiction of holy Church, shall not be impeached, arrested, or drawn to answer before the King's Justices &. But this was after repealed in the same Year. 18 E. 3. cap. 6.

16. A Presumption cannot be tried in the Ecclesiastical Court, because it ought to be tried by Jury which cannot be there. In Time of E. 1.


41—Affid against a Parson, and made his Plaint of a Horse; the Parson said, that he is Parson of P. and that it was Parcel of his Church Comit of Mind &c. and there has been Sepulture of dead Bodies; Judgment, if the Court will take Cognizance; and after the Defendant, by Agreement, pleaded to the Affid; Quare; For per Perjury, the Court ought not to take Cognizance. Br. Jurisdiction, pl. 71, cites 44 Ann. 8.

Whether the Proprietors of a Measuring, called the Priory, have Time of mind repaired the Church; may be tried and determined in the Spiritual Court as well as a Modus Decimandi; and though the Parson is of Common Right to repair the Chancel, yet it may be on a particular Man's Efface by Presumption. 2 Vent. 239. Mich. 2 W. & M. C. B. Williams v. Bond.

Label set forth a Presumption for the heirs of the Parish of M. to find a Parson to officiate in the Church of G. being an ancient Chapel within the said Parish for the Life of the Parsoners, in consideration alleged the Parishers Time &c. paid him and Predicenters two Quarters of H. Beef, and two of H. Yearly. Upon Suggestion of No such Presumption, Prohibition was moved for. And it was agreed by all, that the Things being by Presumption, which properly is triable at Common Law, did not always suffice to set the Spiritual Court of Jurisdiction; and if a Person be by Presumption, though one may bring Annuity for it at Common Law, yet they may libel it for it in the Spiritual Court upon the Presumption; and cited F. N. B. 81. Hol; Oh J said it is the very Point adjudged in Williams's Case, 5 Co. 12. for it is an Ecclesiastical Duty, to be performed for the Advantage of the Parsoners; and though it com- mences by Presumption, yet it concerns Ecclesiastical Persons; and is a mere Spiritual Thing; and is not at all the same as if it were against a Layman, who is not to easily bound by Canon Law as Ecclesi- astical Persons are; for their Proceedings there by Presumption shall not charge a Layman, or any Temporal Right. 12 Mod. 404, 405. Trin. 12 W. 5. B. R. Some v. Joses.

Though Presumption, as whether a whole Parish or a whole Vidiand should close Churchyards, is Matter triable at Common Law, yet Sentence is to be given in the Spiritual Court according to their Verdict. Agreed on a Motion for a Prohibition. 10 Mod. 12. Mich. 9. Ann. B. R. Banister v. Hopton.

17. A Person may sue in the Spiritual Court for a Modus Decimandi, and no Prohibition shall be granted; For it is in Nature of Tythes. Co. 11. Doctor Grant. 16. By Reports 14 A. Gellin and S. P. 2. Harden, S. F. C. Hobart's Reports, Cafe 314. between Scot and Wall.

Vent. 229. In Cafe of Williams v. Bond — He may sue in the Spiritual Court Pro. Mod. Decimandi; but if he files for Tithes in Kind, which by a Modus Decimandi are utterly extinct, and the Land diachel-
Prohibition.

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discharged of them) then upon a Plea De Modo Decimandi a Prohibition was. 13 Rep. 44. Trin. 7. In the Case of Modus Decimandi.

It was resolved, that the Parson might sue for Modus Decimandi in the Spiritual Court, and cited 2 R. 3. 3. a. But if the Parishioner denies it, that they ought to foreclose, and a Prohibition lies; and it shall be tried at the Common Law. Nov. 81. Steward's Cafe.

13. So if the Parson prescribes to have Tithes of Things not tithable, as of Rents of Housers, he may sue for it in the Spiritual Court, and no Prohibition lies, yet no Tithes de Jure ought to be paid of them. Co. 11. Doctor Grant 16.

might be, that this Modus Decimandi had been paid. Time out of Mind for all the Tithes of the Land, whereupon the Houser are built; And though this Land was afterwards built upon, this shall not take away the Right of the Parson in this Cafe, and since it might have a lawful Commencement, and that it had been Time out of Mind, it was for this Reason resolved, that Confinement should be granted; And that he might sue for this Money in Court Christian, because it is in the Nature of Tithes, viz. a Modus Decimandi, And every ancient City and Borough has for the most part such Custom of a Modus Decimandi for their Housers, for the Maintenance of their Parson. And a Confinement was granted. 11 Rep. 16. a. b. S. C.

19. So he may sue in the Spiritual Court for Tithes of Great Trees which he claims by Prescription, and no Prohibition lies, yet de Jure they are not tithable. Natura. 9 B. 6. 1 46.

S. P. being there at pl. 42. in the Year-Book.

20. So he may sue there for a Modus of the Tithes of Fish taken in Island, and brought into the Town where it, (yet no Tithes de Jure are due thereof as it seems,) My Reports, 14 J. C. Cullen and Harden.

was upon a Custom in Yarmouth; But because the Spiritual Court had rejected the Proceeding of another Modus differing from that which the Plaintiff had alleged, a Prohibition was granted; and at another Day a Prohibition was granted by Montrague Ch. (who was made Ch. J. after the former Prohibition granted) and all the Court, because he mistook his Modus.

21. If there be a Custom, that after the Grafs is cut and set in Gras Cocks, the 10th Cock shall be assigned to the Parson, and that he by the Custom shall have lawful Authority to make it into Hay upon the Land, if the Owner of the Land disturbs him to do it, he may sue for this in the Spiritual Court, and no Prohibition shall be granted; For it is incident to the Custom to come there to make it into Hay. Bich. 14 J. B. Reynolds and Newbury.

ought to be tried by the Common Law, yet the Court would not grant a Prohibition; But [the Book 14. 3] it seems they did not intend this, for they did not speak of it; But Warburton seemed for Opinion] that it was an unreasonable Custom. Roll Rep. 423. S. C.

22. The proper Place to sue for a Legacy, is in the Ecclesiastical Court; because it is not any Debt, but only due by the Will. Br. Jurif. dict. pl. 52. cites 37.

H. 6. 9. per Aitton.——J. S. libels in the Confinity Court of the Bishop of Exeter-cut C. and D. Stiffers to B. and Executors of his late Will, for a Legacy left &c. they pleaded that it was a special Allegation, that A. their Father was possessed of several long Leaves in several Testaments, and devised them to B. his Son; but if he should be unmarried, or if he should marry and have an issue, then C. and D. list two Daughters to have these Leaves &c; and that B. dying without issue, they claim as Devises of A. their Father, and not as Executors of B. their Brother; and the Court there overruled this Plea of theirs; and a Prohibition was granted; Because it is Matter of Title with which they ought not to meddle. 2 Show. 52. pl. 52. Patc. 31. C. 2 B. R. Ballard v. Stockwell.

23. If A. gives B. 5 Marks, and he devises by Will, that whereas he owes B. five Marks, his Executor shall make it 10 l. the Suit for this 10 l. may be in the Ecclesiastical Court; For this is not any Addition to the 5 Marks, but a New Sum given in Satisfaction of f. s. to pay the 5 Marks, and to no Part of the 10 l. nor any Debt but only a L. C. A. B. and C. 7 C. W. on his Marriage with M. recomitted with this 10 l. may be in the Ecclesiastical Court; For this is not any Addition to the 5 Marks, but a New Sum given in Satisfaction of f. s. to pay the 5 Marks, and to no Part of the 10 l. nor any Debt but only a L. C. A. B. and C. (who were)
26. If a Man devises a Legacy to another out of certain Land, whereof he is Seised in Fee, and the Device lies for this in the Spiritual Court, a Prohibition lies. For this lies out of the Land, and the Executor shall not have any Estate in the Land, till the Legacy railed out of the Profits (as was objected of the other Part) p. 15. 2d. 13. 6. 1.

But where A. Seised in Fee, and poofled of a Lease for Years of Lands in D. for divers Years yet to come, devised all his Lands and Leases to T. his Son and Heir (whom he made Executor) excepting 25 l. per Annun for 7 Years, in this Manner, viz. 100 l. to his Daughter E. to be paid within 5 Years, and 25 l. to his Daughter E. within 7 Years, and in Anno 1660 died, and T. entered, and took the Profits as well of the one as the other for the 7 Years, and died, and made M. his Heir (now Wife to the Defendant) his Executor, and left Alcs unto her, upon which the said E. the younger Daughter sued her for that Legacy of 25 l. and now they brought a Prohibition, maintaining, that this Legacy being out of the Profits of Land, no Suit could be brought in the Ecclesiastical Court for it. But in regard it was a meer personal Legacy, altho' it is to be railed out of the Profits of Land, yet being railed out of the Laise for Years as well as out of the Land, and he having railed it, and being dead without Payment, there being no Action maintainable for it at the Common Law by Account against his Executors, or otherwise, it is therefore ReaSc he should have her Remedy in the Spiritual Court; whereupon a Conclufion was awarded by all the Justices besides Williams, who doubted thereof. Cro. J. 279. pl. 9. Pacht. 9. 14. 6.

If a Legacy be granted out of a Land, this shall not be filed for in the Spiritual Court; but if one by Will devises Lands to be fond for Payment of Debt and Legacies, this shall be filed for in the Spiritual Court. Per tot. Cur. Brownl. 52. Annul.

27. If a Man devises a certain Legacy to another, and that if his Executor has not sufficient to pay it, then he devises it out of a certain House, of which he is Seised in Fee, the which defends also to the Executor, if the Executor has not Suits of Personal Goods, he cannot be
be sued for this in the Spiritual Court, as payable out of the house; because it has no Jurisdiction thereof. Patch. 15. 1. B. R. Resub. 2. *Per Curiam* between Singleton and Wade.

28. If a Man devised of Land in Fee makes B. his Executor, and by his Will in Writing devises that B. and 3 others shall sell the Land, and that the Monies shall be distributed into 4 Parts, wheresof one Part shall be to F. etc. and dies, and after B. will not sell the Land, and F. sues him in the Court Christian, a Prohibition lies; because if it be a Legacy, yet it illures out of Land, and the Monies shall not be Ainters in the Hands of the Executor. Tr. 17. 1a. B. between Graces and Adwarzd, per Curiam, and *a Contillation denzed.* Hobart's Reports Cafe 343. same Cafe, appointed to special Uses in Way of a Court of Equity, neither can they hold Plea of a Legacy in Equity, but where it is a Legacy in Law in Deed; For they must hold Plea by their Law as our Courts of Law do,


quot;be spiritual, yet if the Consequence be a Determination of a Thing belonging to Common Law Consequence, a Prohibition will go.—N. B. there is no pl. 29. in Roll.

31. If a Man, possessed of a Lease for Years devises that his Executor out of the Profits of it shall pay to every one of his Daughters 20 l. at their full Age, the Executor may sell in the Spiritual Court to put in Surety to pay the Legacies, and Prohibition shall be granted, for this is to illus out of a Chattel. Hill. 11. 1a. B. *Per Curiam.* Prew's Cafe.

*in the Hands of a Stranger;* The Legatee sued the Executors in the Spiritual Court to afford to the Legacy; And a Prohibition was prayed, because they order that the Legacy should be brought into Court, which they ought not to have done, being in the Hands of a Stranger; But the Prohibition was denied by the whole Court; For they may make an Executor affect to a Lease out of a Lease, and therefore may order, that the Legacy be in the Hands of a Stranger, that it shall be brought in to execute it; For the Order, although it be general, binds only the Defendants. Man. 38. 97. pl. 167. Trin. 17. *Car. in C. B. Anor.*

32. If a Man devises, that his Executor shall sell certain Land after his Death, and with the Monies, for which it is sold, that he shall pay certain Legacies; It seizes the Land after the Death of the Testator, and the Legates sue him in the Spiritual Court for those Legacies, a Prohibition lies; because those Legacies issue out of Land, which is not within their Jurisdiction, but their Remedies lie in Chancery. Pb. 14. 15. 1a. 151. 5. by the Judges of both Benches. Cotton D. 9. El. 264. 41. Opinion. Pb. 14. 1a. B. R. between Thelway and Whisler, a Prohibition granted per Curiam. Hobart's Reports, Cafe 343. between Adwards and Graces.

A devised that J. S. should sell his Land, and that his Daughter should have Part of the Money, and gave other Parts to others in certain Sums, and died; *The Executors sold, but refused Payment of the Legacies; The Daughter libelled in the Court Christian. It was the Opinion of all the Judges of both Benches, that a Prohibition well lies in this Cafe, in as much as this is not a Legacy Testammtary, but out of Land, by reason of the Will, the Performance whereof the Court Christian has nothing to do to intermeddle with; but the Party may have Action of Account at the Common Law. D. 151. 6. pl. 5. Mich. 4. & 5. P. & M. Anor.—S. C. by the Name of Patch v. Kerrett accordingly, Berd. 62. 11. 164.

And there is a Note, That if a Testator in such Case devises his Lands to his Executors for a Term to levy a certain Sum out of the same to pay it to the devisee, yet if after Sale the Devisee sues in Court Christian for the Legacy, a Prohibition shall be granted.—D. 151. b. Marg. pl. 5. says that in Mich. 76. & 77. Eliz. B. R. it was so adjudged in Lord Rich's Cafe.

33. In the Statute of 21. H. 8. cap. 5. of Probate of Testaments, there is a Proviso, That it the Teiltator devises by his Will, any Land, Tenement, or Hereditament to be sold, that the Monies thereof coming, nor the Profits of the same Land for any Time to be taken, shall not be taken
Prohibition.

as any of the Goods or Chattels of the Testator. (By the Coherence it seems it is intended to be put in the Inventory.)

34. P. 15 Car. between Roper and Mattingley. Prohibition granted, per Curtin, where the Suit was to put the Money for which the Land was sold into an Inventory, and this at the Suit of the Legateses.

35. If the Ecclesiastical Court holds idea of a Legacy in Equity, a Prohibition lies; For they ought to hold such by their Law, as other Courts of Law do. Hobart's Reports Case 243.

36. If the Archdeacon grants to one the Office of Register of the Archdeaconry by his Patent for Life in Reversion, and after the Grantee is a Recurrent Convict, by which the Archdeacon, appointing him to have forfeited the Office, by another Patent, grants it to another for his Life, and he sues in the Spiritual Court against the first Grantee, to deprive him of the Office for the Recurrence, and because it was granted in Reversion, and that he may have the Office according to his Patent, a Prohibition shall be granted; Because here the Office which is a Matter of Frankentenement, comes in Debate, and which of the 2 Patents shall be preferred, which does not belong to their Jurisdiction. Viz. 15 Ja. B. R. Kifte and Bridgeman. Resolved, and Prohibition granted.

37. If there be a Question between 2 upon several Grants, which of them shall be Register of the Court of the Bishop, this shall not be tried in the Bishop's Court, but at the Common Law; For tho' the Subjectum circa quod be Spiritual, yet the Office itself be temporal. Hall. 8. Ja. B. said by Coke to be Skinner and Mingey's Case.

38. If the Bishop grants the Office of Chancellor to A. and B. and after A. releases to B. and then B. dies, and after the Bishop gives it to R. against whom A. sues in the Ecclesiastical Court, supposing his Release to be void, a Prohibition shall be granted; because the Office is temporal, tho' he exercises the Office in Spiritual Matters. P. 8. Ja. Rot. II. Case refused, and Prohibition granted, per Curtin.

39. But if a Chancellor be sued in Court Christian to be deprived for Insufficiency, as not having Concourse of the Canon Law, no Prohibition lies; because they are the proper Judges of his Ability, and not the Judges of the Common Law. P. 3 Car. 23. R. Case, Chancellor of Gloucester. Resolved per Curtin, and Prohibition denied.

40. If a Vicar sues the Parson appropriate of the same Parish to show Cause why a Terrar, made concerning the Land and Things appertaining to the Dick, shall not be allowed after a Trial at Common Law against the Vicar for the same Thing, a Prohibition lies, because they cannot determine Matter of Frankentenement there. P. 11 Car. 25. R.
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40. If a Man sets out his Tithes by Sequestration from the 9 Parts Br. Juris. of the 10, and after carries away the 10th Part, the Parson cannot sue for this in Court Christian, because by the Sequestration from the 9 Parts, it became a Chattel, for which he might have Action. Gro. E. 62. of Trefpals. Sumnatur. P. 48. B. R. between 4 Leath. and Wood. pl. 8. where...
granted to York, the Plaintiff there being the Parish Clerk of Ver- 
trol in Parting.

For
Hill, 16 Jac. in Bishop's Cafe; cites the Registrar, fol. 52, for he is Quodam modo an Officer 
spiritual; and cites 21 Ed. 4, 45.

* See Pen. — Penions shall be demanded in the Spiritual Court. Br. Prohibition, pl. 21, cites 
the Registrar, fol. 47. — Penion falling out of an Appropriation, 'the' by Prescription, is liable in the 
Ecclesiastical Courts; for it could not begin but by the Grant and Institution of Spiritual Penions. And 
therefore if the Duty be travers'd, it may be tried there. Per Holt Ch. J. Salk 15, Pech. 12 W. 3, 

44. If a Suit be in the Spiritual Court against a Feme for Exerc 
ing the Trade of a Midwife without Licence of the Ordinary against 
the Canons, a Prohibition lies; for this is not any Spiritual Func 
tion of which they have Constancy. Tr. 9 Car. B. R., between 
Benskin and Cripps resolved, and Prohibition granted to the Court 
of Audience.

45. If a Preliment be made by the Churchwardens of a Parish 
in the Ecclesiastical Court, that J. S. a Parishioner is a Railer and 
a Sower of Discord among the Neighbours, a Prohibition lies; for 
this belongs to the Law and not to this Court, unless that it was in 
the Church, or such like. Hobart's Reports, Case 311, between 
Smith and Friendly, Prohibition granted.

46. If the Parishioners of a Parish libel in the Ecclesiastical Court 
to make Proof of diverse Manners of Tything in Perpetuum rei Me 
memoriam, a Prohibition lies; for this [is] conceived to be a Strange 
Attempt. Hobart's Reports, Case 319, between Napper and Steward.

47. If a Suit be in the Spiritual Court Ex Officio, or otherwise, 
for * A Way to the Church for the Parishioners, a Prohibition lies up 
on a Sunrise that it is a Common Highway; for it shall be tried at 
Common Law whether it be a Highway or not. Tr. 15 Car. 
B. R. between Smith and Clemen. Per Curiam, Prohibition granted. 

* Fol. 28; 

Cognizance 
of Requests for carrying 
Tithes be. 

Long to Court Christian, as appears by 2 Ed. 6, and F. N. B. in Consolation 51, A. and Linwood in 

48. If the Churchwardens of a Church sue for a Way to the 
Church, which they claim to appertain to all the Parishioners by Pre 
scription, a Prohibition shall be granted; for it is temporal. 3, 16 
St. B. R. between the Churchwardens of Bishorne and Baxo, Pro 
hibition granted accordingly.

