

The works of Francis Bacon, Baron of Verulam, Viscount St. Alban, Lord High Chancellor of England ... With several additional pieces, never before printed in any edition of his works. To which is prefixed a new life of the author, by Mr. Mallet / [Francis Bacon].

Contributors

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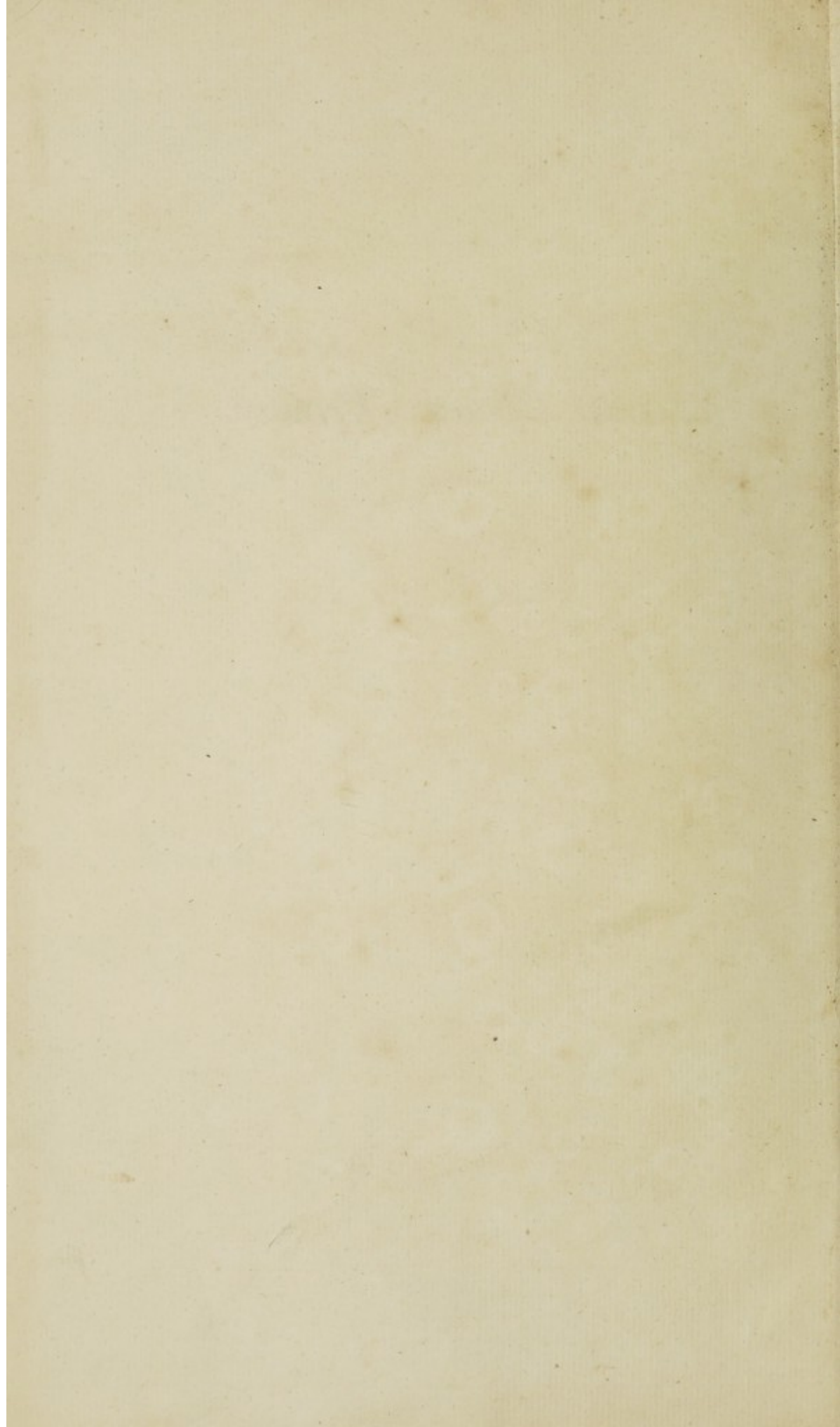
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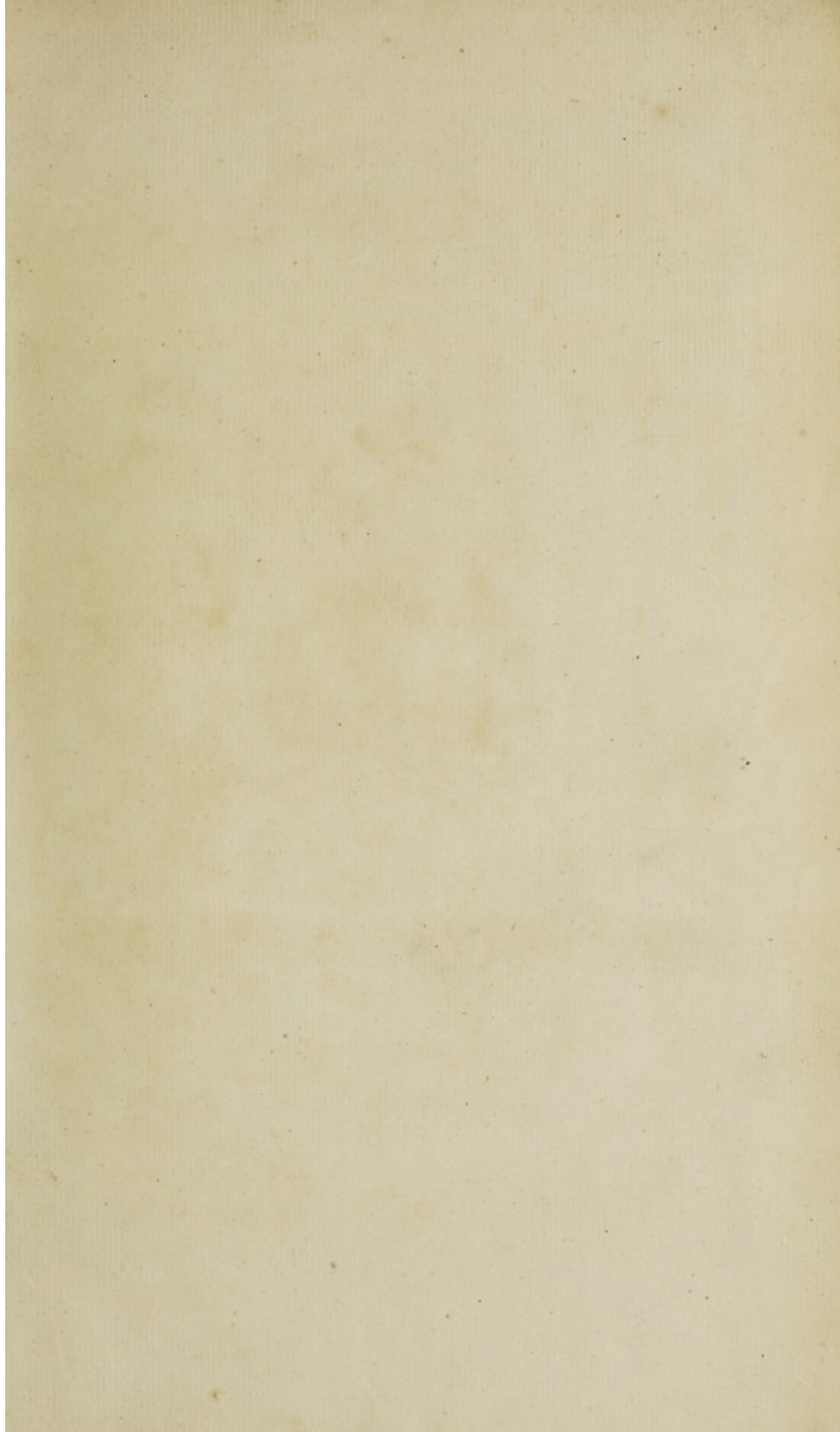
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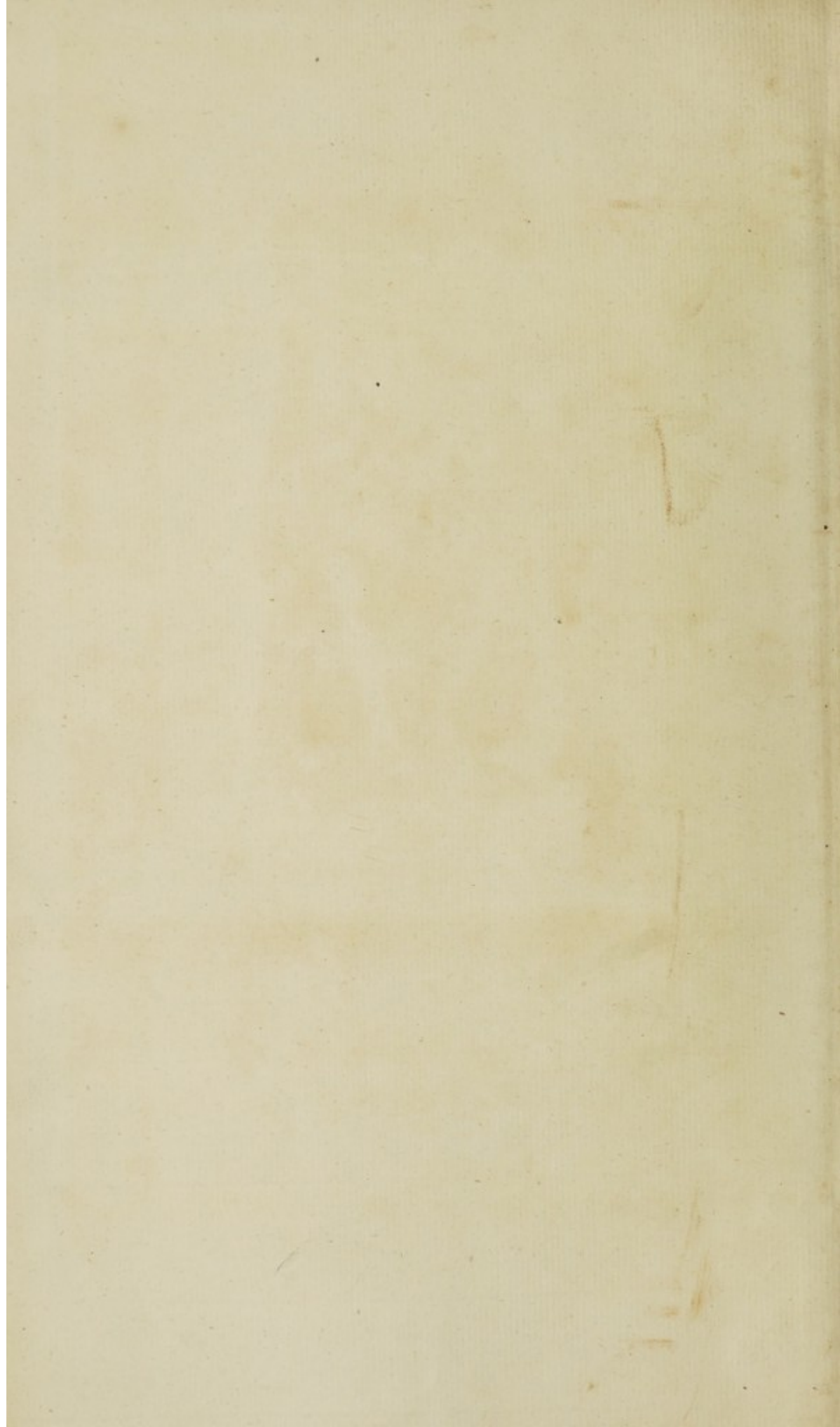


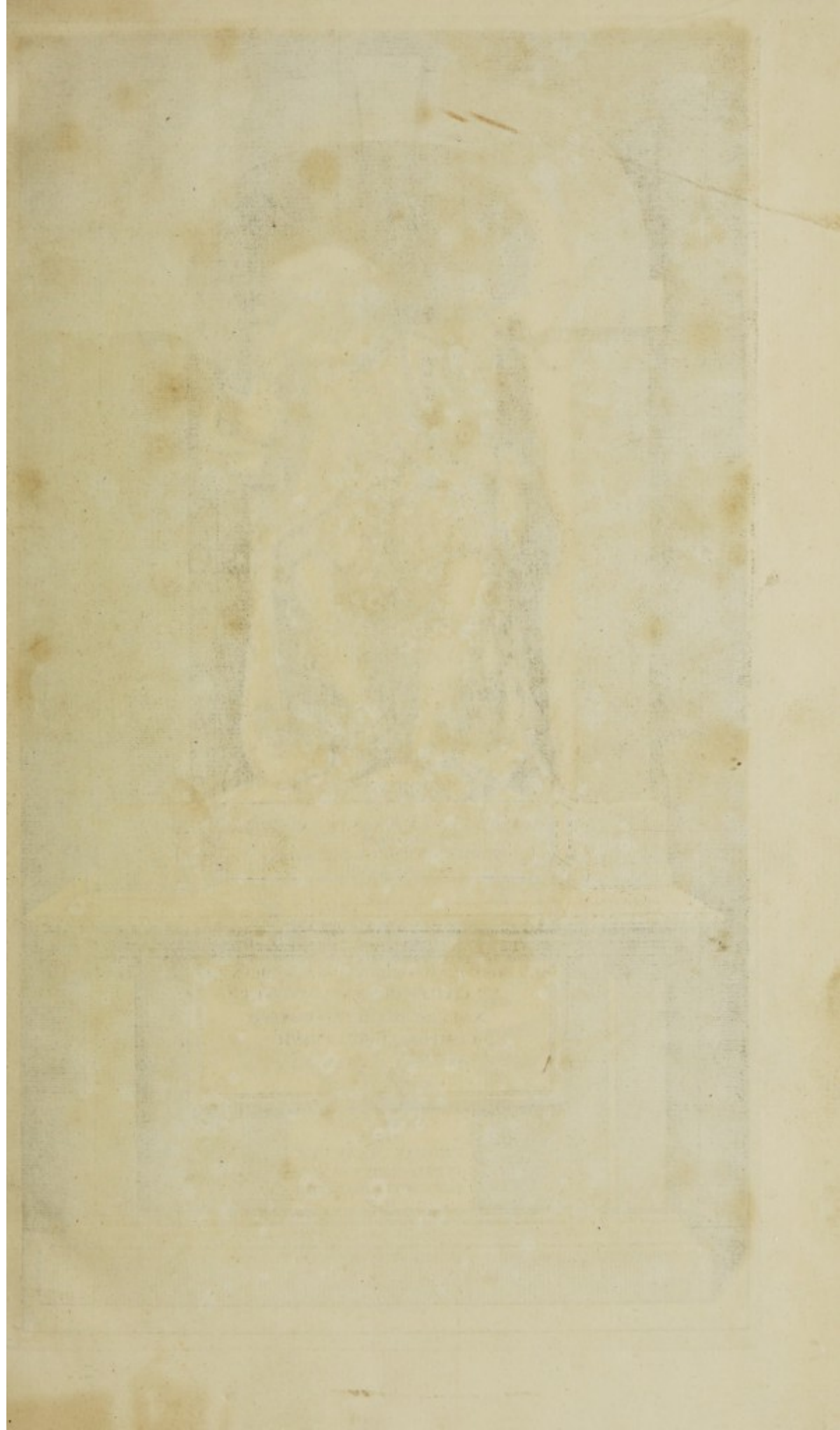
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THE
WORKS
OF
FRANCIS BACON,

Baron of *VERULAM*,
VISCOUNT St. Alban,
AND
Lord High Chancellor of *England*.

VOL. IV.



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M.DCC.XL.

WORKS

FRANCIS BACON

ST. JOHN OF LONDON

VISCOUNT OF VERULAM

LORD CHANCELLOR OF ENGLAND



A PROPOSAL FOR AMENDING
A
PROPOSITION
TO HIS
MAJESTY,

BY

Sir *FRANCIS BACON*, Knight,

His MAJESTY'S Attorney-General, and one of his Privy-Council ; touching the Compiling and Amendment of the Laws of ENGLAND.

YOUR MAJESTY,

OF your favour, having made me Privy-Counsellor, and continuing me in the place of your Attorney-General, (which is more than was these hundred years before,) I do not understand it to be, that by putting off the dealing in causes between party and party, I should keep holy-day the more ; but that I should dedicate my time to your service with less distraction. Wherefore, in this plentiful accession of time, which I have now gained, I take it to be my duty, not only to speed your commandments, and the business of my place ; but to meditate and to exco-
gitate, of my self, wherein I may best, by my travels, derive your virtues to the good of your people, and return their thanks and increase of love to you again. And after I had thought of many things, I could find, in my judgment, none more proper for your Majesty as a master, nor for me as a work-
man, than the reducing and recompiling of the laws of *England*.

YOUR Majesty is a King, blessed with posterity ; and these Kings sort best with acts of perpetuity, when they do not leave them, instead of children ; but transmit both line and merit to future generations. You are a great master in justice and judicature, and it were pity that the fruit of that virtue should die with you. Your Majesty also reigneth in learned times ; the more, in regard of your own perfections and patronage of learning ; and it hath been the mishap of works of this nature, that the less learned time hath wrought upon the more learned, which now will not be so. As for my self, the law is my profession, to which I am a debtor. Some little helps I may have of other learning, which may give form to matter ; and your Majesty hath set me in an eminent place, whereby in a work which must be the work of many, I may the better have coadjutors. Therefore, not to hold your Majesty with any long preface, in that which I conceive to be nothing less than words, I will proceed to the matter ; which matter it self nevertheless requireth somewhat briefly to be said, both of the digni-
ty,

A PROPOSAL FOR AMENDING

ty, and likewise of the safety, and convenience of this work: and then to go to the main; that is to say, to shew how the work is to be done: which incidently also will best demonstrate, that it is no vast nor speculative thing, but real and feasible. *Callisthenes*, that followed *Alexander's* court, and was grown in some displeasure with him, because he could not well brook the *Persian* adoration; at a supper (which with the *Grecians* was ever a great part talk,) was desired, because he was an eloquent man, to speak of some theme, which he did; and chose for his theme, the praise of the *Macedonian* nation; which though it were but a filling thing to praise men to their faces, yet he did it with such advantage of truth, and avoidance of flattery, and with such life, as the hearers were so ravish'd with it, that they plucked the roses off from their garlands, and threw them upon him; as the manner of applauses then was: *Alexander* was not pleased with it, and by way of discountenance said, It was easy to be a good orator, in a pleasing theme. But (saith he to *Callisthenes*.) turn your style, and tell us now of our faults, that we may have the profit, and not you only the praise: which he presently did with such a force, and so piquantly, that *Alexander* said, The goodness of his theme had made him eloquent before; but now it was the malice of his heart, that had inspired him.

1. SIR, I shall not fall into either of those two extremes, concerning the laws of *England*; they commend themselves best to them that understand them; and your Majesty's chief Justice of your bench hath in his writings magnified them not without cause: certainly they are wise, they are just, and moderate laws; they give to God, they give to *Caesar*, they give to the subjects, that which appertaineth. It is true, they are as mixt as our language, compounded of *British*, *Roman*, *Saxon*, *Danish*, *Norman* customs. And as our language is so much the richer, so the laws are the more compleat: neither does this attribute less to them, than those that would have them to have stood out the same in all mutations; for no tree is so good first set, as by transplanting.

2. As for the second extreme, I have nothing to do with it, by way of taxing the laws. I speak only by way of perfecting them, which is easiest in the best things; for that which is far amiss, hardly receiveth amendment; but that which hath already, to that more may be given. Besides, what I shall propound is not to the matter of the laws, but to the manner of their registry, expression, and tradition: so that it giveth them rather light than any new nature. This being so, for the dignity of the work I know scarcely where to find the like: for surely that scale, and those degrees of sovereign honour, are true and rightly marshalled. First, the founders of states; then the law-givers; then the deliverers and saviours after long calamities; then the fathers of their countries, which are just and prudent princes; and lastly, conquerors, which honour is not to be received amongst the rest, except it be, where there is an addition of more country and territory to a better government, than that was of the conquered. Of these, in my judgment, your Majesty may with more truth than flattery be intitled to the first, because of your uniting of *Britain* and planting *Ireland*; both which favour of the founder. That which I now propound to you, may adopt you also into the second: law-givers have been called *principes perpetui*; because, as Bishop *Gardiner* said in a bad sense, that he would be bishop an hundred years after his death, in respect of the long leases he made: so law-givers are still Kings and Rulers after their decease, in their laws. But this work, shining so in it self, needs no taper. For the safety and convenience thereof,

thereof, it is good to consider, and to answer those objections or scruples which may arise, or be made against this work.

Obj. 1. THAT it is a thing needless; and that the law, as it now is, is in good estate, comparable to any foreign law; and that it is not possible for the wit of man, in respect of the frailty thereof, to provide against the uncertainties and evasions, or omissions of law.

Resp. FOR the comparison with foreign laws, it is in vain to speak of it; for men will never agree about it. Our lawyers will maintain for our municipal laws; civilians, scholars, travellers, will be of the other opinion.

BUT certain it is, that our laws, as they now stand, are subject to great uncertainties, and variety of opinion, delays and evasions: whereof ensueth,

1. THAT the multiplicity and length of suits is great.
2. THAT the contentious person is armed, and the honest subject wearied and oppressed.
3. THAT the judge is more absolute; who, in doubtful cases, hath a greater stroke and liberty.
4. THAT the chancery courts are more filled, the remedy of law being often obscure and doubtful.
5. THAT the ignorant lawyer shroudeth his ignorance of law, in that, doubts are so frequent and many.
6. THAT mens assurances of their lands and estates by patents, deeds, wills, are often subject to question, and hollow; and many the like inconveniencies.

IT is a good rule and direction (for that all laws, *secundum magis & minus*, do participate of uncertainties,) that followeth. Mark, whether the doubts that arise are only in cases not of ordinary experience, or, which happen every day: If in the first only, impute it to the frailty of man's foresight, that cannot reach by law to all cases; but if in the latter, be assured there is a fault in the law. Of this I say no more, but that (to give every man his due) had it not been for Sir *Edward Coke's* Reports, (which, though they may have errors, and some peremptory and extrajudicial resolutions, more than are warranted; yet they contain infinite good decisions, and rulings over of cases,) the law by this time had been almost like a ship without ballast; for that the cases of modern experience, are fled from those that are adjudged and ruled in former time. But the necessity of this work is yet greater in the statute law. For first, there are a number of ensnaring penal laws, which lie upon the subject; and if in bad times they should be awaked, and put in execution, would grind them to powder.

THERE is a learned civilian that expoundeth the curse of the prophet; *Pluet super eos laqueos*, of a multitude of penal laws; which are worse than showers of hail or tempest upon cattle, for they fall upon men.

THERE are some penal laws fit to be retained, but their penalty too great; and it is ever a rule, that any over-great penalty, (besides the acerbity of it) deads the execution of the law.

THERE is a further inconvenience of penal laws, obsolete, and out of use; for that it brings a gangrene, neglect, and habit of disobedience upon other wholesome laws, that are fit to be continued in practice and execution; so that our laws endure the torment of *Mezentius*:

The living die in the arms of the dead.

LASTLY, There is such an accumulation of statutes concerning one matter, and they so cross and intricate, as the certainty of law is lost in the heap;

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heap; as your Majesty had experience last day upon the point, Whether the incendiary of *Newmarket* should have the benefit of his clergy.

Obj. 2. THAT it is a great innovation; and innovations are dangerous beyond foresight.

Resp. ALL purgings and medicines, either in the civil or natural body, are innovations: so as that argument is a common place against all noble reformations. But the truth is, that this work ought not to be termed or held for any innovation in the suspected sense. For those are the innovations which are quarrelled and spoken against, that concern the consciences, estates, and fortunes of particular persons: but this of general ordinance pricketh not particulars, but passeth *sine strepitu*. Besides, it is on the favourable part; for it easeth, it presseth not: and lastly, it is rather matter of order and explanation, than of alteration. Neither is this without precedent in former governments.

THE Romans, by their *Decemviri*, did make their twelve tables; but that was indeed a new enacting or constituting of laws, not a registering or recompiling; and they were made out of the laws of the *Grecians*, not out of their own customs.

IN *Athens* they had *Sexviri*, which were standing commissioners to watch and discern what laws waxed unproper for the time; and what new law did, in any branch, cross a former law, and so, *ex officio*, propounded their repeals.

KING *Lewis XI*, of *France*, had it in his intention to have made one perfect and uniform law, out of the civil law *Roman*, and the provincial customs of *France*.

JUSTINIAN the Emperor, by commissions directed to divers persons learned in the laws, reduced the *Roman* laws from vastness of volume, and a labyrinth of incertainties, unto that course of the civil law which is now in use. I find here at home of late years, that King *Henry VIII*, in the twenty seventh of his reign, was authorized by parliament to nominate thirty two commissioners, part ecclesiastical, part temporal, to purge the canon law, and to make it agreeable to the law of God, and the law of the realm; and the same was revived in the fourth year of *Edward VI*, though neither took effect.

FOR the laws of *Lycurgus*, *Solon*, *Minos*, and others of ancient time, they are not the worse, because grammar scholars speak of them: But things too ancient wax children with us again.

EDGAR, the *Saxon* King, collected the laws of this kingdom, and gave them the strength of a faggot bound, which formerly were dispersed.

THE statutes of King *Edward* the first were fundamental. But, I doubt, I err, in producing so many examples: for, as *Cicero* saith to *Caesar*, so may I say to your Majesty;

Nil vulgare te dignum videri possit.

Obj. 3. IN this purging of the course of the common laws and statutes, much good may be taken away.

Resp. IN all purging, some good humours may pass away; but that is largely recompensed, by lightening the body of much bad.

Obj. 4. LABOUR were better bestowed, in bringing the common laws of *England* to a text law, as the statutes are, and setting both of them down in method and by titles.

Resp.

Resp. IT is too long a business to debate, whether *lex scripta, aut non scripta*, a text law, or customs well registred, with received and approved grounds and maxims, and acts and resolutions judicial from time to time duly entered and reported, be the better form of declaring and authorizing laws. It was the principal reason or oracle of *Lycurgus*, that none of his laws should be written. Customs are laws written in living tables, and some traditions the church doth not disauthorize. In all sciences they are the soundest, that keep close to particulars; and sure I am, there are more doubts that rise upon our statutes, which are a text law, than upon the common law, which is no text law. But, howsoever that question be determined, I dare not advise to cast the law into a new mould. The work which I propound tendeth to pruning and grafting the law, and not to plowing up and planting it again; for such a remove I should hold indeed for a perilous innovation.

Obj. 5. IT will turn the judges, counsellors of law, and students of law to school again, and make them to seek what they shall hold and advise for law; and it will impose a new charge upon all lawyers to furnish themselves with new books of law.

Resp. FOR the former of those, touching the new labour, it is true it would follow, if the law were new moulded into a text law; for then men must be new to begin, and that is one of the reasons for which I disallow that course.

BUT in the way that I shall now propound, the entire body and substance of law shall remain, only discharged of idle and unprofitable or hurtful matter; and illustrated by order and other helps, towards the better understanding of it, and judgment thereupon.

FOR the later, touching the new charge, it is not worth the speaking of, in a matter of so high importance; it might have been used of the new translation of the bible, and such like works. Books must follow sciences, and not sciences books.

The Work it self; and the way to reduce and recompile the LAWS of ENGLAND.

THIS work is to be done (to use some few words which is the language of action and effect) in this manner.

IT consisteth of two parts; the digest or recompiling of the common laws, and that of the statutes.

IN the first of these, three things are to be done.

1. THE compiling of a book, *de antiquitatibus juris*.
2. THE reducing or perfecting of the course or corps of the common laws.
3. THE composing of certain introductive and auxiliary books touching the study of the laws.

FOR the first of these, all ancient records in your *Tower*, or elsewhere, containing acts of parliament, letters patents, commissions, and judgments, and the like, are to be searched, perused, and weighed: And out of these are to be selected those that are of most worth and weight, and in order of time not of titles, (for the more conformity with the year-books,) to be set down and registred, rarely in *haec verba*; but summed with judgment, not omit-

ting any material part ; these are to be used for reverend precedents, but not for binding authorities.

FOR the second, which is the main, there is to be made a perfect course of the law *in serie temporis*, or year-books, (as we call them) from Edward the first to this day : in the compiling of this course of law, or year-books, the points following are to be observed.

FIRST, All cases which are at this day clearly no law, but constantly ruled to the contrary, are to be left out ; they do but fill the volumes, and season the wits of students in a contrary sense of law. And so likewise all cases, wherein that is solemnly and long debated, whereof there is now no question at all, are to be entered as judgments only, and resolutions, but without the arguments, which are now become but frivolous : yet for the observation of the deeper sort of lawyers, that they may see how the law hath altered, out of which they may pick sometimes good use, I do advise, that upon the first in time of those obsolete cases, there were a *memorandum* set, that at that time the law was thus taken, until such a time, &c.

SECONDLY, *Homonymiae*, (as *Justinian* calleth them) that is, cases merely of iteration and repetition, are to be purged away ; and the cases of identity, which are best reported and argued, to be retained instead of the rest ; the judgments nevertheless to be set down, every one in time as they are, but with a quotation or reference to the case where the point is argued at large ; but if the case consist part of repetition, part of new matter, the repetition is only to be omitted.

THIRDLY, As to the *Antinomiae*, cases judged to the contrary, it were too great a trust to refer to the judgment of the composers of this work, to decide the law either way, except there be a current stream of judgments of later times ; and then I reckon the contrary cases amongst cases obsolete, of which I have spoken before : nevertheless this diligence should be used, that such cases of contradiction be specially noted and collected, to the end those doubts, that have been so long militant, may either by assembling all the judges in the exchequer chamber, or by parliament, be put into certainty. For to do it by bringing them in question under feigned parties, is to be disliked. *Nil habeat forum ex scenâ.*

FOURTHLY, All idle queries, which are but seminaries of doubts, and incertainties, are to be left out and omitted, and no queries set down, but of great doubts well debated and left undecided for difficulty ; but no doubting or upstarting queries, which though they be touched in argument for explanation, yet were better to die than to be put into the books.

LASTLY, Cases reported with too great prolixity, should be drawn into a more compendious report ; not in the nature of an abridgment, but tautologies and impertinences to be cut off : as for misprinting, and insensible reporting, which many times confound the students, that will be *obiter* amended ; but more principally, if there be any thing in the report which is not well warranted by the record, that is also to be rectified : the course being thus compiled, then it resteth but for your Majesty to appoint some grave and sound lawyers, with some honourable stipend, to be * reporters for the time to come, and then this is settled for all times.

* This Constitution of Reporters I obtained of the King, after I was Chancellor ; and there are two appointed with a 100 l. a year a-piece stipend.

FOR the auxiliary books that conduce to the study and science of the law, they are three; Institutions, a treatise *de regulis juris*; and a better book *de verborum significatione*, or terms of the law. For the institutions, I know well there be books of introductions (wherewith students begin) of good worth, especially *Littleton* and *Fitzherbert's Natura brevium*; but they are no ways of the nature of an institution; the office whereof is to be a key and general preparation to the reading of the course. And principally it ought to have two properties; the one a perspicuous and clear order or method; and the other, an universal latitude or comprehension, that the students may have a little pre-notion of every thing, like a model towards a great building. For the treatise *de regulis juris*, I hold it, of all other things, the most important to the health (as I may term it) and good institutions of any laws: it is indeed like the ballast of a ship, to keep all upright and stable; but I have seen little in this kind, either in our law, or other laws, that satisfieth me. The naked rule or maxim doth not the effect: It must be made useful by good differences, ampliations, and limitations, warranted by good authorities; and this not by raising up of quotations and references, but by discourse and deducement in a just tractate. In this I have travelled my self, at the first more cursorily, since with more diligence, and will go on with it, if God and your Majesty will give me leave. And I do assure your Majesty, I am in good hope, that when Sir *Edward Coke's* Reports, and my rules and decisions shall come to posterity, there will be (whatsoever is now thought) question, who was the greater lawyer? For the books of the terms of the law there is a poor one, but I wish a diligent one, wherein should be comprised not only the exposition of the terms of the law, but of the words of all antient records and precedents.

FOR the abridgments I could wish, if it were possible, that none might use them, but such as had read the course first, that they might serve for repositories to learned lawyers, and not to make a lawyer in haste; but since that cannot be, I wish there were a good abridgment composed of the two that are extant, and in better order. So much for the common law.

Statute Law.

FOR the reforming and recompiling of the statute law, it consisteth of four parts.

1. THE first, to discharge the books of those statutes, where the case, by alteration of time, is vanished; as *Lombards*, *Jews*, *Gauls* half pence, &c. Those may nevertheless remain in the libraries for antiquities, but no reprinting of them. The like of statutes long since expired and clearly repealed; for if the repeal be doubtful, it must be so propounded to the parliament.

2. THE next is, to repeal all statutes which are sleeping and not of use, but yet snaring and in force; in some of those it will perhaps be requisite to substitute some more reasonable law instead of them agreeable to the time; in others a simple repeal may suffice.

3. THE third, that the grievousness of the penalty in many statutes be mitigated, though the ordinances stand.

4. THE last is, the reducing of concurrent statutes heaped one upon another to one clear and uniform law. Towards this there hath been already, upon my motion, and your Majesty's direction, a great deal of good pains taken; my Lord *Hobart*, my self, Serjeant *Finch*, Mr. *Heneage Finch*, Mr. *Noye*, Mr. *Hackwell*, and others, whose labours being of a great bulk, it is not fit now to trouble your Majesty with any further particularity therein; only by this you may perceive the work is already advanced: but because this part of the work, which concerneth the statute laws, must of necessity come to parliament, and the houses will best like that which themselves guide, and the persons that themselves employ, the way were to imitate the precedent of the commissioners for the canon laws in 27 *Hen. VIII.*, and 4 *Edw. VI.*, and the commissioners for the union of the two realms, *primo* of your Majesty, and so to have the commissioners named by both houses; yet not with a precedent power to conclude, but only to prepare and propound to parliament: this is the best way, I conceive, to accomplish this excellent work, of honour to your Majesty's times, and of good to all times; which I submit to your Majesty's better judgment.

A N
O F F E R
T O
K I N G J A M E S,
O F

A DIGEST to be made of the LAWS of ENGLAND.

Most excellent Sovereign,

AMONGST the degrees and acts of sovereign, or rather heroical honour, the first or second is the person and merit of a lawgiver. Princes that govern well are fathers of the people: But if a father breed his son well, or allow him well while he liveth, but leave him nothing at his death, whereby both he and his children, and his childrens children may be the better, surely the care and piety of a father is not in him complete. So Kings, if they make a portion of an age happy by their good government, yet if they do not make testaments (as God Almighty doth) whereby a perpetuity of good may descend to their country, they are but mortal and transitory benefactors. *Domitian*, a few days before he died, dream'd that a golden head did rise upon the nape of his neck: which was truly performed in the golden age that followed his times for five successions. But Kings, by giving their subjects good laws, may (if they will) in their own time, join and graft this golden head upon their own necks after their death. Nay, they may
make

make *Nabuchodonozor's* image of monarchy golden from head to foot. And if any of the meaner sort of politicks, that are sighted only to see the worst of things, think, that laws are but cobwebs, and that good Princes will do well without them, and bad will not stand much upon them; the discourse is neither good nor wise. For certain it is, that good laws are some bridle to bad Princes, and as a very wall about government. And if tyrants sometime make a breach into them, yet they mollify even tyranny it self, as *Solon's* laws did the tyranny of *Pisistratus*: and then commonly they get up again, upon the first advantage of better times. Other means to perpetuate the memory and merits of sovereign Princes are inferiour to this. Buildings of temples, tombs, palaces, theatres, and the like, are honourable things, and look big upon posterity: But *Constantine* the Great gave the name well to those works, when he used to call *Trajan* that was a great builder, *Parietaria*, wall-flower, because his name was upon so many walls: So if that be the matter, that a King would turn wall-flower, or pellitory of the wall, with cost he may. *Adrian's* vein was better, for his mind was to wrestle a fall with time, and being a great progressor through all the *Roman* Empire, whenever he found any decays of bridges, or high-ways, or cuts of rivers and sewers, or walls, or banks, or the like, he gave substantial order for their repair with the better. He gave also multitudes of charters and liberties for the comfort of corporations and companies in decay: so that his bounty did strive with the ruins of time. But yet this, though it were an excellent disposition, went but in effect to the cases and shells of a common-wealth. It was nothing to virtue or vice. A bad man might indifferently take the benefit and ease of his ways and bridges as well as a good; and bad people might purchase good charters. Surely the better works of perpetuity in Princes, are those that wash the inside of the cup: Such as are foundations of colleges and lectures for learning and education of youth; likewise foundations and institutions of orders and fraternities, for nobleness, enterprise, and obedience, and the like. But yet these also are but like plantations of orchards and gardens, in plots and spots of ground here and there; they do not till over the whole kingdom and make it fruitful, as doth the establishing of good laws and ordinances, which makes a whole nation to be as a well-ordered college or foundation.

THIS kind of work in the memory of times, is rare enough to shew it excellent; and yet not so rare, as to make it suspected for impossible, inconvenient, or unsafe. *Moses*, that gave laws to the *Hebrews*, because he was the scribe of God himself, is fitter to be named for honour's sake to other law-givers, than to be numbred or ranked amongst them. *Minos*, *Lycurgus*, and *Solon*, are examples for themes of grammar scholars. For ancient personages and characters now-a-days use to wax children again; though that parable of *Pindarus* be true, the best thing is water: for common and trivial things are many times the best, and rather despised upon pride, because they are vulgar, than upon cause or use. Certain it is, that the laws of those three law-givers had great prerogatives. The first of fame, because they were the pattern amongst the *Grecians*: The second of lasting, for they continued longest without alteration: The third, of a spirit of reviver, to be often oppressed, and often restored.

AMONGST the seven Kings of *Rome* four were law-givers: for it is most true, that a discourser of *Italy* saith; There was never state so well swaddled in the infancy, as the *Roman* was by the virtue of their first Kings; which was a principal cause of the wonderful growth of that state in after-times.

THE *Decemvirs* laws were laws upon laws, not the original; for they grafted laws of *Graecia*, upon the *Roman* stock of laws and customs: But such was their success, as the twelve tables which they compiled were the main body of the laws which framed and wielded the great body of that estate. These lasted a long time, with some supplementals and the Pretorian edicts *in Albo*; which were, in respect of laws, as writing tables in respect of brads; the one to be put in and out, as the other is permanent. *Lucius Cornelius Sylla* reformed the laws of *Rome*: For that man had three singularities, which never tyrant had but he; That he was a law-giver, that he took part with the nobility, and that he turned private man, not upon fear, but upon confidence.

CAESAR long after desired to imitate him only in the first, for otherwise he relied upon new men; and for resigning his power *Seneca* describeth him right: *Caesar gladium citò condidit, nunquam posuit.* *Caesar* soon sheathed his sword, but never put it off. And himself took it upon him, saying in scorn of *Sylla's* resignation; *Sylla nescivit literas, dictare non potuit*, *Sylla* knew no letters, he could not dictate. But for the part of a law-giver, *Cicero* giveth him the attribute; *Caesar si ab eo quaereretur, quid egisset in togâ; leges se respondisset multas & praeclaras tulisse*; if you had asked *Caesar* what he did in the gown, he would have answered, that he made many excellent laws. His nephew *Augustus* did tread the same steps, but with deeper print, because of his long reign in peace; whereof one of the poets of his time saith,

*Pace datâ terris, animum ad civilia vertit
Jura suum; legesque tulit justissimus auctor.*

FROM that time there was such a race of wit and authority, between the commentaries and decisions of the lawyers, and the edicts of the Emperors, as both law and lawyers were out of breath. Whereupon *Justinian* in the end recompiled both, and made a body of laws such as might be wielded, which himself calleth gloriously, and yet not above truth, the edifice or structure of a sacred temple of justice, built indeed out of the former ruins of books, as materials, and some novel constitutions of his own.

IN *Athens* they had *Sexviri*, (as *Aeschines* observeth) which were standing commissioners, who did watch to discern what laws waxed improper for the times, and what new law did in any branch cross a former law, and so *ex officio* propounded their repeal.

KING Edgar collected the laws of this kingdom, and gave them the strength of a faggot bound, which formerly were dispersed; which was more glory to him than his sailing about this island with a potent fleet: for that was, as the scripture saith, *via navis in mari*, the way of a ship in the sea; it vanished, but this lasteth. *Alphonso* the wise, (the ninth of that name) King of *Castile*, compiled the digest of the laws of *Spain*, intitled the *Siete Partidas*; an excellent work which he finished in seven years. And as *Tacitus* noteth well, that the capitol, though built in the beginnings of *Rome*, yet was fit for the great monarchy that came after; so that building of laws sufficeth the greatness of the empire of *Spain*, which since hath ensued.

LEWIS XI had it in his mind (though he performed it not) to have made one constant law of *France*, extracted out of the civil *Roman* law, and the customs of provinces which are various, and the King's edicts, which with the *French* are statutes. Surely he might have done well, if, like as he brought the crown (as he said himself) from *Page*, so he had brought his people from

Lackey; not to run up and down for their laws to the civil law, and the ordinances and the customs and the discretions of courts and discourses of philosophers, as they use to do.

KING Henry VIII, in the twenty seventh year of his reign, was authorized by parliament to nominate thirty-two commissioners, part ecclesiastical, and part temporal, to purge the canon law, and to make it agreeable to the law of God, and the law of the land; but it took not effect: for the acts of that King were commonly rather proffers and fumes, than either well-grounded, or well pursued: but, I doubt, I err in producing so many examples. For as *Cicero* said to *Caesar*, so I may say to your Majesty, *Nil vulgare te dignum videri possit*. Though indeed this well understood is far from vulgar: For that the laws of the most kingdoms and states, have been like buildings of many pieces, and patch'd up from time to time according to occasions, without frame or model.

Now for the laws of *England* (if I shall speak my opinion of them without partiality either to my profession or country) for the matter and nature of them, I hold them wise, just, and moderate laws: they give to God, they give to *Caesar*, they give to the subject, what appertaineth. It is true they are as mixt as our language; compounded of *British*, *Roman*, *Saxon*, *Danish*, *Norman* customs: And surely as our language is thereby so much the richer, so our laws are likewise by that mixture the more complete.

NEITHER doth this attribute less to them, than those that would have them to have stood out the same in all mutations. For no tree is so good first set, as by transplanting and grafting. I remember what happened to *Callisthenes*, that followed *Alexander's* court, and was grown into some displeasure with him, because he could not well brook the *Persian* adoration. At a supper (which with the *Grecians* was a great part talk,) he was desired (the King being present) because he was an eloquent man, to speak of some theme, which he did; and chose for his theme, the praise of the *Macedonian* nation, which though it were but a filling thing to praise men to their faces, yet he performed it with such advantage of truth, and avoidance of flattery, and with such life, as was much applauded by the hearers. The King was the less pleased with it, not loving the man, and by way of discountenance said: It was easy to be a good orator in a pleasing theme. But, saith he to him, turn your style, and tell us now of our faults, that we may have the profit, and not you the praise only; which he presently did with such quickness, that *Alexander* said, That malice made him eloquent then, as the theme had done before. I shall not fall into either of these extremes, in this subject of the laws of *England*; I have commended them before for the matter, but surely they ask much amendment for the form; which to reduce and perfect, I hold to be one of the greatest dowries that can be conferred upon this kingdom: which work, for the excellency, as it is worthy your Majesty's act and times, so it hath some circumstance of propriety agreeable to your person. God hath blessed your Majesty with posterity, and I am not of opinion that Kings that are barren are fittest to supply perpetuity of generations, by perpetuity of noble acts; but contrariwise, that they that leave posterity are the more interested in the care of future times; that as well their progeny, as their people, may participate of their merit.

YOUR Majesty is a great master in justice and judicature, and it were pity the fruit of that your virtue, should not be transmitted to the ages to come. Your Majesty also reigneth in learned times, the more (no doubt) in regard of your own perfection in learning, and your patronage thereof. And it hath been

been the mishap of works of this nature, that the less learned time hath (sometimes) wrought upon the more learned, which now will not be so. As for my self, the law was my profession, to which I am a debtor: some little helps I have of other arts, which may give form to matter; and I have now (by God's merciful chastisement, and by his special providence,) time and leisure to put my talent, or half talent, or what it is, to such exchanges as may perhaps exceed the interest of an active life. Therefore, as in the beginning of my troubles, I made offer to your Majesty to take pains in the story of *England*, and in compiling a method and digest of your laws, so have I performed the first (which rested but upon my self,) in some part; and I do in all humbleness renew the offer of this later (which will require help and assistance) to your Majesty, if it shall stand with your good pleasure to employ my service therein.

THE
ELEMENTS
OF THE
COMMON LAW
OF
ENGLAND.

CONTAINING,

- I. A Collection of some principal Rules and Maxims of the COMMON LAW, with their Latitude and Extent.
- II. The USE of the COMMON LAW, for preservation of our Persons, Goods, and good Names; according to the Laws and Customs of this Land.

TO HER

Sacred M A J E S T Y.

I Do here most humbly present and dedicate to your sacred Majesty a sheaf and cluster of fruit of the good and favourable season, which by the influence of your happy government we enjoy; for if it be true that *silent leges inter arma*, it is also as true, that your Majesty is in a double respect the life of our laws; once, because without your authority they are but *litera mortua*;

mortua; and again, because you are the life of our peace, without which laws are put to silence. And as the vital spirits do not only maintain and move the body, but also contend to perfect and renew it; so your sacred Majesty, who is *anima legis*, doth not only give unto your laws force and vigour; but also hath been careful of their amendment and reforming; wherein your Majesty's proceeding may be compared, as in that part of your government (for if your government be considered in all the parts, it is incomparable) with the former doings of the most excellent Princes that ever have reigned, whose study altogether hath been always to adorn and honour times of peace, with the amendment of the policy of their laws. Of this proceeding in *Augustus Caesar* the testimony yet remains.

*Pace data terris, animum ad civilia vertit
Jura suum; legesque tulit justissimus auctor.*

Hence was collected the difference between *gesta in armis* and *acta in toga*, whereof *Cicero* disputeth thus:

ECQUID est, quod tam proprie dici possit actum ejus, qui togatus in re- Phil. I. c. 7.
publica cum potestate imperioque versatus sit, quam lex? quaere acta Grac-
chi: leges Semproniae proferentur. Quaere Syllae: Corneliae. Quid? Cn.
Pompeii tertius consulatus in quibus actis consistit? nempe in legibus. A Cac-
sare ipso si quaereres quidnam egisset in urbe et in toga: leges multas se re-
sponderet et praeclaras tulisse.

THE same desire long after did spring in the Emperor *Justinian*, being rightly called *Ultimus Imperatorum Romanorum*, who having peace in the heart of his empire, and making his wars prosperously in the remote places of his dominions by his lieutenants, chose it for a monument and honour of his government, to revise the *Roman* laws from infinite volumes and much repugnancy, into one competent and uniform corps of law; of which matter himself doth speak gloriously, and yet aptly, calling it, *proprium et sanctissimum templum justitiae consecratum*: a work of great excellency indeed, as may well appear, in that *France, Italy and Spain*, which have long since shaken off the yoke of the *Roman* Empire, do yet nevertheless continue to use the policy of that law: but more excellent had the work been, save that the more ignorant and obscure time undertook to correct the more learned and flourishing time. To conclude with the domestick example of one of your Majesty's royal ancestors: King *Edward I*, your Majesty's famous progenitor, and the principal law-giver of our nation, after he had in his younger years given himself satisfaction in the glory of arms, by the enterprise of the Holy Land, and having inward peace (otherwise than for the invasions which himself made upon *Wales* and *Scotland*, parts far distant from the centre of the realm,) he bent himself to endow his state with sundry notable and fundamental laws, upon which the government hath ever since principally rested. Of this example, and others the like, two reasons may be given; the one, because that Kings, which either by the moderation of their natures, or the maturity of their years and judgment, do temper their magnanimity with justice, do wisely consider and conceive of the exploits of ambitious wars, as actions rather great than good; and so distasted with that course of winning honour, they convert their minds rather to do somewhat for the better uniting of human society, than for the dissolving or disturbing of the same. Another reason is, because times of peace for the most part drawing with them abundance of wealth, and finessie of cunning, do draw also in further consequence multitude of suits and controversies, and abuses of

law by evasions and devices; which inconveniences in such time growing more general, do more instantly sollicit for the amendment of laws to restrain and repress them.

YOUR Majesty's reign having been blessed from the highest with inward peace, and falling into an age wherein if science be increased, conscience is rather decay'd; and if mens wits be great, their wills be greater; and wherein also laws are multiplied in number, and slackened in vigour and execution; it was not possible but that not only suits in law should multiply and increase (whereof a great part are always unjust) but also that all the indirect courses and practices to abuse law and justice should have been much attempted and put in ure, which no doubt had bred greater enormities, had they not by the royal policy of your Majesty, by the censure and foresight of your Council-table and Star-chamber, and by the gravity and integrity of your benches, been repressed and restrained; for it may be truly observed, that as concerning frauds in contracts, bargains, and assurances, and abuses of laws by delays, covins, vexations, and corruptions in informers, jurors, ministers of justice, and the like, there have been sundry excellent statutes made in your Majesty's time, more in number, and more politick in provision, than in any of your Majesty's predecessors times.

