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Scobel 1670

Modus tenendi Parliamentum:
O R,
The Old Manner of holding
PARLIAMENTS
in ENGLAND.

Extracted out of our Ancient
RECORDS.

With certain Municipal Rights and
Customes of *England.*

Together with some

PRIVILEGES OF PARLIAMENT :

The Manner and Method how Laws are
there Enacted by *Passing of Bills.*

Collected out of the Journal of the
House of COMMONS.

By W. HAKEWEL of *Lincolns-Inn*, Esq.

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TO THE INTELLIGENT
READER.

IT is no improper Character
which may be given of the Law,
that it is nothing else but Reason
refin'd, or Reason regulated;
it may also be well called the Re-
sults of Counsel and Wisdom, af-
ter mature and long deliberation;
for *Deliberandum est diu, quod
statuendum est semel*: That
which is to bear the stamp of a
Law, must be a long time a mould-
ing: there must be previous de-
bates, bandings of arguments, and
clashings of opinions pro & con
go before: for as we find that fire issu-
eth forth from the concussion of flint
and iron, so truth comes forth out of

To the Reader.

*the eventillations and claskings of
several opinions. This hath been
alwayes the mode and method of
our English Parliaments, that high
National Court, which may be said
to be the fountain whence our Lawes
do spring: which Court being com-
posed of a number of the choicest
and most judicious Gentlemen of
the whole land when there assem-
bled, have power not onely to consti-
tute and enact new Lawes, but to en-
large, alter, repeal, disannul, or revive
any old Statute, Act, or Ordinance
for the common good and incollumi-
ty, as also for the welfare and se-
curity of the Nation: This great
Council hath been alwayes held to
be the Bulwark of our liberties, the
main boundary and bank which
keeps us from the inundations of
tyrannical power, from arbitrary
and unbounded will-Government;
It is the only prerogative of Parlia-
ment jus dare, and afterward of the
grave*

To the Reader.

have Judges upon their several tribunals *jus dicere*, to declare, expound, and put in execution the Lawes, and Constitutions which have been there enacted.

This present Treatise consisting of sundry Material parts, will shew us the manner and legal forms how this high Court of Parliament hath been held from the beginning. It was compiled by that worthy Gentleman Mr. Hakewel, one of the Benchers of Lincolns-Inn, a grave and judicious Councillor at law, one who had sat in divers Parliaments, and having out of his great reading, and long conversation with antiquity, extracted those remarkable observations whereof this book is composed, it was thought expedient to publish it for the generall good. Therefore it is very fit to be read by all free-born Subjects, for thereby they will inform
their

To the Reader.

*their understandings upon what
grounds our Lawes and Liberties
are founded.*

The

THE MANNER
OF HOLDING
A
PARLIAMENT
in the second of

EDWARD the Confessor
Son of K. *Etbeldred*.



Here is described the
Manner after which
the *Parliament* of the
King of *England*, and
of his English People
was kept in times of

King *Edward* the Son of *Etbeldred* the
King; which manner was rehearsed
by the discreet sort of the Kingdom,
before *William* Duke of *Normandy*, the
Conqueror, and King of *England*; the
Conqueror himself commanding this;
and by himself approved and used in
in his times, and in the times of his
Successors Kings of *England*.

B

Of

Sold. Hon.
610. ad 615
4 Supp 12.

Of the Summons of Parliament.

The Summons of *Parliament* ought to go forty dayes before the first day of the *Parliament*.

Concerning the Clergy.

The *Parliament* ought to be summoned and come, the Arch-Bishops, Bishops, and other chief of the Clergie, who come thither by holding of some County or Barony, and because of such tenure, and not otherwise; and none of the less degree of the Clergy, unless their presence or coming thither may be required in some other respect then by their Tenures; or, unless they be of the Kings Counsel, or their presence may be deemed necessary, or accounted profitable for the *Parliament*: and the King is bound to minister unto them their costs and expences in coming and tarrying at the *Parliament*. Neither ought such of the lower degree of the Clergy-men be summoned to the *Parliament*, but the King was wont together to send out

Per Comitatum & Baron. summoneri debent. Milites Clerici non summoneri debent, sed per suorum praesentiam necessaria fuerit. Rex solebat talibus brevibus sua mittere, regans quod Parliament. suo interessent.

send out his Writs to such men, requiring them that they should be present at his *Parliament*.

Also the King was wont to give Summons to the Arch-bishops, Bishops, and others exempted persons; or to Abbots, Priors, and other Ecclesiastical persons, that have by such exemptions and priviledges their several jurisdictions, according to their several Deaneries, and Arch-deaneries of *England*, through their Deaneries and Arch-deaneries aforesaid, should cause to be chosen two skilful and fit Proctors or Clerks of the Convocation-house out of the same Arch-deanery, to come and to be present at, to answer, to undergoe, to alledge and to do there, that which all and every Parson of their Deaneries, and Arch-deaneries should, if they, and all, and every of them were personally present there. And that such Proctors or Clerks of the Convocation house come with their two Warrants, sealed with the seals of their superiours, because they are chosen and sent to such a Proctorship: The one of which Letters should be delivered to the Clerk

of the *Parliament* to be enrolled, and the other remain in the Proctors and Clerks themselves: and so under these two kinds of Summons, the whole Clergy ought to be Summoned to the Kings *Parliament*.

Concerning the Laity.

Also all and every Earl, and Baron, and their Peers ought to be summoned and come to the *Parliament*, to wit, those that have Lands and Revenues to the value of a whole County, which maketh four hundred pounds in the whole; or to the value of one whole Barony, to wit, Thirteen fees, and the third part of one Knights fee, every fee being reckoned at twenty pounds, makes in the whole, four hundred marks; and no lower Lay-men ought to be summoned to come to the *Parliament* by reason of their tenure, unless their presence for other causes be profitable and necessary to the *Parliament*; and then they ought to be dealt withall, as is said of the lower degree of the *Clergy*, men who are not bound by reason of their tenure to come to the *Parliament*:

Also

Summones debent omnes & singuli Comites, Barones & episcopi qui tenent ad valent. unius Comitatus, vel Baron. in iura.

Minores laici summoneri non debent.

Also the King was wont to send his Writs to the Warden of the Cinque Ports, that he might cause to be chosen to come and be present at the *Parliament* to answer, undergo, and do there that which their Burroughs themselves should do, if all and every one of them were personally present there; and such Barons should come with their two Warrants sealed with the common Seals of their Ports, to shew that they were orderly chosen, and sent from the Baronies to that end; the one whereof shall be delivered to the Clerk of the *Parliament*, and the other to remain with the Barons themselves: And when such Barons of the Ports, having obtained License, should depart from the *Parliament*, then they were wont to have a Writ under the great Seal of the Warden of the Cinque Ports, that they might have their reasonable Costs and Expences, meet for such Barons, out of the County of the Port from whence they came towards the *Parliament*, until the day wherein they returned home

to their own houses, there being express mention made in the Writ of the stay they made at the *Parliament*, and of the day wherein to return. Yea, there was wont sometimes mention to be made in the Writ, how much such Barons should take of the Counties from whence they came for a day, to wit, some had more, some had less, according to the ability, and honesty of the persons themselves; neither were they wont to put down for two Barons above twenty shillings by the day, and yet therein had they respect to the charges of their stayings, labour, and expence; neither were such uncertain expences to be put down, and allowed by the Court, for all and every one so chosen and sent for their Counties, unless the persons themselves were honest, and behaved themselves well in the *Parliament*.

*Touching the Knights of
the Shire.*

Also the *King* was wont to send his Writs to all the Sheriffs of *England*, that every one might cause to be

be chosen out of his own County, through the Countrey it self, two Knights, fit, honest and skilful, to come to his *Parliament*, after the same manner which is spoken of the Barons of the Ports; and for their Warrants they should come after the same manner.

But for the expences out of one County, for two Knights, there was not wont to be set down and allowed above one Mark a day, and now eight shillings a day, to wit, for every one of them four shillings.

Touching the Citizens.

After the same manner Commandement was wont to be given to the Major and Sheriffe of *London*, the Major and Bayliffs to the Major and Citizens of *York*, and of other Cities, that they for the County of their City should choose two fit, honest and skilful Citizens to come to the *Parliament*, after the same manner which is spoken of the Barons of the Cinque Ports, and the Knights of the Shires: and the Citizens were wont to be

Peers and equals with the Knights of the Shires in expences, all the while they came, tarried, and returned from the *Parliament*.

Touching the Burgesſes.

After the ſame manner commandment was wont to be given to the Bailiffs and honeſt men of Burroughs and Towns Corporate, that they ought of themſelves and by themſelves to chuſe two fit, honeſt and ſkilful Burgeſſes to come and be preſent at the Kings *Parliament*, after the ſame manner as is ſpoken concerning Citizens; but two Burgeſſes were not wont to receive by the day for their expences above ten ſhillings, and ſometimes not above a Noble, which was wont to be taxed by the Court, according to the greatneſs of the Burroughs, and the perſons ſent. Hitherto hath been declared the form, quality, and perſons, how long a time before, the ſummons of the *Parliament* ought to be made, and who are thoſe that ought to come by the ſummons, and who not.

Now ſecondly, we muſt ſhew who they

they are which by reason of their Offices ought to come, and are bound to be present at the *Parliament*-time without summons : whereupon we must make the two principal Clerks of the *Parliament* elected by the King and his Council, and other secondary undertakers, of whom, and whose Offices we will speak more specially afterwards ; and the principal Cryer of *England* with their Under-Cryers ; and the principal Porter of *England*; which two Offices were wont to belong to one person : These two Officers are bound to be present the first day.

The Chancellor of *England*, the Treasurer and Chamberlains, and Barons of the Exchequer, Justices, and all the Clerks, and the Kings Knights, together with them that sue for the Kings Pleas, who are of the Kings Council, are bound to be present the second day, unless by order they be excused,

Touching the beginning of Parliament.

The Lord the King shall sit in the midst of the great Bench, and is bound to be present in the first and last day;

day of *Parliament*. And the Chancellor, Treasurer, Barons of the Exchequer, and Justices were wont to record the defaults made in *Parliament*, according to the order following.

In the First day the Burgesſes and Citizens of all *England* ſhall be called; at which day if they do not come, the Shires ſhall be amerced at an hundred pounds.

2^d day is
omitted.