49. If the Churchwardens of a Church sue J. S. in the Ecclesi 
astical Court, because he and all those who have been cited of such an 
Houle &c. at the Perambulation of the Parishioners of the Parish &c. 
have us'd to find a Refreshing for them, sell, bread and Ale, and 
to suffer them to relit themselves there; a Prohibition shall be grant 
ed, because they claim it in Nature of a Custom, and if this shall be 
suffered, the Inconvenience may enlie. 3, 13 St. B. R. The 
Churchwardens of the Church of Uffington's Case in the County of Berks 
resolved, and Prohibition granted. Hill. 15 Car. B. R. Like 
Prohibition prayed for the same Parish in one Luck's, and the Church 
wardens of the same Church upon a Suit by them in the Spiritual 
Court, but it [was] not granted, but referred to Justice Jones 
when he comes in his Circuit. — See (E) pl. 14.
50. If the Parishesioners of a Parish have used Time whereby Memory it, to elect one Churchwarden, and the Vicar another, and after a Canon is made that the Vicar shall elect both, and he does accordin gly, and the Parishesioners elect one according to the Custom, and the Ordinary disallows him and establishes the two elected by the Vicar, a Prohibition shall be granted. 3S. 5 Ja. V. R. The Parishioners of Roselinden in Kent adjudged.

51. But's Cafe. The Canons ought to be according to the Law and Custom of the Realm, and they cannot make Churchwardens that were Eligible to be Donatists, without an Act of Parliament; and the Canon is to be intended where the Parson had the Nomination of a Churchwarden before the making of the Canon. Per Coke Ch. J. Noy 139. Anon.—S. C. cited Vent. 267. Hill. 28 & 27 Car. 2. B. R. in an Anonymous Cafe, where the Court said that Custom would prevail against the Canon.

52. If the Wardens of a Church sue in Court Christian, J. S. supposing by their Libel that he and all whole Estate he has in certain Land next adjoining to the Church-yard have used Time whereof Memory, to repair so much of the Fences of the Church-yard as was next adjoining to the said Land, a Prohibition lies; for this ought to be tried at the Common Law, as much as it is to charge a Temporal Incurtance. Dick. 14 Car. B. R. The Churchwardens of Clifton and Danw^ild.

53. If a Suit be in the Spiritual Court by the Official Ex prorsus. They may, motion of one Administrator against another Pro saltare anima for a temerarious Administration by Defendant of the Goods of the Incumest, and to under him to make an Inventory, and to shew in an Inventory annex'd the particular Goods; Prohibition lies, because other wise they shall * try the Property of the Goods there, where he may have Trover and Conversion, or Derelict at the Common Law for them. Dick. 16 Car. B. R. between Soy and Harward. Per Curiam. Prohibition granted to the Constable of Winton in 2 Suits.

54. For Marriage Money, the Suit lies in the Spiritual Court, and it's Man and therefore Prohibition does not lie thereof. Br. Prohibition, pl. 21. cites the Register, fol. 46.

55. Where the Spiritual Court ought to have Jurisdiction, Prohibition does not lie. Contra, where the Temporal Court ought to have Jurisdiction. Br. Prohibition, pl. 22. cites 22 All. 77.

56. If a Man sues in the Spiritual Court, for Rent reserved upon a Lease of Tithes, or Offerings, Prohibition lies; for this is a Lay Rent. Br. Prohibition, pl. 3. cites 44 E. 3. 32.

57. Of a Thing which arises upon their Judgment in their Spiritual Court, the Suit for it shall be in the Spiritual Court. Per Ht. Br. Jurisdiction, pl. 26. cites 11 H. 4. 85.
53. If a Man strikes a Chaplain, or a Man infrasacos Ordines, and he sues him in the Spiritual Court, Prohibition lies; for they sue there to excommunicate him for this Offence, and will not afford him of it till he has made a Satisfaction to the Party grieved. Br. Prohibition, pl. 18, cites 11 H. 4. 88.

59. An Action upon the Case is maintainable for not doing divine Service, though it be a spiritual Matter. Br. Jurisdiction, pl. 43, cites 22 H. 6. 52.

60. In Treasons in B. R. against a Parson for taking Goods, claiming them to be Titles by Caife of Silva Cedus, and the Parson sued him in the Spiritual Court for the same Matter, and upon this the Court granted a Prohibition. Br. Prohibition, pl. 6, cites 38 H. 6. 14.


62. Spoliation, and Debate upon Appropriation shall be determined in the Spiritual Court. Br. Jurisdiction, pl. 110, cites 38 H. 6. 20.

63. A Prohibition lich for Counties, Chapels, Prefectures, and Vicarages &c. F. N. B. 40. (G)

64. If one be sued in the Spiritual Court for the Collation to a Grammar School a Prohibition lies. F. N. B. 40. (L)

65. The Chancellor of N. made an Order, and published it there, that every Woman coming to be consecrated after Child-bearing, according to the Law of the Church of Eng., should come covered with a white Veil, and that Eliz. Shipden, being admonished of it, refused to conform; for which Contempt she was excommunicated, and a Certificate thereof into Chancery, whereupon a Capias was to be awarded against her; to prevent which, a Prohibition was moved for, alleging this to be a New Law, not allowed by any Civil or Canon &c. and offered Obedience if there was any such, whereupon the Judges directed the Resolution of the Archbishop, who convened all the Bishops then in London to the Number of 6, and they all agreed and certified, That this was an ancient Custom in the Church of England; thereupon the Prohibition was denied. Palm. 296. Trin. 20 Jac. B. R. Shipden v. Dr. Redman, Chancellor of Norwich.

66. A Chaplain, who was under a Vicar, libelled against him for a Salary, and prescribed that the Vicar ought to pay him 4l. per Annum for his Salary; The Vicar suggested 11t. That the Chaplains were eligible by himself, and therefore because that Chaplain was not chosen by him, he is not Chaplain, but is in his own Wrong. 2dly, That the Prescription for Salary was triable at Common Law; It was inferred for the Chaplain, that the Salary was Spiritual, as the Cure is, like the Case in D. 58. pl. 4. [it should be pl. 8.] But a Prohibition was granted, till it was determined to whom the Election appertained. Hetl. 36. Mich. 3 Car. C. B. the Vicar of Hallifax's Case.

67. In Cases of Licences to marry, granted by the Ordinary, no Prohibition lies, but the Remedy is by Appeal; But if it comes in Question in Ecclesiastical Court, whether the Words of the Act of 25 H. 8. give sufficient Power to the Archibishop to grant Licence there, if Ecclesiastical Court adjudge against the Power, Prohibition lies, and not otherwise. Jo. 259. Pach. 8 Car. B. R. Matingley v. Martin.

68. Affort or not Affort is triable by the Spiritual Court; Mar. 97. Trin. 17 C. B. Anon.

69. If there be a Feodament of Lands and Titles without Livery; And upon a Libel for the Tithes, the Court does adjudge the Tithes to pass, though no Livery, a Prohibition shall be granted. Vent. 41. Mich. 21 C. 2. B. R. [But this seems only to be a Point mentioned in Bates's Case, and to refer to the Case of Patter v. Whisken Pach. 35 Eliz. cited by Coke Ch. J. in Cro. J. 269, 270. in Robert's Case.]

70. Libel was by the Church-wardens of &c. in the Ecclesiastical Court for 1. l. 10 s. 8d. upon a Custom for Payment of so much for being buried in the Body of the Church; and a Prohibition was prayed, suggesting
that there was no such Custom; The Court held such a Custom must be good, because the Parish is to be at the Charge to make up the Church Floor; but if the Custom be denied, it must be tried at Law, and therefore inclined, that a Prohibition was to go, tho' it was objected, That this Duty belongs properly to the Ecclesiastical Court, and no Remedy lies for it elsewhere; For lo is the Case of a Modus decimandi, which may be demanded in the Spiritual Court, but if the Custom be denied, there shall be a Prohibition, and to the Case of a Mortuary, since the Statute of H. 8. And afterwards it being moved again, Hale Ch. J. being present, the Prohibition was granted, which, Hale said, was sometimes granted Pro Delectu Jurisdictionis, and sometimes Pro Defectu Trivationis, as in this Case and others, where the Ground of the Suit is Prescription; For in their Law they have sometimes allowed Prescriptions of 20 Years, sometimes of 40 Years, but we admit none but what are De Tempis doni &c. Vent. 274. Mich. 27 Car. 2. B. R. Anon.

71. In a Suit for Fees for Scvering Churchwardens, and taking their Preliminary a Prohibition was granted. 1 Salk. 330. Hill. 5 W. & M. B. R. Goffin v. Ellifton.

72. A. was libelled against in the Spiritual Court Ex Officio for teaching School contrary to the 77th Canon, Anno 1603, which is that no Man shall teach a School, except licenced by the Bishop, and otherwise qualified, as the Canon prescribes, and now A. prayed a Prohibition, suggesting that every Man at Common Law may teach and instruct another, That all Canons, contrary to the Law of the Land are void, and do not bind the Livity whereof he is one, that the Statute of 1 Jac. and 13 Car. 2. have appointed Penalties for keeping School without Licence; And that the Explication of all Statutes belongs to the King's Courts, and the single Question was How far this Canon binds a Layman, which Holt said was no Question to be determined on a Motion, and therefore granted a Prohibition, and that they declare upon it. 12 Mod. 192. Parch. 10 W. 3. B. R. Oldfield and Sir Richard Raines.

Point never yet determined 12 Mod. 318. in the Case of the King v. Hill. — But a Prohibition having been granted to the Spiritual Court to stop Proceedings there on a Libel for teaching School without Licence, and it being moved in Chancery to dischage the Prohibition, Lord Keeper declared that he always was and Hill is of Opinion that Keeping School is by the old Laws of England an Ecclesiastical Contraction, and therefore discharged the Order for a Prohibition. Wm's Rep 29 to 32. Mich. 1700. Cor's Case — But upon being moved, That it was for teaching School generally, without going onto School, and that the Court Christian could not have Jurisdiction of Writing Schools, Reading Schools, or Dancing Schools etc. which his Lordship adhered to, and thereupon granted Prohibition as to the teaching all Schools but Grammar Schools, which he thought of Ecclesiastical Cognizance. William's Rep 52, 53.


74. Suit cannot be in Spiritual Court for the Fees of a Regifier; for the S. 1 Salk. Office of Regifier of Archdeacon is a Freehold, for which an Office will 535. Mich. lie; And if to, a Denial of the reasonable and usual Fees thereof will 13. W. 3. be a Difficult of his Office. Per Holt. Ch. J. 12 Mod. 608, 609. Hill. 13 B. R.


75. Motion for a Prohibition, suggesting, That where there is a Difference between a Parochial, and the Prerogative Court, whether Boni Notabili or Non, it must be tried by the Common Law, and cited 1 Mod. 211. But per Cur. this must often have happened; And if a Prohibition lay, there must have been frequent Instances of it; where a Prohibition is granted Pro Defectu Trivationis, it is upon Supposition of different Rules established by the Spiritual and Common Laws, as in case of Prescription; But as to Boni Notabilia, the Spiritual and the Common Law are the same, and the Case quoted was not much regarded. 10 Mod. 272. Mich. 1 Geo. 1. B. R. Cottingham v. Lots.

76. A Parish Clerk, chosen by the Parson by Custum, was libelled ag. against to deprive him for Drunkeness in Church at the Time of Divine Service.
Prohibition.

Service, and for Lewdness, and other Crimes of the like Sort, which rendered him unfit for the Service of the said Office. It was suggested for a Prohibition, that those Crimes are properly punishable by Indictment, and to not cognizable in the Spiritual Court, nor can the Spiritual Court determine that the Party is guilty of Crimes triable by the Course of the Common Law, before he is convicted of them at Law; But on the other Side it was said, That in this Case the Parish Clerk being chose by the Parson his Office is Spiritual, and consequently the Suit for a Deprivation is proper in the Spiritual Court, but admitted that it would be otherwise if the Suit had been to inflict a Corporal Punishment for those Crimes, which are properly indictable, and that fo was the Judgment in B. R. in the Case of Townend v. Thorpe. Trin. 13 Geo. 1, where a Consultation was awarded as to the Suit for Deprivation; But the Prohibition stood for so much of the Suit as went to punish the Crime itself; And the Case of The Corporation ofCarlisle being mentioned to the Court where a Distinction was taken, viz. where the Crime was against the Duty of the Party’s Office, as Execution in a Judicial Officer, he might be proceeded against to a Deprivation or Removal before Conviction of such Crime in a due Course of Law, otherwise not, which Difference was agreed by the Court; And thereupon the Motion was denied Quoad the Deprivation, that Matter having been solemnly settled in the Case of Townend and Thorpe aforesaid. Gibb. 189. Hill. 4 Geo. 2. B. R. Newcomb v. Higgs.

(G) For Seats in the Church.

The Disposal of Seats in the Mother Church belonging to the Ordinary, and 1 or Seats in a Chapel of Ease belonging to the Master Church; and to know whether it be a Church or not, is by knowing whether it has Baptismum et Sepulcrum. 12 Mod. 258. Lee v. Daniel.

2. If a Man and his Ancestors, and all those whose Estate he has in a certain Parish, have used Time wherein Memory et, to repair an Ile in the Church, and to fit it in it and no other, the Ordinary cannot displace him; for if he displaces him a Prohibition lies; because he has it by Prescription for a reasonable Consideration. N. 8. B. R. Per Curiam. 39. 10 B. B. Per Curiam. Pinnin’s Case. Hobart’s Reports 95.

In the Case of Frances v. Ley.— But where a Libel was for a Seat in a Church, the Defendant furnished in C.B. that he and his Ancestors have used Time out of Mind et, to have an Ile with a Seat in the said Church for himself and Family, and thereupon pray’d a Prohibition; But because it did appear upon Examination of the Party himself, that the * Parish have always used to repair the said Ile and Seat, the Court would not grant a Prohibition; for that proves, That his Ancestors were not the Founders of the said Ile and Seat. Affo another Man hath always used to fit with him in the said Seat, which also proves, That it does not belong to him alone. Godb. 199. pl. 286. Trin. 10 Jac. C. B. Garven v. Pym.— But otherwise for a Seat in an Ile, a Man may preferibe; because it may be presum’d, That his Ancestor, or he whose Estate he has in the Howe and Land in the Parish, had built the Ile. Mo. 8; 8 pl. 1222. Mich. 10 Jac. Pym v. Gorain.— 12 Rep. 194. Corbin’s Case accordingly, and that it shall be intended that such Building the Ile was done, with the Affent of the Parish, Patron, and Ordinary to the Intent to have it only to himself. S. C. 3 Int. 202. cap. 97.— 2 Wait. Comp. Inc. 700. 711. cap. 39 this S. C.

* If the Ile has been used to be repaired at the Charge of all the Parish in Common, the Ordinary may there from Time to Time appoint whom he pleases to fit there, notwithstanding any Ussage to the contrary. Reob’d Per Cur. Ge. J. 366. Hill. 12 Jac. in the Star-Chamber Frances v. Ley.
3. If a Man prefers, that he and his Ancestors, and all those whose Estates they have in a certain Heritage, have used to sit in a certain Seat in Navi Ecclesia Time wherein Memory is, to remove the said Seat. If the Ordinary removes him from this Seat, a Prohibition lies ; for the Ordinary has not any Power to dispose of it; for it is a good Presumption ; and by Intention there may be a good Consideration for the Commencement of this Presumption, tho’ the Place where the Seat be is the Frontekeinte of the Parson. Tr. 12 Fa. B. Cross’s Case Refolb’d per Curiam, and a Prohibition granted to the Bishop of Exeter, for Cross was a Parishioner of his Parish of Silverton. M. 13 Fa. B. between Laffy and Hafly, Refolb’d, and Prohibition granted and tried by Verdict. M. 13 Fa. B. between * Beothby and Day or Baiy. Hobart’s Reports 95. Same Case.

he must claim it as belonging to his House, and not otherwise ; for properly it belongs to the Manor-House, if any Manor be, and not to the Manor which includes other Tenants, Farmers, and Inhabitants.

One can’t prefer for a Seat in the Body of the Church, but those are disposable by the Parish and Churchwardens; but for a Seat in an airy he may. Mo 8:8. Pym v. Gorin. — In a Prohibition the Question was, Whether a Presumption to an airy in a Church which he and all these Ever, as it is to repair as he claims it is a Manor-House, but only Land, were good ? The Court inclin’d that it was not good, but order’d the Prohibition to go and Defendant to plead, that it come Judicially before them. 2 Mod 28:3. Hill. 29 & 30; Car. 2. B. Shambrook v. Pettipal.

A Presumption for a Seat in the Church at Roton Messingi where he inhabits, is a Temporal Thing, and a Prohibition was granted. Noy 129. Anon.

A Label was in the Bishop’s Court of Exeter for a Seat, which the Churchwardens had offered to him, in whole Right the Plaintiff claimed to sit there; The Defendants there suggest’d now for a Possession a Presumption by a Qui Esse, for the Seat, as being an ancient Seat and belonging to their Tenement in H, and that they and all these Ever, had used to repair it. It was doubted, Whether this Presumption in Navi Ecclesia was good, but it was good in an airy. The Court inclin’d that such Presumption in Navi Ecclesia may be for special Cases, as for Repairing, but they would not grant a Prohibition. 5 Mod 456. Patch. 11 W. 3. Crook v. Sampson.

Where a Man has a Right by Presumption to a Seat in the Church, he may sue in the Spiritual Court for quieting his Possession, and may admit his Presumption to be tried there as a Defendant does a Matter or a Person by Presumption. 2 Salk. 531. Jacob v. Dallor. — 5 Mod 456. Patch. 11 W. 3. S. C.

* Hob. 69. pl. 79. S. C.


Reparation of a Seat ought to be given in Evidence, tho’ it be not mentioned in the Declaration Std. 235; Patch. 16 Car. 2. B. R. in Case of Burton v. Burton.

5. The Ordinary hath nothing to do with the Seats in the Chapels annex’d to the Houses of Laymen, as of Nobles ye. Tr. Fa. 12 W. Agreed.

6. If a Layman, by the Dissolution of Monasteries, has a Monastery, in which is a Church, Parted thereof, and he funder the Parishioners by a long Time to come to it to hear Divine Service, and to use it as their Parish Church; This shall give Jurisdiction to the Ordinary to order the Seats, because now in Fact this is a Parish Church, tho’ before it was not subject to the Ordinary. Tr. 12 Fa. B. Buzzard’s Cafe held.

7. If there be a Custom in a Parish, That 12 of the Parishioners may elect Churchwardens, the which Churchwardens have Power by the Custom to repair the ancient Seats, to erect New in Navi Ecclesia, and appoint what Persons shall fit in them. And the Churchwardens to elect erect a New Seat in Navi Ecclesia, and appoint a certain Man and a Prohibition was granted, be-
Prohibition.