BUT I am an unworthy witness to your Majesty of an higher intention and project, both by that which was published by your Chancellor in full parliament from your royal mouth, in the five and thirtieth of your happy reign; and much more by that which I have been since vouchsafed to understand from your Majesty, imparting a purpose for these many years infused into your Majesty's breast, to enter into a general amendment of the state of your laws, and to reduce them to more brevity and certainty, that the great hollowness and unsafety in assurances of lands and goods may be strengthened, the swerving penalties that lie upon many subjects removed, the execution of many profitable laws revived, the judge better directed in his sentence, the counsellor better warranted in his counsel, the student eased in his reading, the contentious suitor that seeketh but vexation disarmed, and the honest suitor that seeketh but to obtain his right relieved; which purpose and intention, as it did strike me with great admiration when I heard it, so it might be acknowledged to be one of the most chosen works, and of the highest merit and beneficence towards the subject, that ever entered into the mind of any King; greater than we can imagine, because the imperfections and dangers of the laws are covered under the clemency and excellent temper of your Majesty's government. And though there be rare precedents of it in government, as it cometh to pass in things so excellent, there being no precedent full in view but of *Justinian*, yet I must say as *Cicero* said to *Caesar*, *Nil vulgare te dignum videri potest*; and as it is no doubt a precious seed sown in your Majesty's heart by the hand of God's divine Majesty, so I hope, in the maturity of your Majesty's own time, it will come up and bear fruit. But to return thence whither I have been carried; observing in your Majesty, upon so notable proofs and grounds, this disposition in general of a prudent and royal regard to the amendment of your laws, and having by my private labour and travel collected many of the grounds of the common law, the better to establish and settle a certain sense of law, which doth now too much waver in uncertainty, I conceived the nature of the subject, besides my particular obligation, was such, as I ought not to dedicate the same to any other than to your sacred Majesty; both because though the collection be mine, yet the laws are yours; and because it is your Majesty's
reign

reign that hath been as a goodly seasonable spring weather to the advancing of all excellent arts of peace. And so concluding with a prayer answerable to the present argument, which is, that God will continue your Majesty's reign in a happy and renowned peace, and that he will guide both your policy and arms to purchase the continuance of it with surety and honour, I most humbly crave pardon, and commend your Majesty to the divine preservation.

Your sacred MAJESTY's most humble

and obedient subject and servant,

FRANCIS BACON.

THE P R E F A C E.

I HOLD every man a debtor to his profession; from the which as men of course do seek to receive countenance and profit, so ought they of duty to endeavour themselves by way of amends, to be a help and ornament thereunto. This is performed in some degree by the honest and liberal practice of a profession, when men shall carry a respect not to descend into any course that is corrupt and unworthy thereof, and preserve themselves free from the abuses wherewith the same profession is noted to be infected; but much more is this performed if a man be able to visit and strengthen the roots and foundation of the science it self; thereby not only gracing it in reputation and dignity, but also amplifying it in perfection and substance. Having therefore from the beginning come to the study of the laws of this realm, with a desire no less (if I could attain unto it) that the same laws should be the better for my industry, than that my self should be the better for the knowledge of them: I do not find that by mine own travel, without the help of authority, I can in any kind confer so profitable an addition unto that science, as by collecting the rules and grounds dispersed throughout the body of the same laws; for hereby no small light will be given in new cases, wherein the authorities do square and vary, to confirm the law, and to make it received one way; and in cases wherein the law is cleared by authority, yet nevertheless to see more profoundly into the reason of such judgments and ruled cases, and thereby to make more use of them for the decision of other cases more doubtful; so that the incertainty of law, which is the principal and most just challenge that is made to the laws of our nation at this time, will, by this new strength laid to the foundation, be somewhat the more settled and corrected: neither will the use hereof be only in deciding of doubts, and helping soundness of judgment, but further in gracing of argument, in correcting unprofitable subtlety, and reducing the same to a more sound and substantial sense of law, in reclaiming vulgar errors, and generally the amendment in some measure of the very nature and complexion of the whole law; and therefore the conclusions of reasons of this kind are worthily and aptly called

called by a great civilian *legum leges*, laws of laws, for that many *placita legum*, that is, particular and positive learnings of laws do easily decline from a good temper of justice, if they be not rectified and governed by such rules.

Now for the manner of setting down of them, I have in all points, to the best of my understanding and foresight, applied my self not to that which might seem most for the ostentation of mine own wit or knowledge, but to that which may yield most use and profit to the students and professors of our laws.

AND therefore, whereas these rules are some of them ordinary and vulgar, that now serve but for grounds and plain songs to the more shallow and impertinent sort of arguments; others of them are gathered and extracted out of the harmony and congruity of cases, and are such as the wisest and deepest sort of lawyers have in judgment and use, though they be not able many times to express and set them down.

FOR the former sort, which a man that should rather write to raise an high opinion of himself, than to instruct others, would have omitted, as trite and within every man's compass; yet nevertheless I have not affected to neglect them, but have chosen out of them such as I thought good: I have reduced them to a true application, limiting and defining their bounds, that they may not be read upon at large, but restrained to a point of difference: for as both in the law and other sciences, the handling of questions by common-place without aim or application is the weakest; so yet nevertheless many common principles and generalities are not to be contemned, if they be well derived and deduced into particulars, and their limits and exclusions duly assigned: for there be two contrary faults and extremities in the debating and lifting out of the law, which may be best noted in two several manner of arguments. Some argue upon general grounds, and come not near the point in question; others without laying any foundation of a ground or difference, do loosely put cases, which though they go near the point, yet being so scattered, prove not, but rather serve to make the law appear more doubtful, than to make it more plain.

SECONDLY, whereas some of these rules have a concurrence with the civil *Roman* law, and some others a diversity, and many times an opposition, such grounds which are common to our law and theirs I have not affected to disguise into other words than the civilians use, to the end they might seem invented by me, and not borrowed or translated from them: No, but I took hold of it as a matter of greater authority and majesty to see and consider the concordance between the laws penn'd, and as it were dictated *verbatim* by the same reason: on the other side, the diversities between the civil *Roman* rules of law and ours, happening either when there is such an indifferency of reason so equally balanced as the one law embraceth one course, and the other the contrary, and both just, after either is once positive and certain; or where the laws vary in regard of accommodating the law to the different considerations of estate, I have not omitted to set down.

THIRDLY, whereas I could have digested these rules into a certain method or order, which I know would have been more admired, as that which would have made every particular rule through coherence and relation unto other rules seem more cunning and deep, yet I have avoided so to do, because this delivering of knowledge in distinct and dis-joined aphorisms, doth leave the wit of man more free to turn and toise, and make use of that which is so delivered to more several purposes and applications; for we see that all the ancient wisdom and science was wont to be delivered in that form, as may

be seen by the parables of *Solomon*, and by the aphorisms of *Hippocrates*, and the moral verses of *Theognis* and *Phocylides*, but chiefly the precedent of the civil law, which hath taken the same course with their rules, did confirm me in my opinion.

FOURTHLY, Whereas I know very well it would have been more plausible and more current, if the rules, with the expositions of them, had been set down either in *Latin* or in *English*; that the harshness of the language might not have disgraced the matter; and that civilians, states-men, scholars, and other sensible men might not have been barred from them; yet I have forsaken that grace and ornament of them, and only taken this course: the rules themselves I have put in *Latin*, not purified further than the propriety of the terms of the law would permit; which language I chose as the briefest to contrive the rules compendiously, the aptest for memory, and of the greatest authority and majesty to be avouched and alledged in argument: and for the expositions and distinctions, I have retained the peculiar language of our law, because it should not be singular among the books of the same science, and because it is most familiar to the students and professors thereof, and because that it is most significant to express conceits of law; and to conclude, it is a language wherein a man shall not be inticed to hunt after words, but matter; and for the excluding of any other than professed lawyers, it was better manners to exclude them by the strangeness of the language, than by the obscurity of the conceit; which is as though it had been written in no private and retired language, yet by those that are not lawyers, would for the most part not have been understood, or, which is worse, mistaken.

FIFTHLY, Whereas I might have made more flourish and ostentation of reading, to have vouched the authorities, and sometimes to have enforced or noted upon them, yet I have abstained from that also; and the reason is, because I judged it a matter undue and preposterous to prove rules and maxims, wherein I had the example of *Mr. Littleton* and *Mr. Fitzherbert*, whose writings are the institutions of the law of *England*: whereof the one forbear-eth to vouch any authority altogether; the other never reciteth a book, but when he thinketh the case so weak of credit in it self, as it needs a surety; and these two I did far more esteem than *Mr. Perkins* or *Mr. Staundford* that have done the contrary. Well will it appear to those that are learned in the laws, that many of the cases are judged cases, either within the books, or of fresh report, and most of them fortified by judged cases, and similitude of reason; though in some few cases I did intend expressly to weigh down the authority by evidence of reason, and therein rather to correct the law, than either to sooth a received error, or by unprofitable subtlety which corrupteth the sense of law, to reconcile contrarieties. For these reasons I resolved not to derogate from the authority of the rules, by vouching of any of the authorities of the cases, though in mine own copy I had them quoted: for although the meanness of mine own person may now at first extenuate the authority of this collection, and that every man is adventurous to controul; yet surely according to *Gamaliel's* reason, if it be of weight, time will settle and authorize it; if it be light and weak, time will reprove it. So that to conclude, you have here a work without any glory of affected novelty, or of method, or of language, or of quotations and authorities, dedicated only to use, and submitted only to the censure of the learned, and chiefly of time.

LASTLY, there is one point above all the rest I account the most material for making these reasons indeed profitable and instructing; which is, that they be not set down alone like short dark oracles, which every man will be

content still to allow to be true, but in the mean time they give little light or direction; but I have attended them, (a matter not practised, no not in the civil law to any purpose; and for want whereof indeed, the rules are but as proverbs, and many times plain fallacies,) with a clear and perspicuous exposition, breaking them into cases, and opening them with distinctions, and sometimes shewing the reasons whereupon they depend, and the affinity they have with other rules. And though I have thus, with as good discretion and fore-sight as I could, ordered this work, and as I might say, without all colours or shews, husbanded it best to profit, yet nevertheless not wholly trusting to mine own judgment, having collected three hundred of them; I thought good before I brought them all into form, to publish some few, that by the taste of other mens opinions in this first, I might receive either approbation in mine own course, or better advice for the altering of the other which remain: for it is great reason that that which is intended to the profit of others, should be guided by the conceits of others.

T H E

M A X I M S of the L A W.

Reg. 1. *In jure non remota causa sed proxima spectatur.*

IT were infinite for the law to judge the causes of causes, and their impulsions one of another; therefore it contenteth itself with the immediate cause, and judgeth of acts by that, without looking to any farther degree.

6 H. 8.
Dy. 2.

As if an annuity be granted *pro consilio impenso & impendendo*, and the grantee commit treason, whereby he is imprisoned, so that the grantor cannot have access unto him for his counsel, yet nevertheless the annuity is not determined by this *non feafance*; yet it was the grantee's act and default to commit the treason, whereby the imprisonment grew: but the law looketh not so far, but excuseth him, because the not giving counsel was compulsory, and not voluntary, in regard of the imprisonment.

Litt. cap.
Discon.
2 H. 4. 5.
26 H. 8. 2.

So if a parson make a lease, and be deprived or resign, the successors shall avoid the lease; and yet the cause of deprivation, and more strongly of a resignation, moved from the party himself: but the law regardeth not that, because the admission of the new incumbent is the act of the ordinary.

So if I be seised of an advowson in gross, and an usurpation be had against me, and at the next avoidance I usurp arere, I shall be remitted: and yet the presentation, which is the act remote, is mine own act; but the admission of my clerk, whereby the inheritance is reduced to me, is the act of the ordinary.

3 H. 7. 25.

So if I covenant with *I. S.* a stranger, in consideration of natural love to my son, to stand seised to the use of the said *I. S.* to the intent he shall infeoff my son; by this no use ariseth to *I. S.* because the law doth respect that there is no immediate consideration between me and *I. S.*

So if I be bound to enter into a statute before the mayor of the staple at such a day, for the security of a hundred pound, and the obligee, before the day, accept of me a lease of an house in satisfaction; this is no plea in debt upon my obligation, and yet the end of that statute was but security of money: but because the entering into this statute it self, which is the immediate act whereunto I am bound, is a corporal act which lieth not in satisfaction, therefore the law taketh no consideration that the remote intent was for money.

So if I make a * feoffment in fee, upon condition that the feoffee shall infeoff over, and the feoffee be disseised, and a descent cast, and then the feoffee bind himself in a statute, which statute is discharged before the recovery of the land: this is no breach of the condition, because the land was never liable to the statute, and the possibility that it should be liable upon the recovery, the law doth not respect.

So if I enfeoff two, upon condition to enfeoff, and one of them take a wife, the condition is not broken, and yet there is a remote possibility that the jointenant may die, and then the feme is entitled to dower.

So if a man purchase land in fee-simple, and die without issue; in the first degree the law respecteth dignity of sex and not proximity; and therefore the remote heir on the part of the father shall have it before the near heir on the part of the mother: but in any degree paramount the first the law respecteth it not, and therefore the near heir by the grand-mother on the part of the father, shall have it before the remote heir of the grand-father on the part of Plowd. 450. the father.

THIS rule faileth in covinous acts, which though they be conveyed through many degrees and reaches, yet the law taketh heed to the corrupt beginning, and counteth all as one entire act.

As if a feoffment be made of lands held by Knights service to *I. S.* upon condition that within a certain time he shall infeoff *I. D.* which feoffment to *I. D.* shall be to the use of the wife of the first feoffor for her jointure, &c. this feoffment is within the statute of 32 H. VIII. *nam dolus circuitu non purgatur.*

In like manner this rule holdeth not in criminal acts, except they have a full interruption; because when the intention is matter of substance, and that which the law doth principally behold, there the first motive will be principally regarded, and not the last impulsion. As if *I. S.* of malice prepened dischargeth a pistol at *I. D.* and misseeth him, whereupon he throws down his pistol and flies, and *I. D.* pursueth him to kill him, whereupon he turneth and killeth *I. D.* with a dagger; if the law should consider the last impulsive cause, it should say that it was in his own defence; but the law is otherwise, for it is but a pursuance and execution of the first murderous intent.

BUT if *I. S.* had fallen down, his dagger drawn, and *I. D.* had fallen by 44 Ed. 3. 444. haste upon his dagger, there *I. D.* had been *felo de se*, and *I. S.* shall go quit.

ALSO you may not confound the act with the execution of the act; nor the entire act with the last part, or the consummation of the act.

FOR if a disseisor enter into religion, the immediate cause is from the party, Lit. cap. de though the descent be cast in law; but the law doth but execute the act disc. which the party procureth, and therefore the descent shall not bind, & sic e. *converso*.

* M. 40. & 41. El. Julius Winnington's case, ore report per le tresreverend Judge, le Snr Coke, lib. 2.

21 Eliz.

24 H. 8. fo.
4 Dy.

If a lease for years be made for rendring a rent, and the lessee make a feoffment of part, and the lessor enter, the immediate cause is from the law in respect of the forfeiture, though the entry be the act of the party: but that is but the pursuance and putting in execution of the title which the law giveth: and therefore the rent or condition shall be apportioned.

So in the binding of a right by a descent, you are to consider the whole time from the disseisin to the descent cast; and if at all times the person be not privileged, the descent binds.

9 H. 7. 24.
3 & 4 P & M.
L^r. 143.

AND therefore if a feme covert be disseised, and the baron dieth, and she taketh a new husband, and then the descent is cast: or if a man that is not *infra quatuor maria*, be disseised, and he return into *England*, and go over sea again, and then a descent is cast, this descent bindeth, because of the *interim* when the persons might have entered; and the law respecteth not the state of the person at the last time of the descent cast, but a continuance from the very disseisin to the descent.

So if baron and feme be, and they join in a feoffment of the wife's land rendring a rent, and the baron die, and the feme taketh a new husband before any rent-day, and he accepteth the rent, the feoffment is affirmed for ever.

Reg. 2. *Non potest adduci exceptio ejusdem rei, cujus petitur dissolutio.*

It were impertinent and contrary in it self, for the law to allow of a plea in bar of such matter as is to be defeated by the same suit; for it is included: otherwise a man should never come to the end and effect of his suit, but be cut off in the way.

AND therefore if tenant in tail of a manor, whereunto a villain is regardant, discontinue and die, and the right of the entail descend to the villain himself, who brings a *formedon*, and the discontinuee pleadeth villainage; this is no plea, because the divesting of the manor, which is the intention of the suit, doth include this plea, because it determineth the villainage.

So if tenant in ancient demesne, be disseised by the Lord, whereby the seignior is suspended, and the disseisee bring his assize in the court of the Lord, frank fee is no plea, because the suit is brought to undo the disseisin, and to revive the seignior in ancient demesne.

7 H. 4. 39.
7 H. 6. 44.

So if a man be attainted and executed, and the heir bring a writ of error upon the attainder, and the corruption of blood by the same attainder be pleaded, to interrupt his conveying in the same writ of error; this is no plea, for then he were without remedy ever to reverse the attainder.

38 Ed. 3. 32.

So if tenant in tail discontinue for life rendring a rent, and the issue brings a *formedon*, and the warranty of his ancestor with assets be pleaded against him, and the assets is laid to be no other but his reversion with the rent; this is no plea, because the *formedon* which is brought to undo this discontinuance doth inclusively undo this new reversion in fee with the rent thereunto annexed.

BUT whether this rule may take place where the matter of the plea is not to be avoided in the same suit but in another suit, is doubtful; and I rather take the law to be that this rule doth extend to such cases, for otherwise the party were at a mischief, in respect the exceptions and bars might be pleaded cross either of them in the contrary suit, and so the party altogether prevented and intercepted to come by his right.

So if a man be attainted by two several attainders, and there is error in them both, there is no reason but that there should be a remedy open for the heir to reverse those attainders being erroneous, as well if they be twenty as one.

AND therefore if in a writ of error brought by the heir of one of them, the attainder should be a plea peremptory; and so again if in error brought of that other, the former should be a plea, these were to exclude him utterly of his right; and therefore it should be a good replication to say that he hath a writ of error depending of that also, and so the court shall proceed: but no judgment shall be given till both pleas be discussed; and if either plea be found without error, there shall be no reversal either of the one or of the other; and if he discontinue either writ, then it shall be no longer a plea; and so of several outlawries in a personal action.

AND this seemeth to me more reasonable, than that generally an outlawry or an attainder should be no plea in a writ of error brought upon a diverse outlawry or an attainder, as 7 H. IV. and 7 H. VI. seem to hold; for that is a remedy too large for the mischief; for there is no reason but if any of the outlawries or attainders be indeed without error, but it should be a peremptory plea to the person in a writ of error as well as in any other action.

BUT if a man levy a fine *sur conuſaunce de droit come ceo que il ad de ſon done*, and suffer a recovery of the same lands, and there be error in them both, he cannot bring error first of the fine, because by the recovery his title of error is discharged and released in law *inſiſſive*, but he must begin with the error upon the recovery (which he may do, because a fine executed barreth no titles that accrue *de puisne temps* after the fine levied) and so restore himself to his title of error upon the fine: but so it is not in the former case of the attainder; for a writ of error to a former attainder is not given away by a second, except it be by expreſs words of an act of parliament, but only it remaineth a plea to his person while he liveth, and to the conveyance of his heir after his death.

BUT if a man levy a fine where he hath nothing in the land, which inureth by way of conclusion only, and is executory against all purchases and new titles which shall grow to the conuſor afterwards, and he purchase the land, and suffer a recovery to the conuſee, and in both fine and recovery, there is error; this fine is *ſanus bifrons*, and will look forward, and bar him of his writ of error brought of the recovery; and therefore it will come to the reason of the first case of the attainder, that he must reply that he hath a writ also depending of the same fine, and so demand judgment.

To return to our first purpose, like law it is if tenant in tail of two acres make two several discontinuances to several persons for life rendring a rent, and bringeth a *formedon* of both, and in the *formedon* brought of white acre the reversion and rent reserved upon black acre is pleaded, and so contrary. I take it to be a good replication, that he hath a *formedon* also upon that depending, whereunto the tenant hath pleaded the descent of the reversion of white acre, and so neither shall be a bar; and yet there is no doubt but if in a *formedon* the warranty of tenant in tail with affets be pleaded, it is no replication for the issue to say, that a *praecipe* dependeth brought by I. S. to evict the affets.

BUT the former case standeth upon the particular reason before mentioned.

Reg. 3. *Verba fortius accipiuntur contra proferentem.*

THIS rule, that a man's deeds and his words shall be taken strongliest against himself, though it be one of the most common grounds of the law, it is notwithstanding a rule drawn out of the depth of reason; for first it is a school-master of wisdom and diligence in making men watchful in their own business; next it is author of much quiet and certainty, and that in two sorts: first, because it favoureth acts and conveyances executed, taking them still beneficially for the grantees and possessors: and secondly, because it makes an end of many questions and doubts about construction of words; for if the labour were only to pick out the intention of the parties, every judge would have a several sense; whereas this rule doth give them a sway to take the law more certainly one way.

BUT this rule, as all others which are very general, is but a sound in the air, and cometh in sometimes to help and make up other reasons without any great instruction or direction; except it be duly conceived in point of difference, where it taketh place, and where not. And first we will examine it in grants, and then in pleadings.

THE force of this rule is in three things, in ambiguity of words, in implication of matter, and deducing or qualifying the exposition of such grants as were against the law, if they were taken according to their words.

2 R. 3. 18.
21 H. 7. 29. AND therefore if *I. S.* submit himself to arbitrement of all actions and suits between him and *I. D.* and *I. N.* it rests ambiguous whether the submission shall be intended *collective* of joint actions only, or *distributive* of several actions also; but because the words shall be taken strongliest against *I. S.* that speaks them, it shall be understood of both: for if *I. S.* had submitted himself to arbitrement of all actions and suits which he hath now depending, except it be such as are between him and *I. D.* and *I. N.* now it shall be understood *collective* only of joint actions, because in the other case large construction was hardest against him that speaks, and in this case strict construction is hardest.

3 Aff. p. 10. So if I grant ten pounds rent to baron and feme, and if the baron die that the feme shall have three pounds rent, because these words rest ambiguous whether I intend three pounds by way of increase, or three pounds by way of restraint and abatement of the former rent of ten pounds, it shall be taken strongliest against me that am the grantor, that it is three pounds addition to the ten: but if I had let land to baron and feme for three lives, reserving ten pounds *per annum*, and if the baron die reserving three pounds, this shall be taken contrary to the former case, to abridge my rent only to three pounds.

14 H. 8.
28 H. 8. D. 19. So if I demise *omnes boscos meos in villa de Dale* for years, this passeth the foil; but if I demise all my lands in *Dale exceptis boscis*, this extendeth to the trees only, and not to the foil.

So if I sow my lands with corn, and let it for years, the corn passeth to my lessee, if I except it not; but if I make a lease for life to *I. S.* upon condition that upon request he shall make me a lease for years, and *I. S.* soweth his ground, and then I make request, *I. S.* may well make me a lease excepting his corn, and not break the condition.

8 H. 7.
32 H. 6. So if I have free warren in mine own hand, and let my land for life, not mentioning the warren, yet the lessee by implication shall have the warren discharged and extinct during his lease; but if I let the land *una cum libera warrenna*,

warrenna, excepting white acre, there the warren is not by implication reserved unto me either to be enjoyed or extinguished; but the lessee shall have warren against me in white acre.

So if *I. S.* hold of me by fealty and rent only, and I grant the rent, not speaking of the fealty, yet the fealty by implication shall pass, because my grant shall be taken strongly as of a rent service, and not of a rent secke. ^{29 Aff. pl. 10.}

OTHERWISE had it been if the seigniorship had been by homage, fealty, and rent, because of the dignity of the service, which could not have passed by intendment by the grant of the rent: but if I be seised of the manor of *Dale* in fee, whereof *I. S.* holds by fealty and rent, and I grant the manor excepting the rent, the fealty shall pass to the grantee, and I shall have but a rent secke. ^{44 Ed. 3. 19. 26 Aff. pl. 66.}

So in grants against the law, if I give land to *I. S.* and his heirs males, this is a good fee-simple, which is a larger estate than the words seem to intend, and the word males is void. But if I make a gift in tail, reserving a rent to me and the heirs of my body, the words of my body are not void, and so leave it a rent in fee-simple; but the word heirs and all are void, and leaves it but a rent for life; except that you will say, it is but a limitation to any my heir in fee-simple which shall be heir of my body; for it cannot be a rent in tail by reservation.

BUT if I give land with my daughter in frank marriage, the remainder to *I. S.* and his heirs, this grant cannot be good in all the parts, according to the words: for it is incident to the nature of a gift in frank marriage, that the donee hold it of the donor; and therefore my deed shall be taken so strongly against my self, * that rather than the remainder shall be void, the frank marriage, though it be first placed in the deed, shall be void as a frank marriage.

BUT if I give land in frank marriage, reserving to me and my heirs ten pounds rent, now the frank marriage stands good, and the reservation is void, because it is a limitation of a benefit to my self, and not to a stranger.

So if I let white acre, black acre, and green acre to *I. S.* excepting white acre, this exception is void, because it is repugnant; but if I let the three acres aforesaid, rendring twenty shillings rent, *viz.* for white acre ten shillings, and for black acre ten shillings, I shall not distrain at all in green acre, but that shall be discharged of my rent. ^{4 H. 6. 22. 26 Aff. pl. 66.}

So if I grant a rent to *I. S.* and his heirs out of my manor of *Dale*, & *obligo manerium & omnia bona & catalla mea super manerium praedictum existentia ad distringendum per ballivum domini regis*: this limitation of the distress to the King's bailiff is void, and it is good to give a power of distress to *I. S.* the grantee and his bailiffs. ^{46 Ed. 3. 18.}

BUT if I give land in tail *tenend' de capitalibus dominis per redditum viginti solidorum & fidelitatem*: this limitation of tenure to the lord is void; and it shall not be good, as in the other case, to make a reservation of twenty shillings good unto my self; but it shall be utterly void as if no reservation at all had been made: and if the truth be that I that am the donor hold of the lord paramount by ten shillings only, then there shall be ten shillings only reserved upon the gift in tail as for owelty. ^{2 Ed. 4. 5.}

* Quare car le ley semble d'ee le contrary, entant que in un grant quant lun part del fait ne poit estoier ove l'autre le darr: serra void, autrement in un devise & accordant fait lopin: de *Snr Anderson & Owen Just. contra Walmesley Just. P. 40. Eliz. in le case de Countesse de Warwick & Snr Barkley in com. banco.*

21 Ed. 3. 49. So if I give land to *I. S.* and the heirs of his body, and for default of such
 31 & 32 H. 8. issue *quod tenementum praedictum revertatur ad I. N.* yet these words of refer-
 Dyer 46. vation will carry a remainder to a stranger. But if I let white acre to *I. S.*
 Plow. fo. 37. excepting ten shillings rent, these words of exception to mine own benefit
 35 H. 6. 34. shall never inure to words of reservation.

BUT now it is to be noted, that this rule is the last to be resorted to, and is never to be relied upon but where all other rules of exposition of words fail; and if any other come in place, this giveth place. And that is a point worthy to be observed generally in the rules of the law, that when they encounter and cross one another in any case, it be understood which the law holdeth worthier, and to be preferred; and it is in this particular very notable to consider, that this being a rule of some strictness and rigor, doth not as it were its office, but in absence of other rules which are of more equity and humanity; which rules you shall afterwards find set down with their expositions and limitations.

BUT now to give a taste of them to this present purpose, it is a rule that general words shall never be stretched too far in intendment, which the civilians utter thus; *Verba generalia restringuntur ad habilitatem personae, vel ad aptitudinem rei.*

14 Aff. pl. 25. THEREFORE if a man grant to another, common *intra metas & bundas villae de Dale*, and part of the vill is his several, and part his waste and common; the grantee shall not have common in the several: and yet this is the strongest exposition against the grantor.

Lit. cap.
cond.

So it is a rule, *Verba ita sunt intelligenda, ut res magis valeat quam pereat*: and therefore if I give land to *I. S.* and his heirs, *reddend. quinque libras annuatim* to *I. D.* and his heirs, this implies a condition to me that am the grantor; yet it were a stronger exposition against me, to say the limitation should be void, and the feoffment absolute.

10 Ed. 4. 1.

So it is a rule, that the law will not intend a wrong, which the civilians utter thus; *Ea est accipienda interpretatio, quae vitio caret*. And therefore if the executors of *I. S.* grant *omnia bona & catalla sua*, the goods which they have as executors will not pass, because *non constat* whether it may not be a devastation, and so a wrong; and yet against the trespasser that taketh them out of their hand, they shall declare *quod bona sua cepit*.

So it is a rule, that words are so to be understood that they work somewhat, and be not idle and frivolous: *verba aliquid operari debent, verba cum effectu sunt accipienda*. And therefore if I bargain and sell you four parts of my manor of *Dale*, and say not in how many parts to be divided, this shall be construed four parts of five, and not of six nor seven, &c. because that it is the strongest against me; but on the other side, it shall not be intended four parts of four parts, or the whole of four quarters; and yet that were strongest of all, but then the words were idle and of none effect.

3 H. 6. 20.

So it is a rule, *Divinatio non interpretatio est, quae omnino recedit a litera*: and therefore if I have a fee-farm-rent issuing out of white acre of ten shillings, and I reciting the same reservation do grant to *I. S.* the rent of five shillings *percipiend' de reddit' praedict' & de omnibus terris & tenementis meis in Dale*, with a clause of distress, although there be attornment, yet nothing passeth out of my former rent; and yet that were strongest against me to have it a double rent, or grant of part of that rent with an enlargement of a distress in the other land, but for that it is against the words, because *copulatio verborum indicat acceptionem in eodem sensu*, and the word *de* (anglice out of) may be taken in two senses, that is, either as a greater sum out of a less, or

as

as a charge out of land, or other principal interest; and that the coupling of it with lands and tenements, viz. I reciting that I am seised of such a rent of ten shillings, do grant five shillings *percipiend' de eodem reddit'*, it is good enough without attornment; because *percipiend' de &c.* may well be taken for *parcella de &c.* without violence to the words; but if it had been *de reddit' praedict'*, although *I. S.* be the person that payeth me the foresaid rent of ten shillings, yet it is void: and so it is of all other rules of exposition of grants, when they meet in opposition with this rule they are preferred.

Now to examine this rule in pleadings as we have done in grants, you shall find that in all imperfections of pleadings, whether it be in ambiguity of words and double intendments, or want of certainty and averments, the plea shall be strictly and strongly against him that pleads.

For ambiguity of words, if in a writ of entry upon disseisin, the tenant pleads jointenancy with *I. S.* of the gift and feoffment of *I. D.* judgment *de brieve*, the demandant saith that long time before *I. D.* any thing had, the demandant himself was seised in fee *quousque praedict' I. D. super possessionem ejus intravit*, and made a joint feoffment, whereupon he the demandant re-entred, and so was seised until by the defendant alone he was disseised; this is no plea, because the word *intravit* may be understood either of a lawful entry, or of a tortious; and the hardest against him shall be taken, which is, that it was a lawful entry; therefore he should have alledged precisely that *I. D. disseisivit*.

So upon ambiguities that grow by reference, if an action of debt be brought against *I. N.* and *I. P.* sheriffs of London upon an escape, and the plaintiff doth declare upon an execution by force of a recovery in the prison of *Ludgate sub custodia I. S. & I. D.* then sheriffs in 1 K. H. VIII. and that he so continued *sub custodia I. B. & I. G.* in 2 K. H. VIII. and so continued *sub custodia I. N. & I. L.* in 3 K. H. VIII. and then was suffered to escape: *I. N.* and *I. L.* plead that before the escape supposed at such a day *anno superius in narratione specificato*, the said *I. D.* and *I. S.* *ad tunc vicecomites* suffered him to escape; this is no good plea, because there be three years specified in the declaration, and it shall be hardest taken that it was 1 or 3 H. VIII. when they were out of office; and yet it is nearly induced by the *ad tunc vicecomites*, which should leave the intendment to be of that year in which the declaration supposeth that they were sheriffs; but that sufficeth not, but the year must be alledged in fact, for it may be mislaid by the plaintiff, and therefore the defendants meaning to discharge themselves by a former escape, which was not in their time, must alledge it precisely.

For incertainty of intendment, if a warranty collateral be pleaded in bar, and the plaintiff by replication to avoid the warranty saith, that he entred upon the possession of the defendant, *non constat*, whether this entry was in the life of the ancestor or after the warranty attached; and therefore it shall be taken in the hardest sense, that it was after the warranty descended, if it be not otherwise averred.

For impropriety of words, if a man plead that his ancestor died by protestation seised, and that *I. S.* abated, &c. this is no plea, for there cannot be an abatement except there be a dying seised alledged in fact; and an abatement shall not be improperly taken for disseisin in pleading, *car parols font pleas*.

For repugnancy, if a man in avowry declare that he was seised in his demesne as of fee of white acre, and being so seised did demise the said white acre to *I. S.* *habendum*, the moiety for twenty-one years from the date of

the deed, the other moiety from the surrender, expiration, or determination of the estate of *I. D. qui tenet prædictam medietatem ad terminum vite sue reddend' 40 s. rent*: this declaration is insufficient, because the feisin that he hath alledged in himself in his demesne as of fee in the whole, and the state for life of a moiety are repugnant; and it shall not be cured by taking the last which is expressed to controll the former, which is but general and formal; but the plea is naught, and yet the matter in law had been good to have intitled him to have distrained for the whole rent.

BUT the same restraint follows this rule in pleading that was before noted in grants: for if the case be such as falleth within another rule of pleading, this rule may not be urged.

9 Ed. 4.

4 Ed. 6. Plow.

AND therefore it is a rule that a bar is good to a common intent, though not to every intent. As if a debt be brought against five executors, and three of them make default, and two appear and plead in bar a recovery had against them two of 300 *l.* and nothing in their hands over and above that sum: if this bar should be taken strongliest against them, it should be intended that they might have abated the first suit, because the other three were not named, and so the recovery not duly had against them; but because of this other rule the bar is good: for that the more common intent will say, that they two only did administer, and so the action well considered; rather than to imagine, that they would have lost the benefit and advantage of abating the writ.

So there is another rule, that in pleading a man shall not disclose that which is against himself: and therefore if it be matter that is to be set forth on the other side, then the plea shall not be taken in the hardest sense, but in the most beneficial, and to be left unto the contrary party to alledge.

28 H. 8. Dy.

fol. 17.

AND therefore if a man be bound in an obligation, that if the feme of the obligee do decease before the feast of St. *John the Baptist*, which shall be in the year of our Lord 1598. without issue of her body by her husband lawfully begotten then living, that then the bond shall be void; and in debt brought upon this obligation the defendants plead that the feme died before the said feast without issue of her body then living: if this plea should be taken strongliest against the defendant, then should it be taken that the feme had issue at the time of her death, but this issue died before the feast; but that shall not be so understood, because it makes against the defendant, and it is to be brought in of the plaintiff's side, and that without traverse.

So if in a detinue brought by a feme against the executors of her husband for her reasonable part of the goods of her husband, and her demand is of a moiety, and she declares upon the custom of the realm, by which the feme is to have a moiety, if no issue be had between her and her husband, and the third part if there be issue had, and declareth that her husband died without issue had between them; if this count should be hardliest construed against the party, it should be intended that her husband had issue by another wife, though not by her, in which case the feme is but to have the third part likewise; but that shall not be so intended, because it is matter of reply to be shewed of the other side.

AND so it is of all other rules of pleadings, these being sufficient not only for the exact expounding of these other rules, but *obiter* to shew how this rule which we handle is put by when it meets with any other rule.

As for acts of parliament, verdicts, judgments, &c. which are not words of parties, in them this rule hath no place at all, neither in devises and wills, upon several reasons; but more especially it is to be noted, that in evidence

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it hath no place, which yet seems to have some affinity with pleadings, especially when demurrer is joined upon the evidence.

AND therefore if land be given by will by *H. C.* to his son *I. C.* and the heirs males of his body begotten; the remainder to *F. C.* and the heirs males of his body begotten; the remainder to the heirs males of the body of the deviser; the remainder to his daughter *S. C.* and the heirs of her body, with a clause of perpetuity; and the question comes upon the point of forfeiture in an assize taken by default, and evidence is given, and demurrer upon evidence, and in the evidence given to maintain the entry of the daughter upon a forfeiture, it is not set forth nor averred that the deviser had no other issue male, yet the evidence is good enough, and it shall be so intended; and the reason hereof cannot be, because a jury may take knowledge of matters not within the evidence; and the court contrariwise cannot take knowledge of any matters not within the pleas: for it is clear that if the evidence had been altogether remote, and not proving the issue there, although the jury might find it, yet a demurrer might well be taken upon the evidence.

BUT I take the reason of difference between pleadings, which are but openings of the case, and evidences which are the proofs of an issue, to be, that pleadings being but to open the verity of the matter in fact indifferently on both parts, have no scope and conclusion to direct the construction and intendment of them, and therefore must be certain; but in evidence and proofs the issue, which is the state of the question and conclusion, shall incline and apply all the proofs as tending to that conclusion.

ANOTHER reason is, that pleadings must be certain, because the adverse party may know whereto to answer, or else he were at a mischief, which mischief is remedied by a demurrer; but in evidence if it be short, impertinent, or incertain, the adverse party is at no mischief, because it is to be thought that the jury will pass against him; yet nevertheless the jury is not compellable to supply the defect of evidence out of their own knowledge, though it be in their liberty so to do; therefore the law alloweth a demurrer upon evidence also.

Reg. 4. *Quod sub certa forma concessum vel reservatum est, non trahitur ad valorem vel compensationem.*

THE law permitteth every man to part with his own interest, and to qualify his own grant, as it pleaseth himself; and therefore doth not admit any allowance or recompence if the thing be not taken as it is granted.

So in all profits a *prender*, if I grant common for ten beasts, or ten loads of wood out of my coppice, or ten loads of hay out of my meads, to be taken for three years; he shall not have common for thirty beasts, or thirty loads of wood or hay the third year, if he forbear for the space of two years: here the time is certain and precise.

So if the place be limited, or if I grant estovers to be spent in such a house, or stone towards the reparation of such a castle; although the grantee do burn of his fuel and repair of his own charge, yet he can demand no allowance for that he took it not.

So if the kind be specified, as if I let my park reserving to my self all the deer and sufficient pasture for them, if I do decay the game whereby there is no deer, I shall not have quantity of pasture answerable to the feed of so many deer as were upon the ground when I let it; but am without any remedy except I replenish the ground again with deer.

BUT

BUT it may be thought that the reason of these cases is the default and laches of the grantee, which is not so.

FOR put the case that the house where the estovers should be spent be overthrown by the act of God, as by tempest, or burnt by the enemies of the King, yet there is no recompence to be made.

AND in the strongest case where it is in default of the grantor, yet he shall make void his own grant rather than the certain form of it should be wrested to an equity or valuation.

As if I grant common *ubicunque averia mea ierint*, the commoner cannot otherwise entitle himself, except that he averr that in such grounds my beasts have gone and fed; and if I never put in any, but occupy my grounds otherwise, he is without remedy; but if I put in, and after by poverty or otherwise I desist, yet the commoner may continue; contrariwise, if the words of the grant had been *quandocunque averia mea ierint*, for there it depends continually upon the putting in of my beasts, or at least the general seasons when I put them in, not upon every hour or moment.

BUT if I grant *tertiam advocacionem* to I. S. if he neglect to take his turn *ea vice*, he is without remedy: but if my wife be before intitled to dower, and I die, then my heir shall have two presentments, and my wife the third, and my grantee shall have the fourth; and it doth not impugn this rule at all, because the grant shall receive that construction at the first that it was intended such an avoidance as may be taken and enjoyed; as if I grant *proximam advocacionem* to I. D. and then grant *proximam advocacionem* to I. S. this shall be intended the next to the next, which I may lawfully grant or dispose. *Quaere*

BUT if I grant *proximam advocacionem* to I. S. and I. N. is incumbent, and I grant by precise words, *illam advocacionem, quam post mortem, resignationem, translationem, vel deprivationem I. N. immediate fore contigerit*; now the grant is merely void, because I had granted that before, and it cannot be taken against the words.

Reg. 5. *Necessitas inducit privilegium quoad jura privata.*

THE law chargeth no man with default where the act is compulsory and not voluntary, and where there is not a consent and election; and therefore if either there be an impossibility for a man to do otherwise, or so great a perturbation of the judgment and reason as in presumption of law man's nature cannot overcome, such necessity carrieth a privilege in it self.

NECESSITY is of three sorts, necessity of conservation of life, necessity of obedience, and necessity of the act of God, or of a stranger.

FIRST of conservation of life, if a man steal viands to satisfy his present hunger, this is no felony nor larceny.

So if divers be in danger of drowning by the casting away of some boat or barge, and one of them get to some plank, or on the boat's side to keep himself above water, and another to save his life thrust him from it, whereby he is drowned; this is neither *se defendendo* nor by misadventure, but justifiable.

So if divers felons be in a goal, and the goal by casualty is set on fire, whereby the prisoners get forth; this is no escape, nor breaking of prison.

So upon the statute, that every merchant that setteth his merchandize on land without satisfying the customer or agreeing for it (which agreement is construed to be in certainty) shall forfeit his merchandize, and if it is so that

4 Ed. 6. Pl.
com.
Staundf.
Staundf.
Cond. 13. 6.
per Brooke.
15 H. 7. 2. per
Keeble.
14 H. 7. 29.
per Read.
4 Ed. 6. vid. Pl.
com. 4. to 20.

by tempest a great quantity of the merchandize is cast over-board, whereby the merchant agrees with the customer by estimation, which falleth out short of the truth, yet the over-quantity is not forfeited; where note that necessity dispenseth with the direct letter of a statute law.

So if a man have right to land, and do not make his entry for terror of force, the law allows him a continual claim, which shall be as beneficial unto him as any entry; so shall a man save his default of appearance by *cretain de eau*, and avoid his debt by *dureffe*, whereof you shall find proper cases elsewhere.

THE second necessity is of obedience; and therefore where baron and feme commit a felony, the feme can neither be principal nor accessary; because the law intends her to have no will, in regard of the subjection and obedience she owes to her husband.

So one reason among others why ambassadors are used to be excused of practices against the state where they reside, except it be in point of conspiracy, which is against the law of nations and society, is, because *non constat* whether they have it *in mandatis*, and then they are excused by necessity of obedience.

So if a warrant or precept come from the King to fell wood upon the ground whereof I am tenant for life or for years, I am excused in waste.

THE third necessity is of the act of God, or of a stranger, as if I be particular tenant for years of a house, and it be overthrown by grand tempest, or thunder and lightning, or by sudden floods, or by invasion of enemies, or if I have belonging unto it some cottage which hath been infected, whereby I can procure none to inhabit them, no workmen to repair them, and so they fall down; in all these cases I am excused in waste: but of this last learning when and how the act of God and strangers do excuse, there be other particular rules.

BUT then it is to be noted, that necessity privilegeth only *quoad jura privata*, for in all cases if the act that should deliver a man out of the necessity be against the commonwealth, necessity excuseth not; for *privilegium non valet contra rempublicam*: and as another saith, *necessitas publica major est quam privata*: for death is the last and farthest point of particular necessity, and the law imposeth it upon every subject, that he prefer the urgent service of his prince and country before the safety of his life: as if in danger of tempest those that are in the ship throw over other mens goods, they are not answerable; but if a man be commanded to bring ordnance or munition to relieve any of the King's towns that are distressed, then he cannot for any danger of tempest justify the throwing of them overboard, for there it holdeth which was spoken by the *Roman*, when he alledged the same necessity of weather to hold him from embarking, *Neceffe est ut eam, non ut vivam*. So in the case put before of husband and wife, if she join in committing treason, the necessity of obedience doth not excuse the offence as it doth in felony, because it is against the commonwealth.

So if a fire be taken in a street, I may justify the pulling down of the wall or house of another man to save the row from the spreading of the fire; but if I be assailed in my house in a city or town and distressed, and to save my life I set fire on mine own house, which spreadeth and taketh hold upon other houses adjoining, this is not justifiable, but I am subject to their action upon the case, because I cannot rescue mine own life by doing any thing which is against the commonwealth: but if it had been but a private trespass, as the going over another's ground, or the breaking of his inclosure when I am pursued for the safeguard of my life, it is justifiable.

* H. 7. 2.

THIS rule admitteth an exception when the law doth intend some fault or wrong in the party that hath brought himself into the necessity; so that is *necessitas culpabilis*. This I take to be the chief reason why *seipsum defendendo* is not matter of justification, because the law intends it hath a commencement upon an unlawful cause, because quarrels are not presumed to grow without some wrongs either in words or deeds on either part, and the law that thinketh it a thing hardly triable in whose default the quarrel began, supposeth the party that kills another in his own defence not to be without malice; and therefore as it doth not touch him in the highest degree, so it putteth him to sue out his pardon of course, and punisheth him by forfeiture of goods: for where there cannot be any malice nor wrong presumed, as where a man assails me to rob me, and I kill him that assaileth me; or if a woman kill him that assaileth her to ravish her, it is justifiable without any pardon.

* H. 7. 13.

So the common case proveth this exception, that is, if a madman commit a felony, he shall not lose his life for it, because his infirmity came by the act of God: but if a drunken man commit a felony, he shall not be excused, because his imperfection came by his own default; for the reason and loss of deprivation of will and election by necessity and by infirmity is all one, for the lack of *arbitrium solutum* is the matter: and therefore as *infirmitas culpabilis* excuseth not, no more doth *necessitas culpabilis*.

Reg. 6. *Corporalis injuria non recipit aestimationem de futuro.*

THE law, in many cases that concern lands or goods, doth deprive a man of his present remedy, and turneth him over to a further circuit of remedy, rather than to suffer an inconvenience: but if it be question of personal pain, the law will not compel him to sustain it and expect remedy, because it holdeth no damage a sufficient recompence for a wrong which is corporal.

5 Ed. 4. 80.

As if the sheriff make a false return that I am summoned, whereby I lose my land; yet because of the inconvenience of drawing all things to uncertainty and delay, if the sheriff's return should not be credited, I am excluded of my averment against it, and am put to mine action of deceit against the sheriff and summoners: but if the sheriff upon a *capias*, return a *cepi corpus*, & *quod est languidus in prisona*, there I may come in and falsify the return of the sheriff to save my imprisonment.

3 H. 6. 3.

So if a man menace me in my goods, and that he will burn certain evidences of my land which he hath in his hand, if I will not make unto him a bond, yet if I enter into bond by this terror, I cannot avoid it by plea, because the law holdeth it an inconvenience to avoid a specialty by such matter of averment; and therefore I am put to mine action against such a menacer: but if he restrain my person, or threaten me with a battery, or with the burning of my house, which is a safety and protection to my person, or with burning an instrument of manumission, which is an evidence of my enfranchisement; if upon such menace or dureffe I make a deed, I shall avoid it by plea.

7 Ed. 4. 21.

* H. 8. 15.

* H. 7. 28.

So if a trespasser drive away my beasts over another's ground, and I pursue them to rescue them, yet am I trespasser to the stranger upon whose ground I came: but if a man assail my person, and I fly over another's ground, now am I no trespasser.

THIS ground some of the canonists do aptly infer out of Christ's sacred mouth, *Amen, est corpus supra vestimentum*, where they say *vestimentum* comprehendeth

prehendeth all outward things appertaining to a man's condition, as lands and goods, which they say, are not in the same degree with that which is corporal; and this was the reason of the antient *lex talionis, oculus pro oculo, dens pro dente*, so that by that law *corporalis injuria de praeterito non recipit aestimationem*: but our law, when the injury is already executed and inflicted, thinketh it best satisfaction to the party grieved to relieve him in damage, and to give him rather profit than revenge; but it will never force a man to tolerate a corporal hurt, and to depend upon that inferior kind of satisfaction, *ut in dammagiis*.

Reg. 7. *Excusat aut extenuat delictum in capitalibus, quod non operatur idem in civilibus.*

IN capital causes *in favorem vitae*, the law will not punish in so high a degree, except the malice of the will and intention appear; but in civil trespasses and injuries that are of an inferior nature, the law doth rather consider the damage of the party wronged, than the malice of him that was the wrong doer: and therefore,

THE law makes a difference between killing a man upon malice fore-thought, and upon present heat: but if I give a man slanderous words, whereby I damnify him in his name and credit, it is not material whether I use them upon sudden choler and provocation, or of set malice, but in an action upon the case I shall render damages alike.

So if a man be killed by misadventure, as by an arrow at butts, this hath a pardon of course: but if a man be hurt or maimed only, an action of trespass lieth, though it be done against the party's mind and will, and he shall be punished in the law as deeply as if he had done it of malice.

Staundf. 16.
6 Ed. 4. 7.

So if a surgeon authorized to practise, do through negligence in his cure cause the party to die, the surgeon shall not be brought in question of his life; and yet if he do only hurt the wound, whereby the cure is cast back, and death ensues not, he is subject to an action upon the case for his misfeasance.

Staundf. 16.

So if baron and feme be, and they commit felony together, the feme is neither principal nor accessory, in regard of her obedience to the will of her husband: but if baron and feme join in committing a trespass upon land or otherwise, the action may be brought against them both.

So if an infant within years of discretion, or a madman kill another, he shall not be impeached thereof; but if they put out a man's eye, or do him like corporal hurt, he shall be punished in trespass.

So in felonies the law admitteth the difference of principal and accessory, 35 H. 6. 11; and if the principal die, or be pardoned, the proceeding against the accessory faileth; but in a trespass, if one command his man to beat you, and the servant after the battery die, yet your action of trespass stands good against the master. 17 H. 4. 19.

Reg. 8. *Aestimatio praeteriti delicti ex postremo facto nunquam crescit.*

THE law construeth neither penal laws, nor penal facts by intendments, but considereth the offence in degree, as it standeth at the time when it is committed; so as if any circumstance or matter be subsequent, which laid together with the beginning should seem to draw it to a higher nature, yet the law doth not extend or amplify the offence.

THEREFORE

11 H. 4. 12. THEREFORE if a man be wounded, and the percussor is voluntarily let go at large by the goaler, and after, death ensueth of the hurt, yet this is no felonious escape in the goaler.

So if the villain strike the heir apparent of the lord, and the lord dieth before, and the person hurt who succeedeth to be lord to the villain dieth after, yet this is no petty treason.

So if a man compass and imagine the death of one that after cometh to be King of the land, not being any person mentioned within the statute of 25 Ed. III. this imagination precedent is not high treason.

So if a man use slanderous words of a person upon whom some dignity after descends that maketh him a peer of the realm, yet he shall have but a simple action of the case, and not in the nature of a *scandalum Magnatum* upon the statute.

So if *John Stile* steal six pence from me in money, and the King by his proclamation doth raise monies, that the weight of silver in the piece now of six pence should go for twelve pence, yet this shall remain petty larceny and no felony: and yet in all civil reckonings the alteration shall take place; as if I contract with a labourer to do some work for twelve pence, and the inhancing of money cometh before I pay him, I shall satisfy my contract with a six penny piece so raised.