In the Third day of the *Parliament* the Barons of the Cinque-Ports ſhall be called, and afterwards the Barons of *England*, after them the Earls: Whereupon if the Barons of the Cinque-Ports do not come, the Barony from whence they are ſhall be amerced at an hundred Marks, and an Earl at an hundred pounds. And after the ſame manner it muſt be done with thoſe that are equal to Earls and Barons, namely, which have Lands and Revenews to the value of an Earldom, or of one Barony, as before ſaid.

In the Fourth day, the Proctors of
the

the Clergy or Clerks of the Convocation-house shall be called; if they come not, their Bishops shall be amerced for every Arch-deanery one hundred pounds.

In the First day, the Deans, Priors, Abbots, Bishops, and at length the Archbishops shall be called; who if they do not come, every Archbishop shall be fined at an hundred pounds; and every one holding a whole Barony or Abbots, Doctors at an hundred Marks.

In the First day Proclamation ought to be made in the Hall, or in the Monastery, or in some publick place, where the *Parliament* is to be held, and afterwards publickly in the City or Town, *That all those who would deliver Petitions or Bills to the Parliament, that they may deliver them the First day, and so other five days next following.*

Teach-

*Touching the Preaching at the
Parliament.*

An Arch-bishop or Bishop, or some great Clerk discreet and eloquent, chosen by the Arch-bishop in whose Province the *Parliament* is held, ought to preach one of the said five dayes of *Parliament*, and in the presence of the King: and this must be done when the *Parliament* for the greater part shall be joyned and gathered together. In his Sermon, he shall admonish and exhort the whole *Parliament*, that they with him humbly pray God, and worship him for the peace and tranquillity of the King and Kingdom, as shall be said in the Title following.

*Touching the Speech for the
Parliament.*

After preaching, the Chancellor of *England*, or the Lord chief Justice of *England*, or some other fit, honest, and eloquent Justice or Clerk chosen by the Chancellour, or chief Justice themselves, ought, standing to pronounce

nounce the causes of the *Parliament*. Whosoever they be, whilst they speak, shall stand (except the King) so that all of the *Parliament* might hear him that speaketh, or if he speak something darkly, or talk in a low voice, let him speak again, and speak louder also, or let another speak for him.

*Touching the Speech of the King
after the Speech before men-
tioned.*

The King (after the Speech before-mentioned) ought to require the Clergy and Laity, naming them after their degrees, as Archbishops, Bishops, and Abbots, &c. Earls, Barons, Knights, Citizens, &c. that they caretully, diligently, and heartily labour throughly to handle, labour, and deliberate in the business of the *Parliament*, even as they shall understand and perceive that this shall be first according to the will and pleasure of God, and afterwards for his and their honours and commodi-
ties.

*Teaching the Places and sitting
in the Parliament.*

First, as I before said, the King shall sit in the mid place of the great Bench, and at his right side shall sit the Arch-bishop of *Canterbury*, the Bishops of *London*, and of *Winchester*, and after them in order and course, the other Bishops, Abbots and Priors; and on the left side the King, the Arch-Bishop of *York*, the Bishops of *Durham*, and *Carlisle*, and after them, the Earls, Barons, &c. making alwayes a division of place between the foresaid degrees, and their places, that none sit but amongst Peers and his equals; and the Steward of *England* to look to this, unless the King will assign some other to it. At the Kings foot, at the right side shall sit the Chancellor of *England*, and the Chief Justice of *England*, and their fellows, and their Clerks who are of the *Parliament*; and at his foot on the left side shall sit the Treasurer and Chamberlain, and Barons of the Exchequer, the Justices of the Bench, and

and their Clerks who are of the *Parliament*.

*Touching the principal Clerks of
the Parliament.*

There are two principal Clerks of the *Parliament*, who shall sit in the midst of the Justices, who shall enroll all the Pleas and business of the *Parliament* : and we must know these two Clerks are not subject to every Justice, neither is every Justice in *England* Justice in the *Parliament*, neither have they of themselves Record in the *Parliament* , unless so far forth as new power shall be assign'd and given to them in the *Parliament* by the King and the Peers of the *Parliament*, and when they are assigned with other choice men of the *Parliament* to hear and determine divers Petitions and Complaints offered in *Parliament* ; but these two Clerks are immediately subject to the King and his *Parliament* in common, unless perhaps one Justice or two be assigned to examine and amend their Inrollments : And when the Peers of the *Parliament* , to
hear

hear and examine some Petitions by themselves, then when they shall be of one mind and agreeing in rendering their judgments to such Petitions, and the Proceſs made concerning the ſame, and they ſhall give their judgment in full *Parliament*, ſo that the other two Clerks principally inroll all the Pleas, and all the judgments in the principal Roll of the *Parliament*, and ſhall deliver theſe Rolls to the Treafurer before the going away of the *Parliament*, referring yet notwithstanding to the ſame Clerks, one Transcript, and Counter-Roll thereof, if they will have it.

Theſe two Clerks, unleſs they be in other Office under the King, and take of him ſuch fees as whereby they may live honeſtly and well, ſhall receive of the King every day a Mark, for their expences, to be divided between them by equal portions, unleſs they be at the Kings board; otherwiſe half a Mark a day, during all the *Parliament*.

Touching the five Clerks of the Parliament.

The King shall assign or appoint five skilful Clerks, the first whereof shall be Minister to, and serve the Bishops. The second, the Proctors of the Clergy, or the Clerks of the Convocation-house. The third, the Earls and Barons. The fourth, the Knights of the Shire. The fifth, the Citizens and Burgeffes : and every one of them, unless he be with the King, and take of him such a fee, or such Revenews that he may thereupon live honestly, he may take by the day two shillings of the King, unless he be of the Kings board; if he be, then to have but twelve pence: which Clerks shall write the doubts and answers, that they which shall be present at the *Parliament* make to the King, and at the *Parliament*, and communicate their Counsels unto them, whensoever they will have them; and when they shall be at leisure, they will send the principal Clerks to binroll them.

*Concerning Cases and Judgments which
are hard.*

De casibus & Judiciis difficultibus.

Cum dubitat & difficultas casus, pacis vel guerre emergat, &c.

When a Cause of Truce, Doubt, or hard Case of Peace or War doth break forth, or otherwise the Case be referred in writing in full *Parliament*, and left, it to be handled and disputed there between the Peers or equals; and if it be needful, let it be enjoyned by the King, or on the Kings part, if the King be not present to every degree of Peers or equals; that every degree it self may go thereto it self, & let that case be delivered to their Clerk in writing, & let them cause the Case to be recited before them, so that they do ordain & consider among themselves how, and after what sort they may better proceed, and more justly in that Case, as they for the person of the King, and their own persons, and the persons also of those whom they represent will answer before God; let them bring their answer and advice in writing, and let them proceed in all their Answers, Counsels and Advises heard of either side, or to and fro (as we said) according to better and more sound counsel and judgment; and when

when at the least the greater part of the *Parliament* doth agree. And if by the discord between the King and some Noblemen themselves, either the people may be weakned, or the Countrey may be troubled; so that it seem to the King his Council, that it were expedient the business be handled and amended by consideration of all the Peers of the Kingdom: Or if through War the King or Kingdom might be troubled; or if a hard Case do come before the Chancellor of *England*, or a Matter hard to be judged of shall be brought before the Justices, or such like: or if perhaps in such deliberations, all, or at least the greater part cannot agree then the Earl that is Steward, the Earl that is Constable, and the Earl Marshal, or two of them, shall chuse five and twenty persons of all the Peers of the Kingdom; and three Proctors or Clerks of the Convocation-house, for the whole Clergy; two Earls and three Barons, five Knights of the Shire, five Citizens and Burgessees, who make five and twenty; and those five and twenty may chuse, if they will,

will, twelve of them, and condescend to them ; and those twelve chuse six, and condescend no fewer, unless licence be obtained from the Lord the King. And if the King consent to three, these three may condescend to two, and may descend to another, and so at length his Ordinance shall stand above the whole *Parliament*, and so condescend from twenty and five persons to one onely person ; unless the greater number will agree and ordain, at the length, one person, as is said, shall agree for all, who cannot disagree from himself. This being observed, and also reserved, the King and his Council, that they may examine and amend such Ordinance after them, which shall be written, if they know how to do it, and will perform it ; yet so, as they do it there in full *Parliament*, and by the consent of the *Parliament*, and not contrary to the *Parliament*.

*Touching the Order of deliberating
business in the Parliament.*

The business for which the *Parliament* ought to be deliberated on, accord-

according to the Calendar of the *Parliament*, and according to the Petitions, and affiled, no respect being had to any person; let him first handle his Cause that first propounded it. In the Calendar of the *Parliament*, there ought to be rehearsed all the busineses of the *Parliament*, and that after this order :

First, concerning War (if there be any War) and concerning the other busineses, touching the persons of the King, of the Queen, and of their Children.

Secondly, Concerning the common busineses of the Kingdom, as of making Laws, when there shall be lack of Law original, judicial, or executory of particular persons.

Thirdly, The busines of particular persons, and that according to the Petitions offered, as is aforesaid.

Tenching the dayes and hours of the Parliament.

The *Parliament* ought not to be held on the *Lordi-day*, but on the other

ther days following, that day alwayes excepted, and three other, to wit, of *All Saints*, of *All Soules*, and of the *Nativity* of Saint *John Baptist*. It may be held, and ought every day to begin at one of the clock in the afternoon, at which hour the King is to be present at the *Parliament*, and all the Peers of the Kingdom. The *Parliament* ought to be held in a publick place, and not in a private or secret place. In the Holy-dayes the *Parliament* ought to begin at one of the clock, because of Divine-service.

*Touching the Porters of the
Parliament.*

The principal Porter of the *Parliament* shall stand beneath the great Gate of the Monastery, Hall, or other place, where the *Parliament* is held, and must keep the door, so that none come into the *Parliament* but he which ought to come to the *Parliament*, or shall be called for the business which he followeth in *Parliament*; and it behoveth that the party have knowledge of the persons which should

should come in, so that none at all be denied entrance which is bound to be present at the *Parliament*. And the Porter ought, if it be needful, to have more Porters under him.

Touching the Cryer of the Parliament.

The Cryer of the *Parliament* shall stand without the door of the *Parliament*, and the Porter shall declare to him their Cryers.

The King was wont to assign Sergeants at Arms, to stand a great while together without the door of the *Parliament*, to make the door, so that none should make thrusting or tumults about the door, by which the *Parliament* might be hindred, upon pain of taking of their bodies, because of right the door of the *Parliament* ought not to be shut, but to be kept by Porters, or Kings Sergeants at Arms.