The Seat, a Prohibition lies; for the Custom has fixed the Power of the Disposing of the Seats to the Churchwardens. P. 10. B. K. between Bradin and Tredennick, for a Seat in the Church of Breck in Cornwall. Refus'd, and Prohibition granted. But it was also partly granted because the Sentence of the Ordinary was, That Tredennick should have the Seat * to him and his Heirs, and that none should disturb him under the Pain of the greater Excommunication, which is unreasonable; And by this Sentence he and his Heirs shall have it, tho' they be not Inhabitants within the Parish.

It was suggested for a Prohibition, That Time out of Mind the Parishioners, at their own Charge, had raised all the Seats in the Church, and that by reason thereof they had been Time out of Mind disposed of by the Churchwardens, but that the Bishop had now taken upon him the Disposal of the Seats; And for the Plaintiff was cited this Case of Tredennick. Jones J. said, That De Communi Jure the Ordinary has the Disposal of the Seats, and De Communi Jure the Parishioners ought to repair them, and so nothing appears here to oust the Ordinary of his Jurisdiction; for they have only said, That the Parishioners have repaired at the Charge of the Parish, which is no more than what is their Duty to do, and for which they have the Exemption of sitting in them, tho' by the Disposition of the Ordinary; whereupon the Prohibition was denied by the whole Court. 2 Lev. 243. Hill. 50 & 31 Ch. 2. B. R. Greatrave v. Beardley.—— Ravn. 246. S. P. in the same Term in C. B. Langly v. Chute, where the Case was, as appears by the Libel, That one B. being seized of Land in Streatham, in 1611, built a House upon it and a Pews in the Church at his own Cost in 1657, for himself and his Family, and afterwards sold House and Pew to Chute the Defendant and his Heirs; and the Ordinary, by sentence in the Ecclesiastical Court, ordered the Pew to be in the hands of the Plaintiff. Now notwithstanding which the Churchwardens would have placed the Plaintiff in the said Seat. But by the Ch. J. & 2 J. a Prohibition was denied; And the Ch. J. said, That if such Suggestion should hold, the Ordinary's Jurisdiction would be totally for nought; But Atkins J. held that a Prohibition lay, because this Case did not differ from the Case of Bradin. And North Ch J. ordered, That in the Principal Ordinary the Defendant claimed only for himself and Family, whereas Let be claimed for him and his Heirs, he seems to admit, That a Prohibition would be.

A Prohibition was prayed to the Spiritual Court, where the Parishioners pretended to dispute of the Pews exclusive of the Ordinary. But per Cur. that cannot be; And the Ordinary's not acting might be, because there was no Occasion for his intermeddling; but that cannot vest the Right in the Churchwardens, who are only a Corporation capable of Goods, but not of Inheritance; Sed Adversari. 1 Thal. 167. Hill. 5 Annu. B. R. Pregrive v. Churchwardens of Shrewsbury.

War: Comp. 8 Ilia Layman, by the Dissolution of Monasteries, has a Monastery, in which is a Church, Parcel of it, and by a Lessor the Parishioners about 60 Years to come there and hear Divine Service, and he himself has used by all that Time to have the Placing of Men there in the Seats, the Ordinary cannot displace them, because the said Patron had used by all the Time that it had been used for the Parish Church, to have the Placing in the Seats. Tr. 12. B. Bazzard's Case.

9. A Foreigner, tho' occupying Lands in the Parish, shall not be tax'd for Reparations of Seats in the Church, because he has no Benefit by them in particular. Per Omnes. 2 Brownl. 10. in the Cafe of Glover v. Wendham.

Palm. 422. S. R. Carleson v. Hutton. 4 Nov. 55 S. C.——

All Controversies concerning Seats in a Church are determinable before the Ordinary, except where one claims a Seat by Prescription. Per Cur. 12 Mod. 403. Patch. 12 W. 5. B. R. Anon.

11. It was suggested for a Prohibition, That within such a Parish there is such a Custom that the Inhabitants of such and such ancient Temples have sat in the first Seat of such an Abbe, that the Bishop removed them, and gave Licence to others to sit there; and because they went to try the Custom in the Spiritual Court, he prays Prohibition in such as at it is an Idle Custom; and that where Courts held Plea for an Idle Custom, they should be prohibited, and cited the Cafe of Tophall and Ferrers. Hob. 175. But 'twas denied; and Pemberton Ch. J. said, That here besides Culum, the Court has Conscience of the Matter, Placing and Displacing being in the Ordinary, so that if the Culum were out
of the Café, yet they might proceed; but in Topkill's Café they proceeded only upon the Custom, which being a cain unreasonable, they were prohibited. Skin. 7. Mich. 33 Car. 2. B. R. Anon.

12. The Plaintiff brought an Action of the Café, and declaim'd, That he was seized of 3 seats in such a Part of the Church, belonging to an ancient Mournage, and that the Defendant disturbed him &c. Exception was taken. 1st. For that he claims not, That he hath repaired these Seats; This was held a good Exception, and that he ought as well to shew it in an Action Sur Café as upon a Prohibition. 2dly. For that he pretends that he was seized of 3 Seats appertaining to an House, whereas he ought to say, Of an House, to which the Seats were appertaining. And it was sa'd in this Case, That the Freehold of a Seat may be in One, tho' all the Church besides be in the Patron; because Churches are of Lay Foundation, and the Patron might at first except it; But this shall not be intended unless specially flown. Skin. 34. Hill 33 & 34 Car. 2. B. R. Freemen v. Dane.

13. Bill to quiet one in the Possession of an Isle in the Church, the Plaintiff having obtained a Decree before the Ordinary, it was dismist'd with Costs; For this Court executes not their own Decrees by a Bill without examining the Jurisdiction thereof, but we can't examine if the Bishop has done Right, nor will such a Decree bind his Successors. 2 Vern. 226. Pach. 1691. Baker v. Child.

14. The Churchwardens of Ludlow were libell'd against for pulling down Seats between fuch and fuch Isles of the Church, and accordingly belonging to the Lord President of Wales &c. without Leave of the Bishop, and for erecting new Seats there, and placing People therein after Admission &c. The Plaintiff's sugeffion for a Prohibition the Statute of Magna Charta, That no Man shall be dissiplied of his Freehold &c. That all Customs and Precriptions ought to be tried at Common Law, That in the Parish of Ludlow the Churchwardens, by the Consent of the Parishioners &c. have used to dispel of Seats in the Church &c. That they had dispel'd of certain Seats in the Bailiffs of Ludlow, which being ruinous, the Plaintiff's, by the Command of the said Bailiffs, pulled down, and erected new Seats in the Place of the old ones, notwithstanding which, the Defendant cited them into the Spiritual Court &c. A Prohibition was granted. 2 Ltsw. 1932 & 1937. Mich. 4 W. & M. Colebatch v. Baldwyn.

15. Precription for a Pew in a Church by Reason of his House; Affidavits were made, That he was not, nor is an Inhabitant there; This is not sufficient, for Possession only is enough without living there. 12 Mod. 40. Pach. 5 W. & M. B. R. Anon.

16. It was said that anciently there were no Pews in Churches, but only Forms, and that it had been a good Precription to lay that Time out of Mind the Corporation did repair such an Isle in the Church, Ratience cujus the Mayor and Aldermen sat there; for tho' the Right be in the whole Body, the Enjoyment may be and enure to a select Number. 6 Mod. 231. Mich. 3 Ann. B. R. in Café of Jacob v. Dallow.

17. A Libel was for two Seats in the Parish-Church of King's Norton; the Defendant pleaded that he was in Possession of two Ancient Mournages to which these Seats belonged; which Plea being rejected by that Court, the Plaintiff now moved for a Prohibition, which was opposed, for that the Church was New built by the Parishioners; and for that Reason there could be no Precription to the Seating, but that they were in the Gift of the Bishop to; a Consultation was prayed. The Plea tendered by the Defendant was such as could not be tried in the Spiritual Court, because they cannot hold Plea of the Inheritance of the Seats, nor of any Thing which concerns the Freehold; so the Prohibition must stand. 8 Mod. 338. Mich. 11 Geo. 1. 725. Swetnam v. Archer.
Prohibition.

(H.) Jurisdiction. Reparation. [Of the Church.]


A Libel was for not paying to the Repair of the Church and for Books and Vestments, with which Parish he had Lands in his Hands, but was not an Inhabitant, nor had any House therein. And this being suggested for a Prohibition, Popham was at first of Opinion that it was not good, because such as do not inhabit within the Parish have no Benefit of the Divine Service there. But upon shewing the Precedent of this Case of Jeffries v. Foller, and to the Opinion of which Case all the Justices here agreed, Popham changed his Opinion. Cro. E 659. Paley, 41 Eliz. B. R. Paget v. Crompton, 5 P. resolv'd as to the having Lands in a Vill, and not inhabiting there. Cro. E 544. pl. 24. Trin. 43 Eliz. C. B. Stephenon v. Cale—— But in a Reparation in B. R. it was held, That no Man should be charged for this Land to contribute to the Church Reckonings, if he doth not dwell in the same Parish or unless he contends therefor. Mo. 554. pl. 749. Penner v. Crompton. But Paley 8 Jac. it was resolved of the whole Court, That for and towards the Reparation of a Church, the Land of all, as well as Foreigners there inhabiting, as of all others, is liable thereunto; and this is so by the general Custum of the Place, and this is to be raised by a Rate unjustified according to the Value of the Land, and that in the Same, of a Fifteenth; and this is not merely in the Realy. And by Williams and Yelverton Justices, and Fleming Ch. J. it is not the Land but the Person of him who occytes the Land is to be charged. Per Yelverton J. A Man is chargeable for Reparations of a Church by Reason of the Land, and for the Ornaments in the Church by Reason of his coming to Church. And per Williams J. and Fleming Ch. J. If the Party have Land there, he is chargeable for both, whether he comes to Church or not; for that he may come to Church if he please. 1 Bult. 20. in an Anonymous Case.—S. P. 3. Roll. Rep. 262. Mich. 20 Jac. in Wilmore's Case.

S. C. and P. cited and agreed by the Justices and thereupon Popham Ch. J. changed his former Opinion, in the Case of Paget v. Crompton. Cro. E 659. —When there is a Farmer of Land, he shall not be chargeable alone; for there is no Reason that a poor Husbandman that pays Rent for his Land, and perhaps to the utmost Value, shall build Churches; but as it may be unknown to the Parishioner and Churchwardens who has the Fee in Reversion, they may for that Reason impose all the Tax upon the Farmer, and he by Way of Answer may say in the Spiritual Court; that he is Farmer; and thereupon the Tax shall be divided between him and his Landlord, according to the Rate that his Land is of greater Value than the Rent, and upon the Landlord according to the Quantity of the Rent, Quod non facit dedicate. Quere; for in Jeffries' Case, 5 Rep. it is resolv'd, That the Farmer only is chargeable, and that Confinement was granted, but not for this Reason, but because the Reversioner had pleased an infuficient Plea in the Spiritual Court, viz. That he was not an Inhabitant &c. which was not a good Plea, and also for the great Delay which he had used, having brought two Appeals, and after a Prohibition, and so had put the Parish to 60 l. Expense for the Recovery of 6 l. and for this Reason principally, and not upon the Matter in Law, was the Confinement accord'd, for he had rescinded his Time. 2 Roll. Rep. 260. Hill. 20 Jac. B. B. The Churchwardens of . . . . . . In such Case the Tenant must be charged, and not the Owner, and the suggesting that the Lands were in the Occupation of the Tenant, and that himself did not inhabit there, is a good Suggestion for a Prohibition. 4 Mod. 143. Trin. 4 W. & M. B. R. Anon.

3. But if an Inhabitant of a Parish leaves his Land which he has in another Parish, recovering a Rent, he shall not be charge where the Land is in Respect of the Rent; because there is a Parishioner and Inhabitant who may be chargeable. Co. 5. Jeffery 67. b. Resolved. H. 5 Ja. 5.

4. A Man cannot be charged, in the Parish where he inhabits, for Land which he has in another Parish, to the Reparation of the Church; because then he may be twice charged; for he may be charged for it in the Parish where the Land lies. P. 16 Ja. B. R. Sir H. Buzl-

Jeffrey 67.

Resolved, and Prohibition granted. Co. 5.
Prohibition.

5. If a Peric Chapman takes a Standing for a Rent in the Wast of Manor within the Market for 2 or 3 Hours every Market-day, to sell his Commodities, the Market being held there one Day every Week, but he inhabits in another Parish, he cannot be rated to the Reparation of the Church for this Standing. 9. 20 &c. R. between Hollynes and the Churchwardens of Kertering in Northamptonshire; Reform'd, and Prohibition granted accordingly.

6. If a Citizen of London erects a Houfe in the Parish of A. to dwell there in the Time of the Sicknes in London, and has not any Land in the Parish, and after he is affed's 20 s. for the Reparation of the Church, where others who have 100 Acres of Land in the same Parish pay but 6 d. yet no Prohibition shall be granted upon Suit for the 20 s. in Court Christian, because they have Jurisdiction of the Thing; and therefore may order it according to their Law. 9. 3a. R. between Robert Lea's Cafe, per Curiam.

that the Parishioners ought to be rated according to the Value of their Sheet-walks, and not of their Farms or Homes. 2 Roll R 453.

7. If there be a Chapel of Ease in a Parish, and some Part of the A Label was Parish have used Time to here memory 1. alone, without others of the Inhabitants the Parishioners, to repair the Chapel of Ease, and there to hear Service, and marry, and do all other Things, but only they bury at the Mother Church, yet they shall not be discharged of the Reparation of the Mother Church, but ought to contribute to it; for the Chapel was ordained only for their Ease. 9. 13 a. b. between the Wardens of Aston and the Inhabitants of Castle Bromage, Hobart's Reports 91.

in B. a chapel Parochial and Parochial Rites, and that they repair their own Chapel, and that Ratione inde Time out of Mind they have been discharge'd of the Reparation of the Parochial Church of A. The Court granted a Prohibition, and ordered the Plaintiffs to declare, who declared that they had in B. a Chapel Parochial or Church of B. within the Parish of A. where Time out of Mind have been a Body of a Church, Chapel, Bells, and all other Parochial Tropheys, and Divine Service and Sacratures, and a distinct prevalence of B. and A. severally. And that the Inhabitants of B. never went to the Church of A. nor have they any Seats there, and that they have distinct Churchwardens; and make no part of the Church of or Churchyard of B. but for Burial only, and that Time out of Mind they have repaired their Parochial Chapel of B. and the Inhabitants of A. have been exempted from that Charge, and Ratione inde the Inhabitants of B. have Time out of Mind been discharged from repairing the Church of A. and yet have the Defendants belie'd against them to repair it &c. The Defendants demurr'd; it was insisted that a Prefcription generally, without shewing any Caufe to exempt them from Repair of the Parochial Church, is not good; for of common Right every Parishioner is liable to it. As to what is said, that they repair their own Parochial Chapel, that cannot be a sufficient Caufe, because it is for their own Ease; and therefore cannot discharge them from what they are liable to of common Right. If there is any such Caution, it might be shewn in the Spiritual Court, and by this the express Words of the Statute, namely, 'where a Church is erected, viz. the Ecclesiastics doth manage it, and it is not a Publick Charity.' It was adjudged, that Prohibition lies. The Court advised the Defendant to take Issue upon the Caution. 2 Leav. 186. Hill. 28 & 29 Car. 2. B. R. Wife v. Crocke.

8. So in the said Cafe, if the Inhabitants, who use to repair the Chapel, prescribe that they Time of their memory 1. have used to repair the Chapel, and Ratione inde have been discharged of the Reparation of the Mother Church, yet this shall not discharge them of the Reparation of the Mother Church, because it is not any direct Prescription to be discharged, but it is Ratione inde, teller, or the Reparation of the Chapel. 9. 13 a. b. in the said Cafe of Aston.
Prohibition.

9. If the Chapel be 3 Miles distant from the Mother Church, and the Inhabitants who wish'd to come to the Chapel have us'd always to repair the Chapel, and marry and bury there, and never within 60 Years were charg'd to repair the Mother Church, yet this is not any Cause to have Prohibition, but they ought to shew in the Spiritual Court their Exemption, if they have any, upon the Endowment. Hill. 8 Car. R. Per Curiam, Prohibition denied, it being moved by Mr. South.

10. If a Ban be laid in the Spiritual Court for Reparation of the Church, no Prohibition shall be granted upon a Surmise that other Perfons have Land within the Parish, who ought to be charg'd with the Reparation of the Church as well as himself, and are not charg'd with it; for if this be true, it is a good plea there; and if they do not allow it he ought to appeal. Tr. 9 Car. R. between Per Curiam, and Prohibition denied accordingly.

11. If the Men inhabiting in a Chapelry prescribe to be discharge of Memory of the Reparation of the Mother Church, and they are like for Reparation of the Mother Church, a Prohibition lies upon this Surmise. Dobart's Reports 92.

13. A Surmise is for a Rate for Reparation the Church. The Defendant suggested, 11th. That his Lands were over- valued, viz. 100 l. per Annum, when they were worth but 60 l. 2dly. That there was a Custom in the Parish that they ought not to be rated after the Value of their Houses and Lands, but only according to the Value of their Sheep-Walks. As to the first, all the Court except Whitlock resolved, that the Rates ought to be according to the Value of their Lands; and therefore the Valuation thereof properly belongs to themselves; and the Church being the House of God, a Custom in Prejudice of the Repairs thereof is void, for of common Right Houses and all Lands are chargeable to it. And the Court ordered him to suggest the Custom, and omit the Value, and then they would consider whether a Prohibition should go. 2 Roll. R. 463. Mich. 22 Jac. B. R. Holland v. Kirton.

15. It was suggested for a Prohibition, That there was a Custom in the Parish that the Parishes should be rated towards Repair of the Church, so that such Tax be in Proportion to the Tax Pro Domino Regis; and that the Tax there for his Lands to the King was but 2s. and yet he was rated to the Church 5 s. Per Cur. This a Spiritual Matter, and ought to be tried in the Spiritual Court. And so a Prohibition denied, but if any Thing is offered in Proof, which is allowable by our Law, and they will not allow of it, in such Case a Prohibition shall go. Besides, it is not known what Sort of Tax this Tax Pro Domino Regis, which he mentions, is; but it is utterly uncertain. And afterwards a Consultation was awarded by the whole Court. Lat. 217. Paf. 3 Car. Longmore v. Churchyard.

5. P. and seems to be S. C. Mod. 236. pl. 2. Anon. And there it is said, That in Cafe of a

Prohibition.
Prohibition.