So if a man deliver goods to one to keep, and after retain the same person into his service, who afterwards goeth away with his goods, this is no 28 H. 8. pl. 2. felony by the statute of 21 H. VIII. because he was no servant at that time.

IN like manner, if I deliver goods to the servant of *I. S.* to keep, and after die, and make *I. S.* my executor; and before any new commandment of *I. S.* to his servant for the custody of the same goods, his servant goeth away with them, this is also out of the statute. *Quod nota.*

BUT note that it is said *praeteriti delicti*; for any accessory before the fact is subject to all the contingencies pregnant of the fact, if they be pursuances of the same fact: as if a man command or counsel one to rob a man, or beat him grievously, and murder ensue, in either case he is accessory to the murder, 18 Eliz. 175. *quia in criminalibus praestantur accidentia.*

Reg. 9. *Quod remedio destituitur ipsa re valet si culpa absit.*

THE benignity of the law is such, as when to preserve the principles and grounds of law it depriveth a man of his remedy without his own fault, it will rather put him in a better degree and condition than in a worse; for if it disable him to pursue his action, or to make his claim, sometimes it will give him the thing it self by operation of law without any act of his own, sometimes it will give him a more beneficial remedy.

Lit. sec. 683. AND therefore if the heir of the disseisor which is in by descent make a lease for life, the remainder for life unto the disseisee, and the lessee for life die, now the franktenement is cast upon the disseisee by act in law, and thereby he is disabled to bring his *praecipe* to recover his right; whereupon the law judgeth him in his antient right as strongly as if it had been recovered and executed by action, which operation of law is by an antient term and word of law called a *remitter*; but if there may be assigned any default or laches in him, either in accepting the freehold, or in accepting the interest that draws the freehold, then the law denieth him any such benefit.

AND therefore if the heir of the disseisor make a lease for years, the remainder in fee to the disseisee, the disseisee is not remitted, and yet the remainder

mainder is in him without his own knowledge or assent; but because the freehold is not cast upon him by act in law, it is no remitter. *Quod nota.*

So if the heir of the disseisor infeoff the disseisee and a stranger, and make Lit. him livery, although the stranger die before any agreement or taking of the profits by the disseisee, yet he is not remitted; because though a moiety be cast upon him by survivor, yet that is but *jus accrescendi*, and it is no casting of the freehold upon him by act in law, but he is still as an immediate purchaser, and therefore no remitter.

So if the husband be seised in the right of his wife, and discontinue and die, and the feme takes another husband, who takes a feoffment from the discontinuee to him and his wife, the feme is not remitted; and the reason is, because she was once sole, and so laches in her for not pursuing her right: but if the feoffment taken back had been to the first husband and her self, she Lit. sect. 666. had been remitted.

YET if the husband discontinue the lands of the wife, and the discontinuee make a feoffment to the use of the husband and wife, she is not remitted; but that is upon a special reason, upon the letter of the statute of 27 H. VIII. of uses, that willeth that the *cestuy que use* shall have the possession in quality and degree as he had the use; but that holdeth place only upon the first vesting of the use: for when the use is absolutely executed and vested, then it doth insue merely the nature of possessions; as if the discontinuee had made 34 H. 8. Dy. a feoffment in fee to the use of I. S. for life, the remainder to the use of baron and feme, and lessee for life die, now the feme is remitted, *causa qua supra*.

ALSO if the heir of the disseisor make a lease for life, the remainder to the disseisee, who chargeth the remainder, and the lessee for life dies, the disseisee is not remitted; and the reason is, his intermeddling with the wrongful remainder, whereby he hath affirmed the same to be in him, and so accepted it: but if the heir of the disseisor had granted a rent charge to the disseisee, and afterwards made a lease for life, the remainder to the disseisee, and the lessee for life had died, the disseisee had been remitted; because there appeareth no assent or acceptance of any estate in the freehold, but only of a collateral charge.

So if the feme be disseised, and intermarry with the disseisor, who makes a lease for life, rendring rent, and dieth leaving a son by the same feme, and 6 Ed. 3. 17. the son accepts the rent of the lessee for life, and then the feme dies, and the lessee for life dies, the son is not remitted; yet the frank tenement was 28 H. 8. pl. cast upon him by act in law, but because he had agreed to be in the tortious 207. reversion by acceptance of the rent, therefore no remitter.

So if tenant in tail discontinue, and the discontinuee make a lease for life, the remainder to the issue in tail being within age, and at full age the lessee for life surrendereth to the issue in tail, and tenant in tail dies, and lessee for life dies, yet the same issue is not remitted; and yet if the issue had accepted a feoffment within age, and had continued the taking of the profits when he came of full age, and then the tenant in tail had died, notwithstanding his taking of the profits he had been remitted: for that which guides the remitter, is, if he be once in of the freehold without any laches: as if the heir of the disseisor infeoffs the heir of the disseisee, who dies, and it descends to a second heir upon whom the frank tenement is cast by descent, who enters and takes the profits, and then the disseisee dies, this is a remitter, *causa qua supra*.

Lit.

Also if tenant in tail discontinue for life, and take a surrender of the lease, now is he remitted and seised again by force of the tail, and yet he cometh in by his own act: but this case differeth from all other cases; because the discontinuance was but particular at first, and the new gained reversion is but by intendment and necessity of law; and therefore is but as it were *ab initio*, with a limitation to determine whensoever the particular discontinuance endeth, and the estate cometh back to the antient right.

6 H. 8. pl. 3.
Dy.

To proceed from cases of remitter, which is a great branch of this rule, to other cases: if executors do redeem goods pledged by their testator with their own money, the law doth convert so much goods as doth amount to the value of that they laid forth, to themselves in property, and upon a plea of fully administered it shall be allowed: the reason is, because it may be matter of necessity for the well administering of the goods of the testator, and executing their trust that they disburse money of their own: for else perhaps the goods would be forfeited, and he that had them in pledge would not accept other goods but money, and so it is a liberty which the law gives them, and they cannot have any suit against themselves; and therefore the law gives them leave to retain so much goods by way of allowance: and if there be two executors, and one of them pay the money, he may likewise retain against his companion, if he have notice thereof.

3 Eliz. 187.
pl. 8.

BUT if there be an overplus of goods, above the value of that he shall disburse, then ought he by his claim to determine what goods he doth elect to have in value; or else before such election, if his companion do sell all the goods, he hath no remedy but in the spiritual court: for to say he should be tenant in common with himself and his companion *pro rata* of that he doth lay out, the law doth reject that course for intricateness.

19 H. 8. pl. 7.
in fine.
22 Aff. 52 F.
Rec. in value
23.

So if I have a lease for years worth 20 *l.* by the year, and grant unto *I. D.* a rent of 10 *l.* a year, and after make him my executor; now *I. D.* shall be charged with assets 10 *l.* only, and the other 10 *l.* shall be allowed and considered to him; and the reason is, because the not refusing shall be accounted no laches unto him, because an executorship is *pium officium*, and matter of conscience and trust, and not like a purchase to a man's own use.

2 H. 4. 21.
Cond. 185.
2 H. 7. 5.
37 H. 6. 32.

LIKE law it is, where the debtor makes the debtee his executor, the debt shall be considered in the assets, notwithstanding it be a thing in action.

6 Ed. 6. cond.
133.
Lit. pl. 135.

So if I have a rent charge, and grant that upon condition, now though the condition be broken, the grantee's estate is not defeated till I have made my claim; but if after such grant my father purchase the land, and it descend to me, now if the condition be broken, the rent ceaseth without claim: but if I had purchased the land myself, then I had extincted mine own condition, because I had disabled myself to make my claim: and yet a condition collateral is not suspended by taking back an estate; as if I make a feoffment in fee, upon condition that *I. S.* shall marry my daughter, and take a lease for life from my feoffee, if the feoffee break the condition I may claim to hold in by my fee-simple: but the case of the charge is otherwise, for if I have a rent charge issuing out of twenty acres, and grant the rent over upon condition, and purchase but one acre, the whole condition is extinct, and the possibility of the rent by reason of the condition, is as fully destroyed as if it had been a rent in *esse*.

30 H. 6. pl.
Grants 91.

So if the King grant to me the wardship of *I. S.* the son and heir of *I. S.* when it falleth; because an action of covenant lieth not against the King, I shall have the thing myself in interest.

BUT

BUT if I let land to *I. S.* rendering a rent with a condition of re-entry, and *I. S.* be attainted, whereby the lease cometh to the King, now the demand upon this land is gone, which would give me benefit of re-entry, and yet I shall not have it reduced without demand; and the reason of the difference is, ^{7 H. 6. 40.} because my condition in this case is not taken away in right, but only suspended by the privilege of the possession; for if the King grant the lease over, the condition is revived as it was.

ALSO if my tenant for life grant his estate to the King, now if I will grant my reversion over, the King is not compellable to atturn, therefore it shall pass by grant by deed without atturnment.

So if my tenant for life be, and I grant my reversion *pur autre vie*, and the grantee die, living *cestuy que vie*, now the privity between tenant for life and me is not restored, and I have no tenant in *esse* to atturn; therefore I may pass my reversion without atturnment. *Quod nota.* ^{9 Ed. 2. Fitz. Attournments 18.}

So if I have a nomination to a church, and another hath the presentation, and the presentation comes to the King, now because the King cannot be attendant, my nomination is turned to an absolute patronage.

So if a man be seised in an *advowson, and take a wife, and after a title of dower given her, join in impropriating the church, and dieth, now because the feme cannot have the turn because of the perpetual incumbency, she shall have all the turns during her life; for it shall not be disimpropriated to the benefit of the heir contrary to the grant of tenant in fee-simple. ^{6 Ed. 6. Dy. 92.}

BUT if a man grant the third presentment to *I. S.* and his heirs, and impropriate the advowson, now the grantee is without remedy, for he took his grant subject to that mischief at first; and therefore it was his laches, and therefore not like the case of the dower; and this grant of the third avoidance is not like *tertia pars advocacionis*, or *medietas advocacionis* upon a tenancy in common of the advowson: for if two tenants in common be, and an usurpation be had against them, and the usurper do impropriate, and one of the tenants in common do release, and the other bring his writ of right *de medietate advocacionis* and recover; now I take the law to be, that because tenants in common ought to join in presentment, which cannot now be, he shall have the whole patronage: for neither can there be an apportionment that he should present all the turns, and his incumbent but to have a moiety of the profits, nor yet the act of impropriation shall not be defeated. But as if two tenants in common be of a ward, and they join in a writ of right of ward, and one release, the other shall recover the entire ward, because it cannot be divided: so shall it be in the other case, though it be an inheritance, and though he bring his action alone. ^{45 Ed. 3.}

As if a disseisor be disseised, and the first disseisee release to the second disseisor upon condition, and a descent be cast, and the condition broken; now the mean disseisor, whose right is revived, shall enter notwithstanding this descent, because his right was taken away by the act of a stranger.

BUT if I devise land by the statute of [†] 32 H. VIII. and the heir of the deviser enters and makes a feoffment in fee, and the feoffee dieth seised, this descent binds, and there shall not be a perpetual liberty of entry, upon the reason that he never had seisin whereupon he might ground his action, but he is at a mischief by his own laches: and like law is of the King's patentee;

* Vide contra 2 E. 3. fo. 8. que per presentment del feme ladwofson est deveign disimpropriate a tous jours quel est agree in Snr Cok. Rep. 7. fo. 8. a.

† Le contrary fuit resolve in Martin Trott's case, Pas. 32 Eliz. in Com. Banco, & Pa. 1 Jac. ib. vide 7 R. 2. Scire fac. 3. 41 E. 3. 14. per Finchden.

for I see no reasonable difference between them and him in the remainder, which is *Littleton's* case.

BUT note, that the law by operation and matter in fact will never countervail and supply a title grounded upon a matter of record; and therefore if I be entitled unto a writ of error, and the land descend unto me, I shall never be remitted, no more shall I be unto an attain, except I may also have a writ of right.

So if upon my avowry for services, my tenant disclaim where I may have a writ of right as upon disclaimer, if the land after descend to me, I shall never be remitted.

Reg. 10. *Verba generalia restringuntur ad habilitatem rei vel personae.*

IT is a rule that the King's grants shall not be taken or construed to a special intent; it is not so with the grants of a common person, for they shall be extended as well to a foreign intent as to a common intent; yet with this exception, that they shall never be taken to an impertinent or a repugnant intent: for all words, whether they be in deeds or statutes, or otherwise, if they be general and not express and precise, shall be restrained unto the fitness of the matter or person.

Perk. pl. 108. As if I grant common in *omnibus terris meis* in *D.* and I have in *D.* both open grounds and several, it shall not be stretched to common in my several, much less in my gardens and orchards.

14 H. 8. 2. So if I grant to a man *omnes arbores meas crescentes supra terras meas* in *D.* he shall not have apple-trees, or other fruit-trees growing in my gardens or orchards, if there be any other trees upon my ground.

41 Ed. 3. 6. 19. So if I grant to *I. S.* an annuity of 10 *l.* a year *pro consilio impenso & impendendo*, if *I. S.* be a physician, it shall be understood of his counsel in physick; and if he be a lawyer, of his counsel in law.

So if I do let a tenement to *I. S.* near by my dwelling house in a borough, provided that he shall not erect or use any shop in the same without my licence, and afterwards I license him to erect a shop, and *I. S.* is then a miller, he shall not by virtue of these general words erect a joiner's shop.

16 Eliz. 337. Dyer. So the statute of chantries that willeth all lands to be forfeited, given or employed to a superstitious use, shall not be construed of the glebe lands of parsonages: nay farther, if the lands be given to the Parson of *D.* to say a mass in his church of *D.* this is out of the statute, because it shall be intended but as an augmentation of his glebe; but otherwise had it been, if it had been to say a mass in any other church but his own.

So in the statute of wrecks that willeth that goods wreck'd where any live domestical creature remains in a vessel, shall be preserved to the use of the owner that shall make his claim by the space of one year, doth not extend to fresh victuals or the like, which is impossible to keep without perishing or destroying it; for in these and the like cases general words may be taken, as was said, to a rare and foreign intent, but never to an unreasonable intent.

Reg. 11. *Fura sanguinis nullo jure civili dirimi possunt.*

THEY be the very words of the civil law, which cannot be amended to explain this rule. *Heres est nomen Juris, Filius est nomen Naturae*: therefore corruption of blood taketh away the privy of the one, that is, of the heir

heir, but not of the other, that is, of the son; therefore if a man be attainted and murdered by a stranger, the eldest son shall not have the appeal, because the appeal is given to the heir, for the youngest sons who are equal in blood shall not have it; but if an attainted person be killed by his son, this is petty treason, for that the privy of a son remaineth: for I admit the law to be, that if the son kill his father or mother it is petty treason, and that there remaineth so much in our laws of the antient footsteps of *patria* and natural obedience, which by the law of God is the very instance it self; and all other government and obedience is taken but by equity, which I add, because some have thought to weaken the law in that point.

So if land descend to the eldest son of a person attainted from his ancestor of the part of the mother held in knights service, the guardian shall enter, and oust the father, because the law giveth the father that prerogative in respect he is his son and heir; for of a daughter or a special heir in tail he shall not have it; but if the son be attainted, and the father covenant in consideration of natural love to stand seised of land to his use, this is good enough to raise an use, because the privy of a natural affection remaineth.

So if a man be attainted and have a charter of pardon, and be returned of a jury between his son and *I. S.* the challenge remaineth; for he may maintain any suit of his son, notwithstanding the blood be corrupted.

So by the statute of 21 *H. VIII.* the ordinary ought to commit the administration of his goods that was attainted and purchased his charter of pardon, to his children, though born before the pardon, for it is no question of his inheritance: for if one brother of the half blood die, the administration ought to be committed to his other brother of the half blood, if there be no nearer by the father.

So if the uncle by the mother be attainted, and pardoned, and land descend from the father to the son within age held in socage, the uncle shall be guardian in socage; for that savoureth so little of the privy of heir, as the possibility to inherit shutteth out.

BUT if a feme tenant in tail assent to the ravisher, and have no issue, and her cousin is attainted, and pardoned, and purchaseth the reversion, he shall not enter for a forfeiture. For though the law giveth it not in point of inheritance, but only as a perquisite to any of the blood, so he be next in estate; yet the recompence is understood for the stain of his blood, which cannot be considered when it is once wholly corrupted before.

So if a villain be attainted, yet the lord shall have the issues of his villain born before or after the attainder; for the lord hath them *jure naturae* but as the increase of a flock.

QUAERE, whether if the eldest son be attainted and pardoned, the lord shall have aid of his tenants to make him a knight, and it seemeth he shall; for the words of the writ hath *filium primogenitum*, and not *filium & haeredem*, and the like writ he hath *pur file marrier* who is no heir.

Reg. 12. *Receditur a placitis juris, potius quam injuriae & delicta mancant impunita.*

THE law hath many grounds and positive learnings, which are not of the maxims and conclusions of reason; but yet are learnings received which the law hath set down and will not have called in question: these may be rather called *placita juris* than *regulae juris*; with such maxims the law will dispense, rather than crimes and wrongs should be unpunished, *quia salus populi suprema*

prema lex; and *salus populi* is contained in the repressing offences by punishment.

THEREFORE if an advowson be granted to two, and the heirs of one of them, and an usurpation be had, they both shall join in a writ of right of advowson; and yet it is a ground in law, that a writ of right lieth of no less estate than a fee-simple; but because the tenant for life hath no other several action in the law given him, and also that the jointure is not broken, and so the tenant in fee-simple cannot bring his writ of right alone; therefore rather than he should be deprived wholly of remedy, and this wrong unpunished, he shall join his companion with him, notwithstanding the feebleness of his estate.

45 Ed. 3. 21. BUT if lands be given to two, and to the heirs of one of them, and they lose in a *praecipe* by default, now they shall not join in a writ of right, because the tenant for life hath a several action, *viz.* a *Quod ei deforciat*, in which respect the jointure is broken.

So if tenant for life and his lessor join in a lease for years, and the lessee commit waste, they shall join in punishing this waste, and *locus vastatus* shall go to the tenant for life, and the damages to him in reversion; and yet an action of waste lieth not for tenant for life; but because he in the reversion cannot have it alone, because of the mean estate for life, therefore rather than the waste shall be unpunished, they shall join.

45 Ed. 3. 3.
22 H. 6. 24. So if two coparceners be, and they lease the land, and one of them die, and hath issue, and the lessee commit waste, the aunt and the issue shall join in punishing this waste, and the issue shall recover the moiety of the place wasted, and the aunt the other moiety and the entire damages; and yet *actio injuriarum moritur cum persona*, but *in favorabilibus magis attenditur quod prodest, quam quod nocet*.

20 Ed. 2. Fitz.
descent. 16. So if a man recovers by erroneous judgment, and hath issue two daughters, and one of them is attainted, the writ of error shall be brought against the parceners, notwithstanding the privity fail in the one.

33 Eliz. ALSO it is a positive ground, that the accessory in felony cannot be proceeded against, until the principal be tried; yet if a man upon subtlety and malice set a madman by some device to kill, and he doth so; now forasmuch as the madman is excused because he can have no will nor malice, the law accounteth the inciter as principal, though he be absent, rather than the crime shall go unpunished.

Fitz. Corone
459.
M. 28 H. 6.
Staundf. lib.
2. fol. 59. So it is a ground of the law, that the appeal of murder goeth not to the heir where the party murdered hath a wife, nor to the younger brother where there is an elder; yet if the wife murder her husband, because she is the party offender, the appeal leaps over to the heir; and so if the son and heir murder his father, it goeth to the second brother.

BUT if the rule be one of the higher sort of maxims that are *regulae rationales*, and not *positivae*, then the law will rather endure a particular offence to escape without punishment, than violate such a rule.

As it is a rule that penal statutes shall not be taken by equity, and the statute of 1 Ed. VI. enacts that those that are attainted for stealing of horses shall not have their clergy, the judges conceived, that this did not extend to him that should steal but one horse, and therefore procured a new act for it in 2 Ed. VI. cap. 33. And they had reason for it, as I take the law; for it is not like the case upon the statute of *Glocest.* that gives the action of waste against him that holds *pro termino vitae vel annorum*. It is true, that if a man holds but for a

Plow. 467.
Lit. cap. 67.
46 Ed. 3. 31.

year he is within the statute; for it is to be noted, that penal statutes are taken

taken strictly and literally only in the point of defining and setting down the fact and the punishment, and in those clauses that do concern them; and not generally in words that are but circumstances and conveyance in the putting of the case: and so see the diversity, for if the law be, that for such an offence a man shall lose his right hand, and the offender hath had his right hand before cut off in the wars, he shall not lose his left hand, but the crime shall rather pass without the punishment which the law assigned, than the letter of the law should be extended; but if the statute of 1 Ed. VI. had been, that he that should steal one horse should be ousted of his clergy, then there had been no question at all, but if a man had stolen more horses than one, but that he had been within the statute, *quia omne majus continet in se minus*.

Reg. 13. *Non accipi debent verba in demonstrationem falsam, quae competunt in limitationem veram.*

THOUGH falsity of addition or demonstration doth not hurt where you give the thing a proper name, yet nevertheless if it stand doubtful upon the words, whether they import a false reference and demonstration, or whether they be words of restraint that limit the generality of the former name, the law will never intend error or falshood.

THEREFORE if the parish of *Hurst* do extend into the counties of *Wiltsh.* ^{12 Eliz. 6.} and *Berksh.* and I grant my close called *Callis*, situate and lying in the parish of *Hurst* in the county of *Wiltsh.* and the truth is, that the whole close lieth in the county of *Berksh.* yet the law is, that it passeth well enough, because there is a certainty sufficient in that I have given it a proper name which the false reference doth not destroy, and not upon the reason that these words, in the county of *Wiltsh.* shall be taken to go to the parish only, and so be true in some sort, and not to the close, and so to be false: For if I had granted *omnes terras meas in parochia de Hurst in com. Wiltsh.* and I had no lands in *Wiltsh.* but in *Berksh.* nothing had past.

BUT in the principal case, if the close called *Callis* had extended part into *Wiltsh.* and part into *Berksh.* then only that part had passed which lay in *Wiltsh.* ^{9 Ed. 4. 7. 21 Ed. 3. 13. 18 Eliz.}

So if I grant *omnes & singulas terras meas in tenura I. D. quas perquisivi de I. N. in indentura dimissionis fact' I. B. specificat.* If I have land wherein some of these references are true, and the rest false, and no land wherein they are all true, nothing passeth: as if I have land in the tenure of *I. D.* and purchased of *I. N.* but not specified in the indenture to *I. B.* or if I have land which I purchased of *I. N.* and specified in the indenture of demise to *I. B.* and not in the tenure of *I. D.* ^{29 Reg.}

BUT if I have some land wherein all these demonstrations are true, and some wherein part of them are true, and part false, then shall they be intended words of true limitation to pass only those lands wherein all those circumstances are true.

Reg. 14. *Licet dispositio de interesse futuro sit inutilis, tamen potest fieri declaratio praecedens quae sortiatur effectum interveniente novo actu.*

THE law doth not allow of grants except there be a foundation of an interest in the grantor; for the law that will not accept of grants of titles, or of things in action which are imperfect interests, much less will it allow

a man to grant or incumber that which is no interest at all, but merely future.

BUT of declarations precedent before any interest vested the law doth allow, but with this difference, so that there be some new act or conveyance to give life and vigour to the declaration precedent.

NOW the best rule of distinction between grants and declarations is, that grants are never countermandable, not in respect of the nature of the conveyance or instrument, though sometime in respect of the interest granted they are, whereas declarations evermore are countermandable in their natures.

20 Eliz.
19 H. 6. 62. AND therefore if I grant unto you, that if you enter into an obligation to me of 100 *l.* and after do procure me such a lease, that then the same obligation shall be void, and you enter into such an obligation unto me, and afterwards do procure such a lease, yet the obligation is simple, because the discharge was made of that which was not.

27 Ed. 3. So if I grant unto you a rent charge out of white acre, and that it shall be lawful for you to distrain in all my other lands whereof I am now seised, and which I shall hereafter purchase; although this be but a liberty of distress, and no rent save only out of white acre, yet as to the lands afterwards to be purchased the clause is void.

29 Ed. 3. 6.
24 Eliz. So if a reversion be granted to *I. S.* and *I. D.* a stranger by his deed do grant to *I. S.* that if he purchase the particular estate, he will attorn to the grant, this is a void attornment, notwithstanding he doth afterwards purchase the particular estate.

13, 14 Eliz.
20, 21 Eliz.
25 Eliz. BUT of declarations the law is contrary; as if the disseisee make a charter of feoffment to *I. S.* and a letter of attorney to enter and make livery and seisin, and deliver the deed of feoffment, and afterwards livery and seisin is made accordingly, this is a good feoffment; and yet he had no other thing than a right at the time of the delivery of the charter; but because a deed of feoffment is but matter of declaration and evidence, and there is a new act which is the livery subsequent, therefore it is good in law.

M. 48 &
39 Eliz.
36 Eliz. So if a man make a feoffment to *I. S.* upon condition to enfeoff *I. N.* within certain days, and there are deeds made both of the first feoffment and the second, and letters of attorney accordingly, and both those deeds of feoffment, and letters of attorney are delivered at a time, so that the second deed of feoffment and letters of attorney are delivered when the first feoffee had nothing in the land; and yet if both liveries be made accordingly, all is good.

So if I covenant with *I. S.* by indenture, that before such a day I will purchase the manor of *D.* and before the same day I will levy a fine of the same land, and that the same fine shall be to certain uses which I express in the same indenture; this indenture to lead uses being but matter of declaration and countermandable at my pleasure, will suffice, though the land be purchased after; because there is a new act to be done, *viz.* the fine.

25 Eliz.
27 Eliz. BUT if there were no new act, then otherwise it is; as if I covenant with my son in consideration of natural love, to stand seised unto his use of the lands which I shall afterwards purchase, yet the use is void; and the reason is, because there is no new act, nor transmutation of possession following to perfect this inception; for the use must be limited by the feoffor, and not the feoffee, and he had nothing at the time of the covenant.

Com. Plowd.
Rigden's case. So if I devise the manor of *D.* by special name, of which at that time I am not seised, and after I purchase it, except I make some new publication of

of my will, this devise is void; and the reason is, because that my death, which is the consummation of my will, is the act of God, and not my act, and therefore no such new act as the law requireth.

BUT if I grant unto *I. S.* authority by my deed to demise for years, the land whereof I am now seised, or hereafter shall be seised; and after I purchase the lands, and *I. S.* my attorney doth demise them; this is a good demise, because the demise of my attorney is a new act, and all one with a demise by my self.

BUT if I mortgage land, and after covenant with *I. S.* in consideration of ^{21 Eliz.} money which I receive of him, that after I have entred for the condition broken, I will stand seised to the use of the same *I. S.* and I enter, and this deed is enrolled, and all within the six months, yet nothing passeth away, because this enrollment is no new act, but a perfective ceremony of the first deed of bargain and sale; and the law is more strong in that case, because of the vehement relation which the enrolment hath to the time of the bargain and sale, at what time he had nothing but a naked condition.

So if two jointenants be, and one of them bargain and sell the whole land, ^{6 Ed. 6. Br.} and before the enrolment his companion dieth, nothing passeth of the moiety accrued unto him by survivor.

Reg. 15. *In criminalibus sufficit generalis malitia intentionis cum facto paris gradus.*

ALL crimes have their conception in a corrupt intent, and have their consummation and issuing in some particular fact; which though it be not the fact at which the intention of the malefactor levelled, yet the law giveth him no advantage of the error, if another particular ensue of as high a nature.

THEREFORE if an im poisoned apple be laid in a place to im poison *I. S.* and ^{18 Eliz. Sanders case, Pl. com. 474.} *I. D.* cometh by chance and eateth it, this is murder in the principal that is actor, and yet the malice *in individuo* was not against *I. D.*

So if a thief find the door open, and come in by night and rob an house, ^{Cr. Just. 30.} and be taken with the mainour, and break a door to escape, this is burglary; yet the breaking of the door was without any felonious intent, but it is one entire act.

So if a caliver be discharged with a murderous intent at *I. S.* and the piece break and strike into the eye of him that dischargeth it, and killeth him, he is *felo de se*, and yet his intention was not to hurt himself; for *felonia de se* and murder are *crimina paris gradus*. For if a man persuade another to kill himself, and be present when he doth so, he is a murderer.

BUT *quaere*, if *I. S.* lay im poisoned fruit for some other stranger his ene- ^{Cr. Just. fol. 18, 19.} my, and his father or master come and eat it, whether this be petty treason, because it is not altogether *crimen paris gradus*.

Reg. 16. *Mandata licita recipiunt strictam interpretationem, sed illicita latam & extensam.*

IN committing of lawful authority to another, a man may limit it as strictly as it pleaseth him, and if the party authorized do transgress his authority, though it be but in circumstance expressed, it shall be void in the whole act.

BUT when a man is author and mover to another to commit an unlawful act, then he shall not excuse himself by circumstances not pursued.

10 H. 7. 19. THEREFORE if I make a letter of attorney to *I. S.* to deliver livery and
 15, 16. seisin in the capital messuage, and he doth it in another place of the land,
 16 El. Dy. 337. or between the hours of two and three, and he doth it after or before; or if
 16 El. Dy. 337. I make a charter of feoffment to *I. D.* and *I. B.* and express the seisin to be
 11 El. Dy. 283. delivered to *I. D.* and my attorney deliver it to *I. B.* in all these cases the act
 38 H. 8. D. 68. of the attorney, as to execute the estate, is void; but if I say generally to *I. D.*
 whom I mean only to enfeoff, and my attorney make it to his attorney, it
 shall be intended, for it is a livery to him in law.

18 El. Sanders
 case. Com.
 475. BUT on the other side, if a man command *I. S.* to rob *I. D.* on *Shooters-*
bill, and he doth it on *Gads-bill*, or to rob him such a day, and he doth it
 the next day, or to kill *I. D.* and he doth it not himself but procureth *I. B.*
 to do it; or to kill him by poison, and he doth it by violence; in all these
 cases, notwithstanding the fact be not executed in circumstance, yet he is ac-
 cessary nevertheless.

Ibidem. BUT if it be to kill *I. S.* and he killeth *I. D.* mistaking him for *I. S.* then
 the acts are distant in substance, and he is not accessory.

AND be it that the facts be of differing degrees, and yet of a kind:

AS if a man bid *I. S.* to pilfer away such things out of a house, and pre-
 cisely restrain him to do it sometime when he is gotten in without breaking of
 the house, and yet he breaketh the house; yet he is accessory to the burglary:
 for a man cannot condition with an unlawful act, but he must at his peril
 take heed how he putteth himself into another man's hands.

18 Eliz. in
 Sanders case
 pl. Com. 475. BUT if a man bid one rob *I. S.* as he goeth to *Sturbridge-fair*, and he rob
 him in his house, the variance seems to be of substance, and he is not ac-
 cessary.

Reg. 17. *De fide & officio Judicis non recipitur quaestio; sed de scientia,
 sive error sit juris sive facti.*

THE law doth so much respect the certainty of judgments, and the credit
 and authority of judges, as it will not permit any error to be assigned that
 impeacheth them in their trust and office, and in wilful abuse of the same;
 but only in ignorance, and mistaking either of the law or of the case and
 matter in fact.

F. N. br. fo. 21.
 7 H. 7. 4. AND therefore if I will assign for error, that whereas the verdict passed for
 me, the court received it contrary, and so gave judgment against me, this
 shall not be accepted.

3 H. 6. Aff. 3. SO if I will allege for error, that whereas *I. S.* offered to plead a sufficient
 bar, the court refused it, and drove me from it, this error shall not be al-
 lowed.

2 M. Dy. 114. BUT the greatest doubt is where the court doth determine of the verity
 of the matter in fact; so that it is rather a point of trial than a point of judg-
 ment, whether it shall be re-examined in error.

1 Mar. 5.
 28 Aff. pl. 15. AS if an appeal of maim be brought, and the court, by the assistance
 21 H. 7. 40. 35 of the chirurgeons adjudge it to be a maim, whether the party grieved
 may bring a writ of error; and I hold the law to be he cannot.

8 H. 4. 3. SO if one of the Prothonotaries of the common pleas bring an assize of his
 office, and allege fees belonging to the same office in certainty, and issue is
 1 Mar. Dy. 89.
 5 Mar. Dy.
 163. taken upon these fees, this issue shall be tried by the judges by way of exa-
 mination, and if they determine it for the plaintiff, and he have judgment to
 recover arrearages accordingly, the defendant can bring no writ of error of
 this judgment, though the fees in truth be other.

So if a woman bring a writ of dower, and the tenant plead her husband is alive, this shall be tried by proofs and not by jury; and upon judgment given on either side no error lies. 8 H. 6. 23.
2 El. 285. Dy.
43 Aff. 26.
41 Aff. 5.
39 Aff. 9.

So if *nul tiel record* be pleaded, which is to be tried by the inspection of the record, and judgment be thereupon given, no error lieth. 5 Ed. 4. 3.
9 H. 7. 2.
19 H. 6. 52.

So if in the assize the tenant saith; he is *counte de Dale & nient nofme counte*, in the writ, this shall be tried by the records of the chancery, and upon judgment given no error lieth. 22 Aff. pl. 24.
19 Ed. 4. 6.

So if a felon demand his clergy, and read well and distinctly, and the court who is judge thereof do put him from his clergy wrongfully, error shall never be brought upon the attainder.

So if upon judgment given upon confession or default; the court do assess damages, the defendant shall never bring a writ of error; though the damage be outrageous. 9 Aff. 8.
F.N. Br. 21.

AND it seemeth in the case of maim, and some other cases, that the court may dismiss themselves of discussing the matter by examination; and put it to a jury, and then the party grieved shall have his attainder; and therefore it seemeth that the court that doth deprive a man of his action, should be subject to an action; but that notwithstanding the law will not have, (as was said in the beginning;) the judges called in question in the point of their office when they undertake to discuss the issue; and that is the true reason: for to say that the reason of these cases should be, because trial by the court should be peremptory as trial by certificate, (as by the Bishop in case of bastardy, or by the marshal of the King, &c.) the cases are nothing alike; for the reason of those cases of certificate is, because if the court should not give credit to the certificate, but should re-examine it; they have no other mean but to write again to the same Lord Bishop, or the same Lord Marshal, which were frivolous; because it is not to be presumed they would differ from their former certificate; whereas in these other cases of error the matter is drawn before a superiour court, to re-examine the errors of an inferiour court; and therefore the true reason is, as was said, that to examine again that which the court had tried, were in substance to attainder the court. 21 Aff. 24.
11 H. 4. 41.
7 H. 6. 37.

AND therefore this is a certain rule in error; that error in law is ever of such matters as do appear upon record; and error in fact is ever of such matters as are not crossed by the record; as to allege the death of the tenant at the time of the judgment given; nothing appeareth upon record to the contrary.

So when the infant levies a fine, it appeareth not upon the record that he is an infant, therefore it is an error in fact, and shall be tried by inspection during nonage. F.N. Br. 21.

BUT if a writ of error be brought in the King's bench of a fine levied by an infant, and the court by inspection and examination doth affirm the fine; the infant, though it be during his infancy, shall never bring a writ of error in the parliament upon this judgment; not but that error lies after error, but because it doth now appear upon the record that he is now of full age, therefore it can be no error in fact. And therefore if a man will assign for error that fact, that whereas the judges gave judgment for him, the clerks entred it in the roll against him, this error shall not be allowed; and yet it doth not touch the judges but the clerks: but the reason is, if it be an error, it is an error in fact; and you shall never allege an error in fact contrary to the record. 2 R. 3. 20.
F.N. Br. 21.
9 Ed. 4. 3.

Reg. 18. *Persona conjuncta aequiparatur interesse proprio.*

THE law hath that respect of nature and conjunction of blood, as in divers cases it compareth and matcheth nearness of blood with consideration of profit and interest; yea, and in some cases alloweth of it more strongly.

7 & 8 Eliz.

THEREFORE if a man covenant in consideration of blood, to stand seised to the use of his brother, or son, or near kinsman, an use is well raised of this covenant without transmutation of possession; nevertheless it is true, that consideration of blood is naught to ground a personal contract upon; as if I contract with my son, that in consideration of blood I will give unto him such a sum of money, this is a *nudum pactum*, and no *assumpsit* lieth upon it; for to subject me to an action, there needeth a consideration of benefit; but the use the law raiseth without suit or action; and besides, the law doth match real considerations with real agreements and covenants.

19 Ed. 4. 5.

19 Ed. 4. 22.

22 H. 6. 35.

21 H. 6. 15, 16.

22 H. 6. 5.

20 H. 6.

14 H. 6. 6.

14 H. 7. 2.

14 & 15 Eliz.

21 Ed. 4. 75.

Pl. com. 425.

So if a suit be commenced against me, my son, or brother, I may maintain as well as he in remainder for his interest, or his lawyer for his fee; and if my brother have a suit against my nephew or cousin, yet it is at my election to maintain the cause of my nephew or cousin, though the adverse party be nearer unto me in blood.

So in challenges of juries, challenge of blood is as good as challenge without in distress, and it is not material how far off the kindred be, so the pedigree can be conveyed in a certainty, whether it be of the half blood or whole.

15 H. 6. 17.

39 H. 6. 50.

21 Ed. 4. 13.

18 H. 6. 21.

15 Ed. 4. 1.

39 H. 6. 91.

7 Ed. 4. 21.

20 Aff. 14.

Perk. f. 4.

So if a man menace me, that he will imprison or hurt in body my father, or my child, except I make such an obligation, I shall avoid this duress, as well as if the duress had been to mine own person: and yet if a man menace me, by taking away or destruction of my goods, this is no good duress to plead; and the reason is, because the law can make me reparation of that loss, and so it cannot of the other.

So if a man under the years of twenty one, contract for the nursing of his lawful child, this contract is good, and shall not be avoided by infancy, no more than if he had contracted for his own aliments or erudition.

Reg. 19. *Non impedit clausula derogatoria, quo minus ab eadem potestate res dissolvantur a quibus constituuntur.*

ACTS which are in their natures revocable, cannot by strength of words be fixed or perpetuated; yet men have put in use two means to bind themselves from changing or dissolving that which they have set down, whereof one is *clausula derogatoria*, the other *interpositio juramenti*, whereof the former is only pertinent to the present purpose.

THIS *clausula derogatoria* is by the common practical term called *clausula non obstante*, and is of two sorts, *de praeterito* & *de futuro*, the one weakening and disannulling any matter past to the contrary, the other any matter to come, and this latter is that only whereof we speak.

THE *clausula non obstante de futuro*, the law judgeth to be idle and of no force, because it doth deprive men of that which of all other things is most incident to human condition, and that is alteration or repentance.

THEREFORE if I make my will, and in the end thereof do add such like clause, [Also my will is if I shall revoke this present will, or declare any new will, except the same shall be in writing, subscribed with the hands of two witnesses,

witnesses, that such revocation or new declaration shall be utterly void, and by these presents I do declare the same not to be my will, but this my former will to stand, any such pretended will to the contrary notwithstanding] yet nevertheless this clause or any the like never so exactly penned; and although it do restrain the revocation but in circumstance and not altogether, is of no force or efficacy to fortify the former will against the second; but I may by paroll without writing repeal the same will and make a new one.

So if there be a statute made that no sheriff shall continue in his office ^{28 Ed. 3.} above a year, and if any patent be made to the contrary it shall be void; and ^{cap. 7.} if there be any *clausula de non obstante* contained in such patent to dispense ^{24 Ed. 3.} with this present act, that such clause also shall be void; yet nevertheless a pa- ^{cap. 9.} tent of the sheriff's office made by the King for term of life, with a *non ob-* ^{2 H. 7. 6.} *stante*, will be good in law contrary to such statute, which pretendeth to exclude *non obstante's*; and the reason is, because it is an inseparable prerogative of the crown to dispense with politick statutes, and of that kind; and then the derogatory clause hurteth not.

So if an act of parliament be made wherein there is a clause contained, that it shall not be lawful for the King by authority of parliament, during the space of seven years, to repeal and determine the same act, this is a void clause, and such act may be repealed within the seven years; and yet if the parliament should enact in the nature of the antient *lex regia*, that there should be no more parliaments held, but that the King should have the authority of the parliament; this act were good in law, *quia potestas suprema seipsum dissolvere potest, ligare non potest*: for as it is in the power of a man to kill a man, but it is not in his power to save him alive, and to restrain him from breathing or feeling; so it is in the power of a parliament to extinguish or transfer their own authority, but not whilst the authority remains entire, to restrain the functions and exercises of the same authority.

So in 28 of K. H. VIII. chap. 17. there was a statute made, that all acts that passed in the minority of Kings, reckoning the same under the years of twenty four, might be annulled and revoked by their letters patent when they came to the same years; but this act in the first of K. Ed. VI. who was ^{14 Ed. 6. 313.} then between the years of ten and eleven, ^{cap. 11.} was repealed, and a new law surrogate in place thereof, wherein a more reasonable liberty was given; and wherein, though other laws are made revocable according to the provision of the former law with some new form prescribed, yet that very law of ^{Pl. Com. 563.} revocation, together with pardons, is made irrevocable and perpetual, so that there is a direct contrariety between these two laws; for if the former stands, which maketh all later laws during the minority of Kings revocable without exception of any law whatsoever, then that very law of repeal is concluded in the generality, and so it self made revocable: on the other side, that law making no doubt of the absolute repeal of the first law, though it self were made during the minority, which was the very case of the former law in the new provision which it maketh, hath a precise exception, that the law of repeal shall not be repealed.

BUT the law is, that the first law by the impertinency of it was void *ab initio* & *ipso facto* without repeal, as if a law were made, that no new statute should be made during seven years, and the same statute be repealed within the seven years, if the first statute should be good, then no repeal could be made thereof within that time; for the law of repeal were a new law, and that were disabled by the former law; therefore it is void in it self, and

the rule holds, *perpetua lex est, nullam legem humanam ac positivam perpetuam esse; & clausula quae abrogationem excludit initio non valet.*

NEITHER is the difference of the civil law so reasonable as colourable, for they distinguish and say that a derogatory clause is good to disable any later act, except you revoke the same clause before you proceed to establish any later disposition or declaration; for they say, that *clausula derogatoria ad alias sequentes voluntates posita in testamento* (viz. *si testator dicat qd' si contigerit eum facere aliud testamentum non vult illud valere*) operatur quod sequens dispositio ab ipsa clausula reguletur, & per consequens quod sequens dispositio ducatur sine voluntate, & sic quod non sit attendendum. The sense is, that where a former will is made, and after a later will, the reason why without an express revocation of the former will it is by implication revoked, is because of the repugnancy between the disposition of the former and the later.

BUT where there is such a derogatory clause, there can be gathered no such repugnancy; because it seemeth that the testator had a purpose at the making of the first will to make some shew of a new will, which nevertheless his intention was should not take place: but this was answered before; for if that clause were allowed to be good until a revocation, then could no revocation at all be made, therefore it must needs be void by operation of law at first. Thus much of *clausula derogatoria*.

Reg. 20. *Actus inceptus, cujus perfectio pendet ex voluntate partium, revocari potest; si autem pendet ex voluntate tertiae personae, vel ex contingenti, revocari non potest.*

IN acts that are fully executed and consummate, the law makes this difference, that if the first parties have put it in the power of a third person, or of a contingency, to give a perfection to their acts, then they have put it out of their own reach and liberty; therefore there is no reason they should revoke them: but if the consummation depend upon the same consent, which was the inception, then the law accounteth it in vain to restrain them from revoking of it; for as they may frustrate it by omission and *non feifance*, at a certain time, or in a certain sort or circumstance, so the law permitteth them to dissolve it by an express consent before that time, or without that circumstance.

13 H. 7. 13, 14. THEREFORE if two exchange land by deed, or without deed, and neither enter, they may make a revocation or dissolution of the same exchange by mutual consent, so it be by deed, but not by paroll; for as much as the making of an exchange needeth no deed, because it is to be perfected by entry, which is a ceremony notorious in the nature of a livery; but it cannot be dissolved but by deed, because it dischargeth that which is but title.

E. 36 Eliz. So if I contract with *I. D.* that if he lay me into my cellar three tuns of wine before *Mich.* that I will bring into his garner twenty quarters of wheat before *Christmas*, before either of these days the parties may by assent dissolve the contract; but after the first day there is a perfection given to the contract by action on the one side, and they may make cross releases by deed or paroll, but never dissolve the contract; for there is a difference between dissolving the contract, and release or surrender of the thing contracted for: as if lessee for twenty years make a lease for ten years, and after he take a new lease for five years, yet this cannot inure by way of surrender: for a petty lease derived

derived out of a greater cannot be surrendered back again, but inureth only by dissolution of contract; for a lease of land is but a contract executory from time to time of the profits of the land, to arise as a man may sell his corn or his tythe to spring or to be perceived for divers future years.

BUT to return from our digression: on the other side, if I contract with you for cloth at such a price as *I. S.* shall name; there if *I. S.* refuse to name, the contract is void; but the parties cannot discharge it, because they have put it in the power of the third person to perfect.

So if I grant my reversion, though this be an imperfect act before attornment; yet because the attornment is the act of a stranger, this is not simply revocable, but by a policy or circumstance in law, as by levying a fine, or making a bargain and sale, or the like. 11 H. 7. 19.
1 R. 2.
F. attorn-
ment. 8.

So if I present a clerk to the Bishop, now can I not revoke this presentation, because I have put it out of my self, that is, in the Bishop, by admission; to perfect my act begun. 31 Ed. 1. Fitz.
Q. Imp. 185.
14 Ed. 4. 2.
38 Ed. 3. 35.
14 Ed. 4. 2.

THE same difference appeareth in nominations and elections; as if I enfeoff *I. S.* upon condition to enfeoff such a one as *I. D.* shall name within a year, and *I. D.* name *I. B.* yet before the feoffment, and within the year, *I. D.* may countermand his nomination and name again, because no interest passeth out of him. But if I enfeoff *I. S.* to the use of such a one as *I. D.* shall name within a year, then if *I. D.* name *I. B.* it is not revocable, because the use passeth presently by operation of law.

So in judicial acts the rule of the civil law holdeth, *sententia interlocutoria revocari potest, definitiva non potest*; that is, that an order may be revoked, but a judgment cannot; and the reason is, because there is a title of execution or bar given presently unto the party upon judgment, and so it is out of the judge to revoke, in courts ordered by the common law.

Reg. 21. *Clausula vel dispositio inutilis per praesumptionem vel causam remotam, ex post facto non fulcitur.*

CLAUSULA vel dispositio inutilis are said, when the act or the words do work or express no more than the law by intendment would have supplied; and therefore the doubling or iterating of that and no more, which the conceit of the law doth in a sort prevent and preoccupate, is reputed nugation, and is not supported and made of substance either by a foreign intendment of some purpose, in regard whereof it might be material, nor upon any cause emerging afterwards, which may induce an operation of those idle words or acts.

AND therefore if a man devise land at this day to his son and heir, this is a void devise, because the disposition of law did cast the same upon the heir by descent; and yet if it be knight's-service land, and the heir within age, if he take by the devise, he shall have two parts of the profits to his own use, and the guardian shall have benefit but of the third; but if a man devise land to his two daughters, having no sons, then the devise is good, because he doth alter the disposition of law; for by the law they shall take in coparcenary, but by the devise they shall take jointly; and this is not any foreign collateral purpose, but in point of taking of estate. 32 H. 8.
2 M. 1.
Br. devises
41.
29 H. 8. Dy.
12.

So if a man make a feoffment in fee, to the use of his last will and testament, these words of special limitation are void, and the law reserveth the antient use to the feoffor and his heirs; and yet if the words might stand, then might it be authority by his will to declare and appoint uses, and then though

though it were knight's-service land, he might dispose the whole. As if a man make a feoffment in fee, to the use of the will and testament of a stranger, there the stranger may declare an use of the whole by his will, notwithstanding it be knight's-service land; but the reason of the principal case is, because uses before the statute of 27 H. VIII. were to have been disposed by will, and therefore before that statute an use limited in the form aforesaid, was but a frivolous limitation, in regard of the old use that the law reserved was deviseable; and the statute of 27 H. VIII. altereth not the law, as to the creating and limiting of any use, and therefore after that statute, and before the statute of wills, when no lands could have been devised, yet it was a void limitation as before, and so continueth to this day.

19 H. 8. 11.
5 Ed. 4. 8. BUT if I make a feoffment in fee, to the use of my last will and testament, thereby to declare an estate tail and no greater estate, and after my death, and after such estate declared shall expire, or in default of such declaration then to the use of I. S. and his heirs, this is a good limitation; and I may by my will declare an use of the whole land to a stranger, though it be held in knight's-service, and yet I have an estate in fee simple by virtue of the old use during life.

32 H. 8. 43.
Dy. So if I make a feoffment in fee to the use of my right heirs, this is a void limitation, and the use reserved by the law doth take place; and yet if the limitation should be good the heir should come in by way of purchase, who otherwise cometh in by descent; but this is but a circumstance which the law respecteth not, as was proved before.

10 El. 274 Dy BUT if I make a feoffment in fee to the use of my right heirs, and the right heirs of I. S. this is a good use, because I have altered the disposition of law; neither is it void for a moiety, but both our right heirs when they come in being shall take by joint purchase; and he to whom the first falleth shall take the whole, subject nevertheless to his companions title, so it have not descended from the first heir to the heir of the heir: for a man cannot be joint-tenant claiming by purchase, and the other by descent, because they be several titles.

2 Ed. 3. 29.
30 E. 3. Fitz.
Devise. 9. So if a man having land on the part of his mother make a feoffment in fee to the use of himself and his heirs, this use, though expressed, shall not go to him and the heirs of the part of his father as a new purchase, no more than it should have done if it had been a feoffment in fee nakedly without consideration, for the intendment is remote. But if baron and feme be, and they join in a fine of the feme's land, and express an use to the husband and wife and their heirs: this limitation shall give a joint estate by enteries to them both; because the intendment of law would have conveyed the use to the feme alone. And thus much touching foreign intendments.