Touching

*Touching the standing of them
that speak in the Parliament.*

All the Peers of the *Parliament* shall sit, and none shall stand, but when he speaketh; so that every one of the *Parliament* may hear him. None shall enter into *Parliament*, nor go out of *Parliament*, but by one door: and whensoever he speaketh any thing which ought to be deliberated on by the *Parliament*, all they that speak shall stand; the cause is, that he may be heard of the Peers; all which Peers are Judges and Justices, &c.

*Touching the help and aid appointed
for the King.*

The King was not wont to require help or aid of his Kingdom, unless it were for War at hand, or for making his sons Knights, or for marriages of his daughters; and then he ought to require such help in full *Parliament*, and deliver it in writing to every degree of the Peers of the *Parlia-*

Parliament, and to answer the same in writing. And we must know that for the granting of such helps and aid, it behoveth that all the Peers of the *Parliament* agree. And we must understand that two Knights which come to the *Parliament* for the Shires and County out of which they come, have a greater voice in *Parliament* to grant, than the greatest Earl in *England* : and after the same manner the Proctors for the Clergy, or Clerks of the Convocation-house for one Bishoprick, have a greater voice in *Parliament*, if they all agree, than the Bishop himself. And this is true in all things which ought to be granted or denied to the party, or are to be done therein. And this is manifest, because the King may hold *Parliament* with the Commonalty and Commons of the Kingdom without Bishops, Earls, and Barons, yet so, as they be summoned to the *Parliament*, although no Bishop, Earl or Baron come according to their summons, because in times past, neither was there Bishop, Earl nor Baron, and yet even then Kings kept their *Parliament* : but it is

far otherwise, on the other side; for though the Commonalty, to wit, Laity and Clergy were summoned to the *Parliament*, (as of right they ought to be) yet for some certain causes they would not come, as if they would pretend that the King did not govern them as he ought, and would in speciality point out the Articles in which he misgoverned them, as he ought not; that then that *Parliament* is utterly none at all, though the Archbishops, Bishops, Earls, Barons, and all their Peers and equals were then with the King at it: and therefore all things which are to be affirmed or informed, granted or denied, or to be done by the *Parliament*, must be granted by the Commonalty of the *Parliament*, which standeth upon three degrees or sorts gathered together in *Parliament*, that is to say, the Proctors of the Clergy, the Knights of the Shires, the Citizens and Burghesses, who indeed represent the whole Commonalty of *England*; and next upon the whole Noblemen, because every one of them is at the *Parliament* in his own proper person, and none other.

Touch-

*Touching the Absence of the King
in the Parliament.*

The *King* is bound by all means possible to be present at the *Parliament*, unless he be detained or let therefrom by bodily sickness, and then he may keep his Chamber, yet so as he lie not without the Mannour or Town at the least, where the *Parliament* is held; and then he ought to send for twelve persons of the greatest and best of them, that are summoned to the *Parliament*; that is, two Bishops, two Earls, two Barons, two Knights of the Shire, two Burgessees, and two Citizens to look upon his person, to testifie his estate, and in their presence he ought to make a Commission, and give authority to the Archbishop of the place, the Steward of *England*, and Chief Justice, that they joyntly and severally should begin the *Parliament*, and continue the same in his name, express mention being made in that Commission of the cause of his absence then; which ought to suffice and admonish the o-

ther Nobles and chief men in the *Parliament*, together with the evident testimony of the aforesaid twelve Peers of theirs; the reason is, because there was wont to be a cry or murmur in the *Parliament* for the *King's* absence, because his absence is hurtful and dangerous to the whole Commonalty of the *Parliament* and Kingdom, when the *King* shall be absent from his *Parliament*; neither indeed ought he or may be absent but only in the case aforesaid.

Tenching the departure, or breaking up of the Parliament.

The *Parliament* should not depart so long as any *Petition* made thereto hangeth undiscussed or undecided, or at the least to which there is not made a determinate answer: The *Kings* Majesty being desirous of his grace and favour to give the Subject redress of any injury, and not to suffer his people to go unsatisfied. None of all the Peers or Equals of the *Parliament* may or ought to depart alone from the *Parliament*, unless he have obtain-

obtained (and that in full *Parliament*) leave of the King, and of all his Peers or Equals, so to do; and that withall there a remembrance kept in the *Parliament* roll of such leave and liberty granted. And if any of the Peers or Equals, during the time of the *Parliament*, shall be sick or weak, so as he is not able to come to the *Parliament*, then he must three dayes together send such as may excuse him to the *Parliament*: but if they come not, then let there be sent from the *Parliament* two of his Peers or Equals to go and to certifie of his infirmity. And if there be any suspicion, let these two Peers or Equals be sworn that they shall speak the truth concerning the same: and if it be found out that he did feign or counterfeit, let him attorney or appoint some sufficient man before them to be present at the *Parliament* in his stead, if he will; neither can he be further excused if he be of sound memory.

Departing of the Parliament.

Ought to be in such a manner: First it ought to be demanded, yea and publickly proclaimed in the *Parliament*, and within the Palace of the *Parliament*, whether there be any that hath delivered a Petition to the *Parliament*, and hath not received answer thereto; if there be none such, it is to be supposed that every one is satisfied, or else answered unto at the least, so far forth as by law he may be.

Touching the Transcript or Writing out of Records, and Process made in Parliament.

The Clerk of the *Parliament* shall not deny to any man a Transcript or Copy of his Process, or Process in *Parliament*, if he do desire it; and the Clerk shall take alwayes for ten lines but one penny, unless haply that he that requireth the Transcript will give his faith, that he is not able to give it, and in that case he shall take nothing :
The

The Roll of the *Parliament* should contain in breadth ten inches; and the *Parliament* shall be held in what place it shall please the King.

Of the degrees of the Peers or Equals of the Parliament.

The King is the Head, the beginning and the ending, and so he hath not any Peer or Equal.

The second degree is of Archbishops, Bishops, Abbots, &c. holding by Baronies.

The third is of Proctors of the Clergy, or Clerks of the Convocation.

The fourth is of Earls, Barons, and others, great and noble personages, as aforesaid.

The fifth degree is of the Knights of the Shire.

The sixth degree is of Citizens and Burghesses; and so the whole *Parliament* stands of six degrees: But we must know, that though any of the five degrees besides the King shall be absent, yet premonished by summons, the *Parliament* is taken for full.

The Prerogative of the High Court of Parliament.

Of all the Courts of Judicature in *England*, the Court of Parliament is the chiefest and greatest Council of Estate, called and appointed by the Kings Majesty, the Lords of the upper House by personal Writs of Summons; And for the Commons House, a general Writ is sent to the Sheriff of every Shire or County, to call together all such freholders, (which can dispend forty shillings yearly out of their own free lands at least) for the electing two Gentlemen for Knights of the Shire: the like is directed to the Cinque Ports, for choice of their Barons, to each City, Burrough, Town, and University, for choice of two Burgeses, for every of them, to represent their severall bodies in Parliament.

The time and place appointed.

This honourable Assemblies meeting is noticed by the Kings Majesty to all his Subjects by Proclamation.

The

The end of calling this great Assembly, is either the disturbance of the Church by Heresie or Schism, danger of the Kingdom by War offensive or defensive, or for the relief of the Subject, disturbed in the Courts of Justice by ill customs, undue execution of the Laws, oppression, &c.

*think of
calling of
parliament*

From this High Court lies no appeal, the determination thereof being presumed to be the act of every particular Subject, who is either present personally, or consenting by his Assignee, suffraged by himself.

appeal

This honourable Assembly consists of two houses, Upper and Lower. The upper is made up by the Lords Spiritual and Temporal, as Archbishops, Bishops, Dukes, Marquesses, Earls, Viscounts, Barons, no Member of that House being under the degree of a Baron; all which await the Writ of Summons, without which, no place, no vote there; and none may absent themselves after Summons without special proxy from his Majesty, whence he hath power to depute one of the said Members to give his voice for him in absence.

His Majesty, who by his Prerogative Royal hath the sole power, as of calling, so dissolving this honourable Assembly, sits in a Throne in the upper end of the House; on his right hand the Prince of *Wales*, on the left the Duke of *York*. The greatest Officers of the Kingdom, as the Lord Keeper (who is the Speaker or mouth of the House) Treasurer, Privy-Seal, &c. have places some on the right, some on the left hand of the Throne: the form whereof is recited in the Statute of 31. *Henry* 8.

The Manner of giving voices in the Upper house is thus:

The Lords Spiritual and Temporal in their *Parliamentary* Robes, the youngest Bishop reads Prayers; those being ended, the Clerk of the House readeth the Bills, (being first writ in paper,) which being once read, he that pleaseth may speak either for, or against it.

The Manner of the Lower house is in this sort.

The first day each Member is called by his name, every one answering for what place he serveth ; that done, they are willed to chuse their Speaker, who, (though nominated by the Kings Majesty,) is to be a Member of that House ; *their* election being made, he is presented by them to the King sitting in *Parliament*, where after his Oration or Speech, (the Lord Keeper approving in behalf of the King) he petitions his Majestie in behalf of the House : First, for their priviledges from all molestations during the time of sitting. Secondly, that they may enjoy freedom of speech. Thirdly, that they may have power to correct any of their own Members that are offenders. Fourthly, to have favourable access to his Majesty upon all occasions. The Speaker, (in behalf of the House of Commons) promising regardful respect, as befitting loyal and dutiful Subjects.

priviledge

The use of the Parliament

*Parliament
indiscus-
tri public*

Consists in abrogating old, or making new Lawes, reforming all grievances in the Common-wealth, whether in religion or in temporal affairs, settling succession to the Crown, Grants, Subsidies, &c. and in Sum may be called the great Physitian of the Kingdom or Republick.

The Speakers place in the House of Commons.

The Speaker sits in a Chair, placed somewhat high, to be seen and heard the better of all; the Clerks of the House sit before him in a lower seat; who read such Bills as are first propounded in their House, or sent down from the Lords for in that point each House hath equal authority to propound what they think meet.

All Bills be thrice in three several dayes read and disputed on, before put to question; and so good order is used in the House, that he that intends to speak to any Bill stands up bare-headed (for no more than one speaks

at a time) speaking to the Speaker , not one to another, being against the rule of the House : and he that speaketh is to speak no more that day to the Bill he hath spoken to, to avoid spinning needlessly out of time ; and their speeches must be free from Taunts of their fellow-members that are of contrary opinions.