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ing Water) And though the Rate be higher than the Money paid for doing all this, yet it is good, and the Churchwardens are chargeable for the Overplus, not being able to compute to a Shilling. And that if any of the Parishioners refuse to pay their Proportion according to the Rate, they may be libelled against in the Spiritual Court; and if the Libel alleges the Rate to be Pro Reparatione Ecclesie generally, tho' in Stricte Ecclesiae contains both the Body and Chancell of the Church, yet by the Opinion both of the Court of C. B. and of the Exchequer, it shall be intended, that the Rate was only for the Body of the Church; But in this Case it was made appear clearly, that the Rate was only for the Body, and that the Minister was at the Charge of the Chancel. And both Courts agreed, That when a Prohibition is moved and desired, on Purpose to stop for good a Work as the Building a Church, the Court will not compel the Parties to take Issue upon the Suggestion, when upon Examination they find it to be false, and therefore will not grant a Prohibition; For if the Rate be unduly imposed, the Party grieved hath a Remedy in the Spiritual Court, or may appeal if there be a Sentence against him. Afterwards the Court of B. R. was moved for a Prohibition in this Case, and it was denied. So that in this Case there was the Opinion of all the 3 Courts. 2 Mod. 222, 223. Patch. 29 Car. 2. in Seacc. St. Mary Magdalen Bermondsey Church in Southwark.

the Repairing it, and that the Consent of every Parishioner is not necessary,

15. A Libel was in the Ecclesiastical Court of Hereford against the Parish Impropricate, to repair the Chancel of Bradwarden. Upon a Suggestion, That one J. S. had a Seat there Time out of Mind for him and his Family, and Privilege of Burial there, and that he Time out of Mind had used to repair the Chancel, a Prohibition was granted, because this is a Prescription triable at Common Law. Frem. Rep. 300. pl. 365. Trin. 1681. C. B. Anon.

16. The Plaintiff being sued in the Ecclesiastical Court for Repairs of the Church suggested, That he had built an Isle, and repaired it at his own Charges, and moved for a Prohibition. Cur. unless it be forgotten, That he fits in the Isle, and hath no Benefit of the Novis Ecclesiae, there is no Caule for a Prohibition, for a Man may build an Isle for his Convenience. Frem. Rep. 301. pl. 363. Trin. 1681. C. B. Weeks v. Oxenden.

17. Prohibition was prayed to the Conhibitory Court of London, because Suit there was against the Master and Wardens of the Company of - - - - for a Tax imposed upon the Hall of the said Company for the Repair of the Parish Church; And it was said that the Tax is not imposed upon them in their Natural Capacity, but upon the Lands of the Body Politick. Per Cur. a Prohibition shall not issue; For the Land of the Company are chargeable to the Repairs, and the Spiritual Court (who has the Conscience of the Matter) has no other Proceeds than Citation, which cannot be executed upon an Aggregate Corporation, which is not visible in Law; Ergo the Citation of Necessity ought to issue against the Officers of the Corporation, to whom it belongs to pay the Tax, and Allowance may be made to them upon their Account. 2 Jo. 187. Hill. 33 & 34 Car. 2. B. R. Thursfield v. Jones.

18. Libel was, That the Church and Chancel of D. were out of Repair, and that the Churchwardens made a Rate upon the Inhabitants for the Repair of Both, and that they accordingly had repaired Both, and beautified the same with Ornaments. It was suggested for a Prohibition, That of Salk. 165. Common Right the Chancell should be repaired at the whole Charge of the Parson; And that Rates for Repair of a Parish Church should be made by the Parishioners, or the Major Part of them, and not by the Churchwardens alone. And by Holt Ch. J. by the Civil and Canon Law the Parson is obliged to repair the whole Church, and it is so in all Christian Kingdoms but in England; For it is by the peculiar Law of this Nation, that the

Church's being so much out, and to do Work in the Church. The Bishop's Court must proceed against the whole Parish, and get the whole to have it repaired; And that if a Church be moved, and a Court of another Jurisdiction, and the Party grieved hath a Remedy in the Spiritual Court, or may appeal if there be a Sentence against him. Afterwards the Court of B. R. was moved for a Prohibition in this Case, and it was denied. So that in this Case there was the Opinion of all the 3 Courts. 2 Mod. 222, 223. Patch. 29 Car. 2. in Seacc. St. Mary Magdalen Bermondsey Church in Southwark.

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the Parishioners are charged with the Repairs of the Body of the Church; besides, this is one entire Rate as well for repairing the Chancel, to which the Parishioners are not liable. As for repairing the Church to which they are liable, so it can't be distinguished how much was ascribed towards the Repairs of the one, and the other separately; and for these Reasons a Prohibition was granted generally to the whole Suit upon this Rate, though it was very much intimated on the other Side, that the Prohibition might go Quoed the Rate for Repairs of the Chancel only, the Churchwardens at the Charge of the Owners and Occupiers of Houses within the Parish by a Rate to be made with the Consent of the Major Part of the Parishioners having Respect to the annual Value of the Houses, That the Chancel wanted Repairs and Ornaments, and that the Churchwardens with Consent &c. made a Rate confirmed by the Bishop, whereby the Defendant was rated 17 l. 11. for Mills and Raikes, within the said Parish, which was his due Proportion according to the yearly Value of the Houses there, and that he had not paid the same. The Defendant denied the Custome, which was found for the Plaintiff, but for the Defendant it was found, That the Rate was not made by the Major Part of Parishioners. Per Curiam, without a special Custome the Parishioners are not to repair the Chancel; the Parson is bound to do it of common Right, but where a Temporal Inheritance is to be charged by a particular Custome, the Churchwardens must bring the Defendant within the Custome, otherwise it is not good; for it is the Custome that gives the Jurisdiction. Now in this Case the Custome was alleged for Owners of Houses to repair, and they have rated the Defendant, as Owner of a Mill, which cannot be intended a House: For in a Present good reedman, a Mill cannot be demanded by the Name of Domus, but it must be De Molendino. Adjournatur.

* Libel was against the Parish for not paying a Rate made by the Churchwardens only, and this being fagglugged for a Prohibition, and that by the Law the Major Part of the Parson must join; it was said by Twidem J. that perhaps no more of the Parish would come together; To which it was said by the Counsel for the Prohibition, That if that did appear it would be something. Mod. 79. Mich. 22. Car. 2. B.R. Anon.—S. P. per Cor. Vent. 257. Trin. 35. Car. B. R. Thurnfield v. Jones

The Spiritual Court may compel the Parishioners to repair their Parish Church if out of Repair, and may excommunicate every one till it be repaired, and such as are willing to contribute must be absolved till the greater Part of them agree to affix a Tax, but the Court cannot absolve them towards it; Per North Ch. J. to which the others agreed, and That the Churchwardens cannot; For none but a Parliament can impose a Tax; but the greater Part of the Parish may make a By-law, and to this Purpose they are a Corporation; But if a Tax be illegally imposed, as by a Commission from the Bishop to the Parson and some of the Parishioners to affix a Tax, yet if it be attended to, and confirmed by the Major Part of the Parishioners, they in the Spiritual Court may excommunicate such as refuse to pay it. Mod. 194. Hill. 26 & 27. Car. 2. C. B. pl. 155. Rogers v. Davenport.——S. P. And a Prohibition was granted to a Libel for a Tax made by some Parishioners by virtue of a Commission from Dr. Estxon the Chancellor of London, because that Way of Taxation by Commissioners is against Law; And though the Spiritual Court may compel the Parishioners to make a Tax, yet they cannot constitute Commissioners to make one. Frenc. Rep. 286, pl. 320. Hill. 157. Anon. but seems to be S. C.—S. P. 2. Mod. 222. Patch. 28. Car. 2. in the Exchequer by North Ch. J. said it had been lately ruled in C. B. —S. P. by Holt Ch. J. 12. Mod. 528. Mich. 12. W. 3. and that the Spiritual Court may excommunicate for not meeting and making a Rate; And that though one, who sues in the Spiritual Court, sues in his Libel any Matter which must make against him, as was done in the principal Case there, viz. That the Rate was made by the Commissioners of the Ecclesiastical Court, yet hoy of the other Side may suggest it.

* Nov. 331. Heale v. the Churchwardens of Hobleton.† This is not mentioned, and should be 156. and is Chamber's Case. It was a great Case in both the Cafes that such Rate is not good to bind the Inheritance; But it was said in the first Cafe that it is good by way of Direction How and How Much shall be levied.

19. Libel, in the Spiritual Court for not paying a Parish Rate for Repairs of the Church, and f aggulated for a Prohibition, that all Parish Rates were to be by Majority of Parishioners; and that every Rate, after it is collected, becomes void; and that this Rate was not by a Majority &c. and that the Suit was to pay this in Purfuance of an old Rate collected many Years before. Per Holt, here the Suggestion rectifies an ancient Rate, which they say was to be a Standing Order for all Times to come; and that they have confirmed that Rate, and that the Libel is not Want of a New Payment according to it, and cited Nov. *321. † 126. in Point, for a Prohibition in this Case, and said, That all, that the Spiritual Court can do, is to make an Order that the Church be repaired but not to Affix a Quantum. A Prohibition was granted. 12. Mod. 327, 328. Mich. 11. W. 3. Blank v. Newcomb.
Prohibition.

(1) Reparation [Chapel of Eafe.]

1. If there be a Parochial Church, and a Chapel of Eafe in the
same Parish, and the Chapel of Eafe had Time whereof
Memory all Spiritual Rites except Burial and this has used to be
done in the Church Parochial, and because they who have used to go
to the Chapel of Eafe, have used Time out of Mind to repair a
Part of the Wall of the Churchyard of the Parochial Church, and in con-
sideration thereof, and because those who are of the Chapel of Eafe
have used Time out of Mind to repair the Chapel of Eafe at their own
Costs they have been Time out of Mind discharged of the Re-
paration of the Parochial Church. This is a good Precedent, and
there if they are sued in the Spiritual Court to repair the Parochial
Church, a Prohibition lies. Cr. 15. Id. B. R. between the Inhabi-
tants the Parish of Stratford, and the Inhabitants of the Chapel of
Eafe of Luddington. Prohibition granted, and then was shown a Pre-
granted for the Chapel called Deneford against the Parity called
Ringstead.

ham said, That the Affent is not requisite to build a Chapel of Eafe; and then the Ordinary and the Parish
cannot charge the Parochioners with greater Charge, yet now it was ordered that a Prohibition be
granted, and that Defendants, if they pleade, might demur upon it. And cites 5. Jac. B. R. a Derbyshire
Cafe, where a Prohibition in such Cases was denied
The a Man &c. Time out of Mind has repaired a Chapel, yet if it be not a Precedent Chapel, having
Chapel-Wardens belonging to it, 'tis no Reason to exempt him from a Church-Rate to repair; and
if he repairs less than his Proportion, it may be a Question, If it ought to discharge him. Per Holt. Pâr. 122. Hill. 1 Ann. B. R. Anom.

2. If a Chapel of Eafe has used a Tempore â unum, to have all Sacra-
ments except Burial, and the Inhabitants within the Chapel, also al-
ways have repaired the Chapel, and proceed in Consideration of 3 s.
and 4 d. per Annum, paid for Reparation of the Mother Church to be
discharged of the Reparation of the Mother Church. If the Inhabi-
tants of the Chapel are sued for Reparation of the Mother Church
a Prohibition lies upon this Novus. P. 11. Car. B. R. between
Peindland and Toy. Prohibition granted. Gookey was the Chapel, and
Stendford the Mother Church in the County of Berks. Cr. 11. Car.
B. R. in the same Cafe the Prohibition confirmed, and ordered to
be tried at the next Miles. But Arch. 11 Car. A Conflagration was
granted in this Cafe, because the Prohibition was granted after Sen-
tence in the Spiritual Court that there was not any such Cutton

3. The Inhabitants of a Chapelry, within a Parish were libelled against
for not paying towards repairing the Parish Church. The Cate, as appeared
upon the Libel was, the Inhabitants of this Chapelry had never futhert
contributed, but had always buried in the Mother Church, till H. 8th's Time,
when the Bishop consecrated a Burial-Place for them, in Consideration whereof
they agreed to pay towards the Repairs of the Mother Church. It was held, by
Hotch J. That by the Common Law, the Parochioners of every Parish
are bound to repair their Church; But by the Canon Law, the Parson
is, and so it is in Foreign Countries. In London, the Parochioners repair
both Church and Chancel, though the Freehold is in the Parson, and it
is Part of his Glebe, for which he may bring an Ejectment. In the prin-
cipal Cafe, those of a Chapelry may preferite to be exempt from repairing the
Mother Church, as where it buries or chrisains within itself, and has never
contributed to the Mother Church; For in that Cafe it shall be intended
"Co-equal", and not a latter Erectio in Eafe of those of the Chapelry, but
here it appears, That the Chapel could be only an Erectio in Eafe, and
Favour of them and the Chapelry: For they of the Chapelry buried at
the Mother Church till H. 8th's Time, and then undertook to contribute
to the Repairs of the Mother-Church. 1 Salk. 164. pl. 2. Bull v. Gookey.

(K)
(K) Jurisdiction. Reparation. Ornaments.

1. If a Man be rated for the Ornaments of the Church according to his Land, which he has in the Parish, a Prohibition lies. Because he ought to be rated for them according to his Personal Estate. M. 20. In. B. R.


3. If all the Parishioners are not rated for the Reparation of the Church, but some are and some are not, and those who are rated are fined in the Ecclesiastical Court, a Prohibition shall be granted. M. 17. In. B. R. Per Curiam.

Poph. 197. S.C. — The Parish of B. levied a Tax upon all the Lands in the Parish for New Calfi the Bells, so much for every Acre, but they excepted 900 Acres of Wood of the Bishop of London, pretending they were disfran'd by Custom. A Parishioner was sued, and Sentence given against him in Paul's, and the Sentence affirmed upon Appeal, and now he prays a Prohibition. And Serj. Crew said, That this Custom was against Law; whereupon Dodridge and the Court said to him, That he should make his Suggestion, and then he should have a Prohibition.

4. If the major Part of the Parishioners of a Parish, where there are 4 Bells, agree that there shall be a fifth Bell, and a 5th is made accordingly, and they make a Rate for Payment for it; This shall bind the lesser Part of the Parishioners, tho' they do not agree to it; For otherwise any obisinate Person may hinder any thing intended, and which is fit for the Ornament of the Church. Mich. 2. Car. B. R. between — per Curiam. Prohibition denied, it being moved by Master Wilsoe. This concerns the Parishioners of Bromsgrove in Worcestershire.

5. The Churchwardens libel'd for a Rate made to repair the Church, and for dividing the Church House (which did not belong to the Church) into several Rooms for the Use of the Poor, and for Payments of the Marthafea Money, and for making new Chimes. It was suggested for a Prohibition, that the Things mentioned in the Rate are jumbled together, and such as are not cognizable in the Spiritual Court, and that the Chimes are only Ornaments; But it was answered, That they are not only Ornaments but useful and convenient; And a Prohibition was denied per tot. Cur. Lutw. 1019. Hill. 36 & 37. Car. 2. C. B. Watkins v. Seymour & Webb.

6. Rate to pay for Ornaments in Proportion to the yearly Value of Rocks and Mills is not good. 5 Mod. 391. Hill. 9. W. 3. Hawkins's Cafe.
Prohibition.

8. A Rate was made at a Veltry for Building of a Gallery; and for refusing to pay his Part, a Parishioner was su'd in the Spiritual Court, and thereupon he now prays a Prohibition, because a Parish could not be tax'd for the Building of a Gallery, which is neither Useful or Ornamental to a Church. But this was not much regarded by the Court. 10 Mod. 15. Mich. 9 Ann. B. R. Forte v. Buviere.

(L) In what Cases it shall be granted for a Collateral Cause.

If a Suit be in the Spiritual Court to try the Bounds of a Parish, a Prohibition shall be granted, for they shall not try it. Pith. 14 Jn. B. R. Fisher and Chamberlaine. Resolved. H. 41 Cl. B. R. between Piper and Barnaby. Adjudg'd, and Prohibition granted. H. pl. 59. And a Prohibition was granted, because they would try the Bounds of a Parish; and the Plaintiff in the Prohibition shew'd for Title, That the Parishioners came to the Parish by the Statute of Disolution; and that Queen Mary granted it to a Corporation, who led it to the Plaintiff for a certain Term, but did not shew the Letters Patent, nor the Deed of grant from the Corporation; and thereupon it was demur'd for a Convalidation, for this was resolved to Rep. in Dr. Leffield's Case, not to be good. And Coke Ch. J. said, That they would have the Letters Patent and the Deed thrown to them A Latere; because for the Default of plead- ing them, a Convalidation shall not be granted for the Spiritual Court to try the Limits of the Parish, And after they joyn'd Issue by Confess.

S. the Plaintiff sued in the Spiritual Court for Tires, against the Defendant within the Parish of C. The Defendant saith, That the Tires are within the Parish of A, and the Parish of A came in Pro interroga, and thereupon they proceeded to Sentence, and that was given against S. who was su'd for a Prohibition; and the Question was, Whether Such a Parish or Such a Parish be triable by the Law of the Land, or by the Law of the Church? Wray Ch. J. saith, 'twas been taken, That it is triable by our Law. Fenner, the Pope has not distinguished Parishes, but has ordained, That Tires shall be paid within the Parish. 3 Le. 129. pl. 182. R. S. 26 Eliz. in B. R. Stranf. v. Collington. — S. C. Cro. Eliz. 228. pl. 17. A Prohibition was granted; for the Bounds of the Parish are triable at Common Law.

The Bounds of Parishes, tho' coming in Question in a Spiritual Matter shall be tried in the Temporal Court. This is a Maxim in which all the Books of Common Law are unanimous, tho' our Provincial Constitutions expressly mention Limits Parochiarum, among the Matters, Que Mere ad Forum Ecclesiasticum pertinentem nocentur, and que non pollut ad Seculare Forum aliquotius pertinentem. 1 Giff. Cod. 239.

The Reason why Bounds of Parishes are triable at Common Law, is because the Perception is the Ground thereof; Per Hale Ch. J. And per tot. Cur. This is of Right, and not to be denied where grantable. 3 Keb. 285. Pech. 26 Car. 2. B. R. in the Case of Brown and Bard v. Paltry. But where Prohibition was pray'd, because the Bounds of 2 Vills in the Parish of A. came in Question, the Prohibition was deny'd by all the Court; for tho' the Bounds of a Parish are not triable, the Bounds of a Village in the same Parish are triable in the Ecclesiastical Court. Lev. 78. Mich. 14 Car. 2. C. B. Pedes v. Yalame.

2. If a Vicar of a Parish libells against another to avoid his Institution to the Church of D. which he supposes to be a Chapel of Ease unappertaining to his Vicarage, and the Defendant sugetts, That D. is a Parish by itself, and not a Chapel of Ease, a Prohibition shall be granted; for they shall not try the Bounds of the Parish. Pith. 14. Jn. B. R. Fisher v. Chamberlaine. Adjudg'd for the Church of Oakley and Clepham; and yet there he alleg'd it, Subdole libellando.