4 M. 133.
pl. 6. Dyer. For matter *ex post facto*, if a lease for life be made to two, and the survivor of them, and they after make partition: now these words (and the survivor of them) should seem to carry purpose as a limitation, that either of them should be stated in his part for both their lives severally; but yet the law at the first construeth the words but as words of dilating to describe a joint estate; and if one of them die after partition, there shall be no occupant, but his part shall revert.

30 Aff 8. Fitz.
part. 16.
31 H. 8. 46.
Pl. 7. Dy. So if a man grant a rent charge out of ten acres, and grant farther that the whole rent shall issue out of every acre, and distress accordingly, and afterwards the grantee purchase an acre: now this clause should seem to be material to uphold the whole rent; but yet nevertheless the law at first accepteth of these words but as words of explanation, and then notwithstanding the whole rent is extinct.

So if a gift in tail be made upon condition, that if tenant in tail die without issue, it shall be lawful for the donor to enter; and the donee discontinue and die without issue: now this condition should seem material to give him benefit of entry, but because it did at the first limit the estate according to the limitation of law, it worketh nothing upon this matter emergent afterward.

4 E. 6. Com.
33 perHinde.
27 H. 8. 6.

So if a gift in tail be made of lands held in knight's-service with an express reservation of the same service, whereby the land is held over, and the gift is with warranty, and the land is evicted, and other land is recovered in value against the donor, held in socage, now the tenure which the law makes between the donor and donee shall be in socage, and not in knight's-service; because the first reservation was according to the owelty of service, which was no more than the law would have reserved.

22 Aff. Pl. 52.

BUT if a gift in tail had been made of lands held in socage with a reservation of knight's-service tenure, and with warranty, then because the intendment of law is altered, the new land shall be held by the same service the lost land was, without any regard at all to the tenure paramount: and thus much of matter *ex post facto*.

This rule faileth where that the law saith as much as the party, but upon foreign matter not pregnant and appearing upon the same act or conveyance, as if lessee for life be, and he lets for twenty years, if he live so long; this limitation (if he live so long) is no more than the law saith, but it doth not appear upon the same conveyance or act, that this limitation is nugatory, but it is foreign matter in respect of the truth of the state whence the lease is derived: and therefore if lessee for life make a feoffment in fee, yet the state of the lessee for years is not enlarged against the feoffee, otherwise had it been if such limitation had not been, but that it had been left only to the law.

So if tenant after possibility make a lease for years, and the donor confirms to the lessee to hold without impeachment of waste during the life of tenant in tail, this is no more than the law saith; but the privilege of tenant after possibility is foreign matter, as to the lease and confirmation: and therefore if tenant after possibility do surrender, yet the lessee shall hold dispunishable of waste; otherwise had it been if no such confirmation at all had been made.

16 H. 7. 4.
per Keble.
24 Ed. 3. 28.
Fitz.

Also heed must be given that it be indeed the same thing which the law intendeth, and which the party expresseth, and not only like or resembling, and such as may stand both together: for if I let land for life rendring a rent, and by my deed warrant the same land, this warranty in law and warranty in deed are not the same thing, but may both stand together.

18 Ed. 3.
31 E. 1. Fitz.
Vouch. 7.
289.

THERE remaineth yet a great question on this rule.

A principal reason whereupon this rule is built, should seem to be because such acts or clauses are thought to be but declaratory, and added upon ignorance of the law, and *ex consuetudine clericorum* upon observing of a common form, and not upon purpose or meaning, and therefore whether by particular and precise words a man may not controul the intendment of the law.

To this I answer, that no precise or express words will controul this intendment of law; but as the general words are void, because they say contrary to that the law saith; so are they which are thought to be against the law: and therefore if I devise my land being knight's-service tenure to my heir, and express my intention to be, that the one part should descend to him as the third part appointed by statute, and the other he shall take by devise

to his own use, yet this is void; for the law saith, he is in by descent of the whole, and I say he shall be in by devise, which is against the Law.

Lit. pl. 364. BUT if I make a gift in tail, and say upon condition, that if tenant in tail discontinue and after die without issue, it shall be lawful for me to enter; this is a good clause to make a condition, because it is but in one case, and doth not cross the law generally: for if the tenant in tail in that case be disseised, and a descent cast, and die without issue, I that am the donor shall not enter.

BUT if the clause had been provided, that if tenant in tail discontinue, or suffer a descent, or do any other act whatsoever, that after his death without issue it shall be lawful for me to enter: now this is a void condition, for it importeth a repugnancy to law; as if I would over-rule that where the law saith I am put to my action, I nevertheless will reserve to my self an entry.

Reg. 22. *Non videtur consensum retinuisse si quis ex præsripto minantis aliquid immutavit.*

ALTHOUGH choice and election be a badge of consent, yet if the first ground of the act be duress, the law will not construe that the duress doth determine, if the party duresed do make any motion or offer.

THEREFORE if a party menace me, except I make unto him a bond of 40*l.* and I tell him that I will not do it, but I will make unto him a bond of 20*l.* the law shall not expound this bond to be voluntary, but shall rather make construction that my mind and courage is not to enter into the greater bond for any menace, and yet that I enter by compulsion notwithstanding into the lesser.

BUT if I will draw any consideration to my self, as if I had said, I will enter into your bond of 40*l.* if you will deliver me that piece of plate, now the duress is discharged; and yet if it had been moved from the duresor, who had said at the first, you shall take this piece of plate, and make me a bond of 40*l.* now the gift of the plate had been good, and yet the bond shall be avoided by duress.

Reg. 23. *Ambiguitas verborum latens verificatione suppletur; nam quod ex facto oritur ambiguum verificatione facti tollitur.*

THERE be two sorts of ambiguities of words, the one is *ambiguitas patens*, and the other *latens*. *Patens* is that which appears to be ambiguous upon the deed or instrument: *latens* is that which seemeth certain and without ambiguity, for any thing that appeareth upon the deed or instrument; but there is some collateral matter out of the deed, that breedeth the ambiguity.

AMBIGUITAS patens is never holpen by averment, and the reason is, because the law will not couple and mingle matter of specialty, which is of the higher account, with matter of averment, which is of inferior account in law; for that were to make all deeds hollow, and subject to averments, and so in effect, that to pass without deed, which the law appointeth shall not pass but by deed.

THEREFORE if a man give land to *I. D. & I. S. & haeredibus*, and do not limit to whether of their heirs, it shall not be supplied by averment to whether of them the intention was, the inheritance should be limited.

So if a man give land in tail, though it be by will, the remainder in tail, and add a *proviso* in this manner: Provided that if he, or they, or any of them do any, &c. according to the usual clauses of perpetuities, it cannot be averred upon the ambiguities of the reference of this clause, that the intent of the deviser was, that the restraint should go only to him in the remainder, and the heirs of his body; and that the tenant in tail in possession was meant to be at large.

OF these infinite cases might be put, for it holdeth generally that all ambiguity of words by matter within the deed, and not out of the deed, shall be holpen by construction, or in some case by election, but never by averment, but rather shall make the deed void for uncertainty.

BUT if it be *ambiguitas latens*, then otherwise it is: as if I grant my manor of S. to I. F. and his heirs, here appeareth no ambiguity at all; but if the truth be, that I have the manors both of South S. and North S. this ambiguity is matter in fact; and therefore it shall be holpen by averment, whether of them was that the party intended should pass.

So if I set forth my land by quantity, then it shall be supplied by election, and not averment.

As if I grant ten acres of wood in sale, where I have an hundred acres, whether I say it in my deed or no, that I grant out of my hundred acres, yet here shall be an election in the grantee, which ten he will take.

AND the reason is plain, for the presumption of the law is, where the thing is only nominated by quantity, that the parties had indifferent intentions which should be taken, and there being no cause to help the uncertainty by intention, it shall be holpen by election.

BUT in the former case the difference holdeth, where it is expressed, and where not; for if I recite, Whereas I am seised of the manor of North S. and South S. I lease unto you *unum manerium de S.* there it is clearly an election. So if I recite, Where I have two tenements in St. Dunstan's, I lease unto you *unum tenementum*, there it is an election, not averment of intention, except the intent were of an election, which may be specially averred.

ANOTHER sort of *ambiguitas latens* is correlative unto these: for this ambiguity spoken of before, is when one name and appellation doth denominate divers things, and the second, when the same thing is called by divers names.

As if I give lands to *Christ-Church in Oxford*, and the name of the corporation is *Ecclesia Christi in universitate Oxford*, this shall be holpen by averment, because there appears no ambiguity in the words: for this variance is matter in fact, but the averment shall not be of intention, because it doth stand with the words.

FOR in the case of equivocation the general intent includes both the special, and therefore stands with the words: but so it is not in variance, and therefore the averment must be of matter, that do endure quantity, and not intention.

As to say, of the precinct of *Oxford*, and of the university of *Oxford*, is one and the same, and not to say that the intention of the parties was, that the grant should be to *Christ-Church* in that university of *Oxford*.

Reg. 24. *Licita bene miscentur, formula nisi juris obstat.*

THE law giveth that favour to lawful acts, that although they be executed by several authorities, yet the whole act is good. As

As when tenant for life is, the remainder in fee, and they join in a livery by deed or without, this is one good entire livery drawn from them both, and doth not inure to a surrender of the particular estate, if it be without deed*, or confirmation of those in the remainder, if it be by deed; but they are all parties to the livery.

So if tenant for life be, the remainder in fee, and they join in granting a rent, this is one solid rent out of both their estates, and no double rent, or rent by confirmation.

Quære.

So if tenant in tail be at this day, and he make a lease for three lives, and his own, this is a good lease, and warranted by the statute of 32 H. VIII. and yet it is good in part by the authority which tenant in tail hath by the common law, that is, for his own life, and in part by the authority which he hath by the statute, that is, for the other three lives.

So if a man seised of lands deviseable by custom, and of other land held in knight's-service, devise all his lands, this is a good devise of all the land customary by the common law, and of two parts of the other land by the statutes.

So in the star-chamber a sentence may be good, grounded in part upon the authority given the court by the statute of 3 H. VII. and in part upon that antient authority which the court hath by the common law, and so upon several commissions.

BUT if there be any form which the law appointeth to be observed, which cannot agree with the diversities of authorities, then this rule faileth.

Vide 1. Infit.
166. b.

As if three coparceners be, and one of them alien her purparty, the feoffee and one of the sisters cannot join in a writ *de part' facienda*, because it behoveth the feoffee to mention the statute in his writ.

Reg. 25. *Praesentia corporis tollit errorem nominis, & veritas nominis tollit errorem demonstrationis.*

THERE be three degrees of certainty.

1. PRESENCE.

2. NAME.

3. DEMONSTRATION or reference.

WHEREOF the presence the law holdeth of greatest dignity, the name in the second degree, and the demonstration or reference in the lowest, and always the error or falsity in the less worthy.

AND therefore if I give a horse to *I. D.* being present, and say unto him, *I. S.* take this; this is a good gift, notwithstanding I call him by a wrong name: but so had it not been if I had delivered him to a stranger to the use of *I. S.* where I meant *I. D.*

So if I say unto *I. S.* here I give you my ring with the ruby, and deliver it with my hand, and the ring bear a diamond and no ruby, this is a good gift notwithstanding I name it amiss.

So had it been if by word or writing, without the delivery of the thing itself, I had given the ring with the ruby, although I had no such, but only one with a diamond which I meant, yet it would have passed.

So if I by deed grant unto you by general words, all the lands that the King hath passed unto me by letters patents dated 10 May, unto this present

* Semble clerelement le ley d'estre contrary in ambideux cafes, car lou est sans fait, est livery solement de celui in le rem' & furr' de partie ten', auterment ferra forfeiture de son estate, & lou est per fait, le livery passa solement de tenant, car il ad le franktenement, vide accordant Snr Co. l. 1. 79. b. 77. a. Plow. Com. 59. a. 140. 2 H. 5. 7. 13 H. 7. 14. 13 Ed. 4. 4. a. 27 H. 8. 13. M. 16. & 17. El. Dy. 339.

indenture annexed, and the patent annexed have date 10 July; yet if it be proved that that was the true patent annexed, the presence of the patent maketh the error of the date recited not material; yet if no patent had been annexed, and there had been also no other certainty given, but the reference of the patent, the date whereof was mis-recited, although I had no other patent ever of the King, yet nothing would have passed.

LIKE law is it, but more doubtful, where there is not a presence, but a kind of representation, which is less worthy than a presence, and yet more worthy than a name or reference.

As if I covenant with my ward, that I will tender unto him no other marriage, than the gentlewoman whose picture I delivered him, and that picture hath about it *aetatis suae anno 16.* and the gentlewoman is seventeen years old; yet nevertheless if it can be proved that the picture was made for that gentlewoman, I may, notwithstanding this mistaking, tender her well enough.

So if I grant you for life a way over my land, according to a plot intended between us, and after I grant unto you and your heirs a way according to the first plot intended, whereof a table is annexed to these presents, and there be some special variance between the table and the original plot, yet this representation shall be certainty sufficient to lead unto the first plot; and you shall have the way in fee nevertheless, according to the first plot, and not according to the table.

So if I grant unto you by general words the land which the King hath granted me by his letters patents, *quarum tenor sequitur in haec verba, &c.* and there be some mistaking in the recital and variance from the original patent, although it be in a point material; yet the representation of this whole patent shall be as the annexing of the true patent, and the grant shall not be void by this variance.

Now for the second part of this rule touching the name and the reference, for the explaining thereof, it must be noted what things found in demonstration or addition: as first in lands, the greatest certainty is, where the land hath a name proper, as the manor of *Dale*, *Grandfield*, &c. the next is equal to that, when the land is set forth by bounds and abutments, as a close of pasture bounding on the east part upon *Emsden-wood*, on the south upon, &c. It is also a sufficient name to lay the general boundary, that is, some place of larger precinct, if there be no other land to pass in the same precinct, as all my lands in *Dale*, my tenement in *S. Dunstan's parish*, &c.

A farther sort of denomination is to name land by the attendancy they have to other lands more notorious, as parcel of my manor of *D.* belonging to such a college lying upon *Thames* bank.

ALL these things are notes found in denomination of lands, because they be signs local, and therefore of property to signify and name a place; but these notes that sound only in demonstration and addition, are such as are but transitory and accidental to the nature of the place.

As *modo in tenura & occupatione* of the proprietary, tenure or possession is but a thing transitory in respect of land; *Generatio venit, generatio migrat, terra autem manet in aeternum.*

So likewise matter of conveyance, title, or instrument.

As, *quae perquisivi de I. D. quae descendebant a I. N. patre meo*, or, *in praedicta indentura dimissionis*, or, *in praedictis literis patentibus specificat*.

So likewise *continent per aestimationem 20 acras*, or if (*per aestimationem*) be left out, all is one, for it is understood, and this matter of mea-

sure, although it seem local, yet it is indeed but opinion and observation of men.

THE distinction being made, the rule is to be examined by it.

THEREFORE if I grant my close called *Dale* in the parish of *Hurst*, in the county of *Southampton*, and the parish likewise extendeth into the county of *Berkshire*, and the whole close of *Dale* lyeth in the county of *Berkshire*; yet because the parcel is especially named, the falsity of the addition hurteth not, and yet this addition is found in name, but (as it was said) it was less worthy than a proper name.

So if I grant *tenementum meum*, or *omnia tenementa mea* (for the universal and indefinite to this purpose are all one) in *parochia Sancti Butolphi extra Aldgate* (where the verity is *extra Bishopsgate*) in *tenura Guilielmi*, which is true, yet this grant is void, because that which sounds in denomination is false, which is the more worthy; and that which sounds in addition is true, which is the less; * and though in *tenura Guilielmi*, which is true, had been first placed, yet it had been all one.

BUT if I grant *tenementum meum quod perquisivi de R. C. in Dale*, where the truth was *T. C.* and I have no other tenements in *D.* but one, this grant is good, † because that which soundeth in name, (*viz.* in *Dale*) is true, and that which sounded in addition (*viz.* *quod perquisivi, &c.*) is only false.

So if I grant *prata mea in Dale continentia 10 acras*, and they contain indeed twenty acres, the whole twenty pass.

So if I grant all my lands, being parcels *manerii de D. in praedictis literis patentibus specificat'*, and there be no letters patents, yet the grant is good enough.

THE like reason holds in demonstrations of persons, that have been declared in demonstration of lands and places, the proper name of every one is in certainty worthiest: next are such appellations as are fixed to his person, or at least of continuance, as son of such a man, wife of such a husband; or addition of office, as clerk of such a court, &c. and the third are actions or accidents, which sound no way in appellation or name, but only in circumstance, which are less worthy, although they may have a proper particular reference to the intention of the grant.

AND therefore if an obligation be made to *I. S. filio & haeredi G. S.* where indeed he is a bastard, yet this obligation is good.

So if I grant land *Episcopo nunc Londinensi qui me erudit in pueritia*, this is a good grant, although he never instructed me.

BUT *e converso*, if I grant land to *I. S. filio & haeredi G. S.* and it be true that he is son and heir unto *G. S.* but his name is *Thomas*, this is a void grant.

OR if in the former grant it was the Bishop of *Canterbury* who taught me in my childhood, yet shall it be good (as was said) to the Bishop of *London*, and not to the Bishop of *Canterbury*.

THE same rule holdeth of denomination of times, which are such a day of the month, such a day of the week, such a Saint's day or eve, to day, to morrow; these are names of times.

BUT the day that I was born, the day that I was married; these are but circumstances and addition of times.

AND therefore if I bind my self to do some personal attendance upon you upon *Innocent's* day, being the day of your birth, and you were not born that day, yet shall I attend.

THERE

* Semble icy le grant ust este affets bon, cōe suit resolu per cur', Co. lib. 3. fo. 10. a. vid. 33 H. 8. Dy. 50. b. 12 El. ib. 292. b. & Co. lib. 2. fo. 33. a.

† Vide ib. que contraria est lex, car icy auxi le primer certainty est faux.

THERE resteth two questions of difficulty yet upon this rule, first, of such things whereof men take not so much note as that they shall fail of this distinction of name and addition.

As, my box of ivory lying in my study sealed up with my seal of arms, my suit of arras with the story of the nativity and passion; of such things there can be no name, but all is of description, and of circumstance, and of these I hold the law to be, that precise truth of all recited circumstances is not required.

BUT in such things *ex multitudine signorum colligitur identitas vera*, therefore though my box were sealed, and although the arras had the story of the nativity, and not of the passion, if I had no other box, nor no other suit, the gifts are good; and there is certainty sufficient, for the law doth not expect a precise description of such things as have no certain denomination.

SECONDLY, Of such things as do admit the distinction of name and addition, but the notes fall out to be of equal dignity all of name or addition.

As, *prata mea juxta communem fossam in D.* whereof the one is true, the other false, or *tenementum meum in tenura Guilielmi quod perquisivi de R. C. in praedictis* Indent' specifies, whereof one is true, and two are false; or two are true, and one false.

So *ad curiam quam tenebat die Mercurii tertio die Martii*, whereof the one is true, the other false.

IN these cases the former rule *ex multitudine signorum*, &c. holdeth not; neither is the placing of the falsity or verity first or last material, but all must be true, or else the grant is void; always understood, that if you can reconcile all the words, and make no falsity, that is quite out of this rule, which hath place only where there is a direct contrariety, or falsity not to be reconciled to this rule.

Vide livers
avant die pur
cest auxi.

As if I grant all my land in *D. in tenura I. S.* which I purchased of *I. N.* specified in a demise to *I. D.* and I have land in *D.* whereof in part of them all these circumstances are true, but I have other lands in *D.* wherein some of them fail, this grant will not pass all my land in *D.* for there these are references, and no words of falsity or error, but of limitation and restraint.

THE

THE
USE of the LAW;
FOR

Preservation of our Persons, Goods, and good
Names, according to the practice of the Laws
and Customs of this Land.

The USE of the LAW, and wherein it principally consisteth.

THE use of the law consisteth principally in these three things :

1. To secure mens persons from death and violence.

2. To dispose the property of their goods and lands.

3. FOR preservation of their good names from shame and infamy.

Surety to
keep the
peace.

FOR safety of persons, the law provideth that any man standing in fear of another, may take his oath before a justice of peace, that he standeth in fear of his life, and the justice shall compel the other to be bound with sureties to keep the peace.

Action for
slander, bat-
tery, &c.

IF any man beat, wound, or maim another, or give false scandalous words that may touch his credit, the law giveth thereupon an action of the case for the slander of his good name; and an action of battery, or an appeal of maim, by which recompence shall be recovered, to the value of the hurt, damage or danger.

Appeal of
murder given
to the next
of kin.

IF any man kill another with malice, the law giveth an appeal to the wife of the dead, if he had any, or to the next of kin that is heir, in default of a wife; by which appeal the defendant convicted is to suffer death, and to lose all his lands and goods: but if the wife or heir will not sue, or be compounded withal, yet the King is to punish the offence by indictment or presentment of a lawful inquest and trial of the offender before competent judges; whereupon being found guilty, he is to suffer death, and to lose his lands and goods.

Man-slaugh-
ter, when a
forfeiture of
goods, and
when not.

IF one kill another upon a sudden quarrel, this is man-slaughter, for which the offender must die, except he can read; and if he can read, yet must he lose his goods, but no lands.

AND if a man kill another in his own defence, he shall not lose his life, nor his lands, but he must lose his goods, except the party slain did first assault him, to kill, rob, or trouble him by the high-way side, or in his own house, and then he shall lose nothing.

Felo de se.

AND if a man kill himself, all his goods and chattels are forfeited, but no lands.

Felony by
mischance.

IF a man kill another by misfortune, as shooting an arrow at a butt or mark, or casting a stone over an house, or the like, this is loss of his goods and chattels, but not of his lands, nor life.

IF a horse, or cart, or a beast, or any other thing do kill a man, the horse, Deodand. beast, or other thing is forfeited to the crown, and is called a *Deodand*, and usually granted and allowed by the King to the bishop almoner, as goods are of those that kill themselves.

THE cutting out of a man's tongue, or putting out his eyes maliciously, Cutting out tongues, and putting out eyes, felony. is felony; for which the offender is to suffer death, and lose his lands and goods.

But for that all punishment is for example's sake, it is good to see the means whereby offenders are drawn to their punishment; and first for matter of the peace.

THE ancient laws of *England*, planted here by the Conqueror, were, that there should be officers of two sorts in all the parts of this realm to preserve the peace:

1. *CONSTABULARII Pacis.*

2. *CONSERVATORES Pacis.*

THE office of the constable was, to arrest the parties that he had seen The office of the constable. breaking the peace, or in fury ready to break the peace, or was truly informed by others, or by their own confession, that they had freshly broken the peace; which persons he might imprison in the stocks; or in his own house, as his or their quality required, until they had become bounden with sureties to keep the peace; which obligation from thenceforth was to be sealed and delivered to the constable to the use of the King. And that the constable was to send to the King's exchequer or chancery, from whence process should be awarded to levy the debt, if the peace were broken.

BUT the constable could not arrest any, nor make any put in bond upon complaint of threatening only, except they had seen them breaking the peace, or had come freshly after the peace was broken. Also, these constables should keep watch about the town for the apprehension of rogues and vagabonds, and night-walkers, and eves-droppers, scouts, and such like, and such as go armed. And they ought likewise to raise hue and cry against murderers, man-slayers, thieves and rogues.

OF this office of constable there were high constables, two of every hundred; petty constables one in every village; they were in ancient time all appointed by the sheriff of the shire yearly in his court called the sheriff's *Turn*, High-constables for every hundred. Petty constable for every village. and there they received their oath. But at this day they are appointed either in the law-day of that precinct wherein they serve, or else by the high constable in the sessions of the peace.

THE sheriff's *Turn* is a court very ancient, incident to his office. At the first it was erected by the conqueror, and called the King's-bench, appointing men studied in the knowledge of the laws to execute justice, as substitutes to him in his name, which men are to be named, *justiciarii ad placita coram rege assignati*: one of them being called *capitalis justiciarius*, the rest his fellows; in number as pleaseth the King: of late but three *justiciarii*, holden by patent. In this court every man above twelve years of age was to take his oath of allegiance to the King; if he were bound, then his lord to answer for him. In this court the constables were appointed and sworn; breakers of the peace punished by fine and imprisonment; the parties beaten or hurt recompensed upon complaints of damages; all appeals of murder, maim, robbery, decided; contempts against the crown, publick annoyances

against the people, treasons and felonies, and all other matters of wrong betwixt party and party for lands and goods.

Court of
Marshallsea
erected, and
its jurisdic-
tion within
12 miles of
the chief
tunnel, &c.

BUT the King seeing the realm grow daily more and more populous, and that this one court could not dispatch all; did first ordain that his marshal should keep a court, for controversies arising within the verge, which is within twelve miles of the chiefest tunnel of the court, which did but ease the King's-bench in matters only concerning debts, covenants, and such like; of those of the King's household only, never dealing in breaches of the peace, or concerning the crown by any other persons, or any pleas of lands.

Sheriff's
Turn institu-
ted upon the
division of
England into
counties, &c.
Likewise
called *Curia
visus fra-
pleg.*

INSOMUCH, as the King for farther ease having divided this kingdom into counties, and committing the charge of every county to a lord or earl, did direct that those earls, within their limits, should look to the matter of the peace, and take charge of the constables, and reform publick annoyances, and swear the people to the crown, and take pledges of the freemen for their allegiance; for which purpose the county did once every year keep a court, called the sheriff's Turn; at which all the county (except women, clergy, children under twelve, and aged above sixty) did appear to give or renew their pledges for allegiance. And the court was called, *Curia visus franci plegii*, a view of the pledges of freemen; or, *Turna comitatus*.

Subdivision
of the county
court into
hundreds.

AT which meeting or court there fell, by occasion of great assemblies, much blood-shed, scarcity of victuals, mutinies, and the like mischiefs, which are incident to the congregations of people, by which the King was moved to allow a subdivision of every county into hundreds, and every hundred to have a court, whereunto the people of every hundred should be assembled twice a year for survey of pledges, and use of that justice which was formerly executed in that grand court for the county; and the count or earl appointed a bailiff under him to keep the hundred court.

The charge
of the coun-
ty taken
from the
earls, and
committed
to the sheriff.

BUT in the end, the Kings of this realm found it necessary to have all execution of justice immediately from themselves, by such as were more bound than earls to that service, and readily subject to correction for their negligence or abuse; and therefore took to themselves the appointing of a sheriff yearly in every county, calling them *Vicecomites*, and to them directed such writs and precepts for executing justice in the county, as fell out needful to have been dispatched, committing to the sheriff *custodiam comitatus*; by which the earls were spared of their toils and labours, and that was laid upon the sheriffs. So as now the sheriff doth all the King's business in the county, and that is now called the sheriff's Turn; that is to say, he is judge of this grand court for the county, and also of all hundred courts not given away from the crown.

The sheriff is
judge of all
hundred
courts, &c.

County court
kept month-
ly by the
sheriff.

HE hath another court called the county court belonging to his office, wherein men may sue monthly for any debt or damages under 40*s.* and may have writs for to replevy their cattel distrained and impounded by others, and there try the cause of their distress; and by a writ called *justicies*, a man may sue for any sum; and in this court the sheriff by a writ called an *exigent* doth proclaim men sued in courts above to render their bodies, or else they be out-lawed.

The office of
the sheriff.

THIS sheriff doth serve the King's writs of process, be they summons, or attachments to compel men to answer to the law, and all writs of execution of the law, according to judgments of superior courts, for taking of mens goods, lands, or bodies, as the cause requireth.

Hundred-
courts to
whom at first
granted.

THE hundred courts were most of them granted to religious men, noble-men, and others of great place. And also many men of good quality have attained

attained by charter, and some by usage within manors of their own, liberty of keeping law-days, and to use there justice appertaining to a law-day.

WHOSOEVER is lord of the hundred court, is to appoint two high constables of the hundred, and also is to appoint in every village a petty constable, with a tithing-man to attend in his absence, and to be at his commandment when he is present, in all services of his office for his assistance.

Lord of the hundred to appoint two high constables.

THERE have been by use and statute law (besides surveying of the pledges of freemen, and giving the oath of allegiance, and making constables) many additions of powers and authority given to the stewards of leets and law-days, to be put in use in their courts; as for example, they may punish inn-keepers, victuallers, bakers, butchers, poulterers, fishmongers, and tradesmen of all sorts, selling with under weights or measures, or at excessive prices, or things unwholesome, or ill made, in deceit of the people. They may punish those that do stop, straiten, or annoy the high-ways, or do not according to the provision enacted, repair or amend them, or divert water-courses, or destroy fry of fish, or use engines or nets to take deer, conies, pheasants, or partridges, or build pigeon-houses; except he be lord of the manor, or parson of the church. They may also take presentment upon oath of the twelve sworn jury before them of all felonies; but they cannot try the malefactors, only they must by indenture deliver over those presentments of felony to the judges, when they come their circuits into that county. All those courts before mentioned are in use, and exercised as law at this day, concerning the sheriff's law-days and leets, and the offices of high constables, petty constables, and tithing-men; howbeit, with some further additions by statute laws, laying charge upon them for taxation for poor, for soldiers, and the like, and dealing without corruption, and the like.

What matters they enquire of in leets and law-days.

CONSERVATORS of the peace were in ancient times certain, which were assigned by the King to see the peace maintained, and they were called to the office by the King's writ, to continue for term of their lives, or at the King's pleasure.

Conservators of the peace by writ for term of life, or at the King's pleasure.

FOR this service, choice was made of the best men of calling in the country, and but few in the shire. They might bind any man to keep the peace, and to good behaviour, by recognizance to the King with sureties, and they might by warrant send for the party, directing their warrant to the sheriff or constable, as they please, to arrest the party and bring him before them. This they used to do, when complaint was made by any that he stood in fear of another, and so took his oath; or else, where the conservator himself did, without oath or complaint, see the disposition of any man inclined to quarrel and breach of the peace, or to mis-behave himself in some outrageous manner of force or fraud: there by his own discretion he might send for such a fellow, and make him find sureties of the peace, or of his good behaviour, as he should see cause; or else commit him to the goal if he refused.

What their office was.

THE judges of either bench in *Westminster*, barons of the exchequer, master of the rolls, and justices in eire and assizes in their circuits, were all without writ conservators of the peace in all shires of *England*, and continue to this day.

Conservators of the peace by virtue of their office.

BUT now at this day conservators of the peace are out of use, and in lieu of them there are ordained justices of peace, assigned by the King's commissions in every county, which are moveable at the King's pleasure; but the power of placing and displacing justices of the peace is by use delegated from the King to the Chancellor.

Justices of peace ordained in lieu of conservators Power of placing delegated to the

THAT Chancellor.

THAT there should be justices of peace by commissions, it was first enacted by a statute made 1 *Edw.* III. and their authority augmented by many statutes made since in every King's reign.

To fine offenders to the crown, but not to recompense the party grieved. *parl.*
stat. 17 R. 2.
cap. 10. & v.
Dyer 69. b.
Ils ont poier d'inquier de murder car ceo est felon.
* Authority of the justices of peace, &c.

THEY are appointed to keep four sessions every year; that is, every quarter one. These sessions are a sitting of the justices to dispatch the affairs of their commissions. They have power to hear and determine in their sessions, all felonies, breaches of the peace, contempts and trespasses, so far as to fine the offender to the crown, but not to award recompence to the party grieved.

* THEY are to suppress riots and tumults, to restore possessions forcibly taken away, to examine all felons apprehended and brought before them; to see impotent poor people, or maimed soldiers provided for, according to the laws; and rogues, vagabonds, and beggars punished. They are both to license and suppress ale-houses, badgers of corn and victuals, and to punish forestallers, regrators, and engrossers.

Beating, killing, burning of houses.
Attachments for surety of the peace.
Recognizance of the peace delivered by the justices at their sessions.
Quarter sessions held by the justices of the peace.

THROUGH these, in effect, run all the county services to the crown, as taxations of subsidies, mustering men, arming them, and levying forces, that is done by a special commission or precept from the King. Any of these justices by oath taken by a man that he standeth in fear that another man will beat him, or kill him, or burn his house, are to send for the party by warrant of attachment directed to the sheriff or constable, and then to bind the party with sureties by recognizance to the King, to keep the peace, and also to appear at the next sessions of the peace; at which next sessions, when every justice of peace hath therein delivered all their recognizances so taken, then the parties are called and the cause of binding to the peace examined, and both parties being heard, the whole bench is to determine as they see cause, either to continue the party so bound, or else to discharge him.

THE justices of peace in their sessions are attended by the constables and bailiffs of all hundreds and liberties within the county, and by the sheriff or his deputy, to be employed as occasion shall serve in executing the precepts and directions of the court. They proceed in this sort, the sheriff doth summon twenty-four freeholders, discreet men of the said county, whereof some sixteen are selected and sworn, and have their charge to serve as the grand jury, the party indicted is to traverse the indictment, or else to confess it, and so submit himself to be fined as the court shall think meet (regard had to the offence) except the punishment be certainly appointed (as often it is) by special statutes.

The authority of justices of the peace out of their sessions.

THE justices of peace are many in every county, and to them are brought all traitors, felons, and other malefactors of any sort upon their first apprehension; and that justice to whom they are brought examineth them, and heareth their accusations, but judgeth not upon it; only if he find the suspicion but light, then he taketh bond with sureties of the accused to appear either at the next assizes, if it be a matter of treason or felony; or else at the quarter sessions, if it be concerning riot or misbehaviour, or some other small offence. And he also then bindeth to appear those that give testimony and prosecute the accusation, all the accusers and witnesses, and so setteth the party at large. And at the assizes or sessions (as the case falleth out) he certifieth the recognizances taken of the accused, accusers, and witnesses, who being there are called, and appearing, the cause of the accused is debated according to law for his clearing or condemning.

BUT if the party accused seem upon pregnant matter in the accusation, and to the justice, to be guilty, and the offence heinous, or the offender taken with the *mainour*, then the justice is to commit the party by his warrant called a *mittimus*, to the goaler of the common goal of the county, there

there to remain until the assizes. And then the justice is to certify his accusation, examination, and recognizance taken for the appearances and prosecution of the witnesses, so as the judges may, when they come, readily proceed with him as the law requireth.

THE judges of the assizes as they be now came into the place of the ancient justices in eyre, called *justiciarii itinerantes*, which in the prime Kings after the conquest, until H. III's time especially, and after in lesser measure even to R. II's time, did execute the justice of the realm; they began in this sort.

Judges of assize in place of the ancient judges in eyre Temp. R. II.

THE King, not able to dispatch business in his own person, erected the court of King's-bench. That not able to receive all, nor meet to draw the people all to one place, there were ordained counties, and the sheriffs Turns, hundred courts, and particular leets, and law-days, as before mentioned, which dealt only with crown matters for the publick; but not the private titles of lands, or goods, nor the trial of grand offences of treasons and felonies. All the counties of the realm were divided into six circuits: and two learned men well read in the laws of the realm, were assigned by the King's commission to every circuit, and to ride twice a year through those shires allotted to that circuit, making proclamation beforehand, a convenient time, in every county, of the time of their coming, and place of their sitting, to the end the people might attend them in every county of that court.

King's-bench, marshal's-court, county-court, sheriff's-turns, hundreds, leets, and law-days, dealt only in crown matters; justices in eyre dealt in private titles of lands or goods, and in all treasons and felonies, which the county courts meddled not in.

THEY were to stay three or four days in every county, and in that time all the causes of that county were brought before them by the parties grieved, and all the prisoners of the said goal in every shire, and whatsoever controversies arising concerning life, lands, or goods.

THE authority of these judges in eyre, is in part translated by act of parliament to justices of assize, which be now the judges of circuits, and they to use the same course that justices in eyre did, to proclaim their coming every half year, and the place of their sitting.

The authority of judges in eyre, translated to justices of assize.

THE business of the justices in eyre, and of the justices of assize at this day is much lessened, for that in H. III's time there was erected the court of common-pleas at *Westminster*, in which court have been ever since, and yet are, begun and handled the great suits of lands, debts, benefices and contracts, fines for assurance of lands and recoveries, which were wont to be either in the King's-bench, or else before the justices in eyre. But the statute of *Mag. Chart. cap. 11.* is negative against it, *viz. Communia placita non sequantur curiam nostram, sed teneantur in aliquo loco certo*; which *locus certus* must be the common-pleas; yet the judges of circuits have now five commissions by which they sit.

Justices of assize much lessened by the court of common-pleas, erected in H. III's time.

THE first is a commission of oyer and terminer, directed unto them, and many others of the best account, in their circuits; but in this commission the judges of assize are of the *Quorum*, so as without them there can be no proceeding.

Justices of assize sit by five commissions.

THIS commission giveth them power to deal with treasons, murders, and all manner of felonies and misdemeanors whatsoever; and this is the largest commission that they have.

Oyer and terminer, in which the judges are of the quorum, &c.

THE second is a commission of goal-delivery, that is only to the judges themselves, and the clerk of the assize associate: and by this commission they are to deal with every prisoner in the goal, for what offence soever he be there, and to proceed with him according to the laws of the realm, and

Goal delivery directed only to the judges and clerk of the assize.

The manner
of the pro-
ceedings of
the justices of
circuits.
Of the judges
for the goal-
delivery.

the quality of his offence; and they cannot by this commission do any thing concerning any man, but those that are prisoners in the goal. The course now in use of execution of this commission of goal-delivery, is this. There is no prisoner but is committed by some justice of peace, who before he committed him took his examination, and bound his accusers and witnesses to appear and prosecute at the goal-delivery. This justice doth certify these examinations and bonds, and thereupon the accuser is called solemnly into the court, and when he appeareth, he is willed to prepare a bill of indictment against the prisoner, and go with it to the grand jury, and give evidence upon their oaths, he and the witnesses; which he doth: and then the grand jury write thereupon either *billa vera*, and then the prisoner standeth indicted, or else *ignoramus*, and then he is not touched. The grand jury deliver these bills to the judges in their court, and so many as they find indorsed *billa vera*, they send for those prisoners, then is every man's indictment put and read to him, and they ask him whether he be guilty or not: if he saith guilty, his confession is recorded; if he say not guilty, then he is asked how he will be tried; he answereth, by the country. Then the sheriff is commanded to return the names of twelve freeholders to the court, which freeholders be sworn to make true delivery between the King and the prisoner; and then the indictment is again read, and the witnesses sworn to speak their knowledge concerning the fact, and the prisoner is heard at large what defence he can make, and then the jury go together and consult. And after a while they come in with a verdict of guilty or not guilty, which verdict the judges do record accordingly. If any prisoner plead not guilty upon the indictment, and yet will not put himself to trial upon the jury (or stand mute) he shall be pressed.

THE judges, when many prisoners are in the goal, do in the end, before they go, peruse every one. Those that were indicted by the grand jury, and found not guilty by the select jury, they judge to be quitted, and so deliver them out of the goal. Those that are found guilty by both juries, they judge to death, and command the sheriff to see execution done. Those that refuse trial by the country, or stand mute upon the indictment, they judge to be pressed to death: some whose offences are pilfering under twelve pence value, they judge to be whipped. Those that confess their indictments, they judge to death, whipping, or otherwise, as their offence requireth. And those that are not indicted at all, but their bill of indictment returned with *ignoramus* by the grand jury, and all others in the goal, against whom no bills at all are preferred, they do acquit by proclamation out of the goal; that one way or other they rid the goal of all the prisoners in it. But because some prisoners have their books, and be burned in the hand, and so delivered, it is necessary to shew the reason thereof. This having their books is called their clergy, which in ancient time began thus.

Books al-
lowed
clergy, &c.

FOR the scarcity of the clergy in the realm of *England*, to be disposed in religious houses, or for priests, deacons, and clerks of parishes, there was a prerogative allowed to the clergy, that if any man that could read as a clerk were to be condemned to death, the bishop of the diocese might, if he would, claim him as a clerk, and he was to see him tried in the face of the court whether he could read or not. The book was prepared and brought by the bishop, and the judge was to turn to some place as he should think meet; and if the prisoner could read, then the bishop was to have him delivered over unto him, to dispose of in some places of the clergy as he should

should think meet: but either the bishop would not demand him, or that the prisoner could not read, then was he to be put to death.

AND this clergy was allowable in the ancient times and law, for all offences, whatsoever they were, except treason, and the robbing of churches of their goods and ornaments. But by many statutes made since, the clergy is taken away for murder, burglary, robbery, purse-cutting, horse-stealing, and diverse other felonies, particularized by the statutes to the judges; and lastly, by a statute made 18 *Elizabeth*, the judges themselves are appointed to allow clergy to such as can read, being not such offenders, from whom clergy is taken away by any statute, and to see them burned in the hand, and so discharge them, without delivering them to the bishop; howbeit, the bishop appointeth the deputy to attend the judges with a book, to try whether they can read or not.

THE third commission that the judges of circuits have, is a commission directed to themselves only, and the clerk of assize to take assizes, by which they are called justices of assize; and the office of those justices is to do right upon writs called assizes, brought before them by such as are wrongfully thrust out of their lands. Of which number of writs there was far greater store brought before them in ancient times than now; for that mens feifins and possessions are sooner recovered by sealing leases upon the ground, and by bringing an *ejectione firmæ*, and trying their title so, than by the long suits of assizes.

THE fourth commission, is a commission to take *Nisi Prius* directed to none but to the judges themselves, and their clerks of assizes, by which they are called justices of *Nisi Prius*. These *Nisi Prius* happen in this sort; when a suit is begun for any matter in one of the three courts, the King's bench, common-pleas, or the exchequer here above, and the parties in their pleadings do vary in a point of fact; as for example, if in an action of debt upon obligation the defendant denies the obligation to be his debt; or in any action of trespass grown for taking away goods, the defendant denieth that he took them, or in action of the case for slanderous words, the defendant denieth that he spake them, &c. Then the plaintiff is to maintain and prove that the obligation is the defendant's deed, that he either took the goods, or spake the words; upon which denial and affirmation the law saith, that issue is joined betwixt them, which issue of the fact is to be tried by a jury of twelve men of the county, where it is supposed by the plaintiff to be done, and for that purpose the judges of the court do award a writ of *Venire facias* in the King's name to the sheriff of that county, commanding him to cause four and twenty discreet freeholders of his county, at a certain day, to try this issue so joined, out of which four and twenty, only twelve are chosen to serve. And that double number is returned, because some may make default, and some be challenged upon kindred, alliance, or partial dealing.

THESE four and twenty the sheriff doth name and certify to the court, and withal, that he hath warned them to come at the day according to their writ. But because at the first summons there falleth no punishment upon the four and twenty if they come not, they very seldom or never appear upon the first writ; and upon their default there is another writ returned to the sheriff, commanding him to distrain them by their lands to appear at a certain day appointed by the writ, which is the next term after, *Nisi prius iudicarii nostri ad assisas capiendas venerint*, &c. of which words the writ is called

Clergy allowed anciently in all offences, except treason and robbing of churches; now taken away.

1. In murder.
2. In burglary.
3. Robbery.
4. Purse-cutting.
5. Horse-stealing, and in diverse other offences.

By the stat. of 18 E. judges are to allow clergy, and to see them burned in the hand, and to discharge the prisoners without delivering them to the bishop.

4. Commission to take *Nisi Prius*, directed to two judges, and the clerk of the assize: *Nisi Prius*.

* *Distringas*. The manner of proceeding of justices of circuits. The course the judges hold in the taking of *Nisi Prius*.

Postea.

called a *Nisi Prius*, and the judges of the circuit of that county in that vacation, and mean time, before the day of appearance appointed for the jury above, here by their commission of *Nisi Prius*, have authority to take the appearance of the jury in the county before them, and there to hear the witnesses and proofs on both sides, concerning the issue of fact, and to take the verdict of the jury, and against the day they should have appeared above, to return the verdict read in the court above, which return is called a *Postea*.

AND upon this verdict, clearing the matter in fact, one way or other, the judges above give judgment for the party for whom the verdict is found, and for such damages and costs as the jury do assess.

By those trials called *Nisi Prius*, the juries and the parties are eased much of the charge they should be put to, by coming to *London* with their evidences and witnesses; and the courts of *Westminster* are eased of much trouble they should have, if all the juries for trials should appear and try their causes in those courts; for those courts above have little leisure now: though the juries come not up, yet in matters of great weight, or where the title is intricate or difficult, the judges above, upon information to them, do retain those causes to be tried there, and the juries do at this day, in such causes, come to the bar at *Westminster*.

5. Commission is a commission of the peace. The justices of the peace and the sheriff are to attend the judges in their county.

THE fifth commission that the judges in their circuits do sit by, is the commission of the peace in every county of their circuit. And all the justices of the peace, having no lawful impediment, are bound to be present at the assizes to attend the judges, as occasion shall fall out: if any make default, the judges may set a fine upon him at their pleasure and discretions. Also the sheriff in every shire through the circuit, is to attend in person, or by a sufficient deputy allowed by the judges, all that time they be within the county, and the judges may fine him if he fail, or for negligence or misbehaviour in his office before them; and the judges above may also fine the sheriff, for not returning, or not sufficient returning of writs before them.

Property in lands, how gotten or transferred.

1. By entry.
2. By descent.
3. By escheat.
4. Most usually by conveyance.

Of the property of lands to be gained by entry.

All lands in England were the Conqueror's, and held of him, except, 1. Religious and church-lands. 2. The lands of the men of Kent.

1. **P**ROPERTY by entry is, where a man findeth a piece of land that no other possesseth, or hath title unto, and he that so findeth it doth enter, this entry gaineth a property. This law seemeth to be derived from this text, *Terram dedit filiis hominum*, which is to be understood, to those that will till and manure it, and so make it yield fruit: and that is he that entereth into it, where no man had it before. But this manner of gaining lands was in the first days, and is not now of use in *England*, for that by the conquest, all the land of this nation was in the Conqueror's hands, and appropriated unto him; except religious and church lands, and the lands in *Kent*, which by composition were left to the former owners, as the Conqueror found them; so that none but the bishopricks, churches, and the men of *Kent*, can at this day make any greater title than from the conquest, to any lands in *England*; and lands possessed without any such title, are in the crown, and not in him that first entereth; as it is in land left by

by the sea; this land belongeth to the King, and not to him that hath the Land left b-
lands next adjoining, which was the ancient sea banks: this is to be under- the sea be-
stood of the inheritance of lands, viz. that the inheritance cannot be gained longeth to
by the first entry. But an estate for another man's life by occupancy, may at the King.
this day be gotten by entry. As a man called *A.* having land conveyed unto
him for the life of *B.* dieth without making any estate of it, there, who-
soever first entereth into the land after the decease of *A.* getteth the proper-
ty in the land for time of the continuance of the estate which was granted
to *A.* for the life of *B.* which *B.* yet liveth, and therefore the said land can-
not revert till *B.* die. And to the heir of *A.* it cannot go, for that it is not
any estate of inheritance, but only an estate for another man's life; which is
not descendable to the heir, except he be specially named in the grant, viz.
to him and his heirs. As for the executors of *A.* they cannot have it, for
it is not an estate testamentary, that it should go to the executors as goods
and chattels should, so as in truth no man can entitle himself unto those
lands; and therefore the law preferreth him that first entreth, and he is
called *occupans*, and shall hold it during the life of *B.* but must pay the rent, Occupancy.
perform the conditions, and do no waste: and he may by deed assign it to
whom he please in his life-time. But if he die before he assign it over, then
it shall go again to whomsoever first entreth and holdeth; and so all the life
of *B.* so often as it shall happen.

LIKEWISE, if any man doth wrongfully enter into another man's pos-
session, and put the right owner of the freehold and inheritance from it, he
thereby getteth the freehold and inheritance by disseisin, and may hold it
against all men, but him that hath right, and his heirs, and is called a dis-
seisor. Or if any one die seised of lands, and before his heir doth enter,
one that hath no right doth enter into the lands, and holdeth them from
the right heir, he is called an abator, and is lawful owner against all men
but the right heir.

AND if such person abator or disseisor (so as the disseisor hath quiet posses-
sion five years next after the disseisin) do continue their possession, and die
seised, and the land descend to his heir, they have gained the right to the
possession of the land against him that hath right, till he recover it by fit
action real at the common law. And if it be not sued for at the common
law, within threescore years after the disseisin, or abatement committed, the
right owner hath lost his right by that negligence. And if a man hath di-
vers children, and the elder, being a bastard, doth enter into the land, and
enjoyeth it quietly during his life, and dieth thereof so seised, his heirs shall
hold the land against all the lawful children, and their issues.

PROPERTY of lands by descent is, where a man hath lands of inheri- Property of
tance and dieth, not disposing of them, but leaving it to go (as the law casteth lands by de-
it) upon the heir. This is called a descent in law, and upon whom the scent.
descent is to light, is the question. For which purpose, the law of inheri-
tance preferreth the first child before all others, and amongst children the
male before the female; and amongst males the first born. If there be no
children, then the brother; if no brother, then sisters; if neither brothers
nor sisters, then uncles, and for lack of uncles, aunts; if none of them,
then cousins in the nearest degree of consanguinity, with these three rules
of diversities. 1. That the eldest male shall solely inherit; but if it come to
females, then they being all in an equal degree of nearness shall inherit all to- Of descent:
gether, and are called parceners, and all they make but one heir to the three rules.
ancestor. 2. That no brother or sister of the half blood shall inherit to his

Brother or sister of the half blood shall not inherit to his brother or sister, but only as a child to his parents.

brother or sister, but as a child to his parents: as for example, if a man have two wives, and by either wife a son, the eldest son over-living his father, is to be preferred to the inheritance of the father, being fee-simple; but if he entrench and dieth without a child, the brother shall not be his heir, because he is of the half blood to him, but the uncle of the eldest brother or sister of the whole blood: yet if the eldest brother had died, or had not entered in the life of the father, either by such entry or conveyance, then the youngest brother should inherit the land that the father had, although it were a child by the second wife, before any daughter by the first. The third rule about descents: That land purchased so by the party himself that dieth, is to be inherited; first, by the heirs of the father's side, then if he have none of that part, by the heirs of the mother's side. But lands descended to him from his father or mother, are to go to that side only from which they came, and not to the other side.

Descent.

Customs of certain places.

THOSE rules of descent mentioned before are to be understood of fee-simples, and not of entailed lands, and those rules are restrained by some particular customs of some particular places: as namely, the customs of *Kent*, that every male of equal degree of childhood, brotherhood, or kindred, shall inherit equally (as daughters shall being parceners;) and in many borough towns of *England*, the custom alloweth the youngest son to inherit, and so the youngest daughter. The custom of *Kent*, is called *Gavelkind*. The custom of boroughs, *Burgh-English*.