The Speakers office is, when a Bill is read, as briefly as he may to declare the effect thereof to the House, and to Bills first agreed on by the Lords, and sent to the Commons for assent : if they do assent, then are they return'd subscrib'd thus, *Les Communs ont assentus*: So likewise if the Lords agree to what is sent to them from the House of Commons, they subscribe, *Les Seigneurs ont assentus*: If the two Houses cannot agree (every Bill being thrice read in each House) then sometimes the Lords, sometimes the Commons, require a meeting of some of each house, whereby information may be had of each others mind, for the preservation of a good correspondence between them, after which meeting for the most part, (though not alwayes) either part agrees to the Bill in question. The

The assent or dissent of the Upper House, is each man severally by himself, and then for so many as he hath by proxy, they saying onely, content, or not content, and by the major part it is agreed to, or dashed. But in the Lower House no Member can give his voice to another by proxie; the major part being present onely maketh the assent or dissent. After a Bill is twice read there, and engrossed, (being disputed on enough, as conceived) the Speaker asketh if they will go to question; and if agreed to, holding the Bill up in his hand, saith, *As many as will have this Bill pass concerning such a matter, say Yea; and those that are against it, No:* and if it be a doubt which cry is bigger, the House is divided, the one part that agrees not to the Bill being bid to sit still; those that do, to go down with the Bill; so plurality of voices allows, or dashes. But no Bill is an Act of Parliament, Ordinance or Edict of Law, though both the Houses unanimously agree in it, till it hath the Royal Assent.

¶

Touching

Touching the Royal Assent.

When Bills are passed by both the Houses, they ought to have for approbation the Royal Assent, which usually is deferred till the last day of the Sessions, but may be given at any time during the *Parliament*: touching which, it hath been a question much debated, whether the Royal Assent given to any one Bill doth not *ipso facto* conclude that present Session. The 66 question is of great consequence, for if thereby the Session be at an end, then ought every other Bill, although passed both the Houses, to be read again three times in either House, and to have the same proceeding as it had at first, as if nothing had been formerly done therein; so must it be done of all other Acts of the House. But the first Session of the first *Parliament* of King *James*, the *House* being then desirous to have a Bill passed forthwith by the Royal Assent, which should be security to the Warden of the Fleet, touching the delivery of *Sir Thomas Sherly* out of execution,
(for

(for it was then questionable whether he was subject to an action of escape) did agree that the giving of the Royal assent to one Bill or more did not dissolve the Sessions without some special Declaration of his Majesties pleasure to that purpose, 18. *April* 1604. And likewise in the Journal *Anno* 1. and 2. *Phil. & Maria.* 21. *Novemb.* that the King and Queen came on purpose into the Parliament-House to give their Assent to Cardinal *Pool* Bill; and upon question made, it was then resolved by the whole House, that the Session was not thereby concluded, but that they might proceed in their business notwithstanding the Royal Assent given.

Pool

At the giving of the Royal Assent, it is not requisite the King should be present in person, for by the express word of the Statute of 33 *Henry* the 8 *cap.* 21. that the Kings Royal Assent by his Letters Patents, under his great Seal, signed by his hand, and declared and notified in his absence to the Lords Spiritual and Temporal, and to the Commons assembled in Parliament, is, and ever was of as good strength.

strength and force, as if the King had been there in person personally present, and had assented openly and publickly to the same, according to which Statute the Royal assent was given by Commission *Anno 38. H. 8.* unto the Bill for the attainder of the Duke of Norfolk.

The Manner of giving the Royal Assent.

The Royal Assent is given in this sort; after some solemnities ended, the Clerk of the Crown readeth the Titles of the Bills in such order as they are in consequence: as the Title of every Bill is read, the Clark of the Parliament pronounceth the Royal Assent, according to his instructions given him by his Majesty in that behalf: if it be a publick Bill to which the King assenteth, he answereth *Le Roy le veut*; If a private Bill be allowed by the King, the answer is, *Soit fait come il est desire*: If a publique Bill which the King forbearcth to allow, *Le Roy se aviserá*: To the Subsidy-Bill, *Le Roy remercie ses Loyaux*, accepts his subjects benevolence; & *ainsi le veut.* To

To the general Pardon.

Les Prelates Seigneurs & Communes en cest present Parliament assemblees en nom de tous vous autres subjects remercient tres humblement vostre Majesté & prient Dieu vous donner en suite bonne vie & longue.

The usual Form of Summons for the P A R L I A M E N T.

*The Form of the Kings Majesties
Writ to the Peers to assemble
in Parliament.*

CAROLUS &c. Charissimo consanguineo suo E. Comit. D. Salut. Quia de advisamento & assensu Consilii nostri, pro quibusdam arduis urgentibus negotiis nos, statum & defensionem regni nostri Anglia & Ecclesia Anglicana concernent. quoddam Parliamentum nostrum apud Civitatem nostram West

Westmonasterium tertio die Novembris prox. futur. teneri ordinavimus, & ibid. vobiscum ac cum Prælat. magnatibus & proceribus dict. Regni nostri colloquium habere, tractare, vobis sub fide & ligeanciis, quibus nobis tenemini, firmiter injungend. mandavimus, quod considerat. dict. rum negotiorum arduitate & periculis imminenti- bus, cessante excusatione quacunque, dict. die & loco personaliter intersuis nobiscum, ac cum Prælatiis, magnatibus & proceribus prædictis, super dictis negotiis tractatur. vestrumque consilium impensur. & hoc sicut Nos & honorem Nostrum, ac salvationem & defensionem Regni & Ecclesie prædictorum expeditionemque dictarum negotiorum, diligitis, nullatenus omittatis. Teste me apud Westmonasterium decimo octavo die Septembris, Anno Regni nostri 16.

The usual form of summons for the Parliament for the Commonalty, not special, but a general Writ is directed to the Sheriff of every County or shire in *England* and *Wales*, this form.

Rex vice. N. Salutem. Quia de ad-
samento & assensu Consilii nostri quibus-
dam arduis & urgentibus negotiis &
Statum & defensionem Regni nostri
Anglie, & Eccles. Anglicane concernentibus
quoddam Parliamentum nostrum apud
Civitatem nostram West. 17 die Martii
prox. futuro teneri ordinavimus, & ibi-
dem cum Prelatis, Magnatibus & Procu-
ribus dicti regni nostri colloquium habere
& tractare, tibi precipimus firmiter in-
jungentes quod facta proclamatione in
prox. com. tuo post receptionem hujus
brevis nostri tenendam die & loco pre-
dicto, duos Milites gladiis cincti, magis
idoneos & discretos cum predicto. &c. E-
lectionem illam in pleno com. tuo factam
distinctè & aperte, sub sigillo tuo & sigil-
lis eorum qui electioni illi interfuerunt,
nobis in Cancellariam nostram ad dictum
diem & locum certiifies indilate. Testi-
mus ipse, &c. vide Statut. 23. H. 6. c. 15.

The

The King to the Vicount or Sheriſſ greeting,

Whereas by the advice & aſſent of our Council, for certain arduous and urgent affairs concerning us, the State & defence of our Kingdom of England, and the Anglican Church, we have ordain'd a certain Parliament of ours to be held at our City of _____ the day of _____ next enſuing, and there to have conference, and to treat with the Prelats, Great men, and Peers of our ſaid Kingdom; We command and ſtrictly enjoin you, that making Proclamation at the next County Court after the receipt of this our Writ, to be holden the day and place aforeſaid; you cauſe 2 Knights give with ſwords; the moſt ſit and diſcreet of the County aforeſaid, and of every City of that County, 2 Citizens; of every Burrough 2 Burgeſſes, of the diſcreeter, and moſt ſufficient, to be freely and indifferently choſen by them who ſhall be preſent at ſuch Proclamation, according to the tenor of the Statutes in that caſe made and provided; And the names of the ſaid Knights, Citizens and Burgeſſes ſo choſen, to be inſerted in certain Indentures to be then made between you and thoſe that ſhall be preſent at ſuch Election, whether the parties ſo Elected be

present, or absent, and shall make them to come at the said day and place, so that the said Knights for themselves, and for the County aforesaid, and the Citizens, and the Burgesses for themselves, and the Commonalty of the said Cities and Burroughs, may have severally from them full and sufficient power to do, and to consent to those things which then by the favour of God shall there happen to be ordain'd by the Common-Council of our said Kingdom concerning the business aforesaid, so that the business may not by any means remain undone: for want of such power, and by reason of the improvident election of the aforesaid Knights, Citizens and Burgesses; But we will not in any case that you or any other Sheriff of our said Kingdom shall be elected: And at the day and place aforesaid, the said Election being made in a full County Court, you shall certifie without delay unto us in our Chancery under your Seal, and the Seals of them which shall be present at that Election, sending back unto us the other part of the Indenture aforesaid affixed to these presents together with the Writ, Witness our self at Westminster.

And

And concerning those of *Wales* to be summoned to the Parliament, read the Statute thereof 27. *Hen. 8. cap. 26.* Intituled, *An Act for Laws and Justice to be ministred in Wales, in like form as it is in this Realm*; and also that other Statute made 35. *Hen. 8. cap. 11.* Intituled, *An Act for the due payment of Fees and Wages of Knights and Burgeses of the Parliament, in Wales.* And thereof see in *Plowdens Comment.* 120. Sir *Richard Bulkleys Case*, and in *Dyer* 13.

waly -

Hus-
wayn

And concerning those of the County Palatine of *Chester*, and of the City of *Chester* in this behalf, see the Statute made 34. *Hen. 8. cap. 3.*

Chystr

At every County after the delivery of the Parliament-writ to the Sheriffs, Proclamation shall be made in the full County of the day and place of the Parliament, and that all men shall attend for the Election of the Knights for the same County for the Parliament. The which Knights must be resident within the same County whereof they are to be chosen, the day of the writ of summons of the Parliament, whereof every one ought to have 40 s.
of

of Free-hold within the said County beyond all charges, And such who have the greatest number of the said Electors shall be returned Knights for the same County. See 7. *Hen. 4. cap. 12. 1. Hen. 6. cap. 1. 8. Hen. 6. cap. 13. and 10. Hen. 6. cap. 7.*

The Sheriff may examine every one of the said Electors upon the said Evangelists how much he may dispend by year, if he doubt of the value thereof, 8. *Hen. 6. cap. 15.*

The said Election shall be made in the full County between the hours of 8. and 9. before noon. 23. *Hen. 6. cap. 15.*

The said Knights shall be returned into the Chancery by Indenture, seal'd between the Sheriff and the said Electors, 8. *H. 6. c. 7. 7. H. 4. c. 1. 23. H. 6. c. 6. ut patet per breve suprà.*

Every Sheriff who doth not make a true return of such Election of knights to come to the Parliament, according to the Statute in that behalf made, that is to say, the Statute 8. *H. 6. c. 7.* shall forfeit 100 l. to the King, and

100l. to the knight so chosen, who shall commence his Action within three moneths after the Parliament commenced. And if he so do not, and prosecute his suit in effect and without fraud, any other man who will may have the said suit, for the said 100 l. as the Knight had, and costs of suit also shall be awarded to the said K. or any other who will sue in his behalf, 23. Hen. 6. Cap. 15.