3. If the Question be in Court Christian, Whether a Church be a Parochial Church or but a Chapel of Ease, a Prohibition lies. Tr. 3 Jn. B. The Gardners of St. Sampson's Cafe of Cornwall. P. 9 Car. B. R. between Elie Vicar of Alderburne in the County of Wiltis and Cooke. Prohibition granted, I being for the Tituar; and upon 7 H
this, Issue join'd, Whether they were several Parishes, and tried by
Terrible to be one Parish.
4. If in a Parish there be a Chapel of Ease and a Vicar thereof dis-
tinct from the Parochial Church, and the Vicar is endow'd of the
Tithes of the Parishioners who are inhabiting within the Chapel, and
the Vicar lives one of the Parish who is not within the Chapel, and he
says, That he is of the Parish and not of the Chapel, a Prohibition
shall be granted; for now the Bounds of the Chapel come in Questi.
Hy. 15.  B. R. between the Vicar of the Chapel of Bosol in Corn-
wall and another of the Parish of . . . . . . .
3 If the Churchwardens of a Parish sue a Vill for Reparation of
their Church, supposing the Vill to be an Hamlet within their Parish,
and the Vill [pleads] that it is a Parish of itself, and not an Hamlet of
the other Parish, a Prohibition shall be granted; for now the Bounds
of the Parish come in Question. Tr. 16.  B. R. between Perry and
Thomas Plaintiffs, against . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .
5. If a Suit be in the Consistory of Durham for Tithes of Land
lying in Berwick, no Prohibition shall be granted upon a Suremise,
That the Land lies in Amerton in the Kingdom of Scotland, and not in
Berwick; for tho' this be true, yet it may be that the Patron ought
to have the Tithes thereof. Tr. 11.  Car.  B. R. between Morton and
Roslon. Per Curiam. After a Prohibition upon such Suggestion
made, a Traverse taken, That it does not lie in Amerton in the
Realm of Scotland, a Consultation granted; and it seems it was
partly in respect to the said Realms of Scotland and England in
Point of State.
6. A Prohibition shall not be granted by a bare Suremise, that he
is sued for Tithes by the Parson of D. of Lands in the
Parish of S. unlesst it appears in the
Pleading in the Spiritual Court; for they there shall not be Judges of the Bounds of the Parish. By the
7. If a Han who has Land by Devestee sues another in the Ecclesiast.
cal Court for calling him Battard, a Prohibition shall be granted; for
it tends to Temporal Disinherite, Hy. 3.  Ja.  B. R. Per Curiam.
8. If a Han sue in the Spiritual Court against an
Executor, and he there pleads, That he has not Affects but for Debts,
If the Court disallows this Plea, a Prohibition shall be granted,
Panel. 15.  Ja.  B. R. between Singleton and Wade. A Prohibition
granted accordingly.
9. If a Suit be in the Spiritual Court for a Matter
whereof they have Jurisdi.
cion, and
 therein a Plea is pleaded which is triable at the Common Law, yet if they will allow the Plea, they shall have Jurisdiction thereof, and try it; otherwise a Prohibition lies. Agreed per Curiam. Cro. E. 595. pl. 38. Mich. 39 & 40 Eliz. C. B. in the Cause of Somerset v. Markham.
If Goods are devis'd to B. as Son and Heir of A. and B. sues the Executors in the Spiritual Court for
the Goods, and the Executors say, That B. is not Son and Heir of A. and therupon they are at Issue; it was held, That the Spiritual Court shall have Jurisdiction, because it is dependent on the free Matter; besides
B. would otherwise be Remedied, for he cannot sue for the Goods so devis'd in the Temporal Court.
Kelw. 110. a.  pl. 33. Casus incerti Temporis.
So if Devise of Goods sues them in the Spiritual Court, and the Executor pleaes Ne Devisa pas,
this shall be try'd in the same Court; because the principal Thing is merely Spiritual, and this Issue depending upon the Principal, shall ensue the same Court, and be try'd in the same Court. Kelw. 110. b. pl.
33. Casus incerti Temporis.
So if A. devises Goods to B. and dies, and B. sues in the Spiritual Court for the Goods, and the De-

dendant says, That the Property of the Goods is his; this Property shall be tried in the Spiritual Court, and
yet it is a Temporal Thing. Kelw. 110. b. pl. 34. Casus incerti Temporis. Per Hufsey.
So if the Parson sues in the Spiritual Court for a Mortuary, and the Issue is taken upon the Property;
and so of all Issues, being upon the same Thing, they shall be tried by the Spiritual Court. Kelw. 110. b.
pl. 34. Per Hufsey.
But if Testator devises Goods to B. and the Executors for a new Will, in which there is no Such De-
vise, the Action upon the Statute 1 H. 5. cap. 2. against the Executors, shall be in the King's Court, be-
cause the Suit is upon a Thing which merely concerns his Court. Kelw. 110. b. pl. 35. Per Grantham.
Per Casus incerti Temporis.
In a Suit for a Legacy in the Spiritual Court they were at Issue there upon a Point of Cowin, as touching
Matter there alleged, in Discharge of a Legacy; Upon this a Prohibition was pray'd, and denied, and a
Consultation granted, because they had Consonance of the Principal, and therefore they have Caufe allo there
to determine of the Accessory, being Cowin, concerning the Legacy; It was adjug'd for the Consultation,
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An Executor of an Executor was su'd, who pleaded Riens enter Mainis; The Spiritual Court refused that Plea; upon which a Prohibition was awarded out of B. R. Nov 77. Dixe v. Brown.—S. C. Palm. 422. Patch. 1 Car. B. R. — S. C. and reported in almost the same Words. Lat. 114. by the Name of Watkins's Cafe —— 3 Bull. 314. Dickes v. Brown. S. C. But says, That the Prohibition was granted upon a Mispleuing the Suggestion to the Court. And per Cur. we do here try Fully Administrator'd or Not, by a Jury; they there try this per Teiles, and they have Conunence thereof; But if they, in their Proceedings, refuse such a Proof for Fully Administer'd in Discharge of the Party, which is allowable at Common Law, a Prohibition then is to be granted; But here nothing is in this Suggestion, but that they there went to Ifue only upon Fully Administer'd or Not, the which of itself is no Cause to have a Prohibition. — If they refuse to accept of the Plea of Plane Administrator, the Party ought to aplead, because they proceed otherwise than they ought. Sid. 249. Trin. 17 Car. 2. Anon.

9. Libel for not repairing Part of the Church-Wall, which by Custom he was bound to do. A Prohibition was granted after Sentence; because a Custum is not triable in that Court. Carth. 33. Patch. 1 W. & M. B. R. Tyler v. Manfel.

(M) In what Cases they shall not have Jurisdiction for a Collateral Cause.

1. If A. be presented by J. S. to a Benefice, [and is ] admitted, inducted, and inducted, and after the King presents his Clerk to the same Church, supposing A. to be presented by Simony, and his Clerk is inducted and inducted. Upon which A. files in the Ecclesiastical Court against the Clerk of the king, supposing that he did not come in by Simony, and so prays, That the Super-Admission, Institution, and Induction of him be repeal'd, a Prohibition shall be granted for the Clerk of the King upon his Suggestion, That A. was presented by Simony. For now the only Question between them is, whether the Church was void or not at the Time of the Presentation of the King, which is triable only by the Temporal Court. Tr. 16 Ja. B. R. between Sarson and Battoe. Resolved per Curiam, and a Prohibition granted, but after the Prohibition was flux'd. But Hill. 16 Ja. B. R. the Prohibition was granted, tho' it was said, That they only question'd the Institution in the Ecclesiastical Court; for this is not to be allow'd after Induction.

2. The Patron of a Benefice may be su'd in the Ecclesiastical Court for presenting of his Clerk (who is now inducted) for Simony; for the Statue of Simony doth not take away the Ecclesiastical Jurisdiction to punish the Party Pro salute Anima. D. 11 Ja. B. R. Sir William Boier's Cafe. Resolv'd.

Notice of any Simony, this being punishable in the Spiritual Court, and if they meddle only Pro salute Anima, they are not to be prohibited; nor is a Prohibition to be granted in this Cafe, by reason that they examined upon Oath touching the Simony; and this is clear, because it was so done voluntarily; and notwithstanding the Incumbent be dead, yet the Crime remains and is living, and the Examination here by them was only Pro salute Anima. But if there be any Article to be examined upon, which any ways draws the * Right and Title of the Benefice into Question, then clearly a Prohibition is to be granted, but not otherwise; And so no Prohibition was granted. —— * S. P. Bull. 179. 9 Jac. in Holt's Cafe. —— S. P. 2 Le. 168. pl. 205. Patch. 26 Eliz. C. B. in Gerard's Cafe. —— 3 Le. 98. pl. 142. S. C. Roll Rep. 62. S. C. accordingly. — P. an Incumbent of a Church rat'd to be a Fowl's.

3. If A. recovers in Quare Impedit against the Ordinary and the Incumbent, and the Incumbent brings Writ of Error, in which the Judgment is affirm'd, and a Writ to the Bishop is granted for A. upon which A. presents his Clerk to the Bishop before any actual Removal of the Incumbent, and his Clerk is admitted and inducted, upon which the Incumbent appeals to the Audience for a Super-Institution.
Prohibition.

other Parts of Greece, and it was not known whether he was alive or dead; whereupon G. was instituted and induced. Afterwards the Procurators of P. libel'd against G. in the Ecclesiastical Court to try the Super-Induction. It was suggested for a Prohibition. That after Induction the Ecclesiastical Court cannot try the Super-Induction; and that G. was now in his first Fruits, and that therefore the Court may grant a Prohibition; and it was granted. Litt. Rep. 140. Mich. 4 Car. in the Exchequer. Pettie's Cafe.

4. If A. be instituted and induced to a Church, and after he is sued in the High Commission Court, because one B. was instituted and induced before, and after A. was super-instituted and induced, by which by the Canon Law he is an Intruder, and is to be punished as an Intruder, To which A. answered, That he did not know that B. was instituted and induced before him, by which he excuses himself of any Crime, a Prohibition shall be granted; for they shall not try which of them has the better Right after Institution and Induction, but this shall be tried at the Common Law. But the Ordinary may punish any such Clerk, who procures himself to be super-instituted and induced, knowing the Institution and Induction of another. P. 16 Car. B. R. between Maddocks and Chirac. Per Curiam. A Prohibition granted to the High Commission Court.

* Where the first Incumbent comes in by Simony, there can be no Super-Institution; for in such Case the Church is void de Jure & de Facto, and they cannot meddle with the Institution; but with the Simony they may. Per Cur. Litt. Rep. 176. Mich. 4 Car. C. B. in the Case of Stevens v. Cripps. And per Williams J. Matter of Induction and the Validity thereof is determinable at Common Law, and not in their Courts; and the whole Court agreed with him, and a Prohibition was granted. Bull. 179. 9 Jac. Holt's Cafe.

5. If the Parson of B. takes a second Benefice within the Statute without Dispensation by which the first Benefice is void, which is of the Patronage of the King, and after An Ultramontanus Comes ad Collandum omne Dubium, he obtains a new Presentment of the King, and upon this requires the Bishop to admit, and super-Induce him, the Bishop takes Time to be advised, and in the mean Time the King presents another, who is instituted and induced. And after the first Parson sues the Bishop for Injustice in the Spiritual Court; a Prohibition shall be granted; for those of the Spiritual Court ought not to examine the Right of Precedents. P. 3 Ja. B. Williams Cafe adjudged, and Consultation denied.

6. If a Man sues in the Court Christian to have Account for the Profits of a Benefice, a Prohibition lies, because this belongs to the Common Law. P. 3 Ja. B. adjudged.


8. If
Prohibition.

8. If two Churches are united by Patron, Ordinary, and the King, by the Statute of 37 H. 8. upon a Surmise that the 2 Churches are not distant more than a Mile the one from the other, and after the Parishioners are sued in the Spiritual Court to come to the one Church, a Prohibition lies upon a Surmise that the Churches are distant more than a Mile the one from the other. Nich. 10 Car. B. R. between Doison and Sir Robert Mortain, a Rule for a Prohibition granted; the Churches united were Wellesborough and Walton Devalt in the County of Warwick. But after P. 11 Car. B. R. The Prohibition denied, because there was not any Suit depending against the Parishioners, nor any other Suit in the Spiritual Court to be prohibited.

9. If the Parishioners in the Spiritual Court for a Modus Demanding, if the Defendant suggests that he has mistaken the Modus, and shews another Modus, he shall have a Prohibition, because they shall not try the Modus by which his Inheritance shall be bound. And an Usage for 10 Years is good Custom by the Spiritual Law; and if this shall be suffered, they will defeat the Temporal Court of all Jurisdiction. By Reports. 14 Ja. Gaftin and Hardin adjudged. See (F) pl. 17. (Q) pl. 14. 15. S. C. Roll. Rep. 419. And Mountague. Ch. J. Said that the Spiritual Court never had Jurisdiction of the Matter, by Reason of their having mistaken the Modus. S. C. 3 Bulf. 24.

A Parish Libell for the 10th Sheek, and alleged it to be the Custom Time out of Mind, to set the Corn out in that Matter. The Parishioner suggested that the Cotton was to set out the 10th Sheaf and not the 10th Sheek; and that tho’ he had alleged this, they had refused the Plea. A Prohibition was granted, and afterwards a Convalidation was denied. The Court agreed that a Modus Demanding was liable for in the Spiritual Court, but when it is denied they ought to forsake. Whitlock. J. Said, that here is no Title made for a Convalidation, but yet he thought it good enough in this Case, because the Right of the Parties is not denied, but the Manner of setting forth; that they vary not upon the Modus Demanding, but upon the Modus Exemplified; but the other Justices said nothing to this Point. Palm. 445-50. Patch. 2 Car. B. R. Steward’s Case.

10. If a Man presents to the Bishop, and upon Refusal files to the Archbishop, who after Mention, Citation and Default of the Bishop, admits and instituted the Incumbent, upon which he is also instituted, and after the Bishop files his Double Quarel, appearing from the said Sentence to the Delegates, to annul the Admission and Institution, A Prohibition shall be granted, because after Induction the Admission and Institution ought not to be drawn in Question in the Spiritual Court. B. 12 Ja. B. between Sir Timothy Hatton and the Bishop of Chester. Per Curiam.

Mo. 861. pl. 115. S. C. accordingly. Cobb, v. the Bishop of Chester, and Laws. That if the Justices fee Cause, they may write to the Bishop to certify concerning the Institution. S. C. accordingly. Hob. 15. Where the Suggestion to avoid the Institution was, that it was made without Warrant, it being made by the Archbishop at London, he being there in Parliament-time, and so being made out of the Judges was a Nulity. But it was held, That the Induction being a Temporal Act, was not to be avoided but by a Quare Impediment, or the like at Common Law. And tho’ the King signified his Pleasure by several to have a Convalidation granted, yet they answered that they could not do it by the Law, and so after many Meffages the Matter stood.

11. If upon a Resignation of the Incumbent, another be presented and instituted, and after he who resign’d libell in the Ecclesiastical Court against the new Incumbent, pretending that he did not resign, and after makes a Lease upon which Title is joined, whether he was Parish at the Time of the Lease made to try the Title, yet no Prohibition shall be granted, because the Question there is only upon the Resignation, which properly appertains to the Ecclesiastical Court. Nich. 10 Ja. B. Mansfield’s Case. Per Curiam.

12. If a Man pending a Quare Impediment libel in the Spiritual Court to avoid the Institution of the Clerk of the same Church after he is instituted, a Prohibition shall be granted; for otherwise they will prevent the Quare Impediment. Nich. 14 Ja. B. R. between Fister and petit was Ch. 167.
Prohibition.

The Plaintiff in the Quare Impedit sued in the Spiritual Court to remove him; but upon
Suggestion that the Defendant was indicted, a Prohibition was granted. Lat. 205. Oliver v. Hufley.
Pending a June Patronatus, the Bishop admitted one of the Prelelents; whereupon the Patron of the
other Prelelent libell'd in the Spiritual Court; but a Prohibition was granted, and a Confutation after-
wards denied. 2 Le. 163. pl. 205. Fitch 26 Eliz. C. B. Gerard's Cate. — 5 Le. 98. pl. 143. S. C.

S. P. But if the Suit to
repeat the
Institution had been be-
fore the In-
duction, no
Prohibition
should be
granted. Sid.
205. T'sn. 18 Car. 2. B. R. in Cate of Ofley v. Bell ——— S. P. For if the Institution was not good,
the Induction is not good. Hob. 15. in Hurton's Cate.

The Induction is Temporal, and the Spiritual Court cannot frustrate it; and tho' they should give
Sentence against the Induction, yet it remains good. Per Richardson, quite nulll.) conceiiim. And per
Car. They cannot meddle with the Institution after Induction. And by 2 J. A Prohibition may be
granted, tho' no Suit was depending here, and tho' the Induction was utterly void, (as in Cate of Si-
mony, as the principal Cate was) as well as where a Church was lawfully fall before. And Prohibition

13. If I present my Clerk, and he is admitted, and instituted, and
before Induction a Caveat is entered by a Stranger in the Spiritual
Court, that he shall not be inducted, and thereupon an
Inhibition is granted to the Archdeacon, that he shall not induce him. In this
Case a Prohibition shall be granted, because when he is instituted he
has an Inception to the Lap Fee, and the Church is still against all,
except the King; and if this shall be differ^t, all Trials by Quare

14. If I present my Clerk, and he is admitted and instituted, and
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except the King; and if this shall be differ^t, all Trials by Quare

15. If a Bishop collates, pretending a Lapel, and thereupon the
Patron presents, and in a Quare Impedit recovers, and has a Writ to the
Bishop, and before his Prelelent has Institution sealed, the Archbishop
sends an Inhibition that he shall not be instituted, and thereupon Sen-
tence is given in the Arches that he shall not be instituted, a Prohibi-
tion shall be granted upon this; for they shall not try again that
which is before tried at Common Law, and trials in Question the
Recovery; for otherwise Recoveries at Common Law would be of
little Force. D. 4 Ja. B. R. between Fletcher and Baker. Per
Curiam.
Prohibition.

And if the King receive his Presentment, and have a Writ unto the Bishop, and his Clerk is instituted and inducted, if the Bishop, at the Suit of others, hath Provocations or other Infrumments to cite the King's Incomint to the Court of Rome &c. the King shall have a Prohibition to the Bishop, and an Attachment upon it, if &c. And it seems that the King shall have a Prohibition without any Recovery had before, if his Presentment be instituted &c. And so it seems a common Person shall have the such a Prohibition, when the Suit is to try the Title of the Presentment or Collation, yet the Writs in the Register are and speak of a Recovery. F. N. B. 43. (C)

16. If a Patron presents A. his Clerk to his Church, and the Bishop delays him for Examination for more than two Months, whereas by the late Canons he ought not to delay him for more than a Month, whereas A. having made an Return, the Bishop will incur suits, the Bishop to present, and after the 6 Months the Court of Audience gives Judgment for him, and after the Bishop, notwithstanding this, collates by Laple; and thereupon in the Court of 23. R. prays a Prohibition to the Court of Audience. The Prohibition shall be granted; for now it be a Laple, the Ecclesiastical Law will not remove him, the Church being null. And if the Bishop be a Disturber, then his Clerk shall be removed, notwithstanding the Plenary by 6 Months before the Writ purchased; for Collation without Title does not make an Hillegation; and therefore Quasi quasi due Data, it does not appertain to the Ecclesiastical Law to proceed in the Duplex Querela. Tr. 3 23. R. between Palmer and Smith, Prohibition granted, and Con-诉itation denied.