Every heir having land is bound by the binding acts of his ancestors, if he be named.

Dyer 114. Plowd.

Dyer 149. Plowd.

Day and Pepp's case.

Heir charged for his false plea.

AND there is another note to be observed in fee-simple inheritance, and that is, that every heir having fee-simple land or inheritance, be it by common law or by custom, of either *Gavelkind* or *Burgh-English*, is chargeable so far forth as the value thereof extendeth, with the binding acts of the ancestors from whom the inheritance descendeth; and these acts are collateral incumbrances, and the reason of this charge is, *Qui sentit commodum, sentire debet & incommodum sive onus*. As for example, if a man bind himself and his heirs in an obligation, or do covenant by writing for him and his heirs, or do grant an annuity for him and his heirs, or do make a warranty of land, binding him and his heirs to warranty: in all these cases the law chargeth the heir after the death of the ancestor with this obligation, covenant, annuity, and warranty; yet with these three cautions: first, that the party must by special name bind himself and his heirs, or covenant, grant and warrant for himself and his heirs; otherwise the heir is not to be touched. Secondly, that some action must be brought against the heir, whilst the land or other inheritance resteth in him unaliened away: for if the ancestor die, and the heir, before an action be brought against him upon those bonds, covenants, or warranties, do alien away the land, then the heir is clean discharged of the burthen; except the land was by fraud conveyed away of purpose to prevent the suit intended against him. Thirdly, that no heir is farther to be charged than the value of the land descended unto him from the same ancestor that made the instrument of charge, and that land also, not to be sold out-right for the debt, but to be kept in extent, and at a yearly value, until the debt or damage be run out. Nevertheless, if an heir that is sued upon such a debt of his ancestor do not deal clearly with the court when he is sued, that is, if he come not in immediately, and by way of confession set down the true quantity of his inheritance descended, and so submit himself therefore, as the law requireth, then that heir that otherwise demeaneth himself, shall be charged of his own lands or goods, and of his money, for this deed of his ancestor. As for example; if a man bind

bind himself and his heirs in an obligation of one hundred pounds, and dieth leaving but ten acres of land to his heir, if his heir be sued upon the bond, and cometh in, and denieth that he hath any lands by descent, and it is found against him by the verdict that he hath ten acres; this heir shall be now charged by his false plea of his own lands, goods and body, to pay the hundred pound, although the ten acres be not worth ten pound.

PROPERTY [†] of lands by escheat, is where the owner died seised of the lands in possession without child or other heir, thereby the land, for lack of other heir, is said to escheat to the lord of whom it is holden. This lack of heir happeneth principally in two cases: First, where the land's owner is a bastard. Secondly, where he is attainted of felony or treason. For neither can a bastard have any heir, except it be his own child, nor a man attainted of treason, although it be his own child.

UPON attainder of treason the King is to have the land, although he be not the lord of whom it is held, because it is a royal escheat. But for felony it is not so, for there the King is not to have the escheat, except the land be holden of him: and yet where the land is not holden of him, the King is to have the land for a year and a day next ensuing the judgment of the attainder, with a liberty to commit all manner of waste all that year in houses, gardens, ponds, lands, and woods.

IN these escheats two things are especially to be observed; the one is, the tenure of the lands, because it directeth the person to whom the escheat belongeth, *viz.* the lord of the manor of whom the land is holden. 2. The manner of such attainder which draweth with it the escheat. Concerning the tenure of lands, it is to be understood, that all lands are holden of the crown either mediately or immediately, and that the escheat appertaineth to the immediate lord, and not to the mediate. The reason why all land is holden of the crown immediately, or by mesne lords, is this.

THE * Conqueror got by right of conquest all the land of the realm into his own hands in demesne, taking from every man all estate, tenure, property and liberty of the same, (except religious and church lands, and the land in *Kent*;) and still as he gave any of it out of his own hand, he reserved some retribution of rents, or services, or both, to him and to his heirs; which reservation is that which is called the tenure of land.

IN which reservation he had four institutions, exceeding politick and suitable to the state of a conqueror.

FIRST, Seeing his people to be part *Normans*, and part *Saxons*, the *Normans* he brought with him, the *Saxons* he found here; he bent himself to conjoin them by marriages in amity, and for that purpose ordained, that if those of his nobles, knights, and gentlemen, to whom he gave great rewards of lands should die, leaving their heir within age, a male within twenty-one, and a female within fourteen years, and unmarried, then the King should have the bestowing of such heirs in marriage in such a family, and to such persons as he should think meet; which interest of marriage went still implied, and doth at this day in every tenure called knight's-service.

THE second was, to the end that his people should still be conserved in warlike exercises and able for his defence. When therefore he gave any good portion of lands, that might make the party of abilities or strength, he withheld reserved this service, that that party and his heirs having such lands, should keep a horse of service continually, and serve upon him himself when the King went to wars; or else having impediment to excuse his own person, should find

another

† Property of lands by escheat.

Two causes of escheat.

1. Bastardy.

2. Attainder of treason, felony.

Attainder of treason entleth the

King, though lands be not

holden of him: other-

wise in attainder of fe-

lony, &c. for there the

King shall have but an-

num, diem & vastum.

In escheats,

1. The tenure. 2. The

manner of the attainder.

* The Conqueror got all

the lands of the realm in-

to his hands, and reserved

rents and services.

Knight's-service in capite

first instituted.

The reservations in knight's-service.

1. Marriage of the wards.

2. Horse for service.

3. Homage and fealty.

4. Primer seisin.

The policy of the Conqueror in the reservation of services.

Reservation that his tenant should keep a horse

of service, and serve upon

him himself when the King went to

war.

another to serve in his place : which service of horse and man, is a part of that tenure called knight's-service at this day.

BUT if the tenant himself be an infant, the King is to hold this land himself until he come to full age, finding him meat, drink, apparel, and other necessaries, and finding a horse and a man with the overplus, to serve in the wars as the tenant himself should do if he were at full age.

BUT if this inheritance descend upon a woman that cannot serve by her sex, then the King is not to have the lands, she being of fourteen years of age, because she is then able to have an husband that may do the service in person.

3. Institution of the Conqueror was, that his tenants by knight's-service vow,
1. Homage.
2. Fealty.

* THE third institution was, that upon every gift of land the King reserved a vow and an oath to bind the party to his faith and loyalty : that vow was called homage, the oath fealty. Homage is to be done kneeling, holding his hands between the knees of the lord, saying in the *French* tongue, I become your man of life and limb, and of earthly honour. Fealty is to take an oath upon a book, that he will be a faithful tenant to the King, and do his service, and pay his rents according to his tenure.

4. Institution was for recognition of the King's bounty, every heir to pay one year's profit of the lands called *primer seisin*.

† The fourth institution was, that for recognition of the King's bounty by every heir succeeding his ancestor in those knight's-service lands, the King should have *primer seisin* of the lands, which is one year's profit of the lands ; and until this be paid, the King is to have possession of the land, and then to restore it to the heir ; which continueth at this day in use, and is the very cause of suing livery, and that as well where the heir hath been in ward as otherwise.

Knight's-service in *capite* is a tenure *de persona regis*. Tenants by grand serjeanty were to pay relief at the full age of every heir, which was one year's value of the lands so held, *ultra repress*. Grand serjeanty. Petty serjeanty.

THESE before-mentioned be the rights of the tenure, called knight's-service in *capite*, which is as much to say, as tenure *de persona regis* ; and *caput* being the chiefest part of the person, it is called a tenure in *capite*, or in chief. And it is also to be noted, that as this tenure in *capite* by knight's-service generally was a great safety to the crown, so also the Conqueror instituted other tenures in *capite* necessary to his estate ; as namely, he gave divers lands to be holden of him by some special service about his person, or by bearing some special office in his house, or in the field, which have knight's-service and more in them, and these be called tenures by grand serjeanty. Also he provided upon the first gift of lands, to have revenues by continual service of ploughing his land, repairing his houses, parks, pales, castles, and the like. And sometimes to a yearly provision of gloves, spurs, hawks, horses, hounds, and the like ; which kind of reservations are called also tenures in chief, or in *capite* of the King, but they are not by knight's-service, because they required no personal service, but such things as the tenant may hire another to do, or provide for his money. And this tenure is called a tenure by socage in *capite*, the word *soca* signifying the plough ; howbeit in this latter time, the service of ploughing the land, and of harvest works is turned into money-rent, for that the Kings do not keep their demesne in their own hands, as they were wont to do ; yet what lands were *de antiquo dominio coronae*, it well appeareth in the records of the exchequer called the

The institution of socage in *capite*, and that it is now turned into money-rent.

* Aid-money to make the King's eldest son a knight, or to marry his eldest daughter, is likewise due to his Majesty from every one of his tenants in knight's-service, that hold by a whole fee 20 s. and from every tenant in socage, if his land be worth twenty pound *per ann.* 20 s.

† Escuage was likewise due unto the King from his tenant by knight's-service : when his Majesty made a voyage royal to war against another nation, those of his tenants that did not attend him there for forty days with horse and furniture fit for service, were to be assessed in a certain sum by act of parliament, to be paid unto his Majesty ; which assessment is called escuage.

book of *Domesday*. And the tenants in ancient demesne, have many immunities and privileges at this day, that in ancient times were granted unto those tenants by the crown; the particulars whereof are too long to set down.

THESE tenures *in capite*, as well that by *socage*, as the others by knight's-service, have this property; that the tenants cannot alien their lands without licence of the King: if they do, the King is to have a fine for the contempt, and may seize the land, and retain it until the fine be paid. And the reason is, because the King would have a liberty in the choice of his tenant, so that no man should presume to enter into those lands, and hold them (for which the King was to have those special services done him) without the King's leave; this licence and fine as it is now digested is easy and of course.

THERE is an office called the office of alienation, where any man may have a licence at a reasonable rate, that is, at the third part of one year's value of the land moderately rated. A tenant *in capite* by knight's-service or grand serjeanty, was restrained by ancient statute, that he should not give nor alien away more of his lands, than that with the rest he might be able to do the service due to the King; and this is now out of use.

AND to this tenure by knight's-service in chief was incident, that the King should have a certain sum of money called *aid*, due, to be ratably levied amongst all those tenants proportionably to their lands, to make his eldest son a knight, or to marry his eldest daughter.

AND it is to be noted that all those that hold lands by the tenure of *socage in capite* (although not by knight's-service) cannot alien without licence, and they are to sue livery, and pay *primer seisin*, but not to be in ward for body or land.

By example and resemblance of the King's policy in these institutions of tenures, the great men and gentlemen of this realm did the like so near as they could; as for example, when the King had given to any of them two thousand acres of land, this party purposing in this place to make a dwelling, or (as the old word is) his mansion-house, or his manor-house, did devise how he might make his land a complete habitation to supply him with all manner of necessities; and for that purpose, he would give of the uttermost parts of those two thousand acres, 100 or 200 acres, or more or less, as he should think meet, to one of his most trusty servants, with some reservation of rent to find a horse for the wars, and go with him when he went with the King to the wars, adding vow of homage, and the * oath of fealty, wardship, marriage, and relief. This relief is to pay five pound for every knight's fee, or after that rate for more or less at the entrance of every heir; which tenant so created and placed, was and is to this day called a tenant by knight's-service, and not by his own person, but of his manors; of these he might make as many as he would. Then this lord would provide that the land which he was to keep for his own use, should be ploughed, and his harvest brought home, his house repaired, his park pale, and the like: and for that end he would give some lesser parcels to sundry others, of twenty, thirty, forty, or fifty acres: reserving the service of ploughing a certain quantity, or so many days of his land, and certain harvest works or days in the harvest to labour, or to repair the house, park pale, or otherwise, or to give him for his provision, capons, hens, pepper, cummin, roses, gilliflowers, spurs, gloves, or the like: or to pay to him a certain rent, and to be

* Knight's-service tenure created by the lord, is not a tenure by knight's-service of the person of the lord, but of his manor.

sworn to be his faithful tenant, which tenure was called a socage tenure, and is so to this day, howbeit most of the ploughing and harvest service are turned into money rents.

Relief of tenant in socage, one year's rent and no wardship, or other profit upon the dying of the tenant.

Villanage or tenure by copy of court-roll.

Court baron, with the use of it.

Suit to the court of the lord incident to the tenure of the freeholders.

What attainders shall give the escheat to the lord. Attainders, 1. By judgment. 2. By verdict or confession. 3. By out-lawry, give the lands to the lord. Of an attainder by out-lawry.

* THE tenants in socage at the death of every tenant were to pay relief, which was not as knight's-service is, five pound a knight's fee: but it was, and so is still, one year's rent of the land; and no wardship or other profit to the lord. The remainder of the two thousand acres he kept to himself, which he used to manure by his bondmen, and appointed them at the courts of his manor how they should hold it, making an entry of it into the roll of the remembrances of the acts of his court, yet still in the lord's power to take it away; and therefore they were called tenants at will, by copy of court-roll; being in truth bond-men at the beginning: but having obtained freedom of their persons, and gained a custom by use of occupying their lands, they now are called copy-holders, and are so privileged, that the lord cannot put them out, and all through custom. Some copy-holders are for lives, one, two, or three successively; and some inheritances from heir to heir by custom; and custom ruleth these estates wholly, both for widows estates, fines, herriots, forfeitures, and all other things.

MANORS being in this sort made at the first, reason was that the lord of the manor should hold a court, which is no more than to assemble his tenants together at a time by him to be appointed; in which court he was to be informed by oath of his tenants, of all such duties, rents, reliefs, wardships, copy-holds, or the like, that had happened unto him; which information is called a presentment, and then his bailiff was to seise and distrain for those duties if they were denied or with-holden, which is called a court baron: and herein a man may sue for any debt or trespass under forty shillings value, and the freeholders are to judge of the cause upon proof produced upon both sides. And therefore the freeholders of these manors, as incident to their tenures, do hold by suit of court, which is to come to the court, and there to judge between party and party in those petty actions; and also to inform the lord of duties, rents, and services unpaid to him from his tenants. By this course it is discerned who be the lords of lands, such as if the tenants die without heir, or be attainted of felony or treason, shall have the land by escheat.

Now concerning what attainders shall give the escheat to the land; it is to be noted, that it must either be by judgment of death given in some court of record against the felon found guilty by verdict, or confession of the felony, or it must be by out-lawry of him.

THE out-lawry groweth in this sort; a man is indicted for felony, being not in hold, so as he cannot be brought in person to appear and to be tried, insomuch that process of *capias* is therefore awarded to the sheriff, who not finding him, returneth, *non est inventus in balliva mea*; and thereupon another *capias* is awarded to the sheriff; who likewise not finding him maketh the same return: then a writ called an *exigent* is directed to the sheriff, commanding him to proclaim him in his county-court five several court days, to yield his body; which if the sheriff do, and the party yield not his body, he is said, by the default, to be out-lawed, the coroners there adjudging him out-lawed, and the sheriff making the return of the proclamations, and of the judgment of the coroners upon the backside of the writ. This is an attainder of felony, whereupon the offender doth forfeit his lands by an escheat to the lord of whom they are holden.

* All money and escuage money is likewise due unto the lords of their tenants.

BUT note, that a man found guilty of felony by verdict or confession, and praying his clergy, and thereupon reading as a clerk, and so burnt in the hand and discharged, is not attainted; because he by his clergy preventeth the judgment of death, and is called a clerk convict, who loseth not his lands, but all his goods, chattels, leases, and debts. Prayer of the clergy.

So a man indicted, that will not answer nor put himself upon trial, although he be by this to have judgment of pressing to death, yet he doth forfeit no lands, but goods, chattels, leases, and debts, except his offence be treason, and then he forfeiteth his lands to the crown. He that standeth mute forfeiteth no lands, except for treason.

So a man that killeth himself shall not lose his lands, but his goods, chattels, leases, and debts. So of those that kill others in their own defence, or by misfortune. He that killeth himself forfeiteth but his chattels.

A man that being pursued for felony, and flieth for it, loses his goods for his flying, although he return and is tried, and found not guilty of the fact. Flying for felony, a forfeiture of goods.

So a man indicted of felony, if he yield not his body to the sheriff until after the exigent of proclamation is awarded against him, this man doth forfeit all his goods for his long stay, although he be not found guilty of the felony; but none is attainted to lose his lands, but only such as have judgments of death by trial upon verdict, or their own confession, or that they be by judgment of the coroner's out-lawed, as before. He that yieldeth his body upon the exigent for felony, forfeiteth his goods.

BESIDES the escheats of lands to the lords of whom they be holden for lack of heirs, and by attainder for felony (which only do hold place in fee-simple lands) there are also forfeiture of lands to the crown by attainder of treason; as namely, if one that hath entailed lands commit treason, he forfeiteth the profits of the lands for his life to the crown, but not to the lord. Lands entailed escheat to the King for treason. Stat. 26 H.8.

AND if a man having an estate for life of himself, or of another, commit treason or felony, the whole estate is forfeited to the crown, but no escheat to the lord. Tenant for life committeth treason or felony, there shall be no escheat to the lord.

BUT a copy-hold, for fee-simple, or for life, is forfeited to the lord, and not to the crown; and if it be entailed, the lord is to have it during the life of the offender only, and then his heir is to have it.

THE custom of *Kent* is, that Gavelkind land is not forfeitable nor escheatable for felony: for they have an old saying; the father to the bough, and the son to the plough.

IF the husband was attainted, the wife was to lose her thirds in cases of felony and treason, but yet she is no offender; but at this day it is holden by statute law, that she loseth them not for the husband's felony. The relation of these forfeits are these: The wife loseth no dower, notwithstanding the husband be attainted of felony.

1. THAT men attainted of felony or treason, by verdict or confession, do forfeit all the lands they had at the time of their offence committed; and the King or the lord, whosoever of them hath the escheat or forfeiture, shall come in and avoid all leases, statutes, or conveyances done by the offender, at any time since the offence done. And so is the law clear also, if a man be attainted for treason by out-lawry: but upon attainder of felony by out-lawry, it hath been much doubted by the law-books, whether the lord's title by escheat shall relate back to the time of the offence done, or only to the date of teste of the writ of exigent for proclamation, whereupon he is out-lawed; howbeit at this day it is ruled, that it shall reach back to the time of the fact; but for goods, chattels, and debts, the King's title shall Attainder in felony or treason by verdict, confession or out-lawry, forfeiteth all they had from the time of the offence committed.

And so it is upon an attainder of outlawry; otherwise it is in the attainder by verdict, confession, and outlawry, as to their relation for the forfeiture of goods and chattels.

The King's officers to seize a felon's goods and chattels. A person attainted may purchase, but it shall be to the King's use.

There can be no restitution in blood without act of parliament; but a pardon enableth a man to purchase, and the heir begotten after shall inherit those lands.

* Property of land by conveyance divided into,
1. Estates in fee.

2. In tail.

3. For life.

4. For years.

† Leases for years, they go to the executors, and not to the heirs.

Leases are to be forfeited by attainder.

1. In treason.

2. Felony.

3. Premunire.

4. By killing himself.

5. For flying.

6. Standing out, &c.

7. By conviction.

8. Petty larceny.

9. Going beyond the sea without licence.

9. Going beyond the sea without licence.

9. Going beyond the sea without licence.

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9. Going beyond the sea without licence.

shall look no further back than to those goods, the party attainted by verdict or confession, had at the time of the verdict and confession, given of made, and in outlaws at the time of the exigent, as well in treasons as felonies: wherein it is to be observed, that upon the parties first apprehension, the King's officers are to seize all the goods and chattels, and preserve them together, dispending only so much out of them, as is fit for the sustentation of the person in prison, without any wasting, or disposing of them until conviction; and then the property of them is in the crown, and not before.

It is also to be noted, that persons attainted for felony or treason, have no capacity in them to take, obtain or purchase, save only to the use of the King, until the party be pardoned. Yet the party giveth not back his lands or goods, without a special patent of restitution, which cannot restore the blood without an act of parliament. So if a man have a son, and then is attainted of felony or treason, and pardon'd, and purchaseth lands, and then hath issue another son, and dieth; the son he had before he had his pardon, although he be his eldest son, and the patent have the words of restitution to his lands, shall not inherit, but his second son shall inherit them, and not the first; because the blood is corrupted by the attainder, and cannot be restored by patent alone, but by act of parliament. And if a man have two sons, and the eldest is attainted in the life of his father, and dieth without issue, the father living, the second son shall inherit the father's lands; but if the eldest son have any issue, though he die in the life of his father, then neither the second son, nor the issue of the eldest, shall inherit the father's lands, but the father shall there be accounted to die without heir; and the land shall escheat, whether the eldest son have issue or not, afterward or before, though he be pardoned after the death of his father.

Property of lands by conveyance, is first distributed into estates, for years, for life, in tail, and fee-simple.

THESE * estates are created by word, by writing, or by record. For estates of years, which are commonly called leases for years, they are thus made; where the owner of the land agreeth with the other by word of mouth, that the other shall have, hold, and enjoy the land, to take the profits thereof for a time certain of years, months, weeks or days, agreed between them; and this is called a lease parol: such a lease may be made by writing poll, or indented of demise, grant, and to farm let, and so also by fine of record; but whether any rent be reserved or no, it is not material. Unto these † leases there may be annexed such exceptions, conditions, and covenants, as the parties can agree on. They are called chattels real, and are not inheritable by the heirs, but go to the executors, and administrators, and be saleable for debts in the life of the owner, or in the executors or administrators hands by writs of execution upon statutes, recognizances, judgments of debts or damages. They be also forfeitable to the crown by outlawry, by attainder for treason, felony, or premunire, killing himself, flying for felony, although not guilty of the fact, standing out, or refusing to be tried by the county, by conviction of felony, by verdict without judgment, petty-larceny, or going beyond the sea without licence.

THESE are forfeitable to the crown, in like manner as leases for years, viz. interest gotten in other mens lands by extending for debt upon judgment

in PART II. those cases, the crown is entitled to the land, for that the land was not liable longer than the lease, which is the case of the King's crown, and the King's crown is not liable longer than the lease, which is the case of the King's crown.

in any court of record, statute merchant, statute staple, recognizances; which being upon statutes, are called tenants by statute merchant, or staple, the other tenants by *elegit*, and by wardship of body and lands: for all these are called chattels real, and go to the executors and administrators, and not to the heirs; and are saleable and forfeitable as leases for years are.

LEASES for lives are also called free-holds: they may also be made by word or writing. There must be livery and seisin given at the making of the lease by him, whom we call the lessor; who cometh to the door, backside, or garden, if it be a house, if not, then to some part of the land, and there he expresseth, that he doth grant unto the taker called the lessee for term of his life; and in seisin thereof, he delivereth to him a turf, twig, or ring of the door: and if the lease be by writing, then commonly there is a note written on the backside of the lease, with the names of those witnesses who were present at the time of the livery of seisin made. This estate is not saleable by the sheriff for debt, but the land is to be extended for a yearly value, to satisfy the debt. It is not forfeitable by out-lawry, except in cases of felony, nor by any of the means before mentioned, of leases for years; saving in an attainder for felony, treason, premunire, and then only to the crown, and not to the lords by escheat.

AND though a nobleman or other have liberty by charter, to have all felon's goods; yet a tenant holding for term of life, being attainted of felony, doth forfeit unto the King, and not to this nobleman.

IF a man have an estate in lands for another man's life, and dieth; this land cannot go to his heir, nor to his executors, but to the party that first entreth; and he is called an occupant, as before hath been declared.

A lease for years or for life may be made also by fine of record, or bargain and sale, or covenant, to stand seised upon good considerations of marriage, or blood; the reasons whereof are hereafter expressed.

ENTAILS of lands are created by a gift, with livery and seisin to a man, and to the heirs of his body; this word (body) making the entail, may be demonstrated and restrained to the males or females, heirs of their two bodies, or of the body of either of them, or of the body of the grandfather or father.

ENTAILS of lands began by a statute made in Ed. I's time, by which also they are so much strengthened, as that the tenant in tail could not put away the land from the heir by any act of conveyance or attainder; nor let it, nor incumber it, longer than his own life.

BUT the inconvenience thereof was great, for by that means, the land being so sure tied upon the heir as that his father could not put it from him, it made the son to be disobedient, negligent, and wastful, often marrying without the father's consent, and to grow insolent in vice, knowing, that there could be no check of disinheriting him. It also made the owners of the land less fearful to commit murders, felonies, treasons, and manslaughterers; for that they knew none of these acts could hurt the heir of his inheritance. In hindred men that had entailed lands, that they could not make the best of their lands by fine and improvement, for that none upon so uncertain an estate as for term of his own life, would give him a fine of any value, nor lay any great stock upon the land, that might yield rent improved.

LASTLY, those entails did defraud the crown, and many subjects of their debts; for that the land was not liable longer than his own life-time; which caused, that the King could not safely commit any office of account to such

Extends upon
stat. staple.
merchant, or
elegit. Ward-
ship of body
and lands are
chattels, and
forfeitable.
Lease for life
how forfeit-
able.

Indorsement
of livery, &c.

Lease for life
not to be sold
by the sheriff
for debt, but
extended at a
yearly value.

A man that
hath bona fe-
sion. by char-
ter, shall not
have the es-
tate, if lessee
for life be
attainted.
Occupant.

Of state tails,
and how such
an estate may
be limited.

By the stat.
of West. 1.
made in Ed.
I's time, es-
tates in tail
were so
strengthened,
that they
were not for-
feitable by
any attain-
der.
The great in-
convenience
that ensued
thereof.

The preju-
dice the
crown re-
ceived there-
by.

whose lands were entailed, nor other men trust them with loan of money.

The stat.
4 H. VII. and
32 H. VIII.
to bar estates
tail by fine. THESE inconveniencies were all remedied by acts of parliament; as namely, by acts of parliament later than the act of entails, made 4 H. VII. 32 H. VIII. a tenant in tail may disinheret his son by a fine with proclamation, and may by that means also make it subject to his debts and sales.

26 H. VIII.
32 H. VIII. By a statute made 26 H. VIII. a tenant in tail doth forfeit his lands for treason; and by another act of parliament, 32 H. VIII. he may make leases good against his heir for one and twenty years, or three lives; so that it be not of his chief houses, lands, or demesne, or any lease in reversion, nor less rent reserved than the tenants have paid most part of one and twenty years before, nor have any manner of discharge for doing wastes and spoils: by a statute made 33 H. VIII. tenants of entailed lands are liable to the King's debts by extent, and by statutes made 13 and 39 Eliz. they are saleable for the arrearages upon his account for his office; so that now it resteth, that entailed lands have two privileges only, which be these. First, not to be forfeited for felonies. Secondly, not to be extended for debts after the parties death, except the entails be cut off by fine and recovery.

33 H. VIII.
13 & 39 Eliz.
entails two
privileges;
1. Not for-
feitable for
felony. 2. Not
extendable
for the debts
of the party
after his
death: pro-
viso, not to
exclude his
next heir.
If he do, to for-
feit his estate,
and the next
heir must en-
ter.
Of a perpe-
tuity, which
is an entail
with an ad-
dition.
These perpe-
tuities would
bring in all
the former
inconveni-
encies of estates
tail.
The inconve-
niencies of
those perpe-
tuities. BUT it is to be noted, that since these notable statutes and remedies provided by statutes, to dock entails, there is started up a devise called perpetuity, which is an entail with an addition of a proviso conditional, tied to his estate, not to put away the land from his next heir; and if he do, to forfeit his own estate. Which perpetuities, if they should stand, would bring in all the former inconveniencies subject to entails, that were cut off by the former mentioned statutes, and far greater; for by the perpetuity, if he that is in possession start away never so little, as in making a lease, or selling a little quillet, forgetting after two or three descents, as often they do, how they are tied; the next heir must enter, who peradventure is his son, his brother, uncle, or kinsman: and this raiseth unkind suits, setting all that kindred at jars, some taking one part, some another, and the principal parties wasting their time and money in suits of law. So that in the end they are both constrained by necessity to join in a sale of the land, or a great part of it, to pay their debts, occasioned through their suits: and if the chief of the family for any good purpose of well seating himself, by selling that which lieth far off, to buy that which is near, or for the advancement of his daughters or younger sons, should have reasonable cause to sell, this perpetuity, if it should hold good, restraineth him. And more than that, where many are owners of inheritance of land not entailed, may, during the minority of his eldest son, appoint the profits to go to the advancement of the younger sons and daughters, and pay debts; but by entails and perpetuities, the owners of these lands cannot do it, but they must suffer the whole to descend to the eldest son, and so to come to the crown by wardship all the time of his infancy.

Quære, whe-
ther it be
better to re-
strain men by
these perpe-
tuities from
alienations, or
to hazard the
undoing of
houses by un-
thrifty poste-
rity. WHEREFORE, seeing the dangerous times and untowardly heirs, they might prevent those mischiefs of undoing their houses, by conveying the land from such heirs, if they were not tied to the stake by those perpetuities, and restrained from forfeiting to the crown, and disposing it to their own, or to their children's good; therefore it is worthy of consideration, whether it be better for the subject and sovereign to have the lands secured to mens names and bloods by perpetuities, with all the inconveniencies above-mentioned, or to be in hazard of undoing his house by unthrifty posterity.

THE last and greatest estate of lands is fee-simple, and beyond this there is none of the former for lives, years, or entails; but beyond them is fee-simple. For it is the greatest, last and uttermost degree of estates in land; therefore he that maketh a lease for life, or a gift in tail, may appoint a remainder when he maketh another for life or in tail, or to a third in fee-simple; but after a fee-simple he can limit no other estate. And if a man do not dispose of the fee-simple by way of remainder, when he maketh the gift in tail, or for lives, then the fee-simple resteth in himself as a reversion. The difference between a reversion and a remainder is this. The remainder is always a succeeding estate, appointed upon the gifts of a precedent estate at the time when the precedent is appointed. But the reversion is an estate left in the giver, after a particular estate made by him for years, life, or entail; where the remainder is made with the particular estates, then it must be done by deeds in writing, with livery and seisin, and cannot be by words; and if the giver will dispose of the reversion after it remaineth in himself, he is to do it by writing, and not by word, and the tenant is to have notice of it, and to attorn to it, which is to give his assent by word, or paying rent, or the like; and except the tenant will thus attorn, the party to whom the reversion is granted cannot have the reversion, neither can he compel him by any law to attorn, except the grant of the reversion be by fine; and then he may by writ provided for that purpose: and if he do not purchase that writ, yet by the fine the reversion shall pass; and the tenant shall pay no rent, except he will himself, nor be punished for any waste in houses, woods, &c. unless it be granted by bargain and sale by indenture enrolled; these fee-simple estates lie open to all perils of forfeitures, extents, incumbrances and sales.

LANDS are conveyed by these six means; first, by feoffment, which is, where by deed lands are given to one and his heirs, and livery and seisin made according to the form and effect of the deed; if a lesser estate than fee-simple be given, and livery of seisin made, it is not called a feoffment, except the fee-simple be conveyed, but is otherwise called a lease for life or gift in tail as above-mentioned.

2. A fine is a real agreement, beginning thus, *Haec est finalis concordia, &c.* This is done before the King's judges in the court of common-pleas, concerning lands that a man should have from another to him and his heirs, or to him for his life, or to him and the heirs males of his body, or for years certain, whereupon rent may be reserved, but no condition or covenants. This fine is a record of great credit; and upon this fine are four proclamations made openly in the common-pleas; that is, in every term one, for four terms together; and if any man having right to the same, make not his claim within five years after the proclamations ended, he loseth his right for ever, except he be an infant, a woman covert, a mad-man, or beyond the seas, and then his right is saved; so that the claim be within five years after full age, the death of her husband, recovery of his wits, or return from beyond the seas. This fine is called a feoffment of record, because that it includeth all the feoffment doth, and worketh farther of its own nature, and barreth entails preëmptorily, whether the heir doth claim within five years or not, if he claim by him that levied the fine.

3. RECOVERIES are where for assurances of lands the parties do agree, that one shall begin an action real against the other, as though he had good right to the land, and the other shall not enter into defence against it, but allege that he bought the land of *I. H.* who had warranted unto him, and pray that

The last and greatest estate in land is fee-simple.

A remainder cannot be limited upon an estate in fee-simple.

The difference between a remainder and a reversion.

A reversion cannot be granted by word.

Attornment must be had to the grant of the reversion.

The tenant cannot compel to attorn, but where the reversion is granted by fine.

Lands may be conveyed.

1. By feoffment. 2. By fine. 3. By recovery.

4. By use.

5. By covenant. 6. By will.

What a fine is, and how lands may be conveyed hereby.

Five years non-claim barreth not.

1. An infant.

2. Feme covert.

3. Mad-man.

4. Beyond sea.

5. Fine is a feoffment of record.

What recoveries are.

Common
vouchee one
of the criers
of the court.

that *I. H.* may be called in to defend the title, which *I. H.* is one of the cryers of the common-pleas, and is called the common-vouchee. This *I. H.* shall appear and make as if he would defend it, but shall pray a day to be assigned him in his matter of defence; which being granted him, at the day he maketh default, and thereupon the court is to give judgment against him; which cannot be for him to lose his lands, because he hath it not, but the party that he hath sold it to hath that, who vouched him to warrant it.

Judgment
for the de-
mandant a-
gainst the te-
nant in tail.
Judgment for
tenant to re-
cover so
much land in
value of the
common
vouchee.

THEREFORE the demandant who hath no defence made against it, must have judgment to have the land against him that he sued (who is called the tenant) and the tenant is to have judgment against *I. H.* to recover in value so much land of his, where in truth he hath none, nor never will. And by this device, grounded upon the strict principles of law, the first tenant loseth the land, and hath nothing for it; but it is by his own agreement for assurance to him that brought it.

A recovery
barreth an
estate tail and
all reversions
and remain-
ders thereup-
on.

THIS recovery barreth entails, and all remainders and reversions that should take place after the entails, saving where the King is giver of the entail, and keepeth the reversion to himself; then neither the heir, nor the remainder, nor reversion, is barred by the recovery.

The reason
why a com-
mon recovery
barreth
those in re-
mainder and
reversions.

THE reason why the heirs, remainders, and reversions are thus barred, is because in strict law the recompence adjudged against the crier that was vouchee, is to go in succession of estate as the land should have done, and then it was not reason to allow the heir the liberty to keep the land it self, and also to have recompence; and therefore he loseth the land, and is to trust to the recompence.

The many
inconvenien-
ces of estates
in tail
brought in
these recove-
ries, which
are made

THIS sleight was first invented, when entails fell out to be so inconvenient as is before declared, so that men made no conscience to cut them off, if they could find law for it. And now by use, those recoveries are become common assurances against entails, remainders, and reversions, and are the greatest security purchasers have for their money; for a fine will bar the heir in tail, and not the remainder, nor reversion, but a common recovery will bar them all.

now common
conveyances
and assuran-
ces for land.
Upon fines,
feoffments,
and recove-
ries, the estate
doth settle
according to
the intent of
the parties.

UPON feoffments and recoveries, the estate doth settle as the use and intent of the parties is declared by word or writing, before the act was done: as for example, if they make a writing that one of them shall levy a fine, make a feoffment, or suffer a common recovery to the other; but the use and intent is, that one should have it for his life, and after his decease a stranger to have it in tail, and then a third in fee-simple. In this case the land settlenth in an estate according to the use and intent declared. And that by reason of the statute made 27 *H. VIII.* conveying the land in possession to him that hath interest in the use, or intent of the fine, feoffment, or recovery, according to the use and intent of the parties.

Bargains,
sales, and co-
venants to
stand seised
to a use, are
all grounded
upon one sta-
tute.

UPON this statute is likewise grounded the fourth and fifth of the six conveyances, *viz.* bargains and sales, and covenants to stand seised to uses; for this statute, wheresoever it findeth an use, conjoineth the possession to it, and turneth it into like quality of estate, condition, rent, and the like, as the use hath.

What a use
is.

4. THE use is but the equity and honesty to hold the land *in conscientia boni viri*. As for example; I and you agree that I shall give you money for your land, and you shall make me assurance of it. I pay you the money, but you made me no assurance of it. Here although the estate of the land be still in you, yet the equity and honesty to have it is with me; and this equity is called

called the use, upon which I had no remedy but in chancery, until this statute was made of 27 H. VIII. and now this statute conjoineth and conveyeth the land to him that hath the use. I for my money paid to you, have the land it self, without any other conveyance from you; and it is called a bargain and sale.

Before 27 H. 8. there was no remedy for a use, but in chancery.

BUT the parliament that made that statute, did foresee, that it would be mischievous that mens lands should so suddenly upon the payment of a little money be conveyed from them, peradventure in an alchouse or a tavern upon strainable advantages, did therefore gravely provide another act in the same parliament, that the land upon payment of this money should not pass away, except there were a writing indented, made between the said two parties, and the said writing also within six months inrolled in some of the courts at *Westminster*, or in the sessions-rolls in the shire where the land lyeth; unless it be in cities or corporate towns where they did use to enroll deeds, and there the statute extendeth not.

The stat. of 27 H. 8. doth not pass land upon the payment of money without a deed indented and enrolled.

The stat. of 27 H. 8. extendeth not to places where they did enroll deeds.

5. THE fifth conveyance is a covenant to stand seised to uses: it is in this sort; a man that hath a wife and children, brethren, and kinsfolks, may by writing under his hand and seal agree, that for their or any of their preferment he will stand seised of his lands to their uses, either for life, in tail, or fee, so as he shall see cause; upon which agreement in writing, there ariseth an equity or honesty, that the land should go according to those agreements; nature and reason allowing these provisions; which equity and honesty is the use. And the use being created in this sort, the statute of 27 H. VIII. before mentioned, conveyeth the estate of the land, as the use is appointed.

A covenant to stand seised to a use.

Upon an agreement in writing to stand seised to the use of any of his kindred, a use may be created, &c.

AND so this covenant to stand seised to uses, is at this day, since the said statute, a conveyance of land; and with this difference from a bargain and sale, in that this needeth no enrollment as a bargain and sale doth, nor needeth it to be in writing indented, as bargain and sale must: and if the party to whose use he agreeth to stand seised of the land, be not wife, or child, cousin, or one that he meaneth to marry, then will no use rise, and so no conveyance; for although the law alloweth such weighty considerations of marriage and blood to raise uses, yet doth it not admit so trifling considerations, as of acquaintance, schooling, services, or the like.

A covenant to stand seised to a use needeth no enrollment as a bargain and sale to a use doth, &c.

BUT where a man maketh an estate of his land to others, by fine, feoffment, or recovery, he may then appoint the use to whom he listeth, without respect of marriage, kindred, or other things; for in that case his own will and declaration guideth the equity of the estate. It is not so when he maketh no estate, but agreeth to stand seised, nor when he hath taken any thing, as in the cases of bargain and sale, and covenant to stand seised to uses.

Upon a fine, feoffment, or recovery a man may limit the use to whom he listeth, without consideration of blood, or money. Otherwise, in a bargain and sale, or covenant.

6. THE last of the six conveyances is a will in writing, which course of conveyance was first ordained by a statute made 32 H. VIII. before which statute no man might give land by will, except it were in a borough town, where there was an especial custom that men might give their lands by will; as in *London*, and many other places.

Of the conveyance of land by will.

THE not giving of land by will, was thought to be a defect at common law, that men in wars, or suddenly falling sick, had no power to dispose of their lands, except they could make a feoffment, or levy a fine, or suffer a recovery; which lack of time would not permit: and for men to do it by these means, when they could not undo it again, was hard; besides, even to the last hour of death, mens minds might alter upon further proofs of their

The not disposing of lands by will, was thought to be a defect at the common law.

children or kindred, or encrease of children or debt, or defect of servants or friends.

The course that was invented before the stat. of 32 H. 8. first gave power to devise lands by will, was a conveyance of lands to feoffees in trust, to such persons as they should declare in their will.

FOR which cause, it was reason that the law should permit him to reserve to the last instant the disposing of his lands, and to give him means to dispose of it, which seeing it did not fitly serve, men used this devise.

THEY conveyed their full estates of their lands in their good health, to friends in trust, properly called feoffees in trust; and then they would by their wills declare how their friends should dispose of their lands; and if those friends would not perform it, the court of chancery was to compel them by reason of trust; and this trust was called the use of the land, so as the feoffees had the land, and the party himself had the use; which use was in equity, to take the profits for himself, and that the feoffees should make such an estate as he should appoint them; and if he appointed none, then the use should go to the heir, as the estate it self of the land should have done; for the use was to the estate like a shadow following the body.

The inconveniences of putting land into use.

By this course of putting lands into use there were many inconveniences, as this use which grew first for a reasonable cause, viz. to give men power and liberty to dispose of their own, was turned to deceive many of their just and reasonable rights; as namely, a man that had cause to sue for his land, knew not against whom to bring his action, nor who was owner of it. The wife was defrauded of her thirds; the husband of being tenant by courtesy; the lord of his wardship, relief, heriot, and escheat; the creditor of his extent for debt; the poor tenant of his lease; for these rights and duties were given by law from him that was owner of the land, and none other; which was now the feoffee of trust; and so the old owner, which we call the feoffor, should take the profits, and leave the power to dispose of the land at his discretion to the feoffee; and yet he was not such a tenant as to be seised of the land, so as his wife could have dower, or the lands be extended for his debts, or that he could forfeit it for felony or treason, or that his heir could be in ward for it, or any duty of tenure fall to the lord by his death, or that he could make any leases of it.

The frauds of conveyances to use, by degrees of time, as they increased, were remedied by the statutes.

WHICH frauds by degrees of time as they encreased, were remedied by divers statutes; as namely, by a statute of 1 H. VI. and 4 H. VIII. it was appointed that the action may be tried against him which taketh the profits, which was then *cestuy que use* by a statute made 1 R. III. Leases and estates made by *cestuy que use* are made good, and estates by him acknowledged. 4 H. VII. the heir of *cestuy que use* is to be in ward; 16 H. VIII. the lord is to have relief upon the death of any *cestuy que use*.

27 H. 8. taking away all uses, reduceth the law to the ancient form of conveyances of land, by feoffment, fine, and recovery.

WHICH frauds nevertheless multiplying daily, in the end 27 H. VIII. the parliament purposing to take away all those uses, and reducing the law to the ancient form of conveying of lands by publick livery of seisin, fine, and recovery, did ordain, that where lands were put in trust or use, there the possession and estate should be presently carried out of the friends in trust, and settled and invested on him that had the uses, for such term and time as he had the use.

In what manner the stat. of 32 H. 8. giveth power to dispose of lands by will.

By this statute of 27 H. VIII. the power of disposing land by will, is clearly taken away amongst those frauds; whereupon 32 H. VIII. another statute was made, to give men power to give lands by will in this sort. First, it must be by will in writing. Secondly, he must be seised of an estate in fee-simple; for tenant for another man's life, or tenant in tail, cannot give land by will; by that statute 32 H. VIII. he must be solely seised, and not jointly with another; and then being thus seised, for all the land he holdeth in

socage

foeage tenure, he may give it by will, except he hold any piece of land *in capite* by knight's-service of the King; and then laying all together, he can give but two parts by will: for the third part of the whole, as well in foeage as *in capite*, must descend to the heir, to answer wardship, livery, and primer seisin to the crown.

AND so if he hold lands by knight's-service of a subject, he can devise of the land but two parts, and the third the lord by wardship, and the heir by descent is to hold.

AND if a man that hath three acres of land holden *in capite* by knight's-service, do make a jointure to his wife of one, and convey another to any of his children, or to friends, to take the profits, and to pay his debts, or legacies, or daughters portions, then the third acre or any part thereof he cannot give by will, but must suffer it to descend to the heir, and that must satisfy wardship.

YET a man having three acres as before, may convey all to his wife, or children by conveyance in his life-time, as by feoffment, fine, recovery, bargain and sale, or covenant to stand seised to uses, and disinherit the heir. But if the heir be within age when his father dieth, the King or other lord shall have that heir in ward, and shall have one of the three acres during the wardship, and to sue livery and seisin. But at full age the heir shall have no part of it, but it shall go according to the conveyance made by the father.

IT hath been debated how the thirds shall be set forth: For it is the use, that all lands which the father leaveth to descend to the heir, being fee-simple, or in tail, must be part of the thirds; and if it be a full third, then the king, nor heir, nor lord, can intermeddle with the rest; if it be not a full third, yet they must take it so much as it is, and have a supply out of the rest.

THIS supply is to be taken thus; if it be the King's ward, then by a commission out of the court of wards, whereupon a jury by oath must set forth so much as shall make up the thirds, except the officers of the court of wards can otherwise agree with the parties. If there be no wardship due to the King, then the other lord is to have this supply by a commission out of the chancery, and jury thereupon.

BUT in all those cases, the statutes do give power to him that maketh the will, to set forth and appoint of himself which lands shall go for thirds, and neither King nor lord can refuse it. And if it be not enough, yet they must take that in part, and only have a supply in manner as before is mentioned out of the rest.

Property in goods.

Of the several ways whereby a man may get property in goods or chattels.

1. By gift.
2. By sale.
3. By stealing.
4. By waving.
5. By straying.
6. By shipwreck.
7. By forfeiture.
8. By executorship.
9. By administration.
10. By legacy.

1. *Property*

If a man be seised of *capite* lands and foeage, he cannot devise but two parts of the whole.

The third part must descend to the heir to answer wardship, livery and seisin to the crown.

A conveyance by devise of *capite* lands to the wife for her jointure, &c. void for a third part, by 32 H. VIII.

But a conveyance by act executed in the life-time of the party of such lands to such uses is not void; but if the heir be within age, he shall have one third to be in ward.

Entailed lands part of the thirds.

The King nor lord cannot intermeddle if a full third part be left to descend to the heir.

The manner of making supply, when the part of the heir is not a full third.

The statutes give power to the testator to set out the third himself, &c.

1. *Property by gift.*

A deed of gift of goods to deceive his creditors is void against them, but good against the executors, administrators, or vendee of the party himself.

BY gift, the property of goods may be passed by word or writing; but if there be a general deed of gift made of all his goods, this is suspicious to be done upon fraud, to deceive the creditors.

AND if a man who is in debt make a deed of gift of all his goods to protect the taking of them in execution for his debt, this deed of gift is void, as against those to whom he stood indebted; but as against himself, his own executors or administrators, or any man to whom afterwards he shall sell or convey them, it is good.

2. *By sale.*

What is a sale *bona fide* and what not, when there is a private reservation of trust between the parties.

PROPERTY in goods by sale. By sale, any man may convey his own goods to another; and although he may fear execution for debts, yet he may sell them out-right for money at any time before the execution served; so that there be no reservation of trust between them, that repaying the money, he shall have the goods again; for that trust in such case, doth prove plainly a fraud, to prevent the creditors from taking the goods in execution.

3. *By theft or taking in jest.*

How a sale in market shall be a bar to the owner.

PROPERTY of goods by theft, or taking in jest. If any man steal my goods or chattels, or take them from me in jest, or borrow them of me, or as a trespasser or felon carry them to the market or fair, and sell them, this sale doth bar me of the property of my goods, saving, that if he be a horse he must be ridden two hours in the market or fair, between ten and five a clock, and tolled for in the toll-book, and the seller must bring one to avouch his sale, known to the toll-book-keeper, or else the sale bindeth me not. And for any other goods, where the sale in a market or fair shall bar the owner, being not the seller of his property, it must be sale in a market or fair, where usually things of that nature are sold. As for example; if a man steal a horse, and sell him in *Smithfield*, the true owner is barred by this sale; but if he sell the horse in *Cheapside*, *Newgate* or *Westminster* market, the true owner is not barred by this sale; because these markets are usual for flesh, fish, &c. and not for horses.

Of markets; and what markets such a sale ought to be made in.

So whereas by the custom of *London* in every shop there is a market all the days of the week, saving *Sundays* and *Holidays*; yet if a piece of plate or jewel that is lost, or chain of gold or pearl that is stolen or borrowed, be sold in a draper's or scrivener's shop, or any other but a goldsmith's, this sale barreth not the true owner, & *sic in similibus*.

The owner may seize his goods after they are stolen.

YET by stealing alone of goods, the thief getteth not such property, but that the owner may seize them again wheresoever he findeth them, except they were sold in fair or market, after they were stolen; and that *bona fide* without fraud.

If the thief be condemned for felony, or outlawed, or forfeit the stolen goods to the crown, the owner is without remedy.

BUT if the thief be condemned of the felony, or out-lawed for the same, or out-lawed in any personal action, or have committed a forfeiture of goods to the crown, then the true owner is without remedy.

NEVERTHELESS, if fresh after the goods were stolen, the true owner maketh pursuit after the thief and goods, and taketh the goods with the thief, he may take them again: and if he make no fresh pursuit, yet if he prosecute

prosecute the felon, so far as justice requireth, that is, to have him arraigned, indicted, and found guilty (though he be not hanged, nor have judgment of death) or have him out-lawed upon the indictment; in all these cases he shall have his goods again, by a writ of restitution to the party in whose hands they are.

When the owner may take his goods from the thief. If he convict the thief of the same felony, he shall have his goods again by a writ of restitution.

4. *By waving of goods.*

BY waving of goods, a property is gotten thus. A thief having stolen goods, being pursued, flieth away and leaveth the goods. This leaving is called waving, and the property is in the King; except the lord of the manor have right to it, by custom or charter.

BUT if the felon be indicted, adjudged, or found guilty, or outlawed, at the suit of the owner of these goods, he shall have restitution of these goods, as before.

5. *By straying.*

BY straying, property in live cattel is thus gotten. When they come into other mens grounds straying from the owners, then the party or lord into whose grounds or manors they come, causeth them to be seised, and a wythe put about their necks, and to be cried in three markets adjoining, shewing the marks of the cattel; which done, if the true owner claimeth them not within a year and a day, then the property of them is in the lord of the manor whereunto they did stray, if he have all strays by custom or charter, else to the King.

6. *Wreck, and when it shall be said to be.*

BY shipwreck, property of goods is thus gotten. When a ship laden is cast away upon the coasts, so that no living creature that was in it when it began to sink escaped to land with life, then all those goods are said to be wrecked, and they belong to the crown if they be found; except the lord of the soil adjoining can entitle himself unto them by custom, or by the King's charter.