No Sheriff shall be chosen for a Knight of the *Parliament* nor for a Burgesse: see the Book of Entries, 411. And at a *Parliament*, holden 38. Henry 8. It was admitted and accepted, that if a Burgesse of a *Parliament* be a made Mayor of a Town, or have Judicial Jurisdiction, or another is like, That these are Causes sufficient to choose others. And so was done by the Kings Writ out of the Chancery, comprehending this matter which was in *Communi Domini Parlamenti*, 7. and 38. Henry 8.

4. Inst. fo. 48. accord ~~on~~ 15th
on *legimus*, *on contra Libro 15to*

D

In

In every Writ of Parliament directed to the Sheriff this Clause shall be inserted; *Electionem suam in pleno Com. suo factam distincte & aperte sub Sigillo suo & Sigillis eorum qui Electioni illi interfuerunt, nos in Cancellariam nostram adduciem & locum in brevi contentis certificis indilate, Henr. 4. cap. 15.*

The Sheriff after the receipt of the Writ of Election, &c. shall deliver without fraud a sufficient Precept under the Seal of every Major, and Bailiff, or Bailiffs where no Major is, of the City and Burrough within his County reciting in his Precept the Writ of Parliament; Commanding them by the said Precept, if it be a City, to choose Citizens for the same City by the Citizens, and if it be a Burrough, then Burgesses, by Burgesses of the same to come to the Parliament; And that the said Major, or Bailiff, or Bailiffs, where no Major is, shall return lawfully the said Precept to the
 Sheriffs

Sheriffs, and those who made the Elections, and of the Names of the said Citizens, and Burgeses, by them so chosen, 23. *Henry 6. Cap. 15.*

70 The Sheriff shall make a good return of his Writ, and of every return of the Major, and Bailiff, or Bailiffs, where no Major is, to him made. And if the Sheriff do contrary to this Statute made for the Election of Knights, Citizens, and Burgeses to come to the *Parliament*, he shall incur the pain of two hundred pounds to the King, and shall be imprisoned for one whole year, without Bail or Mainprize. And the Knights for the County returned, contrary to the said Ordinances, shall lose their Wages by the Statute, 8. *Henry 6. Cap. 7.* and the Sheriff shall lose one hundred pounds, to every Knight, Citizen and Burgesse, chosen in his County, to come to the *Parliament*, and not duly returned; or to any other who will sue in his default by Action of Debt,

D 2

with

with Costs Expended in that Case
In which suit the Defendan
shall not wage Law, nor be Es
soyned, *Anna* 23. *Henry* 6. *Cap*
15.

If the Major and Bailiff, or
Bailiff, or Bailiffs where no Ma
jor is, do return others than tho
who be chosen by the Citizens and
Burgesses of the Cities and Borough
where such Election shall be made
he shall forfeit to the King forty
pounds, and so much to the Ci
zen or Burgesse chosen to come to
the *Parliament*, and not duely re
turned by the Major or Bailiff, or
Bailiffs where no Major is, or by
any other person who in default of
such Citizen or Burgesse so chosen
will sue for it by Action of Debt, with
Costs expended. And they shall
have a Writ of Debt for the said
forty pounds, in which the Defen
dant shall not wage his Law, nor
shall be Essoyned, 23. *Henr.* 6.
Cap. 15.

Every Knight, Citizen, or Burgesse, chosen and not returned, shall Commence his Action within three moneths next after the Commencing of the said *Parliament*. In which he must proceed effectually without fraud; And if he so do not, any other who will sue for it shall have the said Action for the said Forfeiture, and Costs in the same expended: in which the Defendant shall not wage Law, nor shall be Essoyned, *Anno 23. Hen. 6. cap. 15.*

If any Knight, Citizen, or Burgesse, that shall be returned by the Sheriff to come to the *Parliament*, be after such Return put out, and another put in his place, he that is in his place so put out, if he take upon him to be a Knight, Citizen, or Burgesse, shall forfeit to the King one hundred pounds, and so much to the Knight, Citizen, or Burgesse, returned by the Sheriff, and so afterwards put out; and the same Knight, Citizen, or Burgesse so put out shall have an Action of Debt against him so

put in his place, his Executors and Administrators, and shall Commence his Action within three Months after the beginning of the *Parliament*: and if he sue not as before, any other who will, shall have the said suit; in which the Defendant shall not wage his Law, nor shall be Essoyned; so that such Knights of the *Parliament* chosen, be a Knight, or such Esquire or Gentleman of the same County, who may be a Knight; and none to be such a Knight, who standeth in the Degree of a Yeoman, *Anno 23. Hen. 6. cap. 15.*

All Persons and Commonalties who shall be summoned to the *Parliament*, shall come as it hath been accustomed of the ancient time; and he that cometh not, having no reasonable excuse, shall be amerced and otherwise punished, as of ancient time hath been used, *5. R. 2. Statut. 2. cap. 4.*

And

And it appeareth to be true which *Fortescue* saith in his 18. *Cap. Fol.* 40. That Acts of *Parliament* and Statutes of *England* are not made onely by the Princes pleasure, but also by the consent of the whole Realm ; So that of necessity they must procure the Weal of the whole Realm, and in no wise tend to their hinderance; and it cannot be otherwise thought, but that they are replenished with much Wit and Wisdom, seeing they are not ordained by the Advice of one Man onely, or of one hundred wise Counsellors, but of more than three hundred chosen Men; which agreeth with the ancient number of Ancient Senators of *Rome*.

No Baron, Knight, Citizen or Burgesse, who shall be chosen to come to the *Parliament*, shall depart until that *Parliament* be ended or prorogued, if he have not license of the Speaker, & of the Commons assembled in that *Parliament*; which license shall be entred in the

Book of the Clerk of the Parliament appointed for the Commons House, upon pain of losing their wages, whereof all Counties and Burroughs shall be discharged, 6. Hen. 8. Cap. 16.

Concerning the due leavying of Knights Fees and Wages for the Attendance at the Parliament, See the Statute made 23. Henr. 6. Cap. 11.

Knights and Burgeses for the Parliament must take the *Oath of Allegiance*, and so shall Citizens, and Barons for the five Ports for the Parliament, before they do enter into the Parliament House, Anno. 5. Eliz. Cap. 1. and they must also take the *Oath of Supremacy*, made 7. Jacobi, Cap. 6. Which two Oathes shall be taken before the Lord Steward for the Time being, or his Deputy, or Deputies.

Memorandum,

Memorandum, in the Statute made, *Anno* 25. *Henr.* 8. *Cap.* 19. Entituled, An Act concerning the submission of the Clergie to the Kings Majestie, is contained, That the Convocation is, and alwayes hath been and ought to be Assembled by the Kings Writ, The form whereof is thus set down by Doctor *Cowell* in his Interpreter *Verbo Proclam.* First, the King directeth his Writ to the Arch-Bishop of each Province for the Summoning of all Bishops, Deans, Archdeacons, Cathedrall and Collegiate Churches, and generally all the Clergy of his Province, after their best Discretions and Judgements; assigning to them the time and place in the said Writ: Then the Arch-Bishops proceed in their accustomed course. One Example may shew both; The Arch-Bishop of *Canterbury*, upon his Writ of Summons received, directeth his Letters to the Bishop of *London* as his Dean Provincial: First, Citing him peremptorily, and then wil-

D 5. ling;

ling him to cite in like manner all the Bishops, Deans, Arch-Deacons, Cathedrall and Collegiate Churches, and generally, all the Clergie of his Province, to the place, and against the day prefixed in the VVrit; but directeth withall, That one Proctor sent from every Cathedrall, or Collegiate Church, and two for the body of the inferiour Clergie of each Diocesse, may suffice: and by Vertue of these Letters, authentically sealed the said Bishop of *LONDON*, sendeth the like Letters severally to the Bishops of every Diocesse of the Province, citing them in like manner, and commandeth them not onely to appear, but also to admonish the said Deanes and Arch-Deacons personally to appear; and the Cathedrall and Collegiate Churches also of the common Clergie of the Diocesse, to send their Proctors at the day appointed in the VVrit: And also will them to certifie to the Arch-Bishops the names of all and every

ry

ry one so summoned by them in a Schedule annexed to their Letters Certificatory. The Bishops proceed accordingly, and the Cathedrall and Collegiate Churches: As also the Clergie make choice of their Proctours; which done and certified to the Bishop, hee returneth all answerable to his charge, (*Cave Lector*) for the Clergie of the Convocation-House are no Part or Member of the *Parliament*, as you may see resolved by the Lord *Richard*, Lord *Windsor*, and others, in the beginning of the sixth Examination of Master *Philpot*, in the beginning of the Reign of Queen *Mary*, in Master *Foxes* Book of Martyres, *Folio* 1639. contrary to the Opinion of Doctour *Cassell*, *ubi supra*. Neverthelesse, it is Enacted by the Statute, 8. *Henry 6. Capite* 1. That all the Clergie called to the Convocation-House, by the Kings Writ, and their Servants and Familiars shall have and fully use

use every such Liberty and Defence, in comming, abiding, and going, as the Great Men, and Commonalty of the Land (to be called to the Parliament of the King) shall have.

And because mention is here made of the Priviledges appertaining to those of the Parliament-House, take here a word or two thereof.