17. The Defendant suggested for a Prohibition to a Libel for Defamation in the Arches, that he is an Inhabitant within the Diocess of London, and so the Prosecution is contra normam Statuti 23 H. 8. c. 9. it was argued against the Prohibition, that it ought not to go, because there had been a Composition between the Bishop of London and the Archbispop for this Jurisdiction; and so that Reyon the Archbispop doth not visit in the Diocess of London, and so is Gobber's Cafe Cro. Car. 339. But, per Keeling J. The Diocess of London is not within the Jurisdiction of the Arches, but the Archbispop hath a peculiar Jurisdiction there, consisting of 14 Parishes. And Twidwell J. said that the Composition between the Ordinaries cannot prejudice the People for whole Benefit that Statute was made; and the Reyon in Gobber's Cafe is not good; for the Bishop of London cannot agree that the Archbispop shall not visit. The Court was divided. Raym. 91. Hill. 15 &c 16 Car. 2. B. R. Ford v. Welden.

18. A Citizen of Bristol had a Country House, and frequently received the Sacrament in the Parish Church in the Country, likewise he received it frequently in the Cathedral Church in Bristol, but not in his own Parish Church in Bristol; for which Cause he was cited into the Ecclesiastical Court, and admonished; and afterwards for not obeying and receiving in his Parish Church, according to the Monition, he was excommunicated, tho' one of the Surrogates of the Court but the Sunday before had with his own Hand given him the Sacrament; and tho' he there pleaded this, and likewise his receiving in the Country at his own Parish there, they would not allow it; upon this Matter appearing to the Court, a Prohibition was awarded. Skin. 101. Hill. 35 Car. 2. B. R. Anon.

19. A Woman was libelled against in the Spiritual Court for Incontinency with a Man since dead. It was suggested for a Prohibition, that the Man was her Husband: And now the Spiritual Court could not examine whether he had been her Husband or not, because that would tend to barbarize the Children, and dissolve the Marriage after Death of Party. Holt said, if there were a Marriage de facto, tho' illegal, yet they shall not libel to avoid it after Husband's Death; but it there was none, the Death of the Man ought not to protect her from a Prefentence for her Whoredom. 12 Mod. 419. Mich. 12 W. 3. Anon.

20. One
Prohibition.

So where A. 20. One having 2 Wives died, and one of them libelled against the other for Jilification of Marriage; And he suggel the, That it was to avoid her Marriage, and a Prohibition granted, per Holr Ch. J. 12 Mod. and afterward, and takes L. 432. Mich. 12 W. 3. In the Case of Hemmig v. Price. — cites 7 Co. to Wife, by 43. b. 44. a. Kenn's Case. — Sty. 10.

Vern. 5. Mich. 20. Car. 2. B R. The Bishop of Lincoln v. Smith. 21. A Libel was by a Bishop for a Pension. It was suggested for a Prohibition, That he fled before his own Commissary, and so would be Judge in his own Cause; But a Prohibition was denied; For per Holt Ch. J. and Eyre J. a Suit lies before a Chancellor in such Cause, like the Cause in Dyer, where the Lord fled before his Steward. Comb. 131. 1 W. & M. B. R. Anon.

(N) What shall be said a * Defamation Spiritual to maintain a Suit in the Ecclesiastical Court.

1. Reg. Eger. s. 54. b. Title Consultatio. Consultation granted to proceed in Court Christian in Calvaf Defamatorius, videlicet as well for the Crime of as also because the Jurisdiction of the Spiritual Court per Tumultum & rixas Executionesque jujus in hac Parte debebat faciendas nequiter impediti, ex Officio ad Animae lue Correctionem prosecti. Roll Rep. 427. pl. 44. C. S. C. says, That a Prohibition was granted, and afterwards a Consultation, because the Party, in the Real Reason here mentioned. — Mo. 906. pl. 1265. Trin. 29 Eliz. Morrice v. Smith, a Prohibition was granted to a Libel for calling one Witch; And afterwards a Consultation, because an Action does not lie for it at Common Law, unless where Death ensues. But the Book says Quare now since the Statute of 1 Jac. for it has been adjug'd, That an Action upon the Case lies since that Statute. — 4 E. 2. 92. p. 192. C. S. where the Words are Verocamia, Sotteram & Incantatae Damnationem. And after a Prohibition a Consultation was awarded; And it was held there, That to call one Witch Generally an Action lies not in our Law, as has been adjug'd. But to say, She hath bewitch'd such a one, an Action lies. And per Way, Witchcraft, which is made Felony by any Statute, is not punishable by the Ecclesiastical Law; but in Case of Slander upon such a Witchcraft, such scandalous Words are of Ecclesiastical Jurisdiction; And for Witchcraft, which is not Felony, the Ecclesiastical Court shall punish the Party; And afterwards, in the principal Case, a Consultation was awarded. Error of a Judgment in C. B. in an Action for Words (vii.) She is a Bawd, and has bewitch'd him by Witchcraft and Sorcery. It was held by Jones & Crose J. that the Action well lies for the last Words, (And has bewitch'd him &c.) but for the first Words was doubted; therefore carrier Abstinentia a Rule was given, That Judgment should be affirmed. Cro. C. 261. pl. 5. Trin. S Car. Hix v. Hollowhed. This was held to be

3. If a Man libel in the Ecclesiastical Court against another for saying certain Words of him, which would maintain an Action of the Cate
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Hands on a Parson, and of a Penfion by Prescription &c. 2 Lew. 14. Grundy v. Walden. Jones J. thought these Differences ought to be observed, viz. Where a Man calls a Woman Whore, or such like Slander, for which a Suit lies in the Ecclesiastical Court against the Party, (if the Thing be true) there no Prohibition shall be granted: but where no Suit lies for the Principal in the Spiritual Court, but the Slander is punishable at Common Law, as for calling a Man Thieves, Traitor &c. there if the Suit is in the Spiritual Court, a Prohibition lies. But if the Slander be such as hinders her Marriage, the Party in the Spiritual Court or at Common Law. So if Words are spoken, which are only Words of Reproach, Action lies not at Law, neither do they concern any Thing whereof the Spiritual Court has Contenance, therefore for such a Prohibition lies, as Knave, Drunkard &c. Quære de cesso. The Chief J. agreed to this, but the other Justices said nothing. Jo. 246. pl. 5. Trin. 7 Car. B. R. Anon.

4. So if only the Words which are proper for the Jurisdiction of the Ecclesiastical Court are put in the Libel, and which would not maintain an Action at Common Law by themselves, yet upon Suggestion to the Temporal Court of the Residue of the Words, by which they would maintain an Action at Common Law, a Prohibition lies. 5. 38. El. between Butler and Bartlet adjudged.

5. If a Parson of a Church calls A. Drunkard, upon which A. Brown answers, Thou liest; if the Parson lies A. in the Ecclesiastical Court for giving him the Lie, a Prohibition lies; because the Reason why he gave him the Lie was not Spiritual, but depending upon a Temporal Thing precedent. 9. 7. A. B. between Simpson and Waters. Law against the Parson for slander, where the Words spoken by him are, viz. Thou art drunk, and I never held up my Hand at the Bar as thou halt done. — Libel was for saying, Thou be a knaebol Person, and thou brought one to swear and forfeit. A Prohibition was denied; for they are Irreverend Words, and the Spiritual Court only can punish them. Pro Reformatione Morum. Lat. Rep. 217. Mich. 4. Car. C. B. Proctor v. Bury.

6. If a Clergyman be a Ballist of the Manor of J. S. and he oppresseth the Tenants of the Manor, and one of the Tenants says to him, Thou art a Knave, and letting to wear a White Cloak than a Black, if the Clergyman sue for these Words in Court Christian, a Prohibition shall be granted. 9. R. adjudged. cited 9. 7. A. B.

Clerk filed him in the Spiritual Court, but a Prohibition was awarded. A g. Godb. 447. pl. 514. in the Case of Hye v. Dr. Welsh. — cites Trin. 42 Eliz. Lovegrove v. Bowens.

7. If a Man says of J. S. he is a Railer and Sower of Sedition a. S.C. Hobson &c. among his Neighbours, he cannot be sued for these Words in the Court Christian, because they are not in any respect Spiritual, but tend to any Spiritual Deformation, but are merely temporal. Mich. 16 A. B. Pannel and Smith resolved, and a Prohibition granted.

If it were in the Church, or the like. H. 132. S. C. & P. or unless it were any ways tending to the Ecclesiastical Rites.

8. If a Man calls a Minster Knave, he may be sued for this in the Court Christian, and no Prohibition shall be granted. 9. 7. A. B. per Coke.

granted to a Libel for calling a Parson Knave. Sidt 353. pl. 26. Mich. 25 Car. 2. B. R. Anon. — Vent. 2. Anon. seems to be S. C. and the Prohibition was granted, because it did not appear to relate to any Thing concerning his Function. — S. P. 12 Mod. 164. Mich. 8 W. 3. Nelson v. Hawkins (Dean of Chichester.) — And Twidgen J. said, That it was adjudged about 41 Eliz. That a Prohibition should be granted to a Libel for saying, Sir Priest, you are a Knave. Sidt 353. pl. 26. — S. C. cited Vent. 2. in S. C. — So where the Prior of L. libelled against R. and L. for calling the Poor Wench, taken from Church, and cumber'd Court, a Prohibition was granted; for the Words concerned no Spiritual Matter, and therefore he could not live for them in the Ecclesiastical Court, neither could he have any Action for them at the Common Law. 2 Iall. 425.

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Prohibition.

So a Prohibition was granted to a Suit by a Parson for calling him Fool, Afi, and Goofe, for they are merely Words of Heat, and do not teach him in his Profession. 2 Lev. 49. Parch. 24 Car. 2. B. R. Newman v. Kingery. — 2 Kebr. 28. pl. 49. S. C. but where the Words spoken of a Gypsyman were (viz.) Thou art, or you are, a filthy pimping Rascal. It was suggested for a Prohibition, That the Words were spoken in Pallion, he being provoked by the Parson, who said, He was a Beggare, and was going to run his Country, and was used to steal his Neighbours Ducks &c. and that he had alleged this Matter in the Spiritual Court, but it was refuted. A Conjunction was granted upon Debate. Latv. 1652. Parch. 10 W. 3. Osborne v. Poole.

9. If a Man says, That he will not hear Sermons made by those who are made Ministers by Bishops, he may be sued for this in Court Christian, and no Prohibition shall be granted. 9 Fa. 25. per Cur. adjudged.

So where a Motion was for a Prohibition to the Spiritual Court, the Plaintiff being prosecuted there, for saying, He would not be of the Constitution of the Church of England upon any Consideration, for be believed if he was he should be damned; And the Reason offered for the Prohibition was, Because the Libel was for a Contempt against the Common-Prayer Book, whereas this was not such an Offence. The Court was of Opinion, That tho' it's not an Offence against the Common-Prayer Book, yet it's certainly of Spiritual Cognizance, therefore the Prohibition was denied. 8 Mod. 538. Mich. 11 Geo. 1753. Sweetnam v. Archer.

A Libel was merely a Book, Parson, bitimf Court, Offence for Words, &c., and in B. Prohibition, T. that sentence in B. would be used in B. Court, Jurisdiction of the Common Law, and only by the Customs of London, and to the Action should have been in the Spiritual Court. Geo. El. 645. Anon. — These Words are actionable, because the Party may be indicted for it. Per Cur. Palm. 359. Trii. 21 Jass B. R. in an Anonymous Cafe. D. sued T. in the Spiritual Court, because tho' the was of good Fame, and kept a Virtualling-House in good Order, yet the said T. had published, That D. kept an House of Bawdery. T. now brought a Prohibition, and well; Per Cur. For D. might have had an Action for that at the Common Law; especially where the kept a Piahtelling-House at her Trade. And the Justices said, That the Keeping a Brothel-House is inquiring in the Leet, and to a Temporal Offence; And so was the Opinion of the Court That B. R. Mrs. Edlond's Cafe. Nov. 117. Thorne v. Alice Durham. Libel was in the Spiritual Court for calling a Woman Whore, and saying, That she kept a Bawdy-House, and after Sentence Prohibition was moved for; and urged contra, That they should have alleged below, That the Words were spoke at one and the same Time, and then they might be prohibited; but now that they have Jurisdiction below for calling a Woman Whore, and that was all they gave Sentence for, they would not grant a Prohibition. 12 Mod. 256. Mich. 10 W. 3. Anon

It is not an Offence punishable at the Common Law, but only by the Customs of London, and to the Action should have been in the Spiritual Court. Geo. El. 645. Anon. — These Words are actionable, because the Party may be indicted for it. Per Cur. Palm. 359. Trii. 21 Jass B. R. in an Anonymous Cafe. D. sued T. in the Spiritual Court, because tho' the was of good Fame, and kept a Virtualling-House in good Order, yet the said T. had published, That D. kept an House of Bawdery. T. now brought a Prohibition, and well; Per Cur. For D. might have had an Action for that at the Common Law; especially where the kept a Piahtelling-House at her Trade. And the Justices said, That the Keeping a Brothel-House is inquiring in the Leet, and to a Temporal Offence; And so was the Opinion of the Court That B. R. Mrs. Edlond's Cafe. Nov. 117. Thorne v. Alice Durham. Libel was in the Spiritual Court for calling a Woman Whore, and saying, That she kept a Bawdy-House, and after Sentence Prohibition was moved for; and urged contra, That they should have alleged below, That the Words were spoke at one and the same Time, and then they might be prohibited; but now that they have Jurisdiction below for calling a Woman Whore, and that was all they gave Sentence for, they would not grant a Prohibition. 12 Mod. 256. Mich. 10 W. 3. Anon

10. If a Man says of a Wench Covert, She will be a meddling with Words, She will turn to End to End with any Man, intimating that the would be taught with any Man. But a Prohibition was granted, because they are Idle Words, and not punishable in the Spiritual Court. Het. 1657. Parch.; Car. C. B. Crompon v. Waterford. — Litt. Rep. 344. Anon but is S. C. and reported exactly the same, only that the one is in French and the other in English.

11. If a Man says of another, That he keeps a Bawdy-House, and is sued for this in the Spiritual Court, tho' he may have Action at Common Law, yet the Spiritual Law has a Concurrent Jurisdiction therein, and the Words are noted, and therefore no Prohibition lies, 27 H. 8. 14. b. per Fitzherbert.

12. If a Man says of another that he is the Pander of J. S. he may be sued in the Ecclesiastical Court; because the Signification of this Word is well known, and it sounds to a Spiritual Delegation. B. 2. Car. Leveus & Whitby, per Dodderidge and Jones contra Whitlock.

13. If a Man says to another, Thou art a Bawd, a filthy Bawd, and a Common Bawd, and for this he is sued in Court Christian, no Prohibition lies, because he cannot be indicted for this, if it be true, because he did not lay, That he kept a Bawdy-House, which would be pretestable in a Leet. Bich. 7 Car. between Hollinshead and Hicks
Per Cur. Consultation granted after Prohibition.

8 Car. B. R. between Yates and Glover. Prohibition was denied where it was said, he was a Bawd, and would die for.

Prohibition: by Jones J. for calling one Bawd, Suit lies either in the Spiritual Court or at Common Law, and Prohibition 'does not lie, for he has an Election for one in either and took a Diversity between such Words and Words of Reproce & as Knave, Drunkard &c. To which the Ch. I. agreed, but the others said nothing.

Libel was for saying, Thou art a Bawd, and there were two Couples upon one Bed in his House. The Court said, That the Words, Thou art a Bawd, is a Thing Spiritual, and therefore no Prohibition shall be granted thereupon. Palm. 359. Trin. 51 Jac. B. R. Anon.

Libel was for saying, Thou art an Old Bawd; and thereupon a Prohibition was granted. But it was moved for a Consultation, for that he had been adjudged 14 Jac. That for saying, Thou art a Bawd, no Action by at Common Law; but otherwise, if he had said, Thou keepest a Bawdy-House, Whereupon a Consultation was granted. Palm. 521. Hill. 3 Car. B. R. Roberts v. Brown. — The same Diversity was taken per Cur. Palm. 359. Trin. 21 Car. B. R. in an Anonymous Case. — Same Difference Cro. C. 259. Mich. 7 Car. B. R. in a Spirit of the Case; where the Words were, Thou art a Bawd, and I will prove thee a Bawd; and because no Action lay at Common Law, a Prohibition was denied.

A Prohibition was moved for to the Spiritual Court upon a Libel there for calling the Plaintiff a Bawd. But the Court, after Argument and Time taken to consider thereof, refused, That a Prohibition did not lie, because the Word is not actionable at Common Law. Mich. 12 Geo. 2. B. R. Locky v. Dangerfield. — And denied the Libel in Raym. 115. Ward v. Marsh. — A Prohibition was denied for the Words, Thou art a Bawd, notwithstanding it was objected, That the Words were spoken at Westminster, and that the City of Westminster is an ancient City, and that there is an ancient Customs in the said City that Whores shall be punished by Imprisonment; and also that an Action had been brought for these Words in the Marshall’s Court, and Judgment for the Plaintiff. 10 Mod. 584. Hill. 3 Geo. 1. B. R. Savil v. Kirby.


14. If a Woman lies another for saying to her these Words, Thou art a Whore, a Prohibition lies; because it is not well known what is intended by the Word Whore, and it is but a Word of Anger. Cr. 3 Car. B. R. between Blackman and Stephens, per Cur. Prohibition was granted. Mich. 6 Car. B. R. between Yates and Glover, a Prohibition was granted.

15. If a Man lays to another, Thou art the Son of a Whore, and thy Mother was a Bawd, and he lies in the Ecclesiastical Court for this, a Prohibition lies, because there are but Words of Anger. Mich. 3 Car. between Lownes and Sir Arnold Herbert, a Prohibition was granted.

Prohibition was pray’d to the Ecclesiastical Court, and Son of a Whore, because they are only Words of Heat and Passion, and for that Purpose this Case of Lownes v. Herbert was cited; But the Prohibition was denied per to. Car. for the Words import, That his Mother is a Whore and he a Bawd; but in the Case in Rolls, the Words coupled with (Fly Mother is a Bitch) makes all the Words injurious, but here they are an Ecclesiastical Scandal. And in another Suit by the Mother for the same Words, a Prohibition was denied, for both the Mother and Son are scandalized by the Words. 3 Law. 119. Trin. 53 Car. 2 B. C. Vincent v. Aly. — S. C. cited and approved 11 Mod. 11. Trin. 6 Ann. B. R. in the Case of Hill v. Pope. Where Libel was in the Spiritual Court by the Mother and Son for calling the Son Bawd and his Mother a Whore by Imputation; And a Prohibition was denied.