7. *Forfeitures.*

BY forfeitures, goods and chattels are thus gotten. If the owner be out-lawed, if he be indicted of felony, or treason, or either confess it, or be found guilty of it, or refuse to be tried by peers or jury, or be attainted by judgment, or fly for felony (although he be not guilty,) or suffer the exigent to go forth against him (although he be not outlawed,) or that he go over the seas without licence, all the goods he had at the judgment, he forfeiteth to the crown; except some lord by charter can claim them. For in those cases prescription will not serve, except it be so ancient, that it hath had allowance before the justices in eyre in their circuits, or in the King's bench in ancient time.

8. *By executorship.*

BY executorship goods are gotten. When a man possessed of goods maketh his last will and testament in writing or by word, and maketh

one or more executors thereof; these executors have by the will and death of the parties, all the property of their goods, chattels, leases for years, wardships and extents, and all right concerning those things.

Executors may before probat dispose of the goods, but not bring an action for any debt. What probat of the will is, and in what manner it is made.

THOSE executors may meddle with the goods, and dispose them before they prove the will, but they cannot bring an action for any debt or duty before they have proved the will.

THE proving of the will is thus. They are to exhibit the will into the Bishop's court, and there they are to bring the witnesses, and there they are to be sworn, and the Bishop's officers are to keep the will original, and certify the copy thereof in parchment under the Bishop's seal of office; which parchment so sealed, is called the will proved.

9. By letters of administration.

Pii usus.

† Where the intestate had *bona notabilia* in diverse dioceses, then the archbishop of that province where he died is to commit the administration.

Executor may refuse before the bishop, if he have not intermeddled with the goods.

Executor ought to pay, 1. Judgments.

2. Stat. recogn.

3. Debts by bonds and bills sealed.

4. Rent unpaid. 5. Servants wages.

6. Head-workmen.

7. Shop-book and contracts by word.

Debts due in equal degree of record, the executor may pay which of them he please before suit commenced.

BY letters of administration property in goods is thus gotten. When a man possessed of goods dieth without any will, there such goods as the executors should have had, if he had made a will, were by ancient law to come to the bishop of the diocese, to dispose for the good of his soul that died, he first paying his funerals and debts, and giving the rest *ad pios usus*.

THIS is now altered by statute laws, so as the bishops are to grant letters of administration of the goods at this day to the wife if she requireth it, or children, or next of kin; if they refuse it, as often they do, because the debts are greater than the estate will bear, then some creditor or some other will take it as the bishop's officers shall think meet. It groweth often in question what bishop shall have the right of proving wills, and granting administration of goods.

IN † which controversy the rule is thus, that if the party dead had at the time of his death *bona notabilia* in diverse dioceses of some reasonable value, then the archbishop of the province where he died is to have the probat of his will, or to grant the administration of his goods as the case falleth out; otherwise the bishop of the diocese where he died is to do it.

IF there be but one executor made, yet he may refuse the executorship, coming before the bishop, so that he hath not intermeddled with any of the goods before, or with receiving debts, or paying legacies.

AND if there be more executors than one, so many as list may refuse; and if any one take it upon him, the rest that did once refuse may, when they will, take it upon them; and no executor shall be farther charged with debts or legacies, than the value of the goods come to his hands; so that he foresee that he pay debts upon record, first debts to the King, then upon judgments, statutes, recognizances, then debts by bond and bill sealed, rent unpaid, servants wages, payment to head workmen, and lastly, shop-books, and contracts by word. For if an executor, or administrator pay debts to others before debts to the King, or debts due by bond before those due by record, or debts by shop-books and contracts before those by bond, arrearages of rent, and servants or workmens wages, he shall pay the same over again to those others in the said degrees.

BUT yet the law giveth them choice, that where diverse have debts due in equal degree of record or specialty, he may pay which of them he will, before any suit brought against him; but if suit be brought he must first pay them that get judgment against him.

ANY

ANY one executor may convey the goods, or release debts without his companion, and any one by himself may do as much as all together; but one man's releasing of debts or selling of goods, shall not charge the other to pay so much of the goods, if there be not enough to pay debts; but it shall charge the party himself that did so release or convey.

BUT it is not so with administrators, for they have but one authority given them by the bishop over the goods, which authority being given to many is to be executed by all of them joined together.

AND if an executor die making an executor, the second executor is executor to the first testator.

BUT if an administrator die intestate, then his administrator shall not be executor or administrator to the first; but in that case the bishop, whom we call the ordinary, is to commit the administration of the first testator's goods to his wife, or next of kin, as if he had died intestate; always provided, that that which the executor did in his life-time, is to be allowed for good. And so if an administrator die and make his executor, the executor of the administrator shall not be executor to the first intestate; but the ordinary must new commit the administration of the goods of the first intestate again.

IF the executor or administrator pay debts, or funerals, or legacies of his own money, he may retain so much of the goods in kind, of the testator or intestate, and shall have property of it in kind.

10. Property by legacy.

PROPERTY by legacy, is where a man maketh a will and executors, and giveth legacies, he or they to whom the legacies are given must have the assent of the executors or one of them to have his legacy, and the property of that legacy or other goods bequeathed unto him, is said to be in him; but he may not enter nor take his legacy without the assent of the executors, or one of them; because the executors are charged to pay debts before legacies. And if one of them assent to pay legacies, he shall pay the value thereof of his own purse, if there be not otherwise sufficient to pay debts.

BUT this is to be understood by debts of record to the King, or by bill and bond sealed, or arrearages of rent, or servants or workmens wages; and not debts of shop-books, or bills unsealed, or contract by word; for before them legacies are to be paid.

AND if the executors doubt that they shall not have enough to pay every legacy, they may pay which they list first; but they may not sell any special legacy which they will to pay debts, or a lease of goods to pay a money legacy. But they may sell any legacy which they will to pay debts, if they have not enough besides.

IF a man make a will and make no executors, or if the executors refuse, the ordinary is to commit administration, *cum testamento annexo*, and take bonds of the administrators to perform the will, and he is to do it in such sort, as the executor should have done, if he had been named.

Ex Autogr. W. Sancroft Archiep. Cantuar.

June 3. 1629. Sam. Maunsell utter-barrister of the Middle-Temple having perus'd this book, attested it to be very useful to all young students of the law, and worthy to be imprinted: and then

Lambethae Junii 4^o 1629. *Ut in aliena arte alieno nixus judicio libelli hujus imprimendi potestatem facio.*

JOHANNES JEFFERAY.

A PRE-
mitted *cum*
testamento
annexo.

PREPARATION

Toward the

UNION of the LAWS of *England* and *Scotland*.*

YOUR Majesty's desire of proceeding towards the union of this whole island of *Great Britain* under one law, is (as far as I am capable to make any opinion of so great a cause) very agreeable to policy and justice. To policy, because it is one of the best assurances (as human events can be assured) that there will be never any relapse in any future ages to a separation. To justice, because *dulcis tractus pari jugo*: it is reasonable that communication of privilege draw on communication of discipline and rule. This work being of greatness and difficulty, needeth not to embrace any greater compass of designment, than is necessary to your Majesty's main end and intention. I consider therefore, that it is a true and received division of law into *jus publicum* and *privatum*, the one being the sinews of property, and the other of government; for that which concerneth private interest of *meum* and *tuum*, in my simple opinion, it is not at this time to be meddled with; men love to hold their own as they have held, and the difference of this law carrieth no mark of separation; for we see in any one kingdom, which is most at unity in itself, there is diversity of customs for the guiding of property and private rights, *in veste varietas sit, scissura non sit*. All the labour is to be spent in the other part, though perhaps not in all the other part; for it may be, your Majesty in your high wisdom will discern that even in that part, there will not be requisite a conformity in all points. And although such conformity were to be wished, yet perchance it will be scarcely possible in many points to pass them for the present by assent of parliament. But because we that serve your Majesty in the service of our skill and profession, cannot judge what your Majesty, upon reason of state, will leave and take; therefore it is fit for us to give as near as we can a general information: wherein I for my part, think good to hold my self to one of the parallels, I mean that of the *English* laws. For although I have read, and read with delight, the *Scotish* statutes, and some other collection of their laws; with delight I say, partly to see their brevity, and propriety of speech, and partly to see them come so near to our laws: yet I am unwilling to put my fickle in another's harvest, but to leave it to the lawyers of the *Scotish* nation; the rather, because I imagine with my self, that if a *Scotish* lawyer should undertake by reading of the *English* statutes, or other our books of law, to set down positively in articles, what the law of *England* were, he might oftentimes err, and the like errors I make ac-

* This was printed in the last folio edition under the title of *Cases of Treason, &c* the preface and several corrections are here added from *Stephens's* edition in 1736.

count I might incur in theirs. And therefore, as I take it, the right way is, that the lawyers of either nation, do set down in brief articles what the law is of their nation, and then after, a book of two columns, either having the two laws placed respectively, to be offered to your Majesty, that your Majesty may by a ready view see the diversities, and so judge of the reduction, or leaving it as it is.

Jus publicum I will divide, as I hold it fittest for the present purpose, into four parts. The first, concerning criminal causes, which with us are truly accounted *publici juris*, because both the prejudice and the prosecution, principally pertain to the crown and publick estate. The second, concerning the causes of the church. The third, concerning magistrates, offices, and courts, wherein falleth the consideration of your Majesty's regal prerogative, whereof the rest are but streams. And the fourth, concerning certain special politick laws, usages and constitutions, that do import the publick peace, strength and wealth of the kingdom. In which part I do comprehend not only constant ordinances of law, but likewise forms of administration of law, such as are the commissions of the peace, the visitations of the provinces by the judges of the circuits, and the like. For these in my opinion, for the purpose now in hand, deserve a special observation, because they being matters of that temporary nature, as they may be altered, as I suppose, in either kingdom without parliament, as to your Majesty's wisdom may seem best, it may be the most profitable and ready part of this labour will consist in the introducing of some uniformity in them.

To begin therefore with capital crimes, and first that of TREASON.

CASES of TREASON.

WHERE a man doth compass or imagine the death of the King, if it appear by any overt act, it is treason.

WHERE a man doth compass or imagine the death of the King's wife, if it appear by any overt act, it is treason.

WHERE a man doth compass or imagine the death of the King's eldest son and heir, if it appear by any overt act, it is treason.

WHERE a man doth violate the King's wife, it is treason.

WHERE a man doth violate the King's eldest daughter unmarried, it is treason.

WHERE a man doth violate the wife of the King's eldest son and heir, it is treason.

WHERE a man doth levy war against the King in his realm, it is treason.

WHERE a man is adherent to the King's enemies, giving them aid and comfort, it is treason.

WHERE a man counterfeiteth the King's great seal, it is treason.

WHERE a man counterfeiteth the King's privy seal, it is treason.

WHERE a man counterfeiteth the King's privy signet, it is treason.

WHERE a man doth counterfeit the King's sign manual, it is treason.

WHERE a man counterfeits the King's money, it is treason.

WHERE a man bringeth into the realm false money, counterfeited to the likeness of the coin of *England*, with intent to merchandise or make payment therewith, and knowing it to be false, it is treason.

WHERE a man counterfeiteth any foreign coin current in payment within this realm, it is treason.

WHERE a man doth bring in foreign money, being current within the realm, the same being false and counterfeit, with intent to utter it, and knowing the same to be false, it is treason.

WHERE a man doth clip, wash, round, or file any of the King's money, or any foreign coin current by proclamation, for gain's sake, it is treason.

WHERE a man doth any ways impair, diminish, falsify, scale, or lighten the King's money, or any foreign moneys, current by proclamation, it is treason.

WHERE a man killeth the Chancellor, being in his place, and doing his office, it is treason.

WHERE a man killeth the Treasurer, being in his place, and doing his office, it is treason.

WHERE a man killeth the King's Justice in eyre, being in his place, and doing his office, it is treason.

WHERE a man killeth the King's Justice of assise, being in his place, and doing his office, it is treason.

WHERE a man killeth the King's Justice of Oyer and Terminer, being in his place, and doing his office, it is treason.

WHERE a man doth persuade or withdraw any of the King's subjects from his obedience, or from the religion by his Majesty established, with intent to withdraw him from the King's obedience, it is treason.

WHERE a man is absolved, reconciled, or withdrawn from his obedience to the King, or promiseth his obedience to any foreign power, it is treason.

WHERE any jesuit, or other priest ordained since the first year of the reign of Queen *Elizabeth*, shall come into, or remain in any part of this realm, it is treason.

WHERE any person being brought up in a college of jesuits, or seminary, shall not return within six months after proclamation made, and within two days after his return, submit himself to take the oath of supremacy, if otherwise he do return, or be within the realm, it is treason.

WHERE a man doth affirm or maintain any authority of jurisdiction spiritual, or doth put in ure or execute any thing for the advancement or setting forth thereof, such offence the third time committed, is treason.

WHERE a man refuseth to take the oath of supremacy, being tendred by the bishop of the diocese, if he be an ecclesiastical person; or by commission out of the chancery, if he be a temporal person; such offence, the second time, is treason.

WHERE a man committed for treason, doth voluntarily break prison, it is treason.

WHERE a jailor doth voluntarily permit a man committed for treason to escape, it is treason.

WHERE a man procureth or consenteth to a treason, it is treason.

WHERE a man relieveth or comforteth a traitor, knowing it, it is treason.

The punishment, trial, and proceedings in cases of treason.

IN treason, the corporal punishment is by drawing on a hurdle from the place of the prison to the place of execution, and by hanging and being cut down alive, bowelling and quartering: and in women by burning.

IN treason, there ensueth a corruption of blood in the line ascending and descending.

IN treason, lands and goods are forfeited, and inheritances, as well entailed as fee simple, and the profits of estates for life.

IN treason, the escheats go to the King, and not to the lord of the fee.

IN treason, the lands forfeited shall be in the King's actual possession without office.

IN treason there be no accessaries, but all are principals.

IN treason, no benefit of clergy, or sanctuary, or peremptory challenge.

IN treason, if the party stand mute, yet nevertheless judgment and attainder shall proceed all one as upon verdict.

IN treason, bail is not permitted.

IN treason, no counsel is to be allowed to the party.

IN treason, no witness shall be received upon oath for the party's justification.

IN treason, if the fact be committed beyond the seas, yet it may be tried in any county where the King will award his commission.

IN treason, if the party be *non sanæ memoriae*, yet if he had formerly confessed it before the King's council, and that it be certified that he was of good memory at the time of his examination and confession, the court may proceed to judgment without calling or arraignment the party.

IN treason, the death of the party before conviction dischargeth all proceedings and forfeitures.

IN treason, if the party be once acquit, he shall not be brought in question again for the same fact.

IN treason, no new case not expressed in the statute of 25 *Ed.* 3. nor made treason by any special statute since, ought to be judged treason, without consulting with the parliament.

IN treason, there can be no prosecution but at the King's suit, and the King's pardon dischargeth.

IN treason, the King cannot grant over to any subject power and authority to pardon it.

IN treason, a trial of a peer of the kingdom is to be by special commission before the Lord High Steward, and those that pass upon him to be none but peers: and the proceeding is with great solemnity, the Lord Steward sitting under a cloth of estate with a white rod of justice in his hand, and the peers may confer together, but are not any ways shut up; and are demanded by the Lord Steward their voices one by one, and the plurality of voices carrieth it.

IN treason, it hath been an ancient use and favour from the Kings of this realm to pardon the execution of hanging, drawing, and quartering; and to make warrant for their beheading.

THE proceeding in case of treason with a common subject is in the King's-bench, or by commission of *Oyer and Terminer*.

MISPRISION OF TREASON.

Cases of misprision of treason.

WHERE a man concealeth high treason only, without any comforting or abetting, it is misprision of treason.

WHERE a man counterfeiteth any foreign coin of gold or silver not current in the realm, it is misprision of treason.

The

The punishment, trial, and proceeding in cases of misprision of treason.

THE punishment of misprision of treason is by perpetual imprisonment, loss of the issues of their lands during life, and loss of goods and chattels.

THE proceeding and trial is, as in cases of treason.

IN misprision of treason bail is not admitted.

P E T I T T R E A S O N.

Cases of petit treason.

WHERE the servant killeth the master, it is petit treason.

WHERE the wife killeth her husband, it is petit treason.

WHERE a spiritual man killeth his prelate, to whom he is subordinate, and oweth faith and obedience, it is petit treason.

WHERE the son killeth the father or mother, it hath been questioned whether it be petit treason, and the late experience and opinion seemeth to weigh to the contrary, though against law and reason in my judgment.

The punishment, trial, and proceeding in cases of petit Treason.

IN petit treason, the corporal punishment is by drawing on an hurdle, and hanging, and in a woman burning.

IN petit treason, the forfeiture is the same with the case of felony.

IN petit treason, all accessaries are but in case of felony.

F E L O N Y.

Cases of Felony.

WHERE a man committeth murder, that is, homicide of premeditated malice, it is felony.

WHERE a man committeth manslaughter, that is, homicide of sudden heat, and not of malice premeditated, it is felony.

WHERE a man committeth burglary, that is, breaking of an house with an intent to commit felony, it is felony.

WHERE a man rideth armed, with a felonious intent, it is felony.

WHERE a man doth maliciously and feloniously burn a house, it is felony.

WHERE a man doth maliciously and feloniously burn corn upon the ground, or in stacks, it is felony.

WHERE a man doth maliciously cut out another's tongue, or put out his eyes, it is felony.

WHERE a man robbeth or stealeth, that is, taketh away another man's goods, above the value of twelve pence, out of his possession, with an intent to conceal it, it is felony.

WHERE a man imbezleth or withdraweth any the King's records at *Westminster*, whereby any judgment is reversed, it is felony.

WHERE a man that hath custody of the King's armour, munition, or other habiliments of war, doth maliciously convey away the same, to the value of twenty shillings, it is felony.

WHERE a servant hath goods of his master's delivered unto him, and goeth away with them, it is felony.

WHERE a man conjures, or invokes wicked spirits, it is felony.

WHERE a man doth use or practise any manner of witchcraft, whereby any person shall be killed, wasted, or lamed in his body, it is felony.

WHERE a man practiseth any witchcraft, to discover treasure hid, or to discover stolen goods, or to provoke unlawful love, or to impair or hurt any man's cattle or goods, the second time, having been once before convicted of like offence, it is felony.

WHERE a man useth the craft of multiplication of gold or silver, it is felony.

WHERE a man committeth rape, it is felony.

WHERE a man taketh away a woman against her will, not claiming her as his ward or bondwoman, it is felony.

WHERE any person marrieth again, her or his former husband or wife being alive, it is felony.

WHERE a man committeth buggery with man or beast, it is felony.

WHERE any persons, above the number of twelve, shall assemble themselves with intent to put down inclosures, or bring down prices of victuals, &c. and do not depart after proclamation, it is felony.

WHERE a man shall use any words to encourage or draw any people together, *ut supra*, and they do assemble accordingly, and do not depart after proclamation, it is felony.

WHERE a man being the King's sworn servant, conspireth to murder any lord of the realm, or any of the privy council, it is felony.

WHERE a foldier hath taken any parcel of the King's wages, and departeth without licence, it is felony.

WHERE a man receiveth a feminary priest, knowing him to be such a priest, it is felony.

WHERE a recusant, which is a seducer, and persuader, and inciter of the King's subjects against the King's authority in ecclesiastical causes, or a persuader of conventicles, &c. shall refuse to abjure the realm, it is felony.

WHERE vagabonds be found in the realm, calling themselves *Egyptians*, it is felony.

WHERE a purveyor taketh without warrant, or otherwise doth offend against certain special laws, it is felony.

WHERE a man hunteth in any forest, park, or warren, by night or by day, with vizards or other disguisements, and is examined thereof and conceal-eth his fact, it is felony.

WHERE a man stealeth certain kinds of hawks, it is felony.

WHERE a man committeth forgery the second time, having been once before convicted, it is felony.

WHERE a man transporteth rams or other sheep out of the King's dominions, the second time, it is felony.

WHERE a man being imprisoned for felony, breaks prison, it is felony.

WHERE a man procureth or consenteth to a felony to be committed, it is felony, as to make him accessory before the fact.

WHERE a man receiveth or relieveth a felon, knowing thereof, it is felony, as to make him accessory after the fact.

WHERE a woman, by the constraint of her husband, in his presence, joineth with him in committing of felony, it is not felony, neither as principal, nor as accessory.

The punishment, trial, and proceeding in cases of felony.

IN felony, the corporal punishment is by hanging, and it is doubtful whether the King may turn it into beheading in the case of a Peer, or other person of dignity, because in treason the striking off the head is part of the judgment, and so the King pardoneth the rest : but in felony, it is no part of the judgment, and the King cannot alter the execution of law ; yet precedents have been both ways.

IN felony, there followeth corruption of blood, except it be in cases made felony by special statutes, with a proviso that there shall be no corruption of blood.

IN felony, lands in fee simple, and goods are forfeited, but not lands intailed, and the profits of estates for life are likewise forfeited : And by some customs lands in fee simple are not forfeited ;

The father to the bough, son to the plough ;
as in *Gavelkind* in *Kent*, and other places.

IN felony, the escheats go to the Lord of the fee, and not to the King, except he be Lord : But the profits of estates for lives, or in tail during the life of tenant in tail, go to the King ; and the King hath likewise in fee simple lands holden of common Lords, *annum, diem, & vastum*.

IN felony, the lands are not in the King before office, nor in the Lord before entry or recovery in writ of escheat, or death of the party attainted.

IN felony, there can be no proceeding with the accessory before there be a proceeding with the principal ; which principal if he die, or plead his pardon, or have his clergy before attainder, the accessories can never be dealt with.

IN felony, if the party stand mute, and will not put himself upon his trial, or challenge peremptorily above the number that the law allows, he shall have judgment not of hanging, but of penance of pressing to death ; but then he saves his lands and forfeits only his goods.

IN felony, at the common law, the benefit of clergy or sanctuary was allowed ; but now by statutes it is taken away in most cases.

IN felony, bail may be admitted where the fact is not notorious, and the person not of evil fame.

IN felony, no counsel is to be allowed to the party, no more than in treason.

IN felony, no witness shall be received upon oath for the party's justification, no more than in treason.

IN felony, if the fact be committed beyond the seas, or upon the seas, *super altum mare*, there is no trial at all in the one case, nor by course of jury in the other case, but by the jurisdiction of the Admiralty.

IN felony, if the party be *non sanæ memoriae*, although it be after the fact, he cannot be tried nor adjudged, except it be in course of outlawry, and that is also erroneous.

IN felony, the death of the party before conviction dischargeth all proceedings and forfeitures.

IN felony, if the party be once acquit, or in peril of judgment of life lawfully, he shall never be brought in question again for the same fact.

IN felony, the prosecution may be either at the King's suit, by way of indictment, or at the party's suit, by way of appeal; and if it be by way of appeal, the defendant shall have his counsel and produce witnesses upon oath, as in civil causes.

IN felony, the King may grant *bault justice* to a subject, with the regality of power to pardon it.

IN felony, the trial of Peers is all one as in case of treason.

IN felony, the proceedings are in the King's Bench, or before Commissioners of *Oyer and Terminer*, or of goal delivery, and in some cases before justices of peace.

Cases of feloniam de se, with the punishment, trial and proceeding therein.

IN the civil law, and other laws, they make a difference of cases of *felonia de se*; for where a man is called in question upon any capital crime, and killeth himself to prevent the law, they give the same judgment in all points of forfeiture, as if they had been attainted in their life-time: And on the other side, where a man killeth himself upon impatience of sickness, or the like, they do not punish it at all: But the law of *England* taketh it all in one degree, and punisheth it only with loss of goods to be forfeited to the King, who generally granteth them to his Almoner, where they be not formerly granted unto special liberties.

OFFENCES of PRAEMUNIRE.

Cases of Praemunire.

WHERE a man purchaseth or accepteth any provision, that is, collation of any spiritual benefice or living, from the see of *Rome*, it is case of praemunire.

WHERE a man shall purchase any process to draw any people of the King's allegiance out of the realm, in plea, whereof the cognizance pertains to the King's court, and cometh not in person to answer his contempt in that behalf before the King and his council, or in his chancery, it is case of praemunire.

WHERE a man doth sue in any court which is not the King's court, to defeat or impeach any judgment given in the King's court, and doth not appear to answer his contempt, it is case of praemunire.

WHERE a man doth purchase or pursue in the court of *Rome*, or elsewhere, any process, sentence of excommunication, bull, instrument, or other thing which toucheth the King in his regality, or his realm in prejudice, it is case of praemunire.

WHERE a man doth affirm or maintain any foreign authority of jurisdiction spiritual, or doth put in ure or execute any thing for the advancement or setting forth thereof; such offence, the second time committed, is case of praemunire.

WHERE a man refuseth to take the oath of supremacy being tendered by the bishop of the diocese, if he be an ecclesiastical person; or by commission out of the chancery, if he be a temporal person, it is case of praemunire.

WHERE the dean and chapter of any church upon the *Conge d'eslire* of an archbishop or bishop doth refuse to elect any such archbishop or bishop as is nominated unto them in the King's letters missive, it is case of praemunire.

WHERE

WHERE a man doth contribute or give relief unto any jesuit or seminary priests, or to any college of jesuits or seminary priests, or to any person brought up therein, and called home, and not returning, it is case of praemunire.

WHERE a man is broker of an usurious contract above ten in the hundred, it is case of praemunire.

The punishment, trial, and proceedings in cases of praemunire.

THE punishment is by imprisonment during life, forfeiture of goods, forfeiture of lands in fee simple, and forfeiture of the profits of lands intailed, or for life.

THE trial and proceeding is as in cases of misprision of treason, and the trial is by peers, where a peer of the realm is the offender.

OFFENCES of ABJURATION and EXILE.

Cases of abjuration and exile, and the proceedings therein.

WHERE a man committeth any felony, for the which at this day he may have privilege of sanctuary, and taketh sanctuary, and confesseth the felony before the coroner, he shall abjure the liberty of the realm, and chuse his sanctuary; and if he commit any new offence, or leave his sanctuary, he shall lose the privilege thereof, and suffer as if he had not taken sanctuary.

WHERE a man not coming to the church, and being a popish recusant, doth persuade any the King's subjects to impugn his Majesty's authority in causes ecclesiastical, or shall persuade any subject from coming to church, or receiving the communion, or persuade any subject to come to any unlawful conventicles, or shall be present at any such unlawful conventicles, and shall not after conform himself within a time, and make his submission, he shall abjure the realm, and forfeit his goods and lands during life; and if he depart not within the time prefixed, or return, he shall be in the degree of a felon.

WHERE a man being a popish recusant, and not having lands to the value of twenty marks *per annum*, nor goods to the value of 40 *l.* shall not repair to his dwelling, or place where he was born, and there confine himself within the compass of five miles, he shall abjure the realm; and if he return, he shall be in the degree of a felon.

WHERE a man kills the King's deer in chases or forests, and can find no sureties after a year's imprisonment, he shall abjure the realm.

WHERE a man is a trespasser in parks, or in ponds of fish, and after three years imprisonment cannot find sureties, he shall abjure the realm.

WHERE a man is a ravisher of any child within age, whose marriage belongs to any person, and marrieth the said child after years of consent, and is not able to satisfy for the marriage, he shall abjure the realm.

OFFENCE of HERESY.

Cases of Heresy, and the trial and proceeding therein.

THE declaration of Heresy, and likewise the proceeding and judgment upon hereticks, is by the common laws of this realm referred to the jurisdiction ecclesiastical, and the secular arm is reached unto them by the common

mon laws, and not by any statute, for the execution of them by the King's writ *de Haeretico comburendo*.

Of the KING's Prerogative.*

The King's prerogative in parliament.

THE King hath an absolute negative voice to all bills that pass the parliament, so as without his royal assent they have a mere nullity, and not so much as *auctoritas praescripta* or *senatus consulta* had, notwithstanding the intercession of tribunes.

THE King may summon parliaments, dissolve them, prorogue them, and adjourn them at his pleasure.

THE King may add voices in the parliament at his pleasure, for he may give privilege to borough towns as many as he will, and may likewise call and create barons at his pleasure.

No man can sit in parliament except he take the oath of allegiance.

The King's prerogative in matters of war and peace.

THE King hath power to declare and proclaim war, and to make and conclude peace and truce at his pleasure.

THE King hath power to make leagues and confederacies with foreign states, more strait and less strait, and to revoke and disannul them at his pleasure.

THE King hath power to command the bodies of his subjects for the service of his wars, and to muster, train and levy men, and to transport them by sea or land at his pleasure.

THE King hath power in time of war to execute martial law, and to appoint all officers of war at his pleasure.

THE King hath power to grant his letters of mart and reprisal for remedy to his subjects upon foreign wrongs at his pleasure.

THE King hath power to declare laws by his letters patents for the government of any place conquered by his arms at his pleasure.

THE King may give knighthood, and thereby enable any subject to perform knight's-service at his pleasure.

The King's prerogative in matters of monies.

THE King may alter his standard in baseness or fineness of his coin at his pleasure.

THE King may alter his stamp in the form at his pleasure.

THE King may alter the valuations of his coin, and raise and fall monies at his pleasure.

THE King by his proclamation may make monies of his own current, or not current, at his pleasure.

THE King may take or refuse the subjects bullion, and coin more or less money.

THE King by his proclamation may make foreign money current, or not current.

* This in the former Folio Edition was printed as part of the *Cases of Treason, &c.*

OFFICE OF CONSTABLES.

The King's prerogative in matters of trade and traffick.

THE King may constrain the person of any of his subjects not to go out of the realm at all.

THE King may restrain any of his subjects to go out of the realm into any special part foreign.

THE King may forbid the exportation of any commodities out of the realm.

THE King may forbid the importation of any commodities into the realm.

THE King may set a reasonable impost upon any foreign wares that come into the realm, and so of native wares that go out of the realm.

The King's prerogative in the persons of his subjects.

THE King may create any corporation or body politick, and enable them to purchase, and grant, and to sue, and be sued; and that with such restrictions and modifications as he pleases.

THE King may denizen and enable any foreigner for him and his descendants after the charter, though he cannot naturalize nor enable him to make pedigree from ancestors paramount.

THE King may enable any attainted person (by his charter of pardon) to purchase, and to purge his blood for the time to come, though he cannot restore his blood for the time past.

THE King may enable any dead persons in the law, as men professed in religion, to take and purchase to the King's benefit.

*A twofold power of the law.**

1. A DIRECTION : In this respect the King is underneath the law, because his acts are guided thereby.

2. CORRECTION : In this respect the King is above the law; for it may not correct him for any offence.

A twofold power in the King.

1. HIS absolute power, whereby he may levy forces against any nation.

2. HIS limited power, which is declared and expressed in the laws what he may do.

The Office of Constables, Original and Use of Courts-Leet, Sheriff's Turn, &c. with the Answer to the Questions propounded by Sir Alexander Hay, Knt. touching the Office of Constables. Anno Domini 1608.

1. Quest. **W**HAT is the original of constables?

Ans. Of the original of the authority of constables, it may be said, *caput inter nubila condit*; for the authority was granted upon the ancient laws and customs of this kingdom practised

* This is not in former Editions, but is here added from a MS. of the Earl of Oxford.

tified long before the conquest, and intended and instituted for the conservation of the peace, and repressing of all manner of disturbance and hurt of the people, and that as well by way of prevention as punishment; but yet so, as they have no judicial power, to hear and determine any cause; but only a ministerial power, as in answer to the seventh article is demonstrated.

As for the office of the high or head constable, the original of that is yet more obscure; for though the high constable's authority hath the more ample circuit, he being over the hundred, and the petty-constable over the village; yet I do not find that the petty-constable is subordinate to the high-constable, or to be ordered or commanded by him; and therefore, I doubt, the high-constable was not *ab origine*; but that when the business of the county increased, the authority of the justices of peace was enlarged by divers statutes, and then, for conveniency sake, the office of high-constables grew into use for the receiving of the commands and precepts from the justices of peace, and distributing them to the petty-constables; and in token of this, the election of high-constables in most parts of the kingdom is by the appointment of the justices of peace, whereas the election of the petty-constable is by the people.

BUT there be two things unto which the office of constable hath special reference and relation, and which of necessity, or at least a kind of congruity, must precede the jurisdiction of that office; I mean either the things themselves, or somewhat that hath a similitude or analogy towards them.

1. THE one is the division of the territory, or grofs of the shires into hundreds, villages, and towns; for the high-constable is officer over the hundred, and the petty-constable is over the town or village.

2. THE other is the court-leet, unto which the constable is attendant and minister; for there the constables are chosen by the jury, there sworn, and there that part of their office which concerneth information is principally to be performed: for the jury being to present offences and offenders, are chiefly to take light from the constables of all matters of disturbance and nuisance of the people, which they (in respect of their office) are presumed to have best and most particular knowledge of.

The jurisdiction of the court-leet is to three ends.

1. THE first to take the ancient oath of allegiance of all males above the age of twelve years.

2. THE second, to enquire of all offences against the peace; and for those that are against the crown and peace both, to enquire of only, and certify to the justices of goal-delivery; but those that are against the peace simply, they are to enquire of and punish.

3. THE third is, to enquire of, punish, and remove all publick nuisances and grievances concerning infection of air, corruption of victuals, ease of chaffer, and contract of all other things that may hurt or grieve the people in general, in their health, quiet, and welfare.

AND to these three ends, as matters of policy subordinate, the court-leet hath power to call upon the pledges that are to be taken for the good behaviour of the resiants that are not tenants, and to enquire of all defaults of officers, as constables, ale-tasters, and the like: and likewise for the choice of constables, as aforesaid.

THE jurisdiction of these leets is either remaining in the King, and in that case exercised by the sheriff in his turn, which is the grand leet, or granted over to subjects; but yet it is still the King's court.

2. Quest.

2. *Quest. Concerning the election of constables?*

Ans. THE election of the petty-constable is, as was said, at the court-leet by the inquest that makes the presentments; and the election of the head-constables is by the justices of the peace at their quarter sessions.

3. *Quest. How long is their office?*

Ans. THE office is annual, except they be removed.

4. *Quest. Of what rank or order of men are they?*

Ans. They be men (as it is now used) of inferior, yea, of base condition, which is a mere abuse or degenerating from the first institution; for the petty-constables in towns ought to be of the better sort of resiants in the same; save that they be not aged or sickly, but of able bodies in respect of the keeping watch and toil of their place; nor must they be in any man's livery. And the high-constables ought to be of the ablest freeholders, and of the substantiallest sort of yeomen, next to the degree of gentlemen; but should not be incumbred with any other office, as mayor of a town, under-sheriff, bailiff, &c.

5. *Quest. What allowance have the constables?*

Ans. THEY have no allowance, but are bound by duty to perform their office *gratis*, which may the rather be endured, because it is but annual; and they are not tied to keep or maintain any servants or under-ministers, for that every one of the King's people within their limits are bound to assist them.

6. *Quest. What if they refuse to do their office?*

Ans. UPON complaint made of their refusal to any one justice of peace, the said justice may bind them over to the sessions, where, if they cannot excuse themselves by some just allegation, they may be fined and imprisoned for their contempt.

7. *Quest. What is their authority or power?*

Ans. THE authority of constables, as it is substantive, and of it self, or substituted, and astricted to the warrants and commands of the justices of peace; so again it is original, or additional: for either it was given them by the common law, or else annexed by divers statutes. And as for subordinate power, wherein the constable is only to execute the commandments of the justices of peace, and likewise the additional power which is given by divers statutes, it is hard to comprehend them in any brevity; for that they do correspond to the office and authority of the justices of peace, which is very large, and are created by the branches of several statutes, which are things of diverse and dispersed natures: but for the original and substantive power of a constable, it may be reduced to three heads:

1. FOR matter of peace only.

2. FOR matter of peace and the crown.

3. FOR matter of nuisance, disturbance and disorder, although they be not accompanied with violence and breach of the peace.

First, FOR pacifying of quarrels begun, the constables may, upon hot words given, or likelihood of breach of the peace to ensue, command them in the King's name to keep the peace, and depart and forbear: and so he may where an affray is made, part the same, and keep the parties asunder, and arrest and commit the breakers of the peace, if they will not obey, and call power to assist him for the same purpose.

FOR punishment of breach of peace past, the law is very tender and sparing in giving authority to constables, because he hath no power judicial, and the use of his office is rather for preventing or staying of mischief, than for punishing of offences; for in that part he is rather to execute the warrants

of

of the justices; or when any sudden matter ariseth upon his view, or notorious circumstances, to apprehend offenders, and carry them before the justice of peace, and generally to imprison in like cases of necessity, where the case will not endure the present carrying of the party before the justices. And thus much for the matters of peace.

Secondly, For matters of the crown, the office of the constable consisteth chiefly in these four parts:

THE first is arrest.

THE second is search.

THE third is hue and cry.

AND the fourth is seizure of goods.

ALL which the constable may perform of his own authority, without any warrant of the justices of peace.

1. FOR first, If any man will lay murder or felony to another's charge, or do suspect him of murder or felony, he may declare it to the constable, and the constable ought upon such declaration or complaint, to carry him before a justice; and if by common voice or fame any man be suspected, the constable of duty ought to arrest him, and bring him before a justice, though there be no other accusation or declaration.

2. IF any house be suspected for the receiving or harbouring of any felon, the constable, upon complaint or common fame, may search.

3. IF any fly upon the felony, the constable ought to raise hue and cry.

4. AND seize his goods, and keep them safe without impairing, and inventory them in the presence of honest neighbours.

Thirdly, For matters of common nuisance and grievance, they are of a very variable nature, according to the several comforts which man's life and society requireth, and the contraries which infect the same.

IN all which, be it matter of corrupting air, water, or victuals, or stopping, straightening, or indangering passage, or general deceits in weights, measures, or sizes, or counterfeiting wares, and things vendible; the office of the constable is to give (as much as in him lies) information of them, and of the offenders in leets, that they may be presented; but because leets are kept but twice in the year, and many of these things require present or speedy remedy, the constable, in things notorious and of vulgar nature, ought to forbid and repress them in the mean time: if not, they are for their contempt to be fined and imprisoned, or both, by the justices in their sessions.

8. *Quest. What is their oath?*

Ans. THE oath they take is in this manner;

"You shall swear that you shall well and truly serve the King, and the lord of this law-day; and you shall cause that the peace of our sovereign lord the King shall be well and duly kept to your power; and you shall arrest all those that you see committing riots, debates, and affrays in breach of peace: and you shall well and duly endeavour your self to your best knowledge, that the statutes of *Winchester* for watch, hue and cry, and the statutes made for the punishment of sturdy beggars, vagabonds, rogues, and other idle persons coming within your office be truly executed, and the offenders punished: and you shall endeavour, upon complaint made, to apprehend barreters and riotous persons making affrays, and likewise to apprehend felons; and if any of them make resistance with force, and multitude of mis-doers, you shall make out-cry, and pursue them till they be taken; and shall look unto such persons as use unlawful games; and you shall have regard unto the maintenance of artillery; and you shall

“ well and duly execute all procefs and precepts ſent unto you from the juſtices of peace of the county; and you ſhall make good and faithful preſentments of all bloodſheds, out-cries, affrays, and reſcues made within your office: and you ſhall well and duly, according to your power and knowledge, do that which belongeth to your office of conſtable to do, for this year to come. So help, &c.”

9. Queſt. *What difference is there betwixt the high conſtables and petty conſtables?*

Anſw. THE authority is the ſame in ſubſtance, differing only in extent; the petty-conſtable ſerving only for one town, pariſh, or borough; the head-conſtable ſerving for the whole hundred: neither is the petty-conſtable ſubordinate to the head-conſtable for any commandment that proceeds from his own authority; but it is uſed, that the precepts of the juſtices be delivered unto the high-conſtables, who being few in number, may better attend the juſtices, and then the head-conſtables, by virtue thereof, make their precepts over to the petty-conſtables.

10. Queſt. *Whether a conſtable may appoint a deputy?*

Anſw. IN caſe of neceſſity he may appoint a deputy, or in default thereof, the ſteward of the court-leet may; which deputy ought to be ſworn before the ſaid ſteward.

Now to conclude, the office of conſtables conſiſts wholly in theſe three things, viz.

1. THE conſervation of the peace.
2. SERVING the precepts and warrants.
3. ATTENDANCE for the execution of ſtatutes.

Of the jurisdiction of juſtices itinerant in the principality of Wales.

King's bench.

THESE juſtices have power to hear and determine all criminal cauſes, which are called in the laws of *England*, the pleas of the crown; and herein they have the ſame jurisdiction that the juſtices have in the court of the King's bench.

Common-pleas.

THEY have power to hear and determine all civil cauſes which are called in the laws of *England*, common-pleas, and do take knowledge of all fines levied of lands or hereditaments, without ſuing out any *dedimus poſteſtatem*; and herein they have the ſame jurisdiction that the juſtices of the common-pleas do execute at *Weſtminſter*.

Juſtices of aſſize.

THEY have power to hear and determine all aſſizes upon diſſeiſin of lands or hereditaments, wherein they equal the jurisdiction of the juſtices of aſſize.

THEY may hear and determine all notable violences and outrages perpetrated within their ſeveral precincts of the principality of *Wales*. And therein they have the ſame jurisdiction as the juſtices of *Oyer and Terminer*.

Theſe offices are in the King's gift.

THE prothonotary's office is to draw all the pleadings, and to enter and engroſs all records and judgments in all trivial cauſes.

THE clerk of the crown his office is to draw and engroſs all proceedings, arraignments, and judgments in criminal cauſes.

Theſe offices are in the judges diſpoſition.

THE marſhal's office is to attend the perſons of the judges at their coming, ſitting, and going from their ſeſſions or court.

THE crier is *tanquam publicus praeco*, to call forth ſuch perſons whoſe appearances are neceſſary, and to impoſe ſilence to the people.

The

The office of Justice of Peace.

THERE is a commission under the great seal of *England* to certain gentlemen, giving them power to preserve the peace, and to resist and punish all turbulent persons, whose misdemeanors may tend to the disquiet of the people; and these be called the justices of peace, and every of them may well and truly be called and termed *Eirenarcha*.

THE chief of them is called *custos rotulorum*, in whose custody all the records of their proceedings are residing.

OTHERS there are of that number called justices of peace and *quorum*, because in their commission they have power to sit and determine causes concerning breach of peace, and misbehaviour. The words of their commission are conceived thus, *quorum* such and such, *unum vel duos &c. esse volumus*; and without some one or more of them of the *quorum*, no sessions can be holden, and for the avoiding of a superfluous number of such justices (for through the ambition of many, it is counted a credit to be burthened with that authority) the statute of 38 *H. VIII.* hath expressly prohibited that there shall be but eight justices of peace in every county. These justices do hold their sessions quarterly.

These justices
appointed by
the Lord
Keeper.

IN every shire where the commission of the peace is established, there is also a clerk of the peace for the entering and engrossing of all proceedings before the said justices. And this officer is appointed by the *custos rotulorum*.

The office of Sheriffs.

EVERY shire hath its sheriff, which word being of the *Saxon English*, is as much to say as shire-reeve, or minister of the county: his function or office is two-fold:

1. Ministerial.
2. Judicial.

As touching his ministerial office, he is the minister and executioner of all the process and precepts of the courts of law, and therefore ought to make return and certificate.

34 H. 8. cap. 16.

As touching his judicial office, he hath authority to hold two several courts of distinct natures: the one called the *Turn*, because he keepeth his turn and circuit about the shire, and holdeth the same court in several places, wherein he doth enquire of all offences perpetrated against the common law, and not forbidden by any statute or act of parliament; and the jurisdiction of this court is derived from justice distributive, and is for criminal offences, and is held twice every year.

THE other is called the *County court*, wherein he doth determine all petty and small causes civil under the value of forty shillings, arising within the said county, and therefore it is called the county court.

THE jurisdiction of this court is derived from justice commutative, and is held every month. The office of the sheriff is annual, and in the King's gift, whereof he is to have a patent.

The office of Escheator.

EVERY shire hath an officer called an escheator, which is to attend the King's revenue, and to seize into his Majesty's hands all lands escheated, and goods, or lands forfeited, and therefore is called escheator; and he is to enquire by good inquest of the death of the King's tenants, and to whom their lands are descended, and to seize their bodies and lands for ward, if they

34 H. 8. 201

they be within age, and is accountable for the same; and this officer is named by the Lord Treasurer of England.

The office of Coroner.

THERE are in every shire two other officers called coroners, and by their office they are to inquest in what manner, and by whom every person dying of a violent death, came so to his death; and to enter the same of record; which is matter criminal, and a plea of the crown, and therefore they are coroners, or crowners, as one hath written, because their enquiry ought to be publick *in corona populi*.

THESE officers are chosen by the freeholders of the shire, by virtue of a writ out of the chancery, *de coronatore eligendo*: and of them I need not to speak more, because these officers are in use every where.

General observations touching Constables, Goalers, and Bailiffs.

Constables of
the hundred.

FORASMUCH as every shire is divided into hundreds, it is also by the said statute of 34 *H. VIII. cap. 26.* ordered that two sufficient gentlemen or yeomen shall be appointed constables of every hundred.

Goalers of
fice.

ALSO there is in every shire one goal or prison appointed for the restraint of liberty of such persons as for their offences are thereunto committed, until they shall be delivered thence by course of law.

IN every hundred of every shire the sheriff thereof shall nominate sufficient persons to be bailiffs of that hundred, and under-ministers of the sheriff; and they are to attend upon the justices in every of their courts and sessions.

THE

THE
 ARGUMENTS in LAW
 OF

Sir *FRANCIS BACON*, Knight,
 The KING's Solicitor-General,

In certain great and difficult CASES.

To my loving friends and fellows,

The READERS, ANCIENTS, UTTER-BARRISTERS
 and STUDENTS of *Grays-Inn*.

I Do not hold the law of *England* in so mean an account, but that which other laws are held worthy of, should be due likewise to our laws, as no less worthy for our state. Therefore when I found that not only in the ancient times, but now at this day in *France*, *Italy*, and other nations, the speeches, and as they term them pleadings, which have been made in judicial cases (where the cases were mighty and famous) have been set down by those that made them, and published; so that not only a *Cicero*, a *Demosthenes*, or an *Æschines* hath set forth his Orations, as well in the judicial as deliberative, but a *Marrian* and a *Pavler* have done the like by their pleadings; I know no reason why the same should not be brought in use by the professors of our law for their arguments in principal cases. And this I think the more necessary, because the compendious form of reporting resolutions with the substance of the reasons, lately used by Sir *Edward Coke*, Lord Chief Justice of the King's-bench, doth not delineate or trace out to the young practisers of law, a method and form of argument for them to imitate. It is true I could have wished some abler person had begun; but it is a kind of order sometimes to begin with the meanest. Nevertheless thus much I may say with modesty, that these arguments which I have set forth (most of them) are upon subjects not vulgar; and therewithal, in regard of the commixture, which the course of my life hath made of law with other studies, they may have the more variety, and perhaps the more depth of reason: for the reasons of municipal laws, sever'd from the grounds of nature, manners and policy, are like wall-flowers, which though they grow high upon the crest of states, yet they have no deep root: besides, in all publick services I ever valued my reputation more than my pains; and therefore in weighty causes I always used extraordinary diligence; in all which respects

I persuade my self the reading of them will be not unprofitable. This work I knew not to whom to dedicate, rather than to the society of GRAYS-INN, the place whence my father was called to the highest place of justice, and where my self have lived and had my proceedure, so far, as by his Majesty's rare if not singular grace, to be of both his councils: and therefore few men, so bound to their societies by obligation, both ancestral and personal, as I am to yours; which I would gladly acknowledge not only in having your name joined with mine own in a book, but in any other good office and effect which the active part of my life and place may enable me unto toward the society, or any of you in particular. And so I bid you right heartily farewell.

Your assured loving friend and fellow,

FRANCIS BACON.

T H E
C A S E
O F
IMPEACHMENT of WASTE,
Argued before all the JUDGES in the
EXCHEQUER-CHAMBER.

THE case needs neither repeating nor opening. The point is in substance but one, familiar to be put, but difficult to be resolved; that is, whether upon a lease without impeachment of waste, the property of the timber-trees after severance, be not in him that is owner of the inheritance.

THE case is of great weight, and the question of great difficulty: weighty it must needs be, for that it doth concern or may concern all the lands in *England*; and difficult it must be, because this question fails in *confluentis aquarum*, in the meeting or strife of two great tides. For there is a strong current of practice and opinion on the one side, and there is a more strong current (as I conceive) of authorities, both ancient and late on the other side. And therefore according to the reverend custom of the realm, it is brought now to this assembly; and it is high time the question receive an end, the law a rule, and mens conveyances a direction.

THIS doubt ariseth and resteth upon two things to be considered; first to consider of the interest and property of a timber-tree, to whom it belongeth: and secondly, to consider of the construction and operation of these words or clause, *absque impetitione vasti*: for within these two branches will aptly fall whatsoever can be pertinently spoken in this question, without obscuring the question by any other curious division.

FOR

For the first of these considerations, which is the interest or property of a timber-tree, I will maintain and prove to your lordships three things.

First, that a timber-tree while it groweth, is merely parcel of the inheritance, as well as the soil itself. And secondly, I will prove, that when either nature, or accident, or the hand of man hath made it transitory, and cut it off from the earth, it can't change the owner, but the property of it goes where the inheritance was before. And thus much by the rules of the common law.

And thirdly, I will shew that the statute of *Gloucester* doth rather corroborate and confirm the property in the lessor than alter it, or transfer it to the lessee.

And for the second consideration, which is the force of that clause, *absque impetitione vasti*, I will also uphold and make good three other assertions.

First, THAT if that clause should be taken in the sense which the other side would force upon it, that it were a clause repugnant to the estate and void.

Secondly, THAT the sense which we conceive and give, is natural in respect of the words, and for the matter agreeable to reason and the rules of law.

And lastly, THAT if the interpretation seem ambiguous and doubtful, yet the very mischief it self, and consideration of the common-wealth, ought rather to incline your lordships judgment to our construction.

My first assertion therefore is, that a timber-tree is a solid parcel of the inheritance, which may seem a point admitted, and not worth the labouring. But there is such a chain in this case, as that which seemeth most plain, if it's sharply looked into, doth invincibly draw on that which is most doubtful. For if the tree be parcel of the inheritance unsevered, inherent in the reversion, severance will not alien it, nor the clause will not divest it.