The Words of the Statute made the 11. *Henry, 6. Cap. 11.* are as followeth; The King willing to provide for ease and tranquillity of those that come to his Parliament, hath Ordained and Established, That if any Assault or Affray to be made upon any Lord Spirituall, or Temporall, Knight of the Shire, Citizen, or Burgesse, comming to the Parliament, or the Counsell of our Sovereign Lord the King, that then Proclamation shall be made in the most open place of the City or Town where the affray
was.

was so made, by three several dayes,
That the party that made such affray
and assault yield himself before the
King and his Bench, within a quarter
of a year after the Proclamation so
made, if it be in the time of the Term,
or otherwise in the next day in the
time of the Term following the said
quarter. And if he so do not, that
he be attainted of the deed, and pay
to the party grieved his double dam-
mages, to be taxed at the discretion of
the Justices of the same Bench for the
time being, or by inquest if it be
needful; and make Fine and Ransom
at the Kings will, and if he come and
be found guilty by Inquest, examina-
tion, or otherwise, of such affray, or as-
sault, then he shall pay unto the par-
ty grieved thereby his double dam-
mages found by the Inquest, or to be
taxed by the discretion of the Justices,
and make Fine and Ransome at the
will and pleasure of our Sovereign
Lord the King.

Every

Every Knight, Citizen, Burgeſſ, Baron of the Five Ports, or others, called in the Parliament of the King, ſhall have priviledge of the Parliament during the Sessions of Parliament, ſo that he that doth arreſt any of them during that time, ſhall be impriſoned in the Tower by the Nether Houſe of which he is, and ſhall be put to his Fine, and the Keeper alſo if he will not deliver him when the Serjeant at Arms doth come for him by the commandment of the Houſe whereof he is : See *Dyer*. 60.

The ſervants tending upon their Maſters during Parliament, who are neceſſary, and alſo ſuch Officers as be attending upon the Parliament, as the Serjeant at Arms, the Porter of the door, Clerks and ſuch like ; and in the ſame manner of their Chattels and goods neceſſary, ſo that they ſhall not be arreſted and taken by any Officer, if it be not in caſe of Felony or Treason : in the ſame manner, as the Judges and Miniſters of other Courts ſhall have for their ſervants goods and chattels neceſſary. See *Crompton's Courts*, fol. 11..

But

But the Parliament doth not give priviledge *Tempore vacationis*, *sed sedentis curia*. See Brooks Title Priviledge 56. It appeareth that in the Parliament 31. *Hen. 6.* in the vacation, the Parliament being continued by Prorogation, *Thomas Thorpe* the Speaker was condemned in a thousand Marks damages by an Action of Trespas brought against him by the Duke of *York*, and was committed to prison in execution for the same; and after when the Parliament was re-assembled, the Commons made suit to the King and Lords to have *Thorpe* their Speaker delivered for the good exploit of the Parliament: whereupon the Dukes Counsel declared the whole cause at large; whereupon the Lords demanded the opinion of the Judges, whether in that case *Thorpe* ought to be delivered out of prison by priviledge of Parliament; the Judges made this answer, that they ought not to determine the priviledge of that High Court of Parliament: But for Declarations of proceedings in Law-Courts in the case where writs of *Supersedeas* for the priviledge of the

the Parliament to be brought unto them; they answer, That if any person that is a Member of the Parliament be arrested in such case as it be not for Treason or Felony, or for surety of the Peace, or for condemnation had before the Parliament; it is used that such persons be released, and may make Attorney, so as they may have their freedom and liberty freely to attend that Parliament: Hereupon it was concluded, that *Thorpe* should still remain in prison according to the Law, notwithstanding the privilege of Parliament, and that he was the Speaker; which resolution was declared to the Commons by *Walter Moile* one of the Kings Serjeants at Law, and then the Commons were commanded in the Kings name by the Bishop of *Lincoln*, in the absence of the Archbishop of *Canterbury* then Chancellor, to chuse another Speaker.

It hath been much doubted, whether one taken in Execution during the Parliament may be set at liberty by Writ of Parliament, as is to be seen
in

in the first of *Eliz. 4. fol. 8. a Dyer* 60. But at this day the Law is explained in that case by the Statute made 1 *Jacob. Cap. 19.* Intituled, *An Act for new execution to be sued against any who shall hereafter be delivered out of prison by priviledge of Parliament, and for discharge of them out of whose custody such prisoners shall be delivered.*

Concerning the upper House of Parliament; first it is observed, that thither come all Lords of the Parliament as well Spiritual as Temporal, and they are summoned by the Kings Writ also, but *Separatim*, and not by a general Writ to the Sheriff of the County, as the Commons are summoned, who are of the Lower House of the Parliament; the form of which Writ is as followeth:

Carolus, &c. Charissimo consanguineo suo Comiti Oxford. Quia de advisamento & assensu Consilii nostri, pro quibus. arduis & urgentibus negotiis nos, stat. & defensionem regni nostri & Eccles. Anglic. concernent, quoddam Parliament

liament. nostrum apud Civitat. nostram Westmonasterium 12. die Martii, prox. futur. teneri ordinavimus, & ibidem vobiscum ac cum Prelatis, magnatibus & proceribus dicti Regni nostri colloquium habere & tractare, vobis sub fide & ligeanciis, quibus nobis tenemini, firmiter injungend. mandamus, quod considerat. dictorum negotiorum arduorum & periculis imminenti- bus, cessante excusatione quacunque de- lecto die & loco personaliter interfui nobiscum, ac cum Prelatis, magnatibus & proceribus supra dictis negotiis tra- ctare, vestrumque consilium impensur. Et hoc sicut Nos & honorem nostrum, & rempublicam, & salvationem & de- fensionem Regni & Ecclesie predict. ex- peditionemque negotiorum dictorum dili- gitis, nullatenus omittatis. Teste me ipso apud Westm. 18. die Januarii Anno Regni nostri, &c.

At the first day appointed by the King for the Parliament, usually the King in person doth ride thither, as it were to open the door of their author- ity, attended by all the Lords Spiritu- al and Temporal in their Parliament- Robes ;

Robes; but if the King be let *per aggritudinem*, or by other causes, his Majesty may command the adjournment of the Parliament to be held at some other day at his pleasure; as was done at the first day of the Parliament, holden the first year of the late Queen *Eliz.* as appeareth in *Dyer, Fol. 20. 3. s.* which Parliament was prorogued by Writ Patent under their entire great Seal and Signet, with the hand of the Queen; by which Book the printed Book of the Statutes may be corrected.

And the King may under his great Seal assign two or three of the Lords of the Parliament to supply his place in Parliament, if he be sick, or will not come for any other cause, *ut factum fuit Anno 31. Eliz.* At which time the Archbishop of *Canterbury*, The Lord Treasurer of *England*, and the Earl of *Derby*, were Commissioners under the great Seal appointed and assigned to represent her Majesties person in Parliament.

And they do sit one space lower from the Cloth of Estate in the *Parliament-House*. See *Crompt. Courts, fo. 12. a.*

By

By the Statute made *Anno 23. H.8. Cap.21.* it is thus defined : The Assent of the King by his Letters Patente under the great Seal of *England* , and signed with his hand, and notified in his absence to the Lords of the Parliament and Commons assembled in the Higher House, is and ever was of as good force and strength as if the person of the King had been then present, and had assented openly and publickly to the same. And such Royal assent as is aforesaid shall be taken for good and effectual to every intent without any ambiguity of Custome or usage to the contrary notwithstanding.

In this Court is attending the Lord Chancellor of *England* , or the Lord Keeper of the great Seal , or some other sage man as the King shall chuse ; by whom the King doth shew his mind to the Lords. And he doth put them in remembrance of those things which are to be treated there before the Lords , who if he be no Baron, or Peer of the Realm, sitteth near the King behind the cloth of Estate,

state, and is as the Speaker of the Upper House of Parliament.

In the 31. year of *Hen. 8. Cap. 10.* Intituled, An Act concerning placing of the Lords in the Parliament Chamber and other assemblies & conferences of Counsel, it is Enacted as followeth : *Forasmuch as in all great Councils and Congregations of men bearing sundry degrees in the Commonwealth, it is very requisite and convenient that an order be had and taken for the placing and setting of such persons as are bound to resort to the same ; to the intent that they knowing their places, may use the same without displeasure or let of the Council : Wherefore the Kings most Royal Majesty, although it appertaineth to his Prerogative Royal to give such honour, places and reputation to his Counsellors and other his subjects as shall seem best to his most excellent Majesty, He is nevertheless pleased and contented for an order to be had and taken in this his most high Court of Parliament, that it shall be Enabled by authority of the same, in manner as hereafter followeth :*

First,

First, It is Enacted by authority aforesaid, that no person or persons, of what estate, degree or condition soever he or they be of (except only the Kings children) shall at any time hereafter attempt or presume to sit, and bear place at any side of the cloke of State in the Parliament-Chamber, neithers th'one of the Kings Highness, nor on the other, whether the Kings Majesty be there personally present, or absent. And for as much as the Kings Majesty is justly and lawfully supreme head on earth of the Church of England, under God; and for the exercise of the said most royal dignity and Office, hath made Thomas Lord Cromwel, and Lord privie Seal, his Vicegerent, for good and due ministration of Justice to be had and used in all causes and cases touching the Ecclesiastical Jurisdiction; and for the godly reformation and redress of all Errors, Heresies, and Abuses in the same Church; It is therefore enacted by authority aforesaid, That the said Lord Cromwel, having the said Office of Vicegerent, and all other persons who shall hereafter have the said Office by the grant of the Kings Highness, his

Heirs and Successors, shall sit and be placed as well in this present Parliament, as in all Parliaments whatsoever hereafter to be holden, on the right side of the Parliament Chamber, and on the same form that the Archbishop of Canterbury sitteth upon, and above the said Archbishop and his Successors; and shall have place in every Parliament to assent or dissent, as other the Lords of the Parliament.

And it is enacted, that next to the said Vicegerent shall sit the Archbishops of Canterbury and York; and then next them on the same form & side the Bishop of London, and next to him on the same form and side the Bishop of Duresme, and next to him, on the same form and side, the Bishop of Winchester; and then all the other Bishops of both Provinces of Canterbury and York shall sit and be placed on the same side after their ancienties, as it hath been accustomed.

And forasmuch as such persons as now have, or hereafter, shall happen to have other great Offices of the Realm, that is to say, the Office of the Lord Chancellor, Lord Treasurer, Lord President of the Kings Council, the Lord Privy Seal, the Great Chamberlain of England, the Marshal of England, the Lord Admiral, the Grand Master or Lord Steward of the Kings most honourable Household, the Kings Chamberlain, and the Kings Secretary, have not heretofore been appointed and ordered for the placing and sitting in the Kings most High Court of Parliament, by reason of their Offices; It is therefore now ordered, and Enacted by authority as aforesaid, that the said Lord Chancellor, Lord Treasurer, the President of the Kings Council, and the Lord Privy Seal, being of the degrees of Barons, or above, shall sit and be placed as well in this present Parliament, as in all other Parliaments hereafter to be holden, in the left hand of the Parliament Chamber, on the higher part of the form on the same side, above the Dukes (except only such as shall be

the Kings Son, the Kings Brother, the Kings Uncle, the Kings Nephew, or the Kings Brother or Sisters sons.