Prohibition lies for calling one Whoreman. Per Richardson; Lat. 156 in the Case of Lewis v. Whitton cites Mich. 6 Jac. B. R. Cudworth v. Thomas.

A Libel &c. for these Words, Thou art the Son of a Whore, and thy Mother stood in a White Sheet for a Bawd, or Words to that Effect. It was moved for a Prohibition, because there are only Words of Heat and Passion. But to that the Court answer’d, That if it had been only for the first Words, (viz.) Thou art the Son of a Whore, there would have been only Words of Heat; but here he comes to Particulars, viz. (Stood in a White Sheet) Then it was moved, That here it is not a positive Affirmation in the Libel of speaking the Words, but there, or Words to that Effect. But to that the Court answer’d, That this is their usual Form in the Spiritual Court; and for time they pay, in the Months of January, February &c. all the Months of the Year. But Atkins inclined, That that was charged to all the rest Concerned, and so they would grant no Prohibition. Freem. Rep. 295. pl. 34. — Trin. 166. C. B. Anon. — See (P) pl. 2. It was laid by Hol Ch. That if A. calls B. a Son of a Whore, He can’t Libel in the Spiritual Court, but his Mother may; because in this Case it is no Spiritual Deposition to the Son, but it is to the Mother. 11 Mod. 112, 113. Patch 6 Ann. B. R. Hoskins v. Lee.

16. If a Man lays to a Woman, Thou art a Whore and thy Children are Bawdards, and for this the Woman sues in Court Christian, no Prohibition lies, for the Statute Cl. of Bawdards. That
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lives the Ecclesiastical Jurisdiction. Mich. 3 Car. 2. R. between
and keepst a Bawdy-House, a Prohibition was granted to per Cur. For saying, Thou art a Bawd, and keepst a Bawdy-House is punisheable by the Common Law, and for saying, Thou art a Wench, was held nothing punishable in the Spiritual Court; and a Precedent was shown. Mich. 2.

Jac. 5. 29. Phila. 6. that a Prohibition lies for saying, Thou art a Wench, and a Tainted Wench, and a Thirty Wences. Jo. 44. Mich. 21. Jac. C. B. Binch v. Wood. — So it was held per Cur. That saying thou art a Wench and a Thief, or thou keepst a Bawdy-House, are Temporal Matters, and the Party shall not proceed in the Spiritual Court; whereas if it were only, Thou art a Wrench, a Libel lies in the Spiritual Court. 2 Salk. 552. pl. 15. Mich. 1 Ann. B. R. Gaunt v. Hinckv. 505.

It was for calling a Woman Impudent Whore, and it was objected, That it was only a Word of Paffion, and that later Opinions have been, that unless some Act of Fornication was expressly, a Prohibition should be granted But it was denied, because Whoredom is an Offence of Spiritual Cognition. 1 Vent. 1. Hill. 23 & 21 Car. 2. B. R. Herbert v. Merit. —— Std. printed S. C. by Name of Phillet v. etc. but, this Case was ruled upon View of Precedents, which formerly were, that Prohibition should go, but of late that it should not.

Law: Prohibition was granted to try a Suit for calling a Woman Wench, but upon Consideration, after two Arguments at the Bar, and on the Bench, it was denied; for it is an Ecclesiastical Slander, and examinable and punishable in the Ecclesiastical Court, and not to be considered only as Words of Scolding and Heint. 2 Lew. 63. Trin. 24 Car. 2. B. R. Bettiiff v. Pepple. —— S. P. Frcem. Rep. 43. pl. 31. Trin. 1672. B. R. Medill & Ux. v. Buckold & Ux. and it seems to be S. C. —— S. C. of Bittiiff v. Dittiff. Vent. 220. las. It was for Words spoken of the Mriffh to her Servant, (viz.) Go tell thy Master what Wench, and I will be there. Halsey 1. C. 49. That they cannot be Words of Heint, as if spoken when the Parties had been coleading, but were spoken deliberately to the Servant in the Party's Absence; and said, That formerly they would not prohibit unless the Words implied some Act done, as in Cafe of Eaton v. Aplough Cru. C. 110 but 'tis reasonable this Suit should proceed, it being for Matter of Slander, which is to be punished by public Penalty; so no Prohibition was granted. —— But Trin. 1678. B. R. A Prohibition was granted to a Suit for calling a Woman Whore, because only a Word of Heint and Passion. Frcem. Rep. 296. pl. 321. Anon.

Where the Words were You are a Wench and pig in Merveyards; The Suggestion for a Prohibition was, That the Words were spoke in London where an Action lies for such Words; and a Prohibition was granted for that Reason: For otherwife Suits might have been in the Spiritual Court for such Words, tho' not singly for the Word Whore, it being a Common Word of Blawing; But otherwise where joined with other Words, which shew the Intent to defame in that Kind. Vent. 253. Mich. 31 Car. 2. B. R. Anon. But as for saying you are a Common Woman, and such Wences, as you are, never love any Children, the Suggestion for a Prohibition was, that there was a Cowton in London to punish Wores by Caroling and Whipping &c. and averded, That if any such Words were spoken by him, they were spoken in London &c. a Prohibition was denied per Cur. Because this Custom extends only where the Woman is directly called Whore, and not to Words from which it may be collected that she is a Whore. 2 Lutw. 1039. Hill. 5. W. 3. Houblin v. Milner. —— So where a Libel was for saying, Thou art a wicked old Dog, call tothem the Bitch your Whore it was fuggested here as in the Cafe above about the Cowton of London, whereupon a Prohibition was granted, and it was now moved for a Confinement, upon the Reasons in the abovementioned Cafe, that the Words must be directly and expressly defamatory, and inflinf upon the said Cafe; But per Cur. That Cafe hath been denied to be Law by this Court, and it hath been ruled, That a y Words, which are defamatory and punishable in the Spiritual Court, are triable in London by the Custom there in an Action on the Cafe, wherein Damages may be recovered, so in the principal Cafe the Prohibition was held good, and the Confinement was denied. 3 Mod. 1. Hill. 253. A Prohibition was joined with the Word Whore, it being punishable in London, London for calling a Woman Whore, the Court would not grant a Prohibition, without Oath made, that if any such Words were spoke, they were spoke in London and not elsewhere. 4 Mod. 240. 6 W. & M. B. R. Anon.

Libel &c. for their Words You are a damned Bitch Wzech, and a Pockey Whore, and if you have not the Bible you have the Pox; and moved for a Prohibition, because an Action lies at Common Law; and a Difference was taken, where the Word Pox could not be intended but of the French Pox, by the Words that were spoken with it, there Action lies; and Holt said, That where the Word Pox was joined with the Word Wrench, it should be intendeed of the French Pox, and Prohibition granted. 2. Mod. 242. Mich. 10 W. 3. Grimes v. Lovel. —— S. P. in the same Term 12 Mod 248. Whiffield v. Powel.

But where Words were, You are a Brandy-nosed Whore, and you Stick of Brandy; It was moved for a Prohibition that the Words rather charged Intemperance than Incontinency, but the Prohibition was denied. 2 Salk. 692. Pach. 4 Anne B. R. Acebury v. Barton. —— 11 Mod. 48. pl. 15. S. C.

Libel &c. for their Words S. F. Wife of R. F. is a Whore, and her Husband is a Cockt, and that she brought up his Daughter to follow the same Trade, and to be a Whore like herself, a Prohibition was moved for, and granted Nifi, but afterwards was discharged. Lutw. 1057. Mich. 5 W. & M. Moore without partition, is not to be punifhed, but proceeds per Cur. So for their Words spoken in London (viz.) Thou laufh a Biffard after the Husband's Death. It being after Sentence, Court doubted whether to grant a Prohibition, and yet per Cur. The Pillatt, notwithstanding the Sentence, may bring an Action in London for the fame Words, to which this Sentence cannot be pleaded in Bar; and to the Party be doubly punished for one and the fame Thing. Curia advide. vnt. Car. 34. 315. Hill. 5 W. & M. B. R. Hawkins v. Cook. —— Show 257. S. C. by Name of Coke v. Hawkins.
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Rule was to shew Caufc why a Prohibition should not go to a Suit &c. for the Words, 'She was never, nor has she ever had a Husband (and what is her hopeful Son) hunchard, That she was a Wife; And upon Deenie the Rule was discharged, for the Court was clear to Opinion that those Words were a Spiritual Declamation. Cbr. 498 Mich. 11 W. 3 B. R. Pils v. Smith.

A. said to B. That she made her Husband a Cuckold; B. libelled against A. in the Spiritual Court; and it was moved, that the Words were spoken in London, and that tho’ it is not calling her Wife directly, yet it is calling her fo ly Insultation. Per Holt Ch. J. if the Suffolk of London extends to punish a Woman that makes her Husband a Cuckold, then a Prohibition may be granted; For the Foundation to grant a Prohibition for calling a Woman Whore in London is, because they by Statute punish Words there by Curing them, and an Action lies there for calling a Woman Whore: And afterwards at another Day this Term they granted a Prohibition, because those Words are actionable in London. 11 Mod. 195. Mich. 7 Ann B. R. Bennet v. King.

17. If A Man says to another, Thou art a Drunkard, or a drunken fellow, or an idle drunken fellow, if a Suit be in the Spiritual Court for this, a Prohibition lies; for this is not Spiritual Slan- der. S. C. And ver. Rich. 8 Car. B. R. between Starr and Cuckold. Prohibition was granted: For they are Words of Heat and Passion, and not an Spiritual Declamation. P. 15 Car. B. R. 1 between Hopnes and Poyster, the Words were, Thou art a Drunkard, and drunk 3 Times a Week; Prohibition was granted against the Opinion of Cuckold. But after Rich. 15 Car. it was moved again, and per c. Prohibition was granted, for the Court laid they should not hold Sins of a Declamation, where they have not Original and Direct Wars of Cognizance of the Fact whereas he accused, as they have not, but Richard- son denied: because either the Court might meddle with Drunkennes to punish it; so that it is not merely Temporal; but he offered to the Grant of a Prohibition, and the Party may, if he will, after Declaration, demur there- to. And a Prohibition was granted.—Jo. 301. pl. 12. S. C. And Jones laid, That when he was Justice in C. B. a Prohibition was awarded in such Words in Martin Colthorpe’s Cafe—S. C. Cro. C. 350 by Name of Starr & Byrd, Burkhead, a Prohibition was awarded, because those Words tend to, and are punishable as a Temporal offence, and not in the Ecclesiastical Court. Jo. 341. Mich. 15 Car. B. R. Swayne’s Cafe seems to be—S. C. where the Words were, They art a common Cuckold, and a Prohibition was granted.—Mar. 6. pl. 11. Anon but is S. C. Bibd. 66 pl. 103. S. C.—Per Jones J. If Libels be calling him a Drunkard, a Prohibition does not lie; but otherwise it is for saying, that he was drunk. Richardson laid quere if not for another Reason, [vii.] Because the Act is punishable by the Statute. Lat. 155. 156. in Cafe of Lewen v. Whiton.

Where a Libel was for saying to a Parson, viz. Thou are a jolly drunken Parson and a drunken Papye, a Prohibition was granted, notwithstanding they were spoke of a Parson. 5 Sal. 258. pl. 9. Patch. 2 Ann. Brown v. Tanner.

18. If a Man says to another, thou art a Cuckoldly Knave, and Cro. C. 339. for this he and his Wife lie in the Spiritual Court for Declama- tion, no Prohibition lies; because the Words amount to a Spi- ritual Declamation, to wit, that the Wife was incontinent. Hilk. 9. Car. B. R. between Ieh and Collet, per Curiam, a Prohibition was denied.

calling another Cuckold; for they are Words of Paffen, and the speaking of them not punishable there. Sd. 238. pl. 14. Patch. 7 Car. 2 Knight v. Jacob.—Keb 890. pl. 53. S. C. Twidlen and Keel- ing J. held clearly that it was punishable; but Hyde and Whisham doubted, but ordered Caufc to be shown why it should not be granted.

Defendant was fined in the Spiritual Court for speaking these Words, (viz.) He is a Cuckold and a Witless, which is worse than a Cuckold, and t S. hath less with A’s Wife: it was alleged that for such Words of Spleen Prohibitions have usually been granted; but the Court was clean to Grant, and for tho’ the first Words are too general, yet being coupled in a particular Charge as to a particular Person, they are now not Words of Spleen or usual Di Curiae, but a Declamation liable in the Spiritual Court. And for a Prohibition was denied. Cro C. 110. Patch. 4 Car. C. Eaton v. Aylott.

So where the Words were, Thou art a Cuckold, and a Cuckoldly Knave, and a cuckoldly Rascal; a Prohibition was moved for; and cited 1 Cro 110. But it was denied per Curiam. for there cannot be a hirft Words, if they are to subserve the End of the Cause, but also because the Wife of a Cuckold may be the K. Words be true the mischief necessarily be a Whore: but if the Words had been spoken adjecively, as Cuckoldly Knave, there perhaps it might have been otherwise. Frencv Rep. 44 pl. 54. Trim. 1752. C. B. Davie v. Dorie — In such a Case Prohibition was granted Nisi Caufa Caufa was shown that the Baron and Upon Joining to the Suit, no Prohibition should go; Otherwise if he had lied alone; for the Words charge her with Incontinency, and to be reasonable that the will be that Suit in the Spiritual Court, and usually beings which the Husband hath against his Wife from the Court; but if the Baron had lied alone, a Prohibition should go, because he infers no such Danger by 


Prohibition.

the Speaking of the Words. And of that Opinion was the Court, and dillharg'd the Rule for the Prohibi-

19. If a Man lays to another, Thou art a Knave, a Purlere Knave, and a Pockete-laced Knave, and a Suit is in the Spiritual Court for their Words, a Prohibition lies. P. 11 Car. 3. R. between Parker and Moore, a Prohibition was granted.

20. If J. B. lays to J. D. It is reported that J. N. did, or does keep in his House a Man or Boy to Buggle, to which J. D. ansews, He, Ville Villain, would have done as much to me; If J. N. lies J. D. for this Defamation, advering himself to be a Sinner, a Prohibition lies; because this is not any Spiritual Defamation, and Buggling is made Felony by the Statute. Mich. 8 Car. 3. R. between Higgin and Coppinger. A Prohibition being granted before, a Conuittion was denied, and after a Demurre was joined upon the Declaration, an adjudged per Curiam, that the Prohibition is well granted. Intracr. D. 8 Car. Rot. 129. though the Suit in the Spiritual Court was for Words.

21. If J. A. lies B. in the Spiritual Court for a Defamation, Solicitor, for saying these Words. That A. was false Foriborn before the Judges, in that he swore that J. S. was no Tinner; A Prohibition lies, for anAction lies at Common Law for these Words if he be well laid. Mich. 8 Car. 3. R. between Robinson and Taylor. Prohibition granted per Curiam.

22. If A. a Surrogate, lies in the Spiritual Court against B. Ex Officio pro Salute Animae & morum Reformacione ex Promotione C. because C. being a Proctor of the Spiritual Court, and a Master of Arts, the said B. laid to him, Thou art, or He is a Scabbed Knave, and a Pickeler Bum-bailiff; or thus, I scorn to be abused by such a Scabbed Knave, or such a Pickeler Bum-bailiff as thou art; and avers, that he said this is to desame C. and to concern the Ecclesiastical Jurisdiction, a Prohibition lies; For this is not any Spiritual Slander, nor any Defamation of the Court. Mich. 8 Car. 3. R. between Cory and Ward, per Curiam. And a Prohibition being before granted upon this, and a Plea and Demurre for a Conuittion, the Court form'd now of Opinion, that no Conuittion ought to be granted. But before this was determined, Cory died.

God. 246. Trin. tione Morum, because J. S. was a Doctor of Divinity, and Parson of Shipling in the County of and J. D. laid to J. S. you were twice overthrown by the Parishioners of Shipling. J. D. repled,
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plied. He lied, It was but Once; whereupon J. D. replied, He lied, stated; E. Admiration.

(Age or age of the Smith's Son, or the Son of a Blacksmith, a Prohibition lies; for here is not any Spiritual Slander, and but a returning the Lie upon the Doctor who gave it strict. Mich. 8 Car. B. R. between Hye and the Prohibited Dollar Wells. Pet Curiam, except Richardson, a Prohibition be fore granted, and now Denomuncer for a Consultation, the Prohibition shall stand. Mich. 9 Car. this being moved again, per Curiam it seems that the Prohibition shall stand.)

It was moved for a Prohibition, because they are only Words of Heat and Scolding; and cited 2 Roll. 296. No. 416. Part No. 22. 23. And if he had lied he had been a Common liar, it had been Clear of Derivation. And Per Ellis, then certainly it had been good Caufe to sue in the Spiritual Court. Per Atkins, He is a liar if he tell but one lie, and why should we intend it in the worst Sense of a Common Lie? so that the Question is, How shall it be intimated? Vaughan said, That Cafe in Roll 29.—charges him with one particular Act only, viz. of lying upon the Subject Matter. Sed admiss. Frex. Rep. 30, s. pl. 100. Petch 1673. Glyve v. Gibbent.

24. If A. B. a Feme, says of J. S. a Minister, He is a worthy Preacher, he preaches against Pride, and brings a Trullerud to Church with him, (inmuendo his Wife,) my Husband will not suffer me to be abused by such a Knave; this is a Spiritual Declaration, for which, if a Sure be in the Spiritual Court, no Prohibition shall be granted. Ed. 31 Car. B. R. between Vaughan and Daniels, per Curiam. Prohibition denied.

for a Prohibition, because the Words are actionable at Law, and it was granted; but afterwards a Consultation was granted, because they concern an Ecclesiastical Matter and Person, and are fit to be tried there. 5 Lev. 17. Petch. 55. Car. 2 C.B. Crandcn v. Walden.—but where the Words in the Libel were laid to be, That the said Price (a Parson) behok'd in my Presence with a Scolding, to give the Sacrament; and that he also laid and declared, That the Adams and Exhortations, and other Spiritual Directions of him the said Price from the Pulpit, are not fit to be taken, and that he was not fit to give the Sacrament; and that he the said Clerk, speaking to a Third Person said, You could not receive the Sacrament from such a Puppy as the said Price was, you will live never so long in his Parish. To prevent a Prohibition it was urgt, That there were not Words of Heat but of Deliberation, and highly touch'd him in his Function; and cited the Cafe of Crandcn and Maller—2 Lev. 17. But Holt Ch. 3. 3d. (to which the Court did not disapprove) That tho' the Words did reflect on him in his Profesion, yet seeing they do not charge him with any thing for which he is obnoxious to the Spiritual Court, therefore a Prohibition was granted, and it was ordered to come before the Court of B. R. by Declaration and Denumer. 11 Mod. 140. Mich. 6 Ann. B. R. Clerk v. Price.—Afterwards in Hilt. 7 Ann This Cause came on again, but admiss.—Ibid. 208. S. C. but no Judgment.