To open therefore the nature of an inheritance: sense teacheth there be of the soil and earth, parts that are raised and eminent, as timber-trees, rocks, houses. There be parts that are sunk and depressed, as mines which are called by some *arbores subterraneae*, because that as trees have great branches and smaller boughs and twigs; so have they in their region greater and smaller veins: so if we had in *England* beds of *porcelane*, such as they have in *China*, which *porcelane* is a kind of a plaster buried in the earth, and by length of time congealed and glazed into that fine substance; this were as an artificial mine, and no doubt part of the inheritance. Then are there the ordinary parts, which make the mass of the earth, as stone, gravel, loam, clay and the like.

Now as I make all these much in one degree, so there is none of them, nor timber-trees, not quarries, not minerals or fossils, but hath a double nature; inheritable and real, while it is contained with the mass of the earth, and transitory and personal, when it is once severed. For even gold and precious stone, which is more durable out of earth than any tree is upon the earth; yet the law doth not hold of that dignity as to be matter of inheritance if it be once severed. And this is not because it becometh moveable, for there be moveable inheritances, as villains in gross, and dignities which are judged hereditaments; but because by their severance they lose their nature of perpetuity, which is of the essence of an inheritance.

And herein I do not a little admire the wisdom of the laws of *England*, and the consent which they have with the wisdom of philosophy and nature it self: for it is a maxim in philosophy, that *in regione elementari nihil est aeternum, nisi per propagationem speciei, aut per successionem partium*.

Nevil's case proving there are inheritances which are not local.

The consent of the law with philosophy in distinguishing between perpetual and transitory.

AND

AND it is most evident, that the elements themselves, and their products have a perpetuity not *in individuo*, but by supply and succession of parts; for example, the vestal fire, that was nourished by the virgins at Rome, was not the same fire still, but was in perpetual waste, and in perpetual renovation. So it is of the sea and waters, it is not the same water individually, for that exhales by the sun, and is fed again by showers. And so of the earth it self, and mines, quarries, and whatsoever it containeth, they are corruptible individually, and maintained only by succession of parts, and that lasteth no longer than they continue fixed to the main and mother-globe of the earth, and is destroyed by their separation.

ACCORDING to this I find the wisdom of the law, by imitation of the course of nature, to judge of inheritances and things transitory; for it alloweth no portions of the earth, no stone, no gold, no mineral, no tree, no mold to be longer inheritance than they adhere to the mass, and so are capable of supply in their parts: for by their continuance of body stands their continuance of time.

NEITHER is this matter of discourse, except the deep and profound reasons of law, which ought chiefly to be searched, shall be accounted discourse, as the slighter sort of wits (*Scioli*) may esteem them.

AND therefore now that we have opened the nature of inheritable and transitory, let us see upon a division of estates, and before severance, what kind of interests the law allotteth to the owner of inheritance, and what to the particular tenant; for they be competitors in this case.

The consent of the law with the civil law, in the distinguishing between inheritance and particular estates, which hath relation to their division of *dominium* and *usus-fructus*.

Owner in the statute of 4 H. 7.

The writ of waste supposeth the felling timber to be *ad exhaeredationem*.

The statute of Gloucester, *quod recuperet rem vastatam*, not *locum vastatum*.

22 H. 6. f. 13

FIRST, In general the law doth assign to the lessor those parts of the soil conjoined, which have obtained the reputation to be durable, and of continuance, and such as being destroyed, are not but by long time renewed; and to the *Terminors* it assigneth such interests as are tender and feeble against the force of time, but have an annual or seasonable return or revenue. And herein it consents again with the wisdom of the civil law; for our inheritance and particular estate is in effect their *dominium* and *usus-fructus*; for so it was conceived upon the ancient statute of depopulations 4 Hen. VII. which was penned, *that the Owner of the land should re-edify the houses of husbandry*, that the word Owner (which answereth to *dominus*) was he that had the immediate inheritance, and so ran the later statutes. Let us see therefore what judgment the law maketh of a timber-tree; and whether the law doth not place it within the lot of him that hath the inheritance as parcel thereof.

FIRST it appeareth by the register out of the words of the writ of waste, that the waste is laid to be *ad exhaeredationem*, which presupposeth *haereditatem*: for there can't be a disinherison by the cutting down of the tree, except there was an inheritance in the tree, *quia privatio praesupponit actum*.

AGAIN it appeareth out of the words of the statute of Gloucester well observed, that the tree and the soil are one entire thing, for the words are, *quod recuperet rem vastatam*; and yet the books speak, and the very judgment in waste is, *quod recuperet locum vastatum*, which shews, that *res* and *locus* are in exposition of law taken indifferently: for the lessor shall not recover only the stem of the tree, but he shall recover the very soil, whereunto the stem continues. And therefore it is notably ruled in 22 H. VI. f. 13. that if the *Terminor* do first cut down the tree, and then destroy the stem, the lessor shall declare upon two several wastes, and recover treble damages for them severally. But says the book he must bring but one writ, for he can recover the place wasted but once.

AND

AND farther proof may be fitly alledged out of *Mullin's case* in the commentaries, where it is said, that for timber-trees tithes shall not be paid. And the reason of the book is well to be observed; *for that tithes are to be paid for the revenue of the inheritance, and not for the inheritance itself.*

NAY, my lords, it is notable to consider what a reputation the law gives to the trees, even after they are severed by grant, as may be plainly inferred out of *Herlackenden's case*, *L. Coke* p. 4. f. 62. I mean the principal case; where it is resolved, that if the trees being excepted out of a lease granted to the lessee, or if the grantee of trees accept a lease of the land, the property of the trees drown not, as a term should drown in a freehold, but subsist as a chattel divided; which shews plainly, though they be made transitory, yet they still to some purpose favour of the inheritance: for if you go a little farther, and put the case of a *state tail*, which is a state of inheritance; then I think clearly they are re-annexed. But on the other side, if a man buy corn standing upon the ground, and take a lease of the same ground, where the corn stands, I say plainly it is re-affixed, for *paria copulantur cum paribus*. Co. p. 4. f. 62.

AND it is no less worthy the note, what an operation the inheritance leaveth behind it in matter of waste, even when it is gone, as appeareth in the case of tenant after possibility, who shall not be punished; for though the new reason be, because his estate was not within the statute of *Gloucester*; yet I will not go from my old Master *Littleton's* reason, which speaketh out of the depth of the common law; he shall not be punished *for the inheritance sake which was once in him.*

BUT this will receive a great deal of illustration, by considering the *Terminor's* estate, and the nature thereof, which was well defined by Mr. *Heath* (who spake excellent well to the case) that it is such as he ought to yield up the inheritance in as good plight, as he received it; and therefore the word *firmarius* (which is the word of the statute of *Marlebridge*) cometh, as I conceive, *a firmando*; because he makes the profit of the inheritance, which otherwise should be upon account, and uncertain, firm and certain; and accordingly *feodi firma* fee-farm is a perpetuity certain: Therefore the nature and limit of a particular tenant is to make the inheritance certain, and not to make it worse. The derivation and force of the word firmarius.

I. THEREFORE he cannot break the soil otherwise than with his ploughshare to turn up perhaps a stone, that lieth aloft; his interest is *in superficie* not *in profundo*, he hath but *tunicam terrae*; little more than the vesture.

If we had firr-timber here, as they have in *Muscovy*, he could not pierce the tree to make the pitch come forth, no more than he may break the earth.

So we see the evidence, which is *propugnaculum haereditatis*, the fortress and defence of the land belongeth not to the lessee, but to the owner of the inheritance. The evidence propugnaculum haereditatis.

So the lessee's estate is not accounted of that dignity, that it can do homage, because it is a badge of continuance in the blood of lord and tenant. Neither for my own opinion can a particular tenant of a manor have aid *pur file marier, ou pur faire fitz chevalier*; because it is given by law upon an intendment of continuance of blood and privity between lord and tenant. Homage importeth continuance in the blood. Particular tenants of feignories shall not have aid.

AND for the tree which is now in question; do but consider in what a revolution the law moves, and as it were in an orb: for when the tree is young and tender, *germen terrae*, a sprout of the earth, the law giveth it to the lessee, as having a nature not permanent, and yet easily restored: when it comes to be a timber-tree, and hath a nature solid and durable, the law

carieth it to the lessor. But after again if it become a fear and a dotard, and its solid parts grow putrefied, and as the poet saith, *non jam mater alit tellus viresque ministrat*, then the law returns it back to the lessee. This is true justice, this is *suum cuique tribuere*; the law guiding all things with line of measure and proportion.

The phrase that the lessee hath a special property in the tree very improper; for he hath but the profits of the tree.

AND therefore that interest of the lessee in the tree, which the books call a special property, is scarce worth that name. He shall have the shade, so shall he have the shade of a rock; but he shall not have a crystal or *Bristol* diamond growing upon the rock. He shall have the pannage; why? that is the fruit of the inheritance of a tree, as herb or grass is of the soil. He shall have seasonable loppings; why? so he shall have seasonable diggings of an open mine. So all these things are rather profits of the tree, than any special property in the tree. But about words we will not differ.

So as I conclude this part, that the reason and wisdom of law doth match things, as they consort, ascribing to permanent states permanent interest, and to transitory states transitory interest; and you cannot alter this order of law by fancies of clauses and liberties, as I will tell you in the proper place. And therefore the tree standing belongs clearly to the owner of the inheritance.

Now come I to my second assertion, that by the severance the ownership or property cannot be altered; but that he that had the trees as part of the inheritance before, must have it as a chattel transitory after. This is pregnant and followeth of itself, for it is the same tree still, and as the scripture saith, *uti arbor cadit, ita jacet*.

THE owner of the whole must needs own the parts; he that owneth the cloth owneth the thread, and he that owneth an engine, when it is entire, owneth the parts when it is broken; breaking cannot alter property.

Herlackenden's case.

AND therefore the book in *Herlackenden's* case doth not stick to give it somewhat plain terms; and to say that it were an absurd thing, that the lessee which hath a particular interest in the land, should have an absolute property in that which is part of the inheritance: you would have the shadow draw the body, and the twigs draw the trunk. These are truly called absurdities. And therefore in a conclusion so plain, it shall be sufficient to vouch the authorities without enforcing the reasons.

AND although the division be good, that was made by Mr. *Heath*, that there be four manners of severances, that is when the lessee fells the tree, or when the lessor fells it, or when a stranger fells it, or when the act of God, a tempest fells it, yet this division tendeth rather to explanation than to proof; and I need it not, because I do maintain that in all these cases the property is in the lessor.

Three arguments of property, damages, seizure, and power to grant.

AND therefore I will use a distribution which rather presseth the proof. The question is of property. There be three arguments of property, damages, seizure, and grant; and according to these I will examine the property of the trees by the authority of books.

AND first for damages.

FOR damages look into the books of the law, and you shall not find the lessee shall ever recover damages, not as they are a badge of property; for the damages, which he recovereth, are of two natures, either for the special property (as they call it) or as he is chargeable over. And for this to avoid length, I will select three books, one where the lessee shall recover treble damages, another where he shall recover but for his special property, and the third where he shall recover for the body of the tree, which is a special case, and standeth merely upon a special reason.

THE

THE first is the book of 44 E. III. f. 27. where it is agreed, that if tenant ^{44 E. 3. f. 27.} for life be, and a disseisor commit waste, the lessee shall recover in trespass as he shall answer in waste: but that this is a kind of recovery of damages, tho' *per accidens*, may appear plainly.

FOR if the lessor die, whereby his action is gone, then the disseisor is likewise discharged, otherwise than for the special property.

THE second book is 9 E. IV. f. 35. where it is admitted, that if the lessor ^{9 E. 4. f. 35.} himself cut down the tree, the lessee shall recover but for his special profit of shade, pannage, loppings, because he is not charged over.

THE third is 44 E. III. f. 44. where it is said, that if the lessee fell trees ^{44 E. 3. f. 44.} to repair the barn, which is not ruinous in his own default, and the lessor come and take them away, he shall have trespass, and in that case he shall recover for the very body of the tree, for he hath an absolute property in them for that intent.

AND that it is only for that intent appeareth notably by the book 38 Aff. ^{38 Aff. f. 1.} f. 1. If the lessee after he hath cut down the tree employ it not to reparations, but employ other trees of better value, yet it is waste; which sheweth plainly the property is respective to the employment.

NAY, 5 E. IV. f. 100. goeth farther and sheweth, that the special pro- ^{5 E. 4. f. 100.} perty which the lessee had was of the living tree, and determines as *Herlackenden's* case saith by severance; for then *magis dignum trahit ad se minus dignum*: for it saith, that the lessee can't pay the workmen's wages with those parts of the tree which are not timber. And so I leave the first demonstration of property, which is by damages; except you will add the case of 27 H. VIII. f. 13. where it is said, that if tenant for life and he in the re- ^{27 H. 8. f. 13.} version join in a lease for years, and lessee for years fell timber-trees, they shall join in an action of waste; but he in the reversion shall recover the whole damages: and great reason, for the special property was in the lessee for years, the general in him in the reversion, so the tenant for life meane had neither the one nor the other.

Now for the seisure you may not look for plentiful authority in that: for the lessor, which had the more beneficial remedy by action for treble damages, had little reason to resort to the weaker remedy by seisure, and leases without impeachment were then rare, as I will tell you anon. And therefore the question of the seisure came chiefly in experience upon the case of the wind-falls, which could not be punished by action of waste.

FIRST therefore the case of 40 E. III. pl. 22. is expresse, where at the ^{40 E. 3. pl. 22.} King's suit in the behalf of the heir of *Darcy* who was in ward, the King's lessee was questioned in waste, and justified the taking of the trees, because they were overthrown by winds, and taken away by a stranger. But *Knevet* saith, although one be guardian, yet the trees, when by their fall they are severed from the freehold, he hath no property of the chattels, but they appertain to the heir, and the heir shall have trespass of them against a stranger, and not the guardian, no more than the bailiff of a manor. So that that book rules the interest of the tree to be in the heir, and goes to a point farther, that he shall have trespass for them; but of seisure there had been no question.

So again in 2 H. VII. the words of *Brian* are, that for the timber-trees ^{2 H. 7. f. 14.} the lessor may take them; for they are his, and seemeth to take some difference between them and the gravel.

34 E. 3. f. 5. THE like reason is of the timber of an house, as appears 34 E. 3. f. 5. abridged by *Brook, tit. waste*, pl. 34. when it is said, it was doubted who should have the timber of a house which fell by tempest; and saith the book, it seems it doth appertain to the lessor; and good reason, for it is no waste, and the lessee is not bound to re-edify it: and therefore it is reason the lessor have it; but *Herlackenden's* case goes farther, where it is said that the lessee may help himself with the timber, if he will re-edify it; but clearly he hath no interest but towards a special employment.

9 E. 4. f. 35. Now you have had a case of the timber-tree, and of the timber of the house, now take a case of the *mine*, where that of the trees is likewise put, and that is 9 E. IV. f. 35. where it is said by *Needham*, that if a lease be made of land wherein there is tin, or iron, or lead, or coals, or quarry, and the lessor enter and take the tin or other materials, the lessee shall punish him for coming upon his land, but not for taking of the substances. And so of great trees: but *Danby* goes farther, and saith, the law that gives him the thing, doth likewise give him means to come by it; but they both agree that the interest is in the lessor: and thus much for the seisure.

FOR the grant, it is not so certain a badge of property as the other two; for a man may have a property, and yet not grantable, because it is turned into a right, or otherwise suspended. And therefore it is true, that by the book in 21 H. VI. that if the lessor grant the trees, the grantee shall not take them, no not after the lease expired; because his property is but *de futuro*, expectant; but 'tis as plain on the other side that the lessee cannot grant them, as was resolved in two notable cases, namely the case of *Marwood and Sanders* 41 El. in *communi banco*; where it was ruled, that the tenant of the inheritance may make a feoffment with exception of timber trees; but that if lessee for life or years set over his estate with an exception of the trees, the exception is utterly void; and the like resolution was in the case between *Foster and Mills* plaintiff, and *Spencer and Boord* defendant, 28 Eliz. 101. 820.

Now come we to the authorities, which have an appearance to be against us, which are not many, and they be easily answered not by distinguishing subtilly, but by marking the books advisedly.

I. THERE be two books that seem to cross the authorities touching the interest of the windfalls, 7 H. VI. and 44 E. III. f. 44. where, upon waste brought and assigned in the succision of trees, the justification is, that they were overthrown by wind, and so the lessee took them for fuel, and allowed for a good plea; but these books are reconciled two ways: first, look into both the justifications, and you shall find that the plea did not rely only in that they were windfalls, but couples it with this that they were first fear, and then overthrown by wind; and that makes an end of it, for fear trees belong to the lessee, standing or felled, and you have a special replication in the book of 44 E. III. that the wind did but rend them, and buckle them, and that they bore fruit two years after. And 2dly, you have ill luck with your windfalls, for they be still apple-trees which are but wastes *per accidens*, as willows, or thorns are in the sight of a house; but when they are once felled, they are clearly matter of fuel.

ANOTHER kind of authorities, that make shew against us; are those that say that the lessee shall punish the lessor in trespass for taking the trees, which are 5 H. IV. f. 29. and 1 Mar. Dier. f. 90. *Mervin's* case; and you might add if you will 9 E. IV. the case vouched before, unto which the answer is, that trespass must be understood for the special property, and not for the body

body of the tree ; for those two books speak not a word, what he shall recover, nor that it shall be to the value. And therefore 9 *E. IV.* is a good expositor, for that distinguisheth where the other two books speak indefinitely ; yea, but 5 *H. IV.* goes farther, and saith, that the writ shall purport *arbores suas*, which is true in respect of the special property ; neither are writs to be varied according to special cases, but are framed to the general case, as upon lands recovered in value in tail, the writ shall suppose *donum* a gift.

AND the third kind of authority is some books (as 13 *H. VII. f. 9.*) that 13 *H. 7. f. 9.* say, that trespass lies not by the lessor against the lessee for cutting down trees, but only waste ; but that it is to be understood of trespass *vi & armis*, and would have come fitly in question, if there had been no seisure in this case.

UPON all which I conclude, that the whole current of authorities proveth the properties of the trees upon severance to be in the lessor by the rules of the common law ; and that although the common law would not so far protect the folly of the lessor, as to give him remedy by action, where the state was created by his own act ; yet the law never took from him his property ; so that as to the property before the statute and since, the law was ever one.

NOW come I to the third assertion, that the statute of *Gloucester* hath not transferred the property of the lessee upon an intendment of recompense to the lessor ; which needs no long speech : it is grounded upon a probable reason, and upon one special book.

THE reason is, that damages are a recompense for property : and therefore that the statute of *Gloucester* giving damages should exclude property ; the authority seems to be 12 *E. IV. f. 8.* where *Catesbey* affirming that the lessee at will shall have the great trees, as well as lessee for years or life : *Fairfax* and *Jennings* correct it with a difference, that the lessor may take them in the case of tenant at will, because he hath no remedy by the statute, but not in case of the termors.

THIS conceit may be reasonable thus far, that the lessee shall not both seise and bring waste ; but if he seise, he shall not have his action ; if he recover by action, he shall not seise : for a man shall not have both the thing and recompense ; it is a bar to the highest inheritance (the kingdom of heaven) *receperunt mercedem suam*. But at the first, it is at his election, whether remedy he will use, like as in the case of trespass ; where if a man once recover in damages, it hath concluded and turned the property. Nay, I invert the argument upon the force of the statute of *Gloucester* thus : that if there had been no property at common law ; yet the statute of *Gloucester* by restraining the waste, and giving an action, doth imply a property, where-to a better case cannot be put than the case upon the statute *de donis conditionalibus*, where there are no words to give any reversion or remainder ; and yet the statute giving a *formedon*, where it lay not before, being but an action, implies an actual reversion and remainder.

A statute giving an action implieth an interest.

THUS have I passed over the first main part, which I have insisted upon the longer, because I shall have use of it for the clearing of the second.

NOW to come to the force of the clause, *absque impetitione vasti*. This clause must of necessity work in one of these degrees, either by way of grant of property, or by way of power and liberty knit to the state, or by way of discharge of action ; whereof the first two I reject, the last I receive.

No grant of
property.

THEREFORE I think the other side will not affirm, that this clause amounts to a grant of trees; for then according to the resolution in *Herlackenden's* case, they should go to the executors, and the lessee might grant them over, and they might be taken after the state determined. Now it is plain that this liberty is created with the estate, passeth with the estate, and determines with the estate.

5 H. 5.

THAT appears by 5 *Hen. V.* where it is said, that if lessee for years without impeachment of waste accept a confirmation for life, the privilege is gone.

3 E. 3.
28 H. 8.

AND so are the books in 3 *E. III.* and 28 *H. VIII.* that if a lease be made without impeachment of waste *pur autre vie*, the remainder to the lessee for life, the privilege is gone, because he is in of another estate; so then plainly it amounts to no grant of property, neither can it any ways touch the property, nor enlarge the especial property of the lessee: for will any man say, that if you put *Marwood* and *Sanders's* case of a lease without impeachment of waste, that he may grant the land with the exception of the trees any more than an ordinary lessee? Or shall the windfalls be more his in this case, than in the other? for he was not impeachable of waste for windfalls no more than where he hath the clause. Or will any man say, that if a stranger commit waste, such a lessee may seize? these things I suppose no man will affirm. Again, why should not a liberty or privilege in law be as strong as a privilege in fact? as in the case of tenant after possibility: Or where there is a lessee for life the remainder for life? for in these cases they are privileged from waste, and yet that trenches not the property.

NOW therefore to take the second course, that it should be as a real power annexed to the state; neither can that be, for it is the law that moldeth estates, and not mens fancies. And therefore if men by clauses like voluntaries in music run not upon the grounds of law, and do restrain an estate more than the law restrains it, or enable an estate more than the law enables it, or guide an estate otherwise than the law guides it, they be mere repugnancies and vanities. And therefore if I make a feoffment in fee, provided the feoffee shall not fell timber, the clause of condition is void. And so on the other side, if I make a lease with a power that he shall fell timber, it's void.

SO if I make a lease with a power that he may make feoffment, or that he may make leases for forty years, or that if he make default, I shall not be received, or that the lessee may do homage; these are plainly void, as against law, and repugnant to the state. No, this cannot be done by way of use, except the words be apt, as is *Mildmay's* case: neither is this clause in the sense that they take it, any better.

THEREFORE laying aside these two constructions, whereof the one is not maintained to be, the other cannot be: let us come to the true sense of this clause, which is by way of discharge of the action, and no more; wherein I will speak first of the words, then of the reason, then of the authorities which prove our sense, then of the practice, which is pretended to prove theirs; and lastly, I will weigh the mischief how it stands for our construction or theirs.

IT is an ignorant mistaking of any man to take impeachment for *impedimentum*, and not for *impetitus*; for it is true that *impedimentum* doth extend to all hindrances, or disturbances, or interruptions, as well in *pais* as judicial. But *impetitus* is merely a judicial claim, or interruption by suit in law, and upon the matter all one with *implacitatio*. Wherein first we may take
light

light of the derivation of *impetio*, which is a compound of the preposition *in*, and the verb *peto*, whereof the verb *peto* it self doth signify a demand, but yet properly such a demand as is not *extra judicial*: for the words *petit judicium*, *petit auditum brevis*, &c. are words of acts judicial; as for the demand in *pais*, it is rather *requisitio* than *petitio*, as *licet saepius requisitus*; so much for the verb *peto*. But the preposition *in* enforceth it more, which signifies against, as *Cicero in Verrem*, *in Catilinam*, and so in composition, to inveigh is to speak against: so it is such a demand only where there is a party raised to demand against, that is an adversary, which must be in a suit in law; and so it is used in records of law.

As *Coke lib. 1. f. 17.* *Porter's case*, it was pleaded in bar, that *dicta domina Regina nunc ipsos Johannem & Henricum Porter petere seu occasionare non debet*, that is *implacitare*.

So likewise *Coke l. 1. f. 27.* *case of Alton woods*, *quod dicta domina regina nunc ipsum proinde aliquantulum impetere seu occasionare non debet*.

So in the book of entries *f. 1. litera D. 15 H. VII. rot. 2. inter placita Regis, & super hoc venit W. B. Commonachus abbatis W. loci illius ordinarii, gerensque vices ipsius abbatis, ad quoscunque clericos de quolibet crimine coram Domino Rege impetitos sive irritatos calumniand.* So much *ex vi & usu termini*.

FOR reason; first, it ought to be considered, that the punishment of waste is strict and severe, because the penalty is great, treble damages, and the place wasted: and again, because the lessee must undertake for the acts of strangers: whereupon I infer, that the reason which brought this clause in use, *ab initio*, was caution to save, and to free men from the extremity of the penalty, and not any intention to countermand the property.

ADD to this that the law doth assign in most cases double remedy, by matter of suit, and matter in *pais*; for disseisins, actions and entries; for trespasses, action and seisure; for nuisances, action and abatement: and as *Littleton* doth instruct us, one of these remedies may be released without touching the other. If the disseisee release all actions, saith *Littleton*, yet my entry remains; but if I release all demands or remedies, or the like words of a general nature, it doth release the right itself. And therefore I may be of opinion, that if there be a clause of grant in my lease expres'd, that if my lessee or his assigns cut down and take away any timber-trees, that I and my heirs will not charge them by action, claim, seisure, or other interruption, either this shall inure by way of covenant only, or if you take it to inure by way of absolute discharge, it amounts to a grant of property in the trees, like as the case of *31. Affs.* I grant, that if I pay not you 10 *l.* ^{31. Affs.} *per annum* at such feasts, you shall distrain for it in my manor of *Dale*, tho' ^{A clause that sounds to a power, amounts to a property, if the state bear it.} this sound executory in power, yet it amounts to a present grant of a rent. So as I conclude that the discharge of action the law knows, grant of the property the law knows, but this same mathematical power being a power amounting to a property, and yet no property, and knit to a state that cannot bear it, the law knoweth not, *tertium penitus ignoramus*.

FOR the authorities they are of three kinds, two by inference, and the third direct.

THE first I do collect upon the books of *42 Edw. III. f. 23, and 24.* by *42 E. 3. f. 23,* the difference taken by *Mowbray*, and agreed by the court, that the law doth intend the clause of disimpeachment of waste to be a discharge special, and not general or absolute; for there the principal case was, that there was a clause in the lease, that the lessor should not demand any right, claim, or challenge

challenge in the lands during the life of the lessee. It is resolved by the book, that it is no bar in waste; but that if the clause had been, that the lessee should not have been impeached for waste, clearly a good bar; which demonstrates plainly, that general words, be they never so loud and strong, bear no more than the state will bear, and to any other purpose are idle. But special words that inure by way of discharge of action, are good and allowed by law.

4 E. 2. Fitzb. tit. waste 15. THE same reason is of the books 4 Ed. II. Fitzb. tit. waste 15 and 17 E. III. f. 7. Fitzb. tit. waste 101. where there was a clause, *Quod liceat facere commodum suum meliori modo quo poterit*. Yet saith *Skipwith* doth this amount, that he shall for the making of his own profit disinheret the lessor? *Nego consequentiam*; so that still the law allows not of the general discharge, but of the special that goeth to the action.

9 H. 6. f. 35. Fitzb. tit. waste 39. THE second authority by inference is out of 9 H. VI. f. 35. Fitzb. tit. waste 39. and 32 H. VIII. Dyer f. 47. where the learning is taken, that notwithstanding this clause be inserted into a lease, yet a man may reserve unto himself remedy by entry: but say I, if this clause should have that sense, which they on the other side would give it; namely, that it should amount to an absolute privilege and power of disposing, then were the proviso flat repugnant, all one as if it were *absque impetitione vasti, proviso quod non faciet vastum*, which are contradictories; and note well that in the book of 9 H. VI. the proviso is *quod non faciat vastum voluntarium in domibus*; which indeed doth but abridge in one kind, and therefore may stand without repugnancy: but in the latter book it is general, that is to say *absque impetitione vasti, & si contigerit ipsum facere vastum tunc licebit reintrare*. And there *Sbelley* making the objection that the condition was repugnant, it is salved thus, *sed aliqui tenuerunt*, that this word *impetitione vasti* is to be understood that he shall not be impleaded by waste, or punished by action, and so indeed it ought: those *aliqui recte tenuerunt*.

27 H. 6. Fitzb. tit. waste 8. FOR the authorities direct, they are two, the one 27 H. VI. Fitzb. tit. waste 8. where a lease was made without impeachment of waste, and a stranger committed waste, and the rule is, that the lessee shall recover in trespass only for the crop of the tree, and not for the body of the tree. It is true it comes by a *dicitur*, but it is now a *legitur*; and a *quaere* there is, and reason, or else this long speech were time ill spent.

AND the last authority is the case of Sir *Moyle Finch* and his mother, referred to my Lord *Wrey* and Sir *Roger Manwood*, resolved upon conference with other of the judges vouch'd by *Wrey* in *Herlackenden's* case, and reported to my Lord Chief Justice, here present, as a resolution of law, being our very case.

Statute de Marlebridge. AND for the cases to the contrary, I know not one in all the law direct: they press the statute of *Marlebridge*, which hath an exception in the prohibition, *firmarii non facient vastum, &c. nisi specialem inde habuerint concessionem per scriptum conventionis, mentionem faciens, quod hoc facere possint*. This presseth not the question; for no man doubteth, but it will excuse in an action of waste; and again, *nisi habeant specialem concessionem* may be meant of an absolute grant of the trees themselves: and otherwise the clause, *absque impetitione vasti* taketh away the force of the statute, and looseth what the statute bindeth; but it toucheth not the property at common law.

Littleton. FOR *Littleton's* case in his title of conditions, where it is said, that if a feoffment in fee be made upon condition, that the feoffee shall infeof the husband and wife, and the heirs of their two bodies; and that the husband die,

die, that now the feoffee ought to make a lease without impeachment of waste to the wife, the remainder to the right heirs of the body of her husband and her begotten; whereby it would be inferred, that such a lessee should have equal privilege with tenant in tail: the answer appears in *Littleton's* own words, which is, that the feoffee ought to go as near the condition, and as near the intent of the condition as he may, but to come near is not to reach, neither doth *Littleton* undertake for that.

As for *Culpepper's* case, it is obscurely put and concluded in division of *Culpepper's* opinion; but yet so as it rather makes for us. The case is 2 *Eliz. Dyer* ^{case.} f. 184. and is in effect this: a man makes a lease for years, excepting timber-trees, and afterwards makes a lease without impeachment of waste to *John a Style*, and then granteth the land and trees to *John a Down*, and binds himself to warrant and save harmless *John a Down* against *John a Style*; *John a Style* cutteth down the trees, the question was whether the bond were forfeited, and that question resorteth to the other question; whether *John a Style*, by virtue of such lease, could fell the trees, and held by *Weston* and *Brown* that he could not: which proves plainly for us that he had no property by that clause in the tree; though it is true that in that case the exception of the trees turneth the case, and so in effect it proveth neither way.

FOR the practice, if it were so ancient and common, as is conceived; yet ^{Practice.} since the authorities have not approved, but condemned it, it is no better than a popular error: it is but *pedum visa est via*, not *recta visa est via*. But I conceive it to be neither ancient nor common. It is true I find it first in 19 *E. II.* (I mean such a clause) but it is one thing to say that the clause is ^{19 E. 2.} ancient; and it is another thing to say, that this exposition, which they would now introduce, is ancient. And therefore you must note that a practice doth then expound the law, when the act which is practised, were merely tortious or void, if the law should not approve it; but that is not the case here; for we agree the clause to be lawful: nay, we say that it is in no sort *inutile*, but there is use of it, to avoid this severe penalty of treble damages. But to speak plainly, I will tell you how this clause came in from 13 of *E. I.* till about 12 of *E. IV.* The *state tail* though it had the qualities of an inheritance, yet it was without power to alien; but as soon as that was set at liberty by common recoveries, then there must be found some other device, that a man might be an absolute owner of the land for the time, and yet not enabled to alien, and for that purpose was this clause found out: for you shall not find in one amongst an hundred, that farmers had it in their leases; but those that were once owners of the inheritance, and had put it over to their sons or next heirs, reserved such a beneficial state to themselves. And therefore the truth is, that the flood of this usage came in with perpetuities, save that the perpetuity was to make an inheritance like a stem for life, and this was to make a stem for life like an inheritance: both concurring in this, that they presume to create phantastical estates, contrary to the ground of law.

AND therefore it is no matter, though it went out with the perpetuities, as it came in, to the end that men that have not the inheritance should not have power to abuse the inheritance.

AND for the mischief and consideration of *bonum publicum*, certainly this clause with this opposition tendeth but to make houses ruinous, and to leave no timber upon the ground to build them up again; and therefore let men in God's name, when they establish their states, and plant their sons or

kinſmen in the inheritance of ſome portions of their lands, with reſervation of the freehold to themſelves, uſe it, and enjoy it in ſuch ſort, as may tend *ad ædificationem*, and not *ad deſtructionem*; for that's good for poſterity, and for the ſtate in general.

AND for the timber of this realm, 'tis *vivus theſaurus regni*; and 'tis the matter of our walls, walls not only of our houſes, but of our iſland: ſo as 'tis a general diſinheriton to the kingdom to favour that expoſition, which tends to the decay of it, being ſo great already; and to favour waſte when the times themſelves are ſet upon waſte and ſpoil. Therefore ſince the reaſon and authorities of law, and the policy of eſtate do meet, and that thoſe that have, or ſhall have ſuch conveyances, may enjoy the benefit of that claufe to protect them in a moderate manner, that is, from the penalty of the action; it is both good law and good policy for the kingdom, and not injurious or inconvenient for particulars, to take this claufe ſtrictly, and therein to affirm the laſt report, and ſo I pray judgment for the plaintiff.

The ARGUMENT in

LOWES CASE

OF

TENURES;

In the KING's-BENCH.

THE manor of *Alderwaſley* parcel of the Duchy, and lying out of the county *Palatine* was (before the Duchy came to the crown) held of the King by knight's-ſervice *in capite*. The land in queſtion was held of the ſaid manor in ſocage. The Duchy and this manor parcel thereof deſcended to King *Henry IV.* King *Henry VIII.* by letters patent the 19. of his reign granted this manor to *Anthony Low*, grandfather of the ward, and then tenant of the land in queſtion, reſerving 26 *l.* 10 *s.* rent and fealty, *tantum pro omnibus ſervitiis*, and this patent is under the Duchy-ſeal only. The queſtion is how this tenancy is held, whether *in capite* or in ſocage.

THE caſe reſteth upon a point, unto which all the queſtions ariſing are to be reduced.

THE firſt is, whether this tenancy being by the grant of the King, of the manor to the tenant, grown to an unity of poſſeſſion with the manor, be held as the manor is held, which is expreſſed in the patent to be in ſocage.

THE ſecond, whether the manor it ſelf be held in ſocage according to the laſt reſervation; or *in capite* by revivor of the ancient ſeigniory, which was *in capite* before the duchy came to the crown.

THEREFORE my firſt propoſition is, that this tenancy (which without all colour is no parcel of the manor) cannot be comprehended within the tenure, reſerved upon the manor, but that the law createth a ſeveral and diſtinct

distinct tenure thereupon; and that not guided according to the expresse tenure of the manor; but merely *secundum normam legis*, by the intendment and rule of law, which must be a tenure by knight's-service *in capite*.

AND my second proposition is, that admitting that the tenure of the tenancy should ensue the tenure of the manor: yet nevertheless the manor it self which was first held of the crown *in capite*, the tenure suspended by the conquest of the Duchy to the crown, being now conveyed out of the crown under the duchy-feal only (which hath no power to touch or carry any interest, whereof the King was vested in right of the crown) is now so severed and disjoined from the ancient feignory, which was *in capite*, as the same ancient feignory is revived, and so the new reservation void; because the manor cannot be charged with two tenures.

THIS case concerneth one of the greatest and fairest flowers of the crown, which is the King's tenures, and that in their creation; which is more than their preservation: for if the rules and maxims of law in the first raising of tenures *in capite* be weakened, this nips the flower in the bud, and may do more hurt by a resolution in law, than the losses, which the King's tenures do daily receive by oblivion or suppression, or the neglect of officers, or the iniquity of jurors, or other like blasts, whereby they are continually shaken: and therefore it behoveth us of the King's council to have a special care of this case, as much as in us is, to give satisfaction to the court. Therefore before I come to argue these two points particularly, I will speak something of the favour of law towards tenures *in capite*, as that which will give a force and edge to all that I shall speak afterwards.

THE constitution of this kingdom appeareth to be a free monarchy in nothing better than in this; that as there is no land of the subject that is charged to the crown by way of tribute, or tax, or tallage, except it be set by parliament: so on the other side there is no land of the subject, but is charged to the crown by tenure, mediate or immediate, and that by the grounds of the common law. This is the excellent temper and commixture of this estate, bearing marks of the sovereignty of the King, and of the freedom of the subject from tax, whose possessions are *feodalia*, not *tributaria*.

TENURES, according to the most general division, are of two natures, the one containing matter of protection, and the other matter of profit: that of protection is likewise double, divine protection and military. The divine protection is chiefly procured by the prayers of holy and devout men; and great pity it is, that it was depraved and corrupted with superstition. This begot the tenure in frankalmoigne, which though in burthen it is less than in socage, yet in virtue it is more than knight's-service. For we read how, during the while *Moses* in the mount held up his hands, the *Hebrews* prevailed in battel, as well as when *Elias* prayed, rain came after drought, which made the plough go; so that I hold the tenure in frankalmoigne in the first institution indifferent to knight's-service and socage. Setting apart this tenure, there remaineth the other two, that of knight's-service, and that of socage; the one tending chiefly to defence and protection, the other to profit and maintenance of life. They are all three comprehended in the antient verse, *Tu semper ora, tu protege, tuque labora*. But between these two services, knight's-service and socage, the law of *England* makes a great difference: for this kingdom (my lords) is a state neither effeminate, nor merchant-like; but the laws give the honour unto arms and military service,

service, like the laws of a nation, before whom *Julius Caesar* turned his back, as their own prophet says; *Territa quaesitis offendit terga Britannis*. And therefore howsoever men upon husband-like considerations of profit esteem of socage tenures; yet the law that looketh to the greatness of the kingdom, and proceedeth upon considerations of estate, giveth the preeminence altogether to knight's-service.

WE see that the ward, who is ward for knight's-service-land, is accounted in law disparaged, if he be tender'd a marriage of the barghers parentage: and we see that the knights fees were by the ancient laws the materials of all nobility; for that it appears by diverse records how many knights fees should by computation go to a barony, and so to an earldom. Nay, we see that in the very summons of parliament, the knights of the shire are required to be chosen *milites gladio cincti*; so as the very call, though it were to council, bears a mark of arms and habiliments of war. To conclude, the whole composition of this warlike nation, and the favours of law tend to the advancement of military virtue and service.

BUT now farther, amongst the tenures by knight's-service, that of the King *in capite* is the most high and worthy; and the reason is double; partly because it is held of the King's crown and person; and partly because the law createth such a privity between the line of the crown, and the inheritors of such tenancies, as there cannot be an alienation without the King's licence, the penalty of which alienation was by the common law the forfeiture of the state itself, and by the statute of *E. III.* is reduced to fine and seifure. And although this also has been unworthily termed by the vulgar (not *capite*) captivity and thralldom; yet that which they count bondage, the law counteth honour, like to the case of tenants in tail of the King's advancement, which is a great restraint by the statute of *34 H. VIII.* but yet by that statute it is imputed for an honour. This favour of law to the tenure by knight's service *in capite* produceth this effect, that wheresoever there is no express service effectually limited, or wheresoever that, which was once limited, faileth, the law evermore supplieth a tenure by knight's-service *in capite*; if it be a blank once—that the law must fill it up, the law ever with her own hand writes tenure by knight's-service *in capite*. And therefore the resolution was notable by the judges of both benches, that where the King confirmed to his farmers tenants for life, *tenend per servitia debita*, this was a tenure *in capite*: for other services are *servitia requisita*, required by the words of patents or grants; but that only is *servitium debitum*, by the rules of law.

44 E. 3. f. 45.

THE course therefore that I will hold in the proof of the first main point, shall be this. First I will shew, maintain, and fortify my former grounds, that wheresoever the law createth the tenure of the King, the law hath no variety, but always raiseth a tenure *in capite*.

SECONDLY, that in the case present, there is not any such tenure expressed, as can take place, and exclude the tenure in law, but that there is as it were a lapse to the law.

AND lastly, I will shew in what cases the former general rule receiveth some shew of exception; and will shew the difference between them and our case; wherein I shall include an answer to all that hath been said on the other side.

FOR my first proposition I will divide into four branches: first, I say, where there is no tenure reserved, the law createth a tenure *in capite*; secondly, where the tenure is uncertain; thirdly, where the tenure reserved

is impossible or repugnant to law; and lastly, where a tenure once created is afterwards extinct.

FOR the first, if the King give lands and say nothing of the tenure, this is *Per Prifatt in fine* 33 H. 6. f. 7. 8 H. 7. f. 3. b. a tenure *in capite*; nay, if the King give whiteacre and blackacre, and reserves a tenure only of whiteacre; and that a tenure expressed to be in socage; yet you shall not for fellowship sake (because they are in one patent) intend the like tenure of blackacre; but that shall be held *in capite*.

So if the King grant land, held as of a manor, with warranty, and a special clause of recompense, and the tenant be impleaded, and recover in value; this land shall be held *in capite*, and not of the manor.

So if the King exchange the manor of *Dale* for the manor of *Sal*, which is held in socage, although it be by the word *exambium*; yet that goeth to equality of the state, not of the tenure, and the manor of *Dale* (if no tenure be expressed) shall be held *in capite*; so much for silence of tenure.

FOR the second branch, which is uncertainty of tenure; first, where an *ignoramus* is found by office, this by the common law is a tenure *in capite*, which is most for the King's benefit; and the presumption of law is so strong, that it amounts to a direct finding or affirmative, and the party shall have a negative or traverse, which is somewhat strange to a thing indefinite. 5 Mar. Dyer. 14 Eliz. Dyer. 306.

So if in ancient time, one held of the King, as of a manor by knight's service, and the land return to the King by attainder, and then the King granteth it *tenend' per fidelitatem tantum*, and it returneth the second time to the King, and the King granteth it *per servitia antebac consueta*; now because of the uncertainty, neither service shall take place, and the tenure shall be *in capite*, as was the opinion of you my lord chief justice, where you were commissioner to find an office after *Austin's* death. Austin's office;

So if the King grant land *tenend' de manerio de Eastgreenwich vel de honore de Hampton*; this is void, for the non-certainty, and shall be held of the King *in capite*.

FOR the third branch, if the King limit land to be discharged of tenure, 33 H. 6. f. 7. as *absque aliquo inde reddendo*, this is a tenure *in capite*; and yet if one should go to the next, *ad proximum*, it should be a socage; for the least is next to none at all: but you may not take the King's grant by argument; but where they cannot take place effectually and punctually, as they are expressed, there you shall resort wholly to the judgment of law.

So if the King grant land *tenend' si frankment come il en son corone*, this 14 H. 6. f. 12. is a tenure *in capite*.

If land be given to be held of a lordship not capable, as of *Salisbury plain*; or a corporation not *in esse*, or of the manor of a subject, this is a tenure *in capite*. Mersfield's case.

So if land be given to hold by impossible service, as by performing the office of the sheriff of *Yorkshire* (which no man can do but the sheriff) and fealty for all service, this is a tenure *in capite*.

FOR the fourth branch, which cometh nearest to our case; let us see where a feignory was once, and is after extinguished; this may be in two manners, by release in fact, or by unity of possession, which is a release or discharge in law.

AND therefore let the case be, that the King releaseth to his tenant, that holds of him in socage; this release is good, and the tenant shall hold now *in capite*, for the former tenure being discharged, the tenure in law ariseth. Vid. 30 H. 8. Dyer. 8 H. 7. f. 13.

1 E. 3. f. 4.
fine accept.

So the case, which is in 1 E. III. a fine is levied to *Y. S.* in tail, the remainder ouster to the King, the state tail shall be held *in capite*, and the first tenancy, if it were in socage, by the unity of the tenancy, shall be discharged, and a new raised thereupon: and therefore the opinion, or rather the *quære* in *Dyer* no law.

4 & 5 P. M.

THUS much for my major proposition, now for the minor, or the assumption, it is this: first, that the land in question is discharged of tenure by the purchase of the manor; then that the reservation of the service upon the manor cannot possibly inure to the tenancy; and then if a corruption be of the first tenure, and no generation of the new; then cometh in the tenure *per normam legis*, which is *in capite*.

AND the course of my proof shall be *ab enumeratione partium*, which is one of the clearest and most forcible kinds of argument.

IF this parcel of land be held by fealty and rent *tantum*, either it is the old fealty before the purchase of the manor, or it is the new fealty reserved and expressed upon the grant of the manor; or it is a new fealty raised by intendment of law in conformity and congruity of the fealty reserved upon the manor; but none of these, *ergo*, &c.

THAT it should be the old fealty, is void of sense; for it is not *ad eodem terminos*. The first fealty was between the tenancy and the manor; that tenure is by the unity extinct. Secondly, that was a tenure of a manor, this is a tenor in gross. Thirdly, the rent of 26 *l.* 10 *s.* must needs be new, and will you have a new rent with an old fealty? These things are *portenta in lege*; nay, I demand, if the tenure of the tenancy (*Lowes* tenure) had been by knight's-service, would you have said that had remained? No, but that it was altered by the new reservation, *ergo* no colour of the old fealty.

THAT it cannot be the new fealty is also manifest; for the new reservation is upon the manor, and this is no part of the manor: for if it had escheated to the King in an ordinary escheat, or come to him upon a *mortmain*, in these cases it had come in lieu of the seignior, and been parcel of the manor, and so within the reservation, but clearly not upon a purchase in fact.

6 Eliz. Coke
Lib. 3. f. 30.

AGAIN, the reservation cannot enure, but upon that which is granted; and this tenancy was never granted, but was in the tenant before; and therefore no colour it should come under the reservation. But if it be said, that nevertheless the seignior of that tenancy was parcel of the manor, and is also granted; and although it be extinct in substance, yet it may be *in esse* as to the King's service: this deserveth answer; for this assertion may be colourably inferred out of *Carr's* case.

KING *Edw.* VI. grants a manor, rendring 94 *l.* rent in fee farm *tenendum de Eastgreenwich* in socage; and after, Queen *Mary* granteth these rents amongst other things *tenendum in capite*, and the grantee released to the heir of the tenant; yet the rent shall be *in esse*, as to the King, but the land (saith the book) shall be devisable by the statute for the whole, as not held *in capite*.

26 Aff. pl. 60.

AND so the case of the honour of *Pickeringe*, where the King granted the bailiwick rendring rent; and after granted the honour, and the bailiwick became forfeited, and the grantee took forfeiture thereof; whereby it was extinct, yet the rent remaineth as to the King out of the bailiwick extinct.

THESE two cases partly make not against us, and partly make for us: there be two differences that avoid them. First, there the tenures or rents are *in esse* in those cases for the King's benefit, and here they should be *in esse* to the King's prejudice, who should otherwise have a more beneficial tenure.

tenure: Again, in these cases the first reservation was of a thing *in esse*; at the time of the reservation; and then there is no reason the act subsequent of the King's tenant should prejudice the King's interest once vested and settled: but here the reservation was never good, because it is out of a thing extinct in the instant.

BUT the plain reason, which turneth Carr's case mainly for us, is; for that where the tenure is of a rent or feignory, which is afterwards drowned or extinct in the land; yet the law judgeth the same rent or feignory to be *in esse*, as to support the tenure: but of what? only of the said rent or feignory, and never of the land itself? for the land shall be held by the same tenure it was before. And so is the rule of Carr's case, where it is adjudged, that though the rent be held *in capite*, yet the land was nevertheless devisable for the whole, as no ways charged with that tenure.

WHY then in our case, let the fealty be reserved out of the feignory extinct, yet that toucheth not at all the land: and then of necessity the land must be also held; and therefore you must seek out a new tenure for the land, and that must be *in capite*.

AND let this be noted once for all, that our case is not like the common cases of a menalty extinct, where the tenant shall hold of the lord, as the mean held before; as where the menalty is granted to the tenant, or where the tenancy is granted to the mean, or where the menalty descendeth to the tenant, or where the menalty is forejudged. In all these cases the tenancy, I grant, is held as the menalty was held before, and the difference is because there was an old feignory in being; which remaineth untouched and unaltered, save that it is drawn a degree nearer to the land, so as there is no question in the world of a new tenure: but in our case there was no lord paramount, for the manor itself was in the crown, and not held at all, nor no feignory of the manor *in esse*, so as the question is wholly upon the creation of a new feignory, and not upon the continuance of an old.

FOR the third course, that the law should create a new distinct tenure by fealty of this parcel, guided by the express tenure upon the manor; it is the probablest course of the three: but yet if the former authorities, I have alledged, be well understood and marked, they shew the law plainly, that it cannot be; for you shall ever take the King's grant *ad idem*, and not *ad simile*, or *ad proximum*: no more than in the case of the *absque aliquo reddendo*, or as free as the crown; who would not say that in those cases it should amount to a socage tenure? for *minimum est nihilo proximum*; and yet they are tenures by knight's service *in capite*. So if the King by one patent pass two acres, and a fealty reserved but upon the one of them, you shall not resort to this *ut expressum servitium regat, vel declaret tacitum*. No more shall you in our case imply that the express tenure reserved upon the manor shall govern, or declare the tenure of the tenancy, or controul the intendment of law concerning the same.

Now will I answer the cases, which give some shadow on the contrary side; and shew they have their particular reasons, and do not impugn our case.

FIRST, if the King have land by attainder of treason, and grant the land to be held of himself, and of other lords, this is no new tenure *per normam legis communis*; but the old tenure *per normam statuti*, which taketh away the intendment of the common law; for the statute directeth it so, and otherwise the King shall do a wrong.

So if the King grant land parcel of the demefne of a manor *tenendum de nobis*, or reserving no tenure at all, this is a tenure of the manor, or of the honour, and not *in capite*: for here the more vehement presumption controuleth the less; for the law doth presume the King hath no intent to dismember it from the manor, and so to lose his court and the perquisites.