And it is also ordained and enacted by Authority aforesaid, That the great Chamberlain, the Constable, the Marshall, the Lord Admirall, the Grand Master or Lord Steward, and the Kings Chamberlain, shall sit and be placed after the Lord Privy Seal, in manner and forme following, That is to say, every one of them shall sit and be placed above all other personages being of the same Estate or Degree that they shall happen to be of; That is to say, the Great Chamberlain first, the Constable second, the Marshall third, the Lord Admirall fourth, the Grand Master or Lord Steward fifth, and the Kings Chamberlain the sixth.

And it is also enacted by Authority aforesaid, That the Kings chief Secretary, being of the Degree of a Baron of the Parliament, shall sit and be placed above and before all other Barons, not having any of the Offices aforesaid; and if he be a Bishop, that

E them

then he shall sit and be placed above all other Bishops, not having any of the Offices above remembered.

And it is also ordained and enacted by authority aforesaid, That all Dukes and afore mentioned, Marquesses, Earls, Viscounts, and Barons, not having any of the Offices aforesaid, shall sit and be placed after their ancientry, as it hath been accustomed.

And it is further enacted, that if any person or persons which at any time hereafter shall happen to have any of the Offices aforesaid, of Lord Chancellor, Lord Treasurer, Lord President of the King's Counsel, Lord Privy Seal, or chief Secretary, shall be under the Degree of Baron of the Parliament, by reason whereof they have no interest to give any assent or dissent in the said House. That then in every such case, such persons as shall happen to be under the said degree of a Baron, shall sit and be placed at the uppermost part of the Sacks, in the midst of the Parliament-Chamber, either there to sit upon one form, or upon the uppermost sack, the one of them above

the other in order as is above rehearsed.

Be it also enacted by authority aforesaid, that in all tryels of Treason by Peers of this Realm, if any of the Peers that shall be called hereafter to be triers of such Treason, shall happen to have any of the Offices aforesaid, that then they having such Offices, shall sit and be placed according to their Offices, above all the other Peers that shall be called to such trialls, in manner and form as is above mentioned and rehearsed.

And it is also enacted by authority aforesaid, That as well in all Parliaments, as in the Star-Chamber, and in all other Assemblies, and conferences of Counsel, The Lord Chancellor, the Lord Treasurer, the Lord President, the Lord Privy Seal, the Great Chamberlain, the Constable, the Marshal, the Lord Admiral, the grand Master or Lord Steward, the Kings Chamberlain, and the Kings chief Secretary, shall sit and be placed in such order and form as is above rehearsed, and not in any other place, by authority of this present Act.

And in Sir *Edw. Cooke* II. part. fol. 1.
 The Case concerning priority of place
 in the upper House of *Parliament* was
 as followeth, at the *Parliament* held
 the 30. *Eliz.* The Case was thus:

Thomas Laware Knight, Lord *La-*
ware, son and heir of *Williams*, son
 and heir of *George*, brother and heir of
Thomas, Son and Heir of *Th-*
omas Lord *Laware*, exhibited his
 Petition to the Queen to this effect;
 That whereas *Thomas* the Great-
 grandfather was called to *Parlia-*
ment by Writ of Summons, 3. *Hen. 8.*
 and afterwards this *Thomas* the Great-
 grandfather dieth; after whose
 death *Thomas* his son was called to di-
 vers *Parliaments* by Writ of Summons.
 And afterwards by Act of *Parliamen-*
 3. *E. 6.* for divers causes in the said
 Act mentioned, it was enacted, That
 the said *William* during his life should
 be disabled to claim and enjoy any
 dignity or superiority in any right,
 Estate, &c. by descent, remainder, or
 otherwise. And afterwards the said
Thomas the son of *Thomas* dieth; after
 whose death the said *William* being
 disabled was not called to any *Parlia-*

ment by Writ of Summons, till Queen Elizabeth called him to *Parliament* by Writ of Summons, and sits as youngest Lord of the *Parliament*: And afterwards he dieth, and now the said *Thomas* his son being cal'd to *Parliament* by Writ of Summons, sueth to the Queen that he may have place in *Parliament* of his Great-grandfather (*that is to say*) between the Lord *Berkley* & the Lord *Willoughby* of *Eresby*; And the said Petition was indorsed in these words, *Her Majesty hath commanded me to signifye to your good Lordships, that upon the hum'le suit of the Lord Laware, She is pleased that the matter shall be considered and determined in the House.*

Which Petition being read in the upper house of *Parliament*, the Consideration of this was referred and committed to the Lord *Burley* Lord Treasurer of *England*, and divers other *Committees*, who at his Chamber at *Whitehall* heard the learned Counsel on both sides, in the presence of the two chief Justices, and divers other Justices: And two Objections were made against the Lord *Laware*; First, insomuch that his Father was disabled

by Act of *Parliament* to claim the Dignity : The Petitioner may not convey by him who was disabled, as Heir to his Great grandfather, and by consequence he may not have the place of his Great-grandfather.

But it was resolved by all the Judges, That there was a difference between a Personary and a Temporary disability, and absolute perpetual disability : As whereas one is attainted of Treason or Felony, this is absolute and perpetual disability by corruption of blood, for any of his posterity to claim any hereditament in Fee simple, either as Heir to him, or any other: but disability by *Parliament* without any Attainder, to claim the Dignity for his life that is personal disability for his life onely ; and his Heirs after his death may claim as Heir to him, or any Ancestor to him, or any other Ancestor above him. The second Objection is, that the said *William* hath accepted new Creation of the Queen ; which Dignity newly gain'd descendeth to the Petitioner, which may not wave ; and for that the Petitioner may not have other place than his father had.

To

To this it was answered and resolved, that the acceptance of a new Creation by the said *William* may not hurt the Petitioner, because the said *William* was at that time disabled, and in truth he was no *Baron*, but onely an *Esquire*; so that when the old and new dignity descended together, the old shall be preferred; which resolution was well approved by all the *Lords Committees*, which was accordingly reported to all the *Lords of the Parliament*, and allowed by them all; whereupon it was ordered by the *Lords*, that the *Queen* should be acquainted with this by the *Lord Keeper*; which was done accordingly.

Whereupon at the said *Parliament*, the *Lord Laware* in his *Parliament Robes*, was by the *Lord Zouch*, supplying the place of the *Lord Willoughby*, within age at that time, and the *Lord Berkley* also in his Robes, brought into the House, and placed in his place (that is to say) next after the *Lord Berkley*; *Garter King at Arms* attending upon him, and doing his office.

In the upper House of *Parliament* do sit the Justices upon sacks of Wooll, in *medio Camera*; who are called thither by the Kings Writ, *quid personaliter interfuit nobiscum ac cum ceteris de consilio nostro predictis negotiis tractat. vestrumque consilium impensur.* And this *negotia* be *Ardu* & *arguentia negotia Regni, &c.* And their Oath amongst other things is, that they shall counsel the King truly in his business; but they have no voice among the Lords.

If a Writ of Error be brought in *Parliament* upon a Judgement given in *Kings Bench*, the Lords of the higher House onely, without the Commons, are to examine the Errors; and that is by the Advice and Counsel of the Judges, who are to inform them what the Law is, and to direct them in their judgement; and if judgement be reversed, then commandment is to be given to the Lord Chancellor to do Execution accordingly. And so was done in the 7. of R. 2. in a Writ brought in *Parliament* by the Dean and Chapter of *Litchfield*, against the Prior and Covent of *Newport-Pannell*,

as appeareth by the Record. And if the judgment be affirmed, then the Court of K. Bench are to proceed to Execution of the judgment, as appears in *Howardenes Case*, 1, H. 7. Fol. 19.

But it is to be noted, that in all such Writs of Errors, the Lords are to proceed according to the Law; and for their judgment therein, they are informed and guided by the Judges, and do not follow their own Opinions or discretions. See *Egertons post-nati*, fol. 23.

There do also sit the Secretaries of Estate, who are to answer to such Letters or things passed in the Councel whereof they have the keeping; and with them the Master of the Rolls: But they have no voice in *Parliament*, if they be not of the degree of a Baron.

Note by Kirby, Clerk of the Rolls of the *Parliament*, It is thus in the Books of the Law, the 33. H. 6. c. 87. If a Bill come first to the Commons, and they do pass it, then the use is to indorse it in this form; *Soyt bayle & Seigneures*: And then if the Lords nor K. do not alter the Bill, then it shall be

inrolled by the Clerk of the *Parliament*, and if the Bill pass, then it shall be inrolled; but if it be a particular Bill then it shall be filed upon *filices*, and that shall suffice; unless the party whom it particularly concerneth will sue to have it inrolled, that it may be inrolled to be sure.

All the priviledges which do belong to those of the Commons House of *Parliament*, *a fortiori* do appertain to all the Lords of the Upper House; for their persons are not only free from arrests during the *Parliament*, but during their lives; nevertheless the Original cause is by reason they have place and voice in *Parliament*: And this is manifest by express Authorities grounded upon excellent Reasons in the Book of Law.

And if a Baron, Viscount, Earl, Marquess or Duke of *England* bring any Action real or personal, and the defendant pleadeth in abatement of the Writ, That he is no Baron, Viscount, Earl, &c. and thereupon the Demandant or Plaintiff pleadeth in abatement of the Writ, and taketh issue; This issue shall not be tried by

by a Jury, but by the Records of the *Parliaments*, whether he or his Ancestors, whose Heir he is, were called to serve there as a Peer, or one of the Nobility of the Realm. See Sir *Edward Cooke* 6. *part.* 53. & 7. *part.* Fol. 17. a.

In the ancient *Britains* and *Saxon* Kings dayes, the Archbishops and Bishops were called to their *Parliaments* or other Assemblies of State; which was done not so much in respect of their Tenures, for in those dayes all their Tenures were *Franckfe Almonage*; but especially, because the Laws and Counsels of men were then most currant and commendable, and had a more blessed issue and success, when they were grounded upon the fear of God, the root and beginning of Wisdom. And therefore our wise and Religious Ancestors called thither those chief and principal persons of the Clergy, who by their place and profession, by their Gravity, Learning and Wisdome might best advise them what was the Law of God his acceptable will and pleasure; that they might from their humane Laws answerable, or at the least not contrary.

trary or repugnant thereunto. Nevertheless, shortly after the *Norman Conquest*, the Conqueror altered the Tenure of the Bishopricks, not without some complaint and grief of the Clergy, as it is mentioned in *Matthew Paris, Annis 1070.*

And in the Constitutions of *Clarendon*, in the time of *Henry 2. Annis 1164.* It is expressed in the eleventh Article.