25. If A. Woman, Sis B. in the Spiritual Court, for Say. C. 466. 8. C. Cro. ing of her, Thou art a Welch Jade, averring in the Libel, that the said Words signify as much as if he said of her that she was a Whores. No Prohibition shall be granted; for this is a Spiritual Declaration. 31 Car. B. R. a Consultation granted, after a Prohibition before granted, upon Showings of a Libel for laying, Thou art a * Thief, and a Welch Jade, but now the Proctor comes into Court and curseth the Court, that the Word Thief was not in the Record in the Spiritual Court, and upon this a Consultation was granted, between Jeffries and Inc, per Curiam.

Thief, and a filthie Jade; and suggested in the Libel that Jade signified Whore. A Prohibition was denied per rot. Car. because the Words are malicious. 2 Show. 436. 436 pl. 451. Mich. 2 Jas. 2 B. R. Warwick v. Skinner & al. —But the Reporter adds, Sed quere vim Rationis; for an Averment seems necessary. And says that Mr. Powell (the Counsel that mov'd for the Prohibition) Inform'd him that the next Day they had a Prohibition granted in C. B.

* Where the Words are con- trary, so that Allen will be for Part in the Temporal Court, Prohibition will go for all; as it had been for laying, Thou art a Whore and a Thief, the Sait in the Spiritual Court shall not be lay'd for the Word Thief only but for the whole. Per Twifden f. Sd. 552; in the Cafe of Meller v. Herbet.

26. 9 E. 2. cap. 4. Enacts, that in Defamations the Prelates may con- se 2 Hilt. rol without the King's Prohibition.

27. A Man may sue in the Spiritual Court for calling him Falstaff, C. 3d cited Madeure, or Usurier Sec. F. N. B. 51. (1)
Prohibition.

28. If a Man give Evidence to an Inquest to indict one, he cannot sue for this Defamation in Court Christian. 2 Inst. 493.

29. If a Man call one a Perjured Man, he must take his Remedy at the Common Law. 2 Inst. 493.

30. C. libelled against A. for calling him Bajlard-maker. The Defendant justified, because he was proved to be so before two Justices of Peace, according to the Statute 18 Eliz. which Plex the Judges in the Ecclesiastical Court relisted, whereupon a Prohibition was awarded. But per Haughton, if the Defendant had not pleaded the Conviction, but had only justified, and offered to prove it, and they had refuted his Plea, no Prohibition should be granted; But his Remedy had been by Appeal. 2 Roll. Rep. 82. Patch. 17 Jac. B. R. Cooke’s Cafe.

31. The Plaintiff spoke of the Defendant these Words: A. is a Lying Fellow, and has lain with all the Women between H. and B. and lies with so many Women, that he scarce lies with his Wife. The Plaintiff was sued for these Words in the Ecclesiastical Court. A Prohibition was prayed, because these Words import a Thing impossible, and are too general. But denied per Curiam, because they import him to be an Adulterer; and this is a Matter properly in the Constance of the Ecclesiastical Court. Freem. Rep. 283. pl. 325. Trin. 1675. B. R. Thornton v. Pickering.

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32. I will not venture myself with her, (being spoke of a Midwife licensed) she is a Whore, and will kill me, and bury me in the Garden, as she did her Bajlard; for which Words a Suit was in the Ecclesiastical Court, and prayed, and upon Caufe they were denied; the Court taking them not to be actionable at Common Law. Skim. 86. Hill. 35 Cat. 2. B. R. Anon.

33. A Libel was for these Words, viz. She is a Bitch, a Whore, and an Old Bawd. A Prohibition was prayed, because some of the Words are actionable at Law; and some punishable in the Spiritual Court, and so prayed a Prohibition Quod those Words that are Actionable at Law; and it was granted, because the Words were an Entire Sentence, and spoken altogether; and if a Prohibition should not be granted, the Plaintiff might be doubly vexed. 3 Mod. 74. Mich. 1 Jac. 2. B. R. Anon.

34. A Libel was for saying, You are a Rogue and a Rascal, and have hired Fellowes to swear false. It was sued for a Prohibition, That though the Words should not be deemed Words of Heat &c, but advised and malicious, then they import an Offence against a Statute Law, and, That where no Suit lies for the Principal in that Court, no Libel can be there for defamation in the charging such Offence. And a Prohibition was granted. 2 Show. 454. pl. 417. Mich. 1 Jac. 2. B. R. Venners v. Allen.

35. Prohibition was granted to the Spiritual Court upon a Libel, for calling him Rogue and a Rascal, and saying, that he kept a Whore in his House, and thereupon the Plaintiff there had Sentence. The Defendant appealed to the Archives, where the Sentence was affirmed and remanded, and then appealed to the Delegates, and was thence remanded for Non-Prosecution there. Upon a Motion to discharge the Prohibition it was infited, That the Words were only of Heat and Scolding, and to say that the Plaintiff kept a Whore in his House, shall not be
be understood that he knew her not to be so, but that he kept her as a
Whore, especially being after Sentence, and of that Opinion was the
Court, and granted a Confinement. 3 Lev. 350. Patch. 5 W. & M. C.
B. Elliot v. Chamberlain.

36. A Libel was for these Words. You are a Rogue, Rascal, Where-
Matter, and son of a Purfamed Affidavit Bitch. A Prohibition being
moved for, all the Words were waived but that of Whore-Matter; and
it was urged, That this was only a Word of Heat. But per Holt Ch.
J. To lay fo of a Man is the fame as calling a Woman Whore, which
is an Ecclesiatical Slander; That to call a Man Cuckold was not an Ec-
clesiatical Slander, but Wittal was, for that imports his Knowledge
and Contemn to the Adultery of his Wife; but to call a Man Impudent
Brazen-fa’d Belschino Words of Paffion, and import no Crime
or Difcredit any more than Devil, or Prince of Darkness. 2 Salk. 692.

S. C. Comb.
226. Dolben said, That a Prohi-
bition had often been denied for
calling one Whore, and there was
the like Refon for Whore-
matter; and cited 1 Cro.

590. And that the Prohibition was denied per tot. Car. and they said they would not encourage defam-
tory Words.

37. Libel was for these Words spoken of a Parson, he has no Soufe,
he is a Drudge and a Blockhead, and he wondered the Bishop would lay his
Hands on fuch a Fellow, and that he deferved to have his Gown pulled over
his Ears. A Prohibition was granted; for a Parson is not punishable in the Spiritual Court for being a Blockhead more than another Man; and
it being urg’d, that he might be deprived for want of Learning, Holt
Ch. J. laid, if that be his Cafe, he must bring his Action at Law, because
Deprivation is a Temporal Damage. And a Prohibition was granted.

38. A Motion was made for a Prohibition to the Spiritual Court,
upon a Libel there for these Words. He is a great Rogue, As great a Rogue
as ever was hanged, and deserves to be hanged more than Dr. Blute; a Pro-
hibition was granted, because no Spiritual Defamation. 11 Mod. 112.

(O) Where the Spiritual and Common Laws differ. If
the Suit be according to the Spiritual Law, a Prohi-
bition shall be granted. In the Matter.

1. If a Man buys Wood, and expends it in his House, though the
Vender may be settle for Tithes of it by the Spiritual Law at (7)
the Election of the Parson, per se he ought not by the Common
Law, because he expends it in his House, a Prohibition shall be
granted; as was granted P. 14 Ja. 2. between Parson Ellis and Drake.

2. So if a Leette of Paffure rendering Rent be sted for Tithes of the
Rent and not in Kind, a Prohibition is, because it is against the
Common Law; For he ought to st for Tithes in Kind, as was ad-
judged, 14 Ja. Ellis and Drake before.

3. If a gives a Legacy to B. and makes C. his Executor, and dies
and after C. dies intestate, and D. takes Letters of Administration
of the Goods of C. and after B. dies D. as Administrator of C. for this
Legacy, supposing C. when he was Executor, to have waited the Goods
of A. a Prohibition lies; because by the Common Law this was a
Personal Tort for which the Administrator cannot be charged. P. 11
Car. V. R. between Asmod and Fatherly by 2 Justices against one.

But since this Caj Ad-

10. Sid. 248. And 1 Cro. 532. But Eyrk. J. said that that Cafe had been since exploded — S. C. Skin.
390. And that the Prohibition was denied per tot. Car. and they said they would not encourage defamatory Words.

11. Cited 1 Cro.
4. Where a Man grants the Tenth Part over and above the Tithe, which he ought to pay to the Church, there, of this the Lay Court shall have Jurisdiction. Br. Difmes &c. pl. 1. cites 44 E. 3. 5.

5. The Defendant in a Squer Implecti (panding the Suit in B. R.) billed against S. one of the Parishioners of the Church in Question for Tithe, and De Jure Rectoris, alleging, That he is Verus & Indubitatus Reator &c. S. plead there, That G. was not Parson, but that M. was; which Plea they refuted, and gave Sentence against S. and S. pray'd a Prohibition, for that it appears to the Court of B. R. by a Verdict given here, That M. and not G. is the true Parson. Coke Ch. J. thought a Prohibition should be granted; for should G. have the Tithe, M. might also charge S. and to S. would be twice charg'd; and it appears to the Court, That M. is the true Parson, and yet they of the Spiritual Court will certainly sentence G. to be the true Parson, because they look upon M.'s Institution to be void by reason of a Cavet enter'd, in which Respect our Law and theirs differ Ex Oppolito, for the Libel is, That G. is Verus & Indubitatus Reator, and that the Suit is De Jure & Titulo Rectoris, whereas Parson or Not Parson is triable by the Common Law; quod quid concedimus Per Doderidge, who said, That Parson or Not Parson comprehends Induction; which Coke granted, and a Prohibition was granted. 1 Roll. Rep. 228. pl. 36. Trin. 13 Jac. B. R. Glover v. Shadd.

6. It was agreed per Cur. That Real Compositions for Endowment of Vicaries shall be expounded by the Judges of the Common Law, and therefore it the Spiritual Court meddles with it a Prohibition lies. Litt. Rep. 263. Pach. 5 Car. C. B. Caff of Vicaries.

7. A. made 2 Executors B. and C. and died; B. made J. N. his Executor and died; C. died intestate. A Legatee of A. su'd J. N. in the Spiritual Court for his Legacy, who pleaded this Matter, but they there refused the Plea; whereupon he pray'd a Prohibition, but it was deny'd, because the Matter is Testamentary; and perhaps J. N. has all the Goods in his Hands, and is Executor De fide mort, and that there is no body else in this Case to be su'd to recover the Legacy from; And tho' the Survivor by our Law shall have all, it is not so perhaps in their Law, to which this Matter belongs; And if they proceed ill he ought to appeal, but this Court will not prohibit them, and a Prohibition was denied. Lev. 104. Pach. 17 Car. 2. B. R. Guillian v. Gill.

8. When a Question arises concerning the Jurisdiction of the Spiritual Court, as whether they ought to have the Probate of such a Will? whether such a Disposition of a Personal Estate be a Will or not? whether such a Will ought to be proved before a Peculiar or before the Ordinary? whether by the Archbishop of one Province or another, or both? and what shall be bona Notabilia? In these or the like Cases the Common Law retains the Jurisdiction of Determining. Per North Ch. J. 1 Mod. 211. pl. 44. Pach. 28 Car. 2. in C.B. Anon.

(P) Where the Temporal and Spiritual Law differ in the Manner of the Suit.

1. If Baron and Feme are divorced Causa Adulterii, and after the Feme sues alone without the Baron for a Defamation; tho' the Divorce does not dissolve the Marriage, yet because the Feme may by the Court of the Spiritual Law sue alone in such Case, No Prohibition shall be granted, tho' it be contrary to the Usage of our Law. By Reports. Metam and Metam a judicis.
Prohibition.

Spiral Court a Feme covert may sue alone in every one of the following cases, viz. When the is
Exceute or Administrator, or Legatee or Legacy, or Defaying or Deceased. Per Dr. Pliul. 12 Med.

2. If a Hn labels in Ecclesiastical Court for laying of certain
Words (naming them) Aut in Elle€u Confimilia ; Tho' such Declara-
tion be not good at the Common Law, yet such Label is good by V
nage there, and therefore no Prohibition shall be granted. Yill. 11

3. If a Feme Covert be sued and convicted, and Condeared, and Costs taxed, the Baron not
being Party to any thing thereof, yet because it is the Custom of the
Spirital Court, no Prohibition shall be granted. Will. 14. B. R.
Bennet's Case. Prohibition denied.

4. If a Hb be sued in the High Commissio Court Ad Infan-
tiam Partis for Incest, and there it appears that there was a Fact
committed, and a Feme and one witness that the Defendant was guilty
thereof, yet because there were not 2 Witnesses he was put to his Purgat-
ion, because there a Hb cannot be condemned by one Witness, and
he purged himself accordingly, and yet there they gave Costs to the
Party who prosecuted this Suit, according to their Viage in such
Cases no Prohibition shall be granted ; For tho' he escapes the En-
force of the Court by the Strictness of their Law for Want of a Wit-
ness, yet for the Premption that he is Guilty, they may well give
Costs according to their Law. P. 11. Ja. B. R. Corneil's Case re-
folled.

5. Upon a Suit * in the Ecclesiastical Court Ad Infan-
tian Partis, if the Defendant pleads the King's Pardon, and after Costs are
taxed for the Plaintiff, because the Pardon is in manner a Concession
of the Fact, tho' this be their Custom there, yet a Prohibition
shall be granted, for in as much as the Matter and Suit is pardoned,

6. If a Baron and Feme are sued in the Ecclesiastical Court for
Polygamy, and there it appears that the Feme was married before to
J. S. within the Age of Confent, and after diigraced at the Age of
Confent, and married the Defendant, and so the Court acquitted the
Defendants, yet if they tax Costs to the Plaintiff, no Prohibition
shall be granted, in as much as they have Jurisdiction of the Cause
and it is their Viage to tax Costs, where the Plaintiff had Cautum

7. If a Parson sues upon the Statute of 2 F. E. 6. in the Spiritual
Court for the Double Value for not setting forth of Tithes, and the
Defendant confutes that he set them forth, and that they would not
admit the Proof of it there by one Witnesses. Nob Prohibition lies, be
cause they have Coninance of the Matter. Bilt. 9 Car. B. R. be-
tween Pide and Sir Edward Powel. Per Curiam. Prohibition de-
ned.

8. If the Parishioners sue the Churchwardens of the Parish to
make an Account in the Ecclesiastical Court, and in this Suit Costs
of Suit are taxed for the Parishioners against the Churchwardens, and
after the Churchwardens pay the Costs to one of the Parishioners, and
thereupon he, who receives it, gives a Release to the Churchwardens of
the Costs, and this Release is afterwards pleaded by the Churchward-
ens against the other Parishioners in the Ecclesiastical Court, and is
not followed there, yet no Prohibition shall be granted, because they
having Coninance of the Original (to wit) of the Costs they shall have
Coninance also, what shall be a sufficient Payment of them. Bich.
13 Car.
Prohibition.

15 Car. B. R. between *Homes and Godwin*, *per curiam*, a Prohibition denied.

Accounts paid and auditd. The Parishioners appeared, and objected to Part of the Account, which after some Variation the Judge allowed, and ordered the Parish to pay 6s. 6d. of Suit. The Parish appealed from this Sentence to the Court of Arches, and pending the Appeal mov'd for a Prohibition; And it was argued, That tho' the Ordinary at the Influence of the Parishioners may cite Churchwardens to bring in their Accounts, as being Officers amenable to him, yet he cannot take the Accounts between them, as he has done here, at the Peril of Costs to the Parishioners; but the Parish must settle it among themselves, or at a Vehfly; and that it had been so determined several Times. And of this Opinion was the Court. And held that where it appears upon the Face of the Proceedings that the Court had no Jurisdiction, a Prohibition may be granted after Sentence; and accordingly a Prohibition was granted. *Trim*. 13 & 14 Geo. 2. B. R. Adams v. Rudge.

9. Trespass of 2 Loads of Underwood taken in D. the Defendant said, That the Plaintiff is Parish of D. and he is Vicar there, and the Underwoods were Tithes severed from the 9 Parts, and that the Vics have had it Time out of Mind, and that the Plaintiff came and claimed them as Parcel of his Tithes, and the Defendant took them as his Tithes, which is the same Trespass, Judgment &c. And because it was after Importance the Defendant could not plead to the Jurisdiction as he might at first, because it is between Parson and Vicar, and yet because it appeared to the Court that it is between Parson and Vicar, and the *Lay Court* takes one Manner of Prohibition and Spiritual Court another, therefore the Court *Ex Officio* rejected them of Jurisdiction by Award; quod nota. Br. Jurisdiction, pl. 79. cites 22 E. 4. 23.

10. One libelled in the Spiritual Court for Tithes, and died, and his Executors revived the Suit. Doderidge J. said, That the Suit being lawfully commenced shall continue; For by the Civil Law the Death of the Plaintiff or Defendant is not any Abatement of the Libel; But they have a Reviver, as the Common Law has a Resumption in Recovery of Ward, and where a Court is once lawfully possessed of a Cause, and has Jurisdiction, it would be hard to grant a Prohibition, and Prohibition was denied. *Per tot*. Cur. *Cro.* J. 483. pl. 20. *Patch* 16. Jac. B. R. *The Bishop of Carlisle's Cafe.*

11. A Prohibition was prayed to stay a Suit against J. S. Leeffe of a Rectory, out of which a Pension was demanded. It was suggested, That the Lord Biron had 3 Parts in 4 of this Rectory, upon which the Pension was chargeable, and that the Suit against one alone ought not to be, as in an Affic for Rent-charge all the Tertennants are to be named, and here the Party has an Election to sue a Writ of Annuity, and if lo, he must have named all that had been chargeable. *Per Cur.* 'Tis true, in our Law it were a good Plea in Abatement, but perhaps their Law and Court is otherwise, and here they have Jurisdiction, and may proceed according to their own Rules, or if not, you may have an Appeal; whereupon a Prohibition was denied. *Vent.* 335. *Patch* 31. Car. 2. B. R. Anon.

12. M. being prosecuted in the Spiritual Court by a Proctor for his Fees in a Suit brought by the said M. against her then Husband Young to be divorced, prays a Prohibition; suggesting, That the was Feme Convent, and as such not liable to be sued singly to pay the Fees. *Per Parker Ch. J.* If the Spiritual Court has the Jurisdiction, perhaps it is not necessary by the Forms of their Law, for the Husband to be named in the Suit, as in the Cafe of an Executrix. And the Reason of the Difference between the Common Law and the Civil Law is this, That in the Spiritual Court the Husband, tho' not named, may come in Pro Interesse suo, and make Defence himself, should the Wife defend the Cause. *10 Mod.* 261 & 264. Mich. 1 Geo. 1. B. R. Clerk v. Lee.

13. Where a Prohibition is granted *Pro Defendens Titannis* it is upon Supposition of Different Rules established by the Spiritual and Common Law, as in Cafe of Prescription. *Per Cur.* 10 Mod. 272. Mich. 1 Geo. 1. B. R. in the Cafe of Cottingham and Loits.