Thereby we see the presence of the Bishops in *Parliament*, in respect of their Baronies, *quousque perveniatur ad diminutionem, &c.* for so even unto our times, when question is had of the attainder of any Peer, or other in *Parliament*, the Archbishops and Bishops depart the higher House, and do make their Proctors: for by the Decrees of the Church they may not be Judges of life and death. Ever since the Conquest the Archbishops & Bishops have no title to have place and voice in *Parliament*, but only in respect of their Temporal Baronies.

And it is to be observed, that although of later times the use & manner of penning of Stat. is, that it is enacted,
by

by the Lords Spiritual and Temporal, and the Commons in the same assembled; yet the ancient form was not so, which you may see exemplified in Sir *Edw. Cokes* 8. *part. f. l. 19.*

And good Acts of Parliament may be made, though the Archbishops and Bishops would not consent thereunto; for a Statute was made *Anno 1196* by the King, the Barons and the Commons (*Clero exclus,*) and this was at a Parliament holden at *Saint Edmundsbury*, in the reign of *E. 1.* as it is reported by *Jewel Bishop of Salisbury* against *Harding*, fol. 620. And in the Province of *Milton*, the time of *H. 8.* a matter was moved of Bastardy, touching the legitimization of Bastards born before marriage; where it is said, That the Statute did pass intirely with the Lords temporal, against the wills of the Lords spiritual: which Statute is in the Books in the 20. year of *H. 8. 3. c. 9.*

And in *11. R. 2. c. 3.* It is enacted, that the appeals, pursuits, accuséments, processes, judgments & executions made & given in this present Parliament be affirm'd & established, as a thing duly made

made for the weal and profit of the King our Sovereign Lord, and of all the Realm, notwithstanding that the Lords Spiritual and their Procurators did absent themselves out of the Parliament the time of the said judgment given, for the honesty and salvation of their estates, as it is contained in a protestation made by the Lords Spiritual and their Procurators delivered in this present Parliament.

See *Ke bancies* Book fol. 184. in the 7. H. 8. The Justices did say, that our Sovereign Lord the King may well hold his Parliament by him and his Temporal Lords, and by the Commons also, without the Spiritual Lords; for the Spiritual Lords have not any place in the Parliament-Chamber by reason of their Spiritualities, but onely by reason of their Temporal possessions.

The Sovereign power of this High Court of Parliament is this; That albeit the Kings Majesty hath many great priviledges and prerogatives, yet many things there are not effectual in Law, to pass under the great Seal by the Kings Charter, without Parlia-

liament; as upon this point it was resolved by all the Judges in the Princes Case, That the Dukedom of Cornwall, &c. did not, nor could pass from E. 3. by his Charter made in Parliament, That his Son and Heir apparent, and to his Heirs in form, as it was intended and made in *Anno 11.* of his reign. But of necessity it was, and so was done by authority of Parliament; which Case is notable and worth the reading: See Sir *Edw. Coker* 8. part. fol. and his 7. part fol. 7. 4. The King by his Letters Patents may make a denizen, but cannot naturalize him to all purposes, as an Act of *Parliament* may do; for the Kings Charter cannot make any hereditary in this Case that by the common Laws cannot inherit. And herewith agreeth the 36. of H. 8. *Denizon Brook.*

Bracton in the beginning of his second Book saith, *Nil aliud potest Rex in terris, cum sit Dei minister & vicarius, quàm quod de jure potest*: and a little after, *Itaque potestas sua est Juris non injuria; & sicut sit auctor Juris,*
non

non delet inde injuriarum nasci occasum unde jura nascantur.

And it appeareth in *Fitzherberti Natura Brevium*. 222. in the Writ *ad quendam*, that every grant of the King or gift hath his condition expressed or implied, as by the Law annexed to it; *It. q; quod per donationem illam patria magis solito non aueretur seu gravetur.*

And therefore it was resolved by all the Judges 4. *F. 10. b.*, that they who dig for Salt-peter, may not dig within the Mansion-house of any subject; *Salt-peter* without his assent, for the manifest inconveniences that thereby may grow to the owner of the house. See Sir *E. 4. Coke 11. part. 82.*

Also the Commission to be made, the purveyers for Timber for the Kings use, yet they cannot by that authority *Timber* take Timber-trees growing upon any mans Freehold: for that is prohibited by *Magna Charta cap. 21. Nos nec Ballivi nostri nec alii capiemus boscum alienum ad castra vel ad alia agenda nostra, nisi per voluntatem cuius boscum ille fuerit.*

A Commission was awarded to take

take singing-boyes in Cathedral-Churches, or in other places where such are instructed, for the furnishing of the Kings Chappel; these general words by construction shall have a reasonable understanding, that is to say, such children as be taught to sing, thereby to acquire or get their livings, such may be taken for the Kings service; but the son of a Gentleman, or any other who is taught to sing for his recreation, ornament, or delight, may not be taken against his will, or against the will of his parents or friends; and so it was resolved by all the Judges and whole Court of Star-Chamber, 43. *Eliz.*

If a man be attainted of Felony or Treason, by Verdict, Outlary, Confession, &c. his blood is corrupted: which is a perpetual and absolute disability for him or his posterity to claim any hereditament in Fee-simple, either as heir to him, or any Ancestor *PARAGONNE* him; and he shall not be restored to his blood without Parliament: and the King may give to any attainted person his life, by this Charter of
Par-

Parliament. See *Stamfords Pleas*, 195. For the King cannot alter the Common Law, or the general customes of the Realm, such as the descent of *Gayland*, *Burrough English*, or such like, without *Parliament*. See *Braks Prerogative* 15. & 11. H. 4. c. 73.

And it is set down for a rule, That if a King have a Kingdom by descent, there seeing by the Law of that Kingdom he doth inherit that Kingdom, he cannot change those Laws of himself, without consent of *Parliament*.

Fortescue also saith in his 9. cap. fol. 25. 5. If the power of the King over his subjects were royal onely, and not politick, then he might change the Laws of the Realm, and charge his subjects with Tallages and other burdens without their consent. And that such is the dominion the Civil Law purports, when they say, *Quod Principi placuit legis habet vigorem.* But by the Laws of this Kingdom the King cannot by his Proclamation alter the Law; but the King may make Proclamation that he shall incur the indignation of his Majesty

fly that withstandeth it. And by his absolute authoritie, the King may commit any one to prison during his pleasure; see *Stamford* 72. But the penaltie of not obtaining his proclamation, may not be upon pain of forfeiture of his Goods, his Lands, or his Life, without *Parliament*. See *Cromptons Courts* 14. a. & 16. 6. *Sed unus non capit hoc verbum*; for they of another profession in Law say, that of these two one must needs be true, that either the King is above the *Parliament*, that is, the positive Law of the Kingdom; or else that he is an absolute King, *Arist. lib. Polit. cap. 16*. And therefore though it be a merciful policy, and also a politick mercy, not alterable without great peril, and to make Laws by the consent of the whole Realm, because no one partie shall have cause to complain of a partialities; yet simply to bind the King to or by those Laws, were repugnant to the nature and constitution of an absolute Monarchy.

In some special cases there sometimes may be liking of subjects without

out land of possession, as in the government which *Moses* had over the children of *Israel* in the Wilderness, and in the case which *Sir Job. Popham*, the late Lord chief Justice, did put in the Parliament; If a King and his subjects be driven out of his Kingdom by his Enemies, yet notwithstanding he continueth still King over his subjects, and they still are bound to him by their bonds of allegiance, where soever they be: but he cannot be a King without subjects, for that were *Imperium inbellum*, & *Rex & subditi sunt relativa*.

Ⓐ I believe *Solomon*, that saith, *Per m reges regnant, & Principes iusta decernunt*; and I make no doubt, but as God ordained Kings, and hath given Laws to Kings themselves, so he hath authorized and given power to Kings to give Laws to their subjects; and so Kings did first make Laws, and then ruled by their Laws, and altered and changed their Laws from time to time as they saw occasion, for the good of themselves and of their Subjects.

By the premisses it appeareth, that
Act

Acts of Parliament and Statutes are made in this High Court of Parliament by the King, with the consent of the Commons, or by the greater part of them; for so saith *Littleton*, 15 E. 4. fol. 2. a.

In the Parliament, if the greater part of the Knights of the Shire do assent to the making of an Act of Parliament, and the lesser part will not agree to it, yet this is a good Act or Statute to last *in perpetuum*: and that the Law of *Majoris partis* is so in all Counsels, Elections, &c. both by the rules of the Common law and the Civil.

In this Court of Parliament they do make new positive Laws or Statutes, and sometimes they enlarge some of them as unto them seemeth good: and it is good counsel, that in making of laws, *quoad ejus fieri possit, quam plurima legibus definiantur, quam paucissima vero Judicis arbitrio relinquantur*; yet forsomuch as every considerable circumstance cannot be foreseen at the time of the making of the Law, for, *rerum progressus*
est: n-

ostendunt multa quæ in initio tractaverit scripti videri non possunt. Therefore by the very intent of the makers of the Statute, they do many times leave to be supplied by the discretion of the executioner of the Law that thing which was not conveniently comprehended before hand by the wisdom of the Authors of the same: for the expounding of the Laws doth ordinarily belong to the reverend Judges, and in case of greatest difficulty of importance to the High Court of Parliament. See *Pleaders Commentaries*, fol. 363. & 364, & 365.

And the Judges do say, that they may not make any interpretation against the expresse words of the Statute, where the intent of the Makers of the law doth appear to the contrary, and where no inconvenience by the Statute shall ensue; for in such cases *A verbis legum non est recedendum.*

But to exemplifie all the several kinds and forms of penning them and the words of them taken and construed, sometimes by execution, sometimes by restriction, sometimes by implication, sometimes by disjunction,

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tion, sometimes a disjunctive for a copulative, sometimes a copulative for a disjunctive, the present tense for the future, the future for the present; sometimes by equity out of the reach of the words, sometimes taken in a contrary sense, sometimes singularly, as *contineus pro continens*, and suchlike, will ask a volume by it self, and in my opinion is not incident to this Discourse of the *Jurisdiction of the High Court of Parliament.*

ANCIENT