So if the King grant land *tenendum* by a rose *pro omnibus servitiis*; this is not like the cases of the *absque aliquo inde reddendo*, or as free as the crown: ^{25 H. 6. f. 56.} for *pro omnibus servitiis* shall be intended for all express service; whereas fealty ^{9.} is incident, and passeth tacit, and so it is no impossible or repugnant reservation.

This is no
frankal-
moigne.

Wood's case.

THE case of the frankalmoigne, I mean the case where the King grants lands of the Templers to *J. S.* to hold as the Templers did, which cannot be frankalmoigne; and yet hath been ruled to be no tenure by knight's-service *in capite*, but only a socage tenure, is easily answered; for that the frankalmoigne is but a *species* of a tenure in socage with a privilege, so the privilege ceaseth, and the tenure remains.

To conclude therefore, I sum up my arguments thus; my major is, where *calamus legis* doth write the tenure, it is knight's-service *in capite*. My minor is, this tenure is left to the law, *ergo* this tenure is *in capite*.

FOR the second point I will first speak of it according to the rules of the common law, and then upon the statutes of the duchy.

FIRST I do grant, that where a feignory and a tenancy, or a rent and land, or trees and land, or the like primitive and secondary interest are conjoined in one person, yea, though it be in *autre droit*; yet if it be of like perdurable estate they are so extinct, as by act in law they may be revived, but by grant they cannot.

FOR if a man have a feignory in his own right, and the land descend to his wife, and his wife dieth without issue, the feignory is revived; but if he will make a feoffment in fee, saving his rent, he cannot do it. But there is a great difference, and let it be well observed, between *autre capacite* and *autre droit*; for in case of *autre capacite* the interests are *contigua*, and not *continua*, conjoined but not confounded. And therefore if the master of an hospital have a feignory, and the mayor and commonalty of *St. Albans* have a tenancy, and the master of the hospital be made mayor, and the mayor grant away the tenancy under the seal of the mayor and commonalty, the feignory of the hospital is revived.

So between natural capacity and politick, if a man have a feignory to him and his heirs, and a bishop is tenant, and the lord is made bishop, and the bishop before the statute grants away the land under the chapter's seal, the feignory is revived.

THE same reason is between the capacity of the crown and the capacity of the duchy, which is in the King's natural capacity, though illustrate with some privileges of the crown; if the King have the feignory in the right of his crown, and the tenancy in the right of the duchy (as our case is) and make a feoffment of the tenancy, the tenure must be revived; and this is by the ground of the common law. But the case is the more strong by reason of the statute of 1 H. IV. 3 H. V. and 1 H. VII. of the duchy, by which the duchy-seal is enabled to pass lands of the duchy, but no ways to touch the crown; and whether the King be in actual possession of the thing that should pass, or have only a right, or a condition, or a thing in suspense (as our case is) all is one; for that seal will not extinguish so much as a spark of that which is in the right of the crown; and so a plain revivor.

AND

AND if it be said that a mischief will follow; for that upon every duchy patent men shall not know how to hold, because men must go back to the ancient tenure, and not rest in the tenure limited: for this mischief there grows an easy remedy, which likewise is now in use, which is to take both seals, and then all is safe.

SECONDLY, as the King cannot under the duchy-seal grant away his ancient feignory in the right of his crown; so he cannot make any new reservation by that seal, and so of necessity it falleth to the law to make the tenure: for every reservation must be of the nature of that that passeth, as a dean and chapter cannot grant land of the chapter, and reserve a rent to the dean and his heirs, nor *à converso*: nor no more can the King grant land of the duchy under that seal, and reserve a tenure to the crown; and therefore it is warily put in the end of the case of the duchy in the commentaries, where it is said, if the King make a feoffment of the duchy land, the feoffee shall hold *in capite*; but not a word of that it should be by way of express reservation, but upon a feoffment simply, the law shall work it and supply it.

To conclude, there is direct authority in the point, but that it is *via versa*; and it was the bishop of *Salisbury's* case, the King had in the right of the duchy a rent issuing out of land, which was monastery land, which he had in the right of the crown, and granted away the land under the great seal to the bishop; and yet nevertheless the rent continued to the duchy, and so upon great and grave advice it was in the duchy decreed: so as your lordship seeth whether you take the tenure of the tenancy, or the tenure of the manor; this land must be held *in capite*, and therefore, &c.

T H E
C A S E
O F
REVOCATION of USES,

In the KING'S-BENCH.

The case shortly put without names or dates more than of necessity is this.

SIR *John Stanhope* conveys the manor of *Burrough-ash* to his lady for part of her jointure, and intending (as is manifest) not to restrain himself, nor his son, from disposing some proportion of that land according to their occasions, so as my lady were at no loss by the exchange, inserteth into the conveyance a power of revocation and alteration in this manner; provided that it shall be lawful for himself and his son successively to alter, and make void the uses, and to limit and appoint new uses, so it exceed not the value of 20 *l.* to be computed after the rents then answered; and that immediately after such declaration, or making void, the feoffees shall stand seized to such new uses; *Ita quod*, he or his son within six months after such

declaration, or making void, shall assure within the same town, *tantum terrarum & tenementorum, & similis valoris*, as were so revoked, to the uses expressed in the first conveyance.

SIR *John Stanbope* his son revokes the land in *Burrough-ash*, and other parcels not exceeding the value of 20 *l.* and within six months assures to my lady and to the former uses *Burton-joice*, and other lands; and the jury have found that the lands revoked contain twice so much in number of acres, and twice so much in yearly value, as the new lands; but yet that the new lands are rented at 21 *l.* and find the lands of *Burrough-ash*, now out of lease formerly made: and that no notice of this new assurance was given before the ejectment, but only that Sir *John Stanbope* had by word told his mother, that such an assurance was made, not shewing or delivering the deed.

THE question is whether *Burrough-ash* be well revoked; which question divides itself into three points.

FIRST, whether the *ita quod* be a void and idle clause? for if so, then there needs no new assurance, but the revocation is absolute *per se*.

THE next is, if it be an effectual clause, whether it be pursued or no? wherein the question will rest, whether the value of the re-assured lands shall be only computed by rents?

AND the third is, if in other points it should be well pursued, yet whether the revocation can work until a sufficient notice of the new assurance?

AND I shall prove plainly, that *ita quod* stands well with the power of revocation; and if it should fall to the ground, it draws all the rest of the clause with it, and makes the whole void, and can't be void alone by itself.

I SHALL prove likewise that the value must needs be accounted not a tale value, or an arithmetical value by the rent, but a true value in quantity and quality.

AND lastly, that a notice is of necessity, as this case is.

I WILL not deny, but it is a great power of wit to make clear things doubtful; but it is the true use of wit to make doubtful things clear, or at least to maintain things that are clear, to be clear, as they are. And in that kind I conceive my labour will be in this case, which I hold to be a case rather of novelty than difficulty, and therefore may require argument, but will not endure much argument: but to speak plainly to my understanding, as the case hath no equity in it (I might say piety) so it hath no great doubt in law.

FIRST therefore this it is, that I affirm, that the clause *so that, ita quod*, containing the recompense, governs the clause precedent of the power, and that it makes it wait and expect otherwise than as by way of inception, but the effect and operation is suspended, till that part also be performed: and if otherwise, then I say plainly you shall not construe by fractions; but the whole clause and power is void not *in tanto*, but *in toto*. Of the first of them I will give four reasons.

THE first reason is, that the wisdom of the law useth to transpose words according to the sense; and not so much to respect how the words do take place, but how the acts, which are guided by those words, may take place.

HILL and Graunger's case comment. 171. A man in *August* makes a lease rendering 10 *l.* rent yearly to be paid at the feasts of *Annunciation* and *Michaelmas*: these words shall be inverted by law, as if they had been set thus, at *Michaelmas* and the *Annunciation*, for else he can't have a rent yearly; for there will be fourteen months to the first year.

Hill and
Graunger's
case, com. f.
171.

FITZ-WILLIAMS'S case 2 *Jac. Co.* p. 6. f. 33. It was contained in an indenture of uses, that Sir *William Fitz-Williams* should have power to alter and change, revoke, determine, and make void the uses limited: the words are placed disorderly; for it is in nature first to determine the uses, and after to change them by limitation of new. But the chief question being in the book, whether it might be done by the same deed; it is admitted and thought not worth the speaking to, that the law shall marshal the acts against the order of the words, that is, first to make void, and then to limit.

So if I convey land and covenant with you to make farther assurance, so that you require it of me, there though the request be placed last, yet it must be acted first.

So if I let land to you for a term, and say farther, it shall be lawful for you to take twenty timber-trees to erect a new tenement upon the land; so that my bailiff do assign you where you shall take them, here the assignment, though last placed, must precede. And therefore the Grammarians do infer well upon the word *period*, which is a full and compleat clause or sentence, that it is *complexus orationis circularis*: for as in a circle there is not *prius* nor *posterius*, so in one sentence you shall not respect the placing of words; but though the words lie in length, yet the sense is round, so as *prima erunt novissima, & novissima prima*. For though you cannot speak all at once so, yet you must construe and judge upon all at once.

To apply this; I say these words *so that*, though *loco & textu posteriora*, yet they be *potestate & sensu priora*: as if they had been penned thus, that it shall be lawful for Sir *Thomas Stanhope*, so that he assure lands, &c. to revoke; and what difference between, so that he assure, he may revoke, or he may revoke, so that he assure: for you must either make the *so that* to be precedent or void, as I shall tell you anon. And therefore the law will rather invert the words, than pervert the sense.

BUT it will be said, that in the cases I put, it is left indefinite, when the act last limited shall be performed; and so the law may marshal it, as may stand with possibility; and so if it had been in this case no more but (*so that* Sir *Thomas* or *John* should assure new lands) and no time spoken of, the law might have intended it precedent. But in this case it is precisely put to be at any time within six months after the declaration, and therefore you cannot vary in the times.

To this I answer, that the new assurance must be in deed in time after the instrument or deed of the declaration; but on the other side it must be time precedent to the operation of the law, by determining the uses thereupon: so as it is not to be applied so much to the declaration itself, but to the warrant of the declaration. It shall be lawful, *so that*, &c. And this will appear more plainly by my second reason, to which now I come; for as for the cavillation upon the word *immediately*, I will speak to it after.

My second reason therefore is out of the use and signification of this conjunction or bond of speech, *so that*: for no man will make any great doubt of it, if the words had been *si*, if Sir *Thomas* shall within six months of such declaration convey; but that it must have been intended precedent; yet if you mark it well, these words *ita quod* and *si*, howsoever in propriety, the *ita quod* may seem subsequent, and the *si* precedent, yet they both bow to the sense.

So we see in 4 *Edw. VI.* *Coltburst's* case, a man leaseth to *J. S.* a house, *si ipse vellet habitare, & residens esse*; there the word *si* amounts to a condition subsequent; for he could not be resident before he took the state; and

4 E. 6. Pl.
Com. *Coltburst's* case.

Digg's case,
42 Eliz. Co.
p. 1. f. 173.

and so *via versa* may *ita quod* be precedent, for else it must be idle or void. But I go farther, for I say *ita quod*, though it be good words of condition, yet more properly it is neither condition, precedent nor subsequent, but rather a qualification, or form, or adherent to the acts, whereto it is joined, and made part of their essence, which will appear evidently by other cases. For allow it had been thus, *so that the deed of declaration be inrolled within six months*, this is all one, as by deed inrolled within six months, as it is said in Digg's case 42 Eliz. f. 173. That by deed indented to be inrolled is all one with deed indented and inrolled. It is but a *modus faciendi*, a description, and of the same nature is the *ita quod*: so if it had been thus, it shall be lawful for Sir Thomas to declare, *so that the declaration be with the consent of my lord chief justice*, is it not all one with the more compendious form of penning, that Sir Thomas shall declare with the consent of my lord chief justice? And if it had been thus, *so that Sir John within six months after such declaration shall obtain the consent of my lord chief justice*, should not the uses have expected? But these you will say are forms, and circumstances annexed to the conveyance required; why surely any collateral matter coupled by the *ita quod* is as strong? If the *ita quod* had been that Sir John Stanhope within six months should have paid my lady 1000 l. or entered into bond, never more to disturb her, or the like, all these make but one entire idea or notion, how that his power should not be categorical, or simple at pleasure, but hypothetical, and qualified, and restrained, that is to say, not the one without the other, and they are parts incorporated into the nature and essence of the authority itself.

THE third reason is the justice of the law in taking words so, as no material part of the parties intent perish: for as one saith *præstat torquere verba quam homines*, better wrest words out of place, than my Lady Stanhope out of her jointure, that was meant to her. And therefore it is elegantly said in Fitz-William's case, which I vouched before, though words be contradictory, and (to use the phrase of the book) *pugnant tanquam ex diametro*; yet the law delighteth to make atonement, as well between words, as between parties, and will reconcile them, so as they may stand, and abhorreth a *vacuum*, as well as nature abhorreth it; and as nature to avoid a *vacuum* will draw substances contrary to their propriety, so will the law draw words. Therefore saith Littleton, if I make a feoffment *reddendo* rent to a stranger, this is a condition to the feoffor, rather than it shall be void, which is quite cross; it sounds a rent, it works a condition, it is limited to a third person, it inureth to the feoffor; and yet the law favoureth not conditions, but to avoid a *vacuum*.

45 E. 3.

So in the case of 45 E. III. a man gives land in frank-marriage, the remainder in fee. The frank-marriage is first put, and that can be but by tenure of the donor; yet rather than the remainder should be void, though it be last placed, the frank-marriage being but a privilege of estate shall be destroyed.

So 33 H. VI. Treffham's case: the King granteth a wardship, before it fall; good, because it cannot inure by covenant, and if it should not be good by plea, as the book terms it, it were void: so that, no, not in the King's case, the law will not admit words to be void.

So then the intent appears most plainly, that this act of Sir John should be *actus geminus*, a kind of twine to take back, and to give back, and to make an exchange, and not a resumption; and therefore upon a conceit of repugnancy, to take the one part, which is the privation of my lady's jointure, and not the other, which is the restitution or compensation, were a thing utterly injurious in matter, and absurd in construction.

THE

THE fourth reason is out of the nature of the conveyance, which is by way of use, and therefore ought to be construed more favourably according to the intent, and not literally or strictly: for although it be said in *Frene* and *Dillon's* case, and in *Fitz-Williams's* case, that it is safe so to construe the statute of 27 H. VIII. as that uses may be made subject to the rules of the common law, which the professors of the law do know, and not leave them to be extravagant and irregular; yet if the late authorities be well marked, and the reason of them, you shall find this difference, that uses in point of operation are reduced to a kind of conformity with the rules of the common law, but that in point of exposition of words, they retain somewhat of their antient nature, and are expounded more liberally according to the intent; for with that part the statute of 27, doth not meddle. And therefore if the question be, whether a bargain and sale upon condition be good to reduce the state back without an entry; or whether if a man make a feoffment in fee to the use of *John a Style* for years, the remainder to the right heirs of *John a Downe*, this remainder be good or no, these cases will follow the grounds of the common law for possessions, in point of operation; but so will it not be in point of exposition.

FOR if I have the manor of *Dale*, and the manor of *Sale* lying both in *Vale*, and I make a lease for life of them both, the remainder of the manor of *Dale*, and all other my lands in *Vale* to *John a Style*, the remainder of the manor of *Sale* to *John a Downe*, this latter remainder is void, because it comes too late, the general words having carried it before to *John a Style*. But put it by way of use, a man makes a feoffment in fee of both manors, and limits the use of the manor of *Dale*, and all other the lands in *Vale*, to the use of himself, and his wife for her jointure, and of the manor of *Sale* to the use of himself alone: Now his wife shall have no jointure in the manor of *Sale*, and so was it judged in the case of the manor of *Odiam*.

The case of the manor of *Odiam*.

AND therefore our case is more strong, being by way of use, and you may well construe the latter part to controul and qualify the first, and to make it attend and expect; nay, it is not amiss to see the case of *Peryman* 41 Eliz. Coke p. 5. f. 84. where by a custom a livery may expect; for the case was, that in the manor of *Portchester*, the custom was, that a feoffment of land should not be good, except it were presented within a year in the court of the manor, and there ruled that it was but *actus inchoatus*, till it was presented; now if it be not merely against reason of law, that so solemn a conveyance as livery, which keeps state, (I tell you) and will not wait, should expect a farther perfection, *a fortiori* may a conveyance in use, or declaration of use, receive a consummation by degrees, and several acts. And thus much for the main point.

41 Eliz. Co. p. 5. f. 84.

Now for the objection of the word *immediate*, it is but light, and a kind of sophistry. They say that the words are, that the uses shall rise immediately after the declaration, and we would have an interposition of an act between, viz. that there should be a declaration first, then a new assurance within the six months; and lastly, the uses to rise; whereunto the answer is easy; for we have shewed before, that the declaration and the new assurance are in the intent of him that made the conveyance, and likewise in eye of law, but as one compounded act. So as *immediately after the declaration* must be understood of a perfect and effectual declaration, with the adjuncts and accomplements expressed.

So we see in 49 E. III. f. 11. If a man be attainted of felony, that holds lands of a common person, the King shall have his year, day and waste:

but when? not before an office found: and yet the words of the statute of *praerogativa Regis* are *Rex habebit catalla felonum, & si ipsi habent liberum tenementum, statim capiatur in manus domini, & rex habebit annum, diem & vastum*: and here the word *statim* is understood of the effectual and lawful time, that is after office found.

2 H. 4. f. 17. So in 2 H. IV. f. 17. it appears that by the statute of *Aetion Burnell*, if the debt be acknowledged, and the day past, that the goods of the debtors shall be sold *statim*, in *French* *maintenant*; yet nevertheless this *statim* shall not be understood, before the process of law requisite passed, that is, the day comprised in the extent.

27 H. 8. f. 19. So it is said 27 H. VIII. f. 19. by *Audley* the Chancellor, that the present tense shall be taken for the future, *a fortiori* say I, the immediate future tense may be taken for a distant future tense: as if I be bound that my son being of the age of twenty one years shall marry your daughter, and that he be now of twelve years; yet this shall be understood, when he shall be of the age of twenty one years. And so in our case *immediately after the declaration* is intended, when all things shall be performed, that are coupled with the said *declaration*.

BUT in this I doubt I labour too much; for no man will be of opinion, that it was intended that the Lady *Stanbope* should be six whole months without either the old jointure or the new; but that the old should expect until the new were settled without any *interim*. And so I conclude this course of atonements (as *Fitz-Williams's* case calls it) whereby I have proved, that all the words by a true marshalling of the acts may stand according to the intent of the parties.

I MAY add *tanquam ex abundanti*, that if both clauses do not live together, they must both die together; for the law loves neither fractions of estates, nor fractions of constructions: and therefore in *Jermin* and *Askew's* case, 37 *Eliz.* a man did devise lands in tail with proviso, that if the devisee did attempt to alien, his estate should cease, as if he were naturally dead. Is it said there, that the words, *as if he were naturally dead*, shall be void, and the words, *that his estate shall cease*, good? No, but the whole clause shall be void. And it is all one reason of a *so that*, as of an *as if*, for they both suspend the sentence.

So if I make a lease for life, upon condition he shall not alien, nor take the profits, shall this be good for the first part, and void for the second? No, but it shall be void for both.

So if the power of declaration of uses had been thus penn'd, that Sir *John Stanbope* might by his deed indented declare new uses, so that the deed were inrolled before the mayor of *St. Albans*, who hath no power to take inrollments; or so that the deed were made in such sort, as might not be made void by parliament: in all these and the like cases the impossibility of the last part doth strike upwards and infect, and destroy the whole clause. And therefore, that all the words may stand, is the first and true course; that all the words be void, is the second and probable; but that the revoking part should be good, and the assuring part void, hath neither truth nor probability.

Now come I to the second point, how this value should be measured; wherein methinks you are as ill a measurer of values, as you are an expounder of words; which point I will divide, first considering what the law doth generally intend by the word *value*; and secondly to see what special words may be in these clauses, either to draw it to a value of a present arrentation, or to understand it of a just and true value.

THE

THE word value is a word well known to the law, and therefore cannot be (except it be willingly) misunderstood. By the common law there is upon a warranty a recovery in value. I put the case therefore that I make a feoffment in fee with warranty of the manor of *Dale*, being worth 20 *l. per annum*, and then in lease for 20 *s.* The lease expires; (for that is our case, though I hold it not needful) the question is, whether upon an eviction there shall not be recovered from me land to the value of 20 *l.*

So if a man give land in frank-marriage then rented at 40 *l.* and no more worth; there descendeth other lands, let perhaps for a year or two for 20 *l.* but worth 80 *l.* shall not the donee be at liberty to put this land in hotchpotch?

So if two parceners be in tail, and they make partition of lands equal in rent, but far unequal in value, shall this bind their issues? By no means; for there is no calendar so false to judge of values as the rent, being sometimes improved, sometimes antient, sometimes where great fines have been taken, sometimes where no fines; so as in point of recompense you were as good put false weights into the hands of the law, as to bring in this interpretation of value by a present arrentation. But this is not worth the speaking to in general; that which giveth colour, is the special words in the clause of revocation, that the 20 *l.* value should be according to the rents then answered; and therefore that there should be a correspondence in the computation likewise of the recompense. But this is so far from countenancing that exposition, as, well noted, it crossieth it; for *opposita juxta se posita magis elucescunt*: first, it may be the intent of Sir *Thomas*, in the first clause, was double, partly to exclude any land in demesne, partly knowing the land was double, and as some say quadruple, better than the rent, he would have the more scope of revocation under his 20 *l.* value.

BUT what is this to the clause of recompense? first, are there any words *secundum computationem praedictam*? There are none. Secondly, doth the clause rest upon the words *similis valoris*? No, but joineth *tantum & similis valoris*: confound not predicaments; for they are the mere-stones of reason. Here is both quantity and quality; nay he saith farther within the same towns. Why? marry it is somewhat to have men's possessions lie about them, and not dispersed. So it must be as much, as good, as near; so plainly doth the intent appear, that my lady should not be a loser.

For the point of the notice, it was discharged by the court.

THE JURISDICTION OF THE MARCHES.

The effect of the first argument of the King's Solicitor-general, in maintaining the jurisdiction of the Council of the marches over the four shires.

THE question for the present is only upon the statute of 34 H. VIII. and though it be a great question, yet it is contracted into small room; for it is but a true construction of a monosyllable, the word *march*.

THE exposition of all words resteth upon three proofs, the propriety of the word, and the matter precedent and subsequent.

MATTER precedent concerning the intent of those that speak the words, and matter subsequent touching the conceit and understanding of those that construe and receive them.

FIRST therefore as to *vis termini*, the force and propriety of the word; this word *marches* signifieth no more but limits, or confines, or borders, in latin *limites*, or *confinia*, or *contermina*; and thereof was derived at the first *marchio*, a marquis, which was *comes limitaneus*.

Now these limits cannot be *linea imaginaria*, but it must have some contents and dimension, and that can be no other but the counties adjacent: and for this construction we need not wander out of our own state, for we see the counties of *Northumberland*, *Cumberland*, and *Westmoreland*, lately the borders upon *Scotland*. Now the middle shires were commonly called the east, west, and middle marches.

To proceed therefore to the intention of those that made the statute, in the use of this word; I shall prove that the parliament took it in this sense by three several arguments.

THE first is, that otherwise the word should be idle; and it is a rule *verba sunt accipienda, ut sortientur effectum*: for this word *marches*, as is confessed on the other side, must be either for the counties marches, which is our sense, or the lordships marchers, which is theirs; that is, such lordships, as by reason of the incursions and infestations of the *Welsh* in antient time, were not under the constant possession of either dominion, but like the bateable ground where the war played. Now if this latter sense be destroyed, then all equivocation ceaseth.

THAT it is destroyed, appears manifestly by the statute of 27 H. VIII. made seven years before the statute of which we dispute; for by that statute all the lordships marchers are made shire ground, being either annexed to the antient counties of *Wales*, or to the antient counties of *England*, or

erected into new counties, and made parcel of the dominion of *Wales*, and so no more marches after the statute of 27; so as there were no marches in that sense at the time of the making of the statute of 34.

THE second argument is from the comparing of the place of the statute, whereupon our doubt riseth (*viz.*) that there shall be and remain a lord president and council in the dominion of *Wales*, and the marches of the same, &c. with another place of the same statute, where the word (marches) is left out; for the rule is, *opposita juxta se posita magis elucescunt*. There is a clause in the statute, which gives power and authority to the King to make and alter laws for the weal of his subjects of his dominion of *Wales*; there the word *marches* is omitted, because it was not thought reasonable to invest the King with a power to alter the laws, which is the subjects birth-right, in any part of the realm of *England*; and therefore by the omission of the word *marches* in that place you may manifestly collect the signification of the word in the other, that is, to be meant of the four counties of *England*.

THE third argument which we will use is this: the council of the marches was not erected by the act of parliament, but confirmed; for there was a president and council long before in *E. IV.* his time, by matter yet appearing; and it is evident upon the statute it self, that in the very clause which we now handle, it referreth twice to the usage, *as heretofore hath been used*.

THIS then I infer, that whatsoever was the King's intention in the first erection of this court, was likewise the intention of the parliament in the establishing thereof, because the parliament builded but upon an old foundation.

THE King's intention appeareth to have had three branches, whereof every of them doth manifestly comprehend the four shires.

THE first was the better to bridle the subject of *Wales*, which at that time was not reclaimed: and therefore it was necessary for the president and council there to have jurisdiction and command over the *English* shires; because that by the aid of them, which were undoubted good subjects, they might the better govern and suppress those that were doubtful subjects.

AND if it be said, that it is true, that the four shires were comprehended in the commission of *oyer* and *terminer*, for the suppressing of riots and misdemeanors, but not for the jurisdiction of a court of equity; to that I answer, that their commission of *oyer* and *terminer* was but *gladius in vagina*, for it was not put in practice amongst them; for even in punishment of riots and misdemeanors, they proceeded not by their commission of *oyer* and *terminer* by way of jury, but as a council by way of examination. And again it was necessary to strengthen that court for their better countenance with both *jurisdictions*, as well civil as criminal, for *gladius gladium juvat*.

THE second branch of the King's intention was to make a better equality of commerce, and intercourse in contracts and dealings between the subjects of *Wales* and the subjects of *England*; and this of necessity must comprehend the four shires: for otherwise, if the subject of *England* had been wronged by the *Welsh* on the sides of *Wales*, he might take his remedy nearer hand. But if the subject of *Wales*, for whose weal and benefit the statute was chiefly made, had been wronged by the *English* in any of the shires, he might have sought his remedy at *Westminster*.

THE third branch of the King's intent was to make a convenient dignity and state for the mansion and residence of his eldest son, when he should

be created Prince of *Wales*, which likewise must plainly include the four shires: for otherwise to have sent *primogenitum Regis* to a government, which without the mixture of the four shires (as things then were) had more peril than honour or command; or to have granted him only a power of lieutenancy in those shires, where he was to keep his state, not adorn'd with some authority civil, had not been convenient.

So that here I conclude the second part of that I am to say touching the intention of the parliament precedent.

Now touching the construction subsequent, the rule is good, *optimus legum interpretis consuetudo*; for our labour is not to maintain an usage against a statute, but by an usage to expound a statute; for no man will say, but the word *marches* will bear the sense, that we give it.

THIS usage or custom is fortified by four notable circumstances; first that it is antient and not late, or recent; secondly, it is authorized and not popular, or vulgar; thirdly, that it hath been admitted and quiet, and not litigious or interrupted; and fourthly, when it was brought in question, which was but once, it hath been affirmed *judicio controverso*.

FOR the first, there is record of a president and council, that hath exercised and practised jurisdiction in these shires, as well sixty years before the statute, viz. since 18 E. IV. as the like number of years since: so that it is *Janus bifrons*, it hath a face backwards from the statute, as well as forwards.

FOR the second it hath received these allowances by the practice of that court, by suits originally commenced there, by remanding from the courts of *Westminster*, when causes within those shires have been commenced here above; sometimes in chancery, sometimes in the star-chamber, by the admittance of diverse great learned men, and great judges, that have been of that council, and exercised that jurisdiction; as at one time *Bromley*, *Morgan*, and *Brook*, being the two chief justices, and chief baron, and diverse others; by the King's learned council, which always were called to the penning of the King's instructions; and lastly, by the King's instructions themselves, which though they be not always extant, yet it is manifest that since 17 H. VIII. when Princess *Mary* went down, that the four shires were ever comprehended in the instructions, either by name, or by that that amounts to so much. So as it appears that this usage or practice hath not been an obscure custom practised by the multitude, which is many times erroneous, but authorized by the judgment and consent of the state: for as it is *vera vox* to say, *maximus erroris populus magister*; so it is *dura vox* to say, *maximus erroris princeps magister*.

FOR the third, it was never brought in question till 16 Eliz. in the case of one *Wynde*.

AND for the fourth, the controversy being moved in that case, it was referred to *Gerrard* attorney, and *Bromley* solicitor, which was afterwards chancellor of *England*, and had his whole state of living in *Shropshire* and *Worcester*, and by them reported to the lords of the council in the star-chamber, and upon their report decreed, and the jurisdiction affirmed.

LASTLY, I will conclude with two manifest badges and tokens, though but external yet violent in demonstration, that these four shires were understood by the word *marches*; the one the denomination of that council, which was ever in common appellation termed and styled *the council of the marches*, or in the *marches*, rather than the council of *Wales*, or in *Wales*, and *denominatio est a digniore*. If it had been intended of lordships marchers, it had been, as if one should have called my lord mayor, my lord mayor

mayor of the suburbs. But it was plainly intended of the four *English* shires, which indeed were the more worthy.

AND the other is of the perpetual residence and mansion of the council, which was evermore in the shires; and to imagine that a court should not have jurisdiction, where it sitteth, is a thing utterly improbable, for they should be *tanquam piscis in arido*.

So as upon the whole matter, I conclude that the word (marches) in that place by the natural sense, and true intent of the statute, is meant of the four shires.

The effect of that, that was spoken by Serjeant Hutton and Serjeant Harris, in answer of the former argument, and for the excluding of the jurisdiction of the marches in the four shires.

THAT, which they both did deliver, was reduced to three heads:

THE first, to prove the use of the word *marches* for lordships marchers.

THE second to prove the continuance of that use of the word, after the statute of 27, that made the lordships marchers shire-grounds; whereupon it was inferred, that though the marches were destroyed in nature, yet they remained in name.

THE third was some collections, they made upon the statute of 34; whereby they inferred, that that statute intended that word in that signification.

FOR the first, they did alledge diverse statutes before 27 *H. VIII.* and diverse book-cases of law in print, and diverse offices and records, wherein the word *marches* of *Wales* was understood of the lordships marchers.

THEY said farther, and concluded, that whereas we shew our sense of the word but rare, they shew theirs common and frequent; and whereas we shew it but in a vulgar use and acceptation, they shew theirs in a legal use in statutes, authorities of books, and antient records.

THEY said farther, that the example we brought of marches upon *Scotland*, was not like, but rather contrary; for they were never call'd *marches* of *Scotland*, but the *marches* of *England*: whereas the statute of 34, doth not speak of the *marches* of *England*, but of the *marches* of *Wales*.

THEY said farther, that the county of *Worcester* did in no place or point touch upon *Wales*, and therefore that county could not be termed *marches*.

TO the second they produced three proofs; first, some words in the statute of 32 *H. VIII.* where the statute providing for a form of trial for treason committed in *Wales*, and the marches thereof, doth use that word, which was in time after the statute of 27, whereby they prove the use of the word continued.

THE second proof was out of two places of the statute, whereupon we dispute, where the word *marches* is used for the lordships marchers.

THE third proof was the style and form of the commission of *oyer and terminer* even to this day, which run to give power and authority to the president and council there, *infra principalitat. Walliae*, and *infra* the four counties by name, with this clause farther, *& marchias Walliae eisdem comitatibus adjacent*: whereby they infer two things strongly, the one that the marches of *Wales* must needs be a distinct thing from the four counties; the other

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other that the word *marches* was used for the lordships marchers long after both statutes.

THEY said farther, that otherwise the proceeding, which had been in the four new erected counties of *Wales* by the commission of *oyer and terminer*, by force whereof many had been proceeded with both for life, and other-ways, should be called in question, as *coram non judice*, inasmuch as they neither were part of the principality of *Wales*, nor part of the four shires; and therefore must be contained by the word *marches*, or not at all.

FOR the third head, they did insist upon the statute of 34, and upon the preamble of the same statute.

THE title being an act for certain ordinances in the King's Majesty's dominion and principality of *Wales*; and the preamble being for the tender zeal and affection that the King bears to his subjects of *Wales*; and again, at the humble suit and petition of his subjects of *Wales*: whereby they infer that the statute had no purpose to extend or intermeddle with any part of the King's dominions or subjects, but only within *Wales*.

AND for usage and practice they said, it was nothing against an act of parliament.

AND for the instructions, they pressed to see the instructions immediately after the statute made.

AND for the certificate and opinions of *Gerrard* and *Bromley*, they said they doubted not, but that if it were now referred to the attorney and solicitor, they would certify as they did.

AND lastly, they relied, as upon their principal strength, upon the precedent of that, which was done of the exempting of *Cheeshire* from the late jurisdiction of the said council; for they said, that from 34 of *H. VIII.* until 11 of *Queen Eliz.* the court of the marches did usurp jurisdiction upon that county, being likewise adjacent to *Wales*, as the other four are; but that in the eleventh year of *Queen Elizabeth* aforesaid, the same being questioned at the suit of one *Radforde*, was referred to the Lord *Dyer*, and three other judges, who by their certificate at large remaining of record in the chancery, did pronounce the said shire to be exempted, and that in the conclusion of their certificate they give this reason, because it was no part of the principality, or marches of *Wales*. By which reason they say it should appear their opinion was, that the word *marches* could not extend to counties adjacent. This was the substance of their defence.

The reply of the King's Solicitor to the arguments of the two serjeants.

HAVING divided the substance of their arguments (*ut supra*) he did pursue the same division in his reply, observing nevertheless both a great redundancy, and a great defect in that, which was spoken. For touching the use of the word *marches* great labour had been taken, which was not denied: but touching the intent of the parliament, and the reasons to demonstrate the same, which were the life of the question, little or nothing had been spoken.

AND therefore as to the first head, that the word *marches* had been often applied to the lordships marchers, he said it was the sophism, which is called *sciomachia*, fighting with their shadows, and that the sound of so many statutes, so many printed book-cases, so many records were *nomina magna*, but

but they did not press the question; for we grant that the word *marches* hath significations, sometimes for the counties, sometimes for the lordships marchers, like as *Northampton*, and *Warwick* is sometimes taken for the towns of *Northampton* and *Warwick*, and sometimes for the counties of *Northampton* and *Warwick*. And *Dale* and *Sal* are sometimes taken for the villages or hamlets of *Dale* and *Sal*, and sometimes taken for the parishes of *Dale* and *Sal*: and therefore that the most part of that they had said, went not to the point.

To that answer, which was given to the example of the middle shires upon *Scotland*, it was said, it was not *ad idem*; for we used it to prove that the word *marches* may and doth refer to whole counties; and so much it doth manifestly prove; neither can they deny it. But then they pinch upon the addition, because the *English* counties adjacent upon *Scotland* are called the marches of *England*, and the *English* counties adjacent upon *Wales* are called the marches of *Wales*; which is but a difference in phrase: for sometimes limits and borders have their names of the inward country, and sometimes of the outward country; for the distinction of *exclusive* and *inclusive* is a distinction both in time and place; as we see that that which we call this day fortnight, excluding the day, the *French* and the law-phrase calls this day fifteen days, or *quindena* including the day. And if they had been called the marches upon *Wales*, or the marches against *Wales*, then it had been clear and plain; and what difference between the banks of the sea, and the banks against the sea? So that he took this to be but a toy, or cavillation, for that phrases of speech are *ad placitum, & recipiunt casum*.

As to the reason of the map, that the county of *Worcester* doth no way touch upon *Wales*, it is true, and I do find when the lordships marchers were annexed, some were laid to every other of the three shires, but none to *Worcester*. And no doubt but this emboldened *Wynd* to make the claim to *Worcester*, which he durst not have thought on for any of the other three. But it falls out well that that, which is the weakest in probability, is strongest in proof; for there is a case ruled in that more than in the rest. But the true reason is, that usage must over-rule propriety of speech; and therefore if all commissions and instructions, and practices, have coupled these four shires, it is not the map that will sever them.

To the second head he gave this answer. First, he observed in general that they had not shewed one statute, or one book-case, or one record (the commissions of *oyer* and *terminer* only excepted) wherein the word *marches* was used for lordships marchers since the statute of 34. So that it is evident, that as they granted the nature of those marches was destroyed and extinct by 27; so the name was discontinued soon after, and did but remain a very small while, like the sound of a bell, after it hath been rung and as indeed it is usual when names are altered, that the old name, which is expired, will continue for a small time.

SECONDLY, he said, that whereas they had made the comparison, that our acceptation of the word was popular, and theirs was legal, because it was extant in book-cases, and statutes, and records, they must needs confess that they are beaten from that hold: for the name ceased to be legal clearly by the law of 27, which made the alteration in the thing itself, whereof the name is but a shadow; and if the name did remain afterwards, then it was neither legal, nor so much as vulgar, but it was only by abuse, and by a trope or *catachresis*.

THIRDLY, he shewed the impossibility how that signification should continue, and be intended by the statute of 34. For if it did, it must be in one of these two senses, either that it was meant of the lordships marchers made part of *Wales*, or of the lordships marchers annexed to the four shires of *England*.

FOR the first of these, it is plainly impugned by the statute itself; for the first clause of the statute doth set forth that the principality and dominion of *Wales* shall consist of twelve shires; wherein the four new erected counties, which were formerly lordships marchers, and whatsoever else was lordships marchers annexed to the antient counties of *Wales* is comprehended; so that of necessity all that territory or border must be *Wales*: then followeth the clause *immediately*, whereupon we now differ (*viz.*) that there shall be and remain a president and council in the principality of *Wales*, and the marches of the same; so that the parliament could not forget so soon what they had said in the clause next before: and therefore by the marches they meant somewhat else besides that which was *Wales*. Then if they fly to the second signification, and say that it was meant by the lordships marchers annexed to the four *English* shires; that device is merely *nuper nata oratio*, a mere fiction and invention of wit, crossed by the whole stream and current of practice: for if that were so, the jurisdiction of the council should be over part of those shires, and in part not; and then in the suits commenced against any of the inhabitants of the four shires, it ought to have been laid or shew'd that they dwelt within the antient lordships marchers, whereof there is no shadow that can be shewed.

THEN he proceeded to the three particulars. And for the statute of 32, for trial of treason, he said it was necessary that the word *marches* should be added to *Wales*, for which he gave this reason, that the statute did not only extend to the trial of treasons, which should be committed after the statute, but did also look back to treasons committed before: and therefore this statute being made but five years after the statute of 27, that extinguished the lordships marchers, and looking back, as was said, was fit to be penn'd with words, that might include the preterperfect tense, as well as the present tense; for if it had rested only upon the word *Wales*, then a treason committed before the lordships marchers were made part of *Wales*, might have escaped the law.

TO this also another answer was given, which was, that the word *marches* as used in that statute, could not be referred to the four shires, because of the words following, wherewith it is coupled (*viz.*) in *Wales*, and the marches of the same, where the King's writ runs not.

TO the two places of the statute of 34 itself, wherein the word *marches* is used for lordships marchers; if they be diligently marked, it is merely sophistry to alledge them; for both of them do speak by way of recital of the time past before the statute of 27, as the words themselves being read over will shew without any other enforcement; so that this is still to use the almanack of the old year with the new.

TO the commissions of *oyer* and *terminer*, which seemeth to be the best evidence they shew for the continuance of the name in that *tropical* or abused sense, it might move somewhat, if this form of penning those commissions had been begun since the statute of 27. But we shew forth the commission in 17 *H. VIII.* when the Princess *Mary* went down, running in the same manner *verbatim*, and in that time it was proper, and could not otherwise be. So that it appeareth that it was but merely a *fac simile*, and that

that notwithstanding the case was altered, yet the clerk of the crown pursued the former precedent; hurt it did none, for the word *marches* is there superfluous.

AND whereas it was said, that the words in those commissions were effectual, because else the proceeding in the four new-erected shires of *Wales* should be *coram non judice*, that objection carrieth no colour at all; for it is plain, they have authority by the word *Principality of Wales* without adding the word *marches*; and that is proved by a number of places in the statute of 34, where if the word *Wales* should not comprehend those shires, they should be excluded in effect of the whole benefit of that statute; for the word *marches* is never added in any of these places.

To the third head, touching the true intent of the statute, he first noted how naked their proof was in that kind, which was the life of the question, for all the rest was but *in litera, & in cortice*.

HE observed also that all the strength of our proof, that concerned that point, they had passed over in silence, as belike not able to answer: for they had said nothing to the first intentions of the erections of the court, whereupon the parliament built; nothing to the diversity of penning, which was observed in the statute of 34, leaving out the word *marches*, and resting upon the word *Wales* alone; nothing to the resistance, nothing to the denomination, nothing to the continual practice before the statute and after, nothing to the King's instructions, &c.

As for that that they gather out of the title and preamble, that the statute was made for *Wales*, and for the weal and government of *Wales*, and at the petition of the subjects of *Wales*, it was little to the purpose; for no man will affirm on our part the four *English* shires were brought under the jurisdiction of that council, either first by the King, or after by the parliament for their own sakes, being in parts no farther remote; but it was for congruity's sake, and for the good of *Wales*, that that commixture was requisite: and *turpis est pars, quae non congruit cum toto*. And therefore there was no reason, that the statute should be made at their petition, considering they were not *primi in intentione*, but came *ex consequenti*.

AND whereas they say that usage is nothing against an act of parliament, it seems they do voluntarily mistake, when they cannot answer; for we do not bring usage to cross an act of parliament, where it is clear, but to expound an act of parliament, where it is doubtful, and evermore *contemporanea interpretatio*, whether it be of statute or Scripture, or author whatsoever, is of greatest credit: for to come now above sixty years after by subtilty of wit to expound a statute otherwise than the ages immediately succeeding did conceive it, is *expositio contentiosa*, and not *naturalis*. And whereas they extenuate the opinion of the attorney and solicitor, it is not so easy to do; for first they were famous men, and one of them had his patrimony in the shires; secondly, it was of such weight, as a decree of the council was grounded upon it; and thirdly, it was not unlike, but that they had conferred with the judges, as the attorney and solicitor do often use in like cases.

LASTLY, for the exemption of *Cheshire* he gave this answer. First, that the certificate in the whole body of it, till within three or four of the last lines, doth rely wholly upon that reason, because it was a county *Palatine*, and to speak truth, it stood not with any great sense or proportion, that that place, which was privileged and exempted from the jurisdiction of the courts

courts of *Westminster*, should be meant by the parliament to be subjected to the jurisdiction of that council.

SECONDLY, he said that those reasons, which we do much insist upon for the four shires, hold not for *Cheeshire*; for we say it is fit the subject of *Wales* be not forced to sue at *Westminster*, but have his justice near hand; so may he have in *Cheeshire*, because there is both a justice for common law and a chancery; we say it is convenient for the Prince, if it please the King to send him down, to have some jurisdiction civil as well as for the peace; so may he have in *Cheeshire*, as Earl of *Chester*. And therefore those grave men had great reason to conceive that the parliament did not intend to include *Cheeshire*.

AND whereas they pinch upon the last words in the certificate, *viz.* that *Cheeshire* was no part of the dominion, nor of the marches, they must supply it with this sense, not within the meaning of the statute; for otherwise the judges could not have discerned of it: for they were not to try the fact, but to expound the statute; and that they did upon those reasons, which were special to *Cheeshire*, and have no affinity with the four shires.

AND therefore if it be well weighed, that certificate makes against them; for as *exceptio firmat legem in casibus non exceptis*, so the excepting of that shire by it self doth fortify, that the rest of the shires were included in the very point of difference.

AFTER this he shewed a statute in 18 *Eliz.* by which provision is made for the repair of a bridge called *Chepstow-bridge* between *Monmouth* and *Glocester*, and the charge lay in part upon *Glocestershire*; in which statute there is a clause, that if the justices of peace do not their duty in levying of the money, they shall forfeit five pounds to be recovered by information before the council of the marches: whereby he inferred that the parliament would never have assigned the suit to that court, but that it conceived *Glocestershire* to be within the jurisdiction thereof. And therefore he concluded that here is in the nature of a judgment by parliament, that the shires are within the jurisdiction.

The third and last argument of the King's solicitor in the case of the marches in reply to serjeant Harris.

THIS case groweth now to some ripeness, and I am glad we have put the other side into the right way; for in former arguments they laboured little upon the intent of the statute of 34 *H. VIII.* and busied themselves in effect altogether about the force and use of the word *marches*; but now finding that *littera mortua non prodest*, they offer at the true state of the question, which is the intent; I am determined therefore to reply to them in their own order, *ut manifestum sit* (as he saith) *me nihil aut subterfugere voluisse reticendo, aut obscurare dicendo.*

ALL which hath been spoken on their part, consisteth upon three proofs.

THE first was by certain inferences to prove the intent of the statute.

THE second was to prove the use of the word *marches*, in their sense long after both statutes; both that of 27, which extincted the lordships marchers, and that of 34, whereupon our question ariseth.

THE third was to prove an interruption of that practice and use of jurisdiction, upon which we mainly insist, as the best exposition of the statute.

FOR the first of these concerning the intention, they brought five reasons.

THE first was that this statute of 34, was grounded upon a platform, or preparative of certain ordinances made by the King two years before, *viz.* 32; in which ordinances there is the very clause, whereupon we dispute, *viz.* That there should be and remain in the dominion and principality of *Wales* a president and a council: In which clause nevertheless the word *marches* is left out, whereby they collect that it came into the statute of 34, but as a slip without any farther reach or meaning.

THE second was that the mischief before the statute, which the statute means to remedy, was, that *Wales* was not governed according to similitude or conformity with the laws of *England*. And therefore, that it was a cross and perverse construction, when the statute laboured to draw *Wales* to the laws of *England*, to construe it that it should abridge the antient subjects of *England* of their own laws.

THE third was, that in a case of so great importance, it is not like that if the statute had meant to include the four shires, it would have carried it in a dark general word, as it were *noctanter*, but would have named the shires to be comprehended.

THE fourth was the more to fortify the third reason, they observed that the four shires are remembred and named in several places of the statute, three in number; and therefore it is not like that they would have been forgotten in the principal place, if they had been meant.

THE fifth and last was that there is no clause of attendance; that the sheriffs of the four shires should attend the lord president and the council, wherein there was urged the example of the acts of parliament, which erected courts; as the court of augmentations, the court of wards, the court of survey, in all which there are clauses of attendance; whereupon they inferred that evermore, where a statute gives a court jurisdiction, it strengtheneth it with a clause of attendance; and therefore no such clause being in this statute, it is like there was no jurisdiction meant. Nay, farther they noted, that in this very statute for the justices of *Wales*, there is a clause of attendance from the sheriffs of *Wales*.

IN answer to their first reason, they do very well, in my opinion, to consider Mr. Attorney's business and mine, and therefore to find out for us evidence and proofs, which we have no time to search; for certainly nothing can make more for us than these ordinances, which they produce: for the diversity of penning of that clause in the ordinances, where the word *marches* is omitted, and that clause in the statute where the word *marches* is added, is a clear and perfect direction what was meant by that word. The ordinances were made by force, and in pursuance of authority given to the King by the statute of 27; to what did the statute extend, only to *Wales*? And therefore the word *marches* in the ordinances is left out; but the statute of 34 respected not only *Wales*, but the commixed government, and therefore the word *marches* was put in. They might have remembred that we built an argument upon the difference of penning of that statute of 34 itself in the several clauses of the same; for that in all other clauses, which concern only *Wales*, the word *marches* is ever omitted; and in that clause alone, that concerneth the jurisdiction of the president and council, it is inserted. And this our argument is notably fortified by that they now shew of the ordinances, wherein the very self-same clause, touching the president and council, because the King had no authority to meddle but with *Wales*, the

word *marches* is omitted. So that it is most plain that this word comes not in by chance or slip, but with judgment and purpose, as an effectual word: for as it was formerly said, *opposita juxta se posita magis elucescant*; and therefore I may likewise urge another place in the statute which is left out in the ordinance; for I find there is a clause that the town of *Bewdley*, which is confessed to be no lordships marcher, but to lie within the county of *Worcester*; yet because it was an exempted jurisdiction, is by the statute annexed unto the body of the said county. First, this shews that the statute of 34 is not confined to *Wales*, and the lordships marchers, but that it intermeddles with *Worcestershire*. Next, do you find any such clause in the ordinance of 32? No: Why? Because they were appropriate to *Wales*. So that in my opinion nothing could enforce our exposition better than the collating of the ordinance of 32 with the statute of 34.

IN answer to the second reason, the course, that I see often taken in this cause, makes me think of the phrase of the Psalm, *starting aside like a broken bow*; so when they find their reasons broken, they start aside to things not in question. For now they speak, as if we went about to make the four shires *Wales*, or to take from them the benefit of the laws of *England*, or their being accounted amongst the antient counties of *England*: doth any man say that those shires are not within the circuits of *England*, but subject to the justices of *Wales*? Or that they should send but one knight to the parliament, as the shires of *Wales* do? or that they may not sue at *Westminster*, in chancery, or at common law, or the like? No man affirms any such things; we take nothing from them, only we give them a court of summary justice in certain causes at their own doors.

AND this is *nova doctrina* to make such an opposition between law and equity, and between formal justice and summary justice. For there is no law under heaven, which is not supplied with equity; for *summum jus, summa injuria*, or as some have it, *summa lex, summa crux*. And therefore all nations have equity; but some have law and equity mixed in the same court, which is the worse; and some have it distinguished in several courts, which is the better. Look into any counties *Palatine*, which are small models of the great government of kingdoms, and you shall never find any, but had a chancery.

LASTLY, it is strange that all other places do require courts of summary justice, and esteem them to be privileges and graces; and in this cause only they are thought to be servitudes and loss of birth-right. The universities have a court of summary justice, and yet I never heard that scholars complain their birth-right was taken from them. The stannaries have them, and you have lately affirmed the jurisdiction; and yet you have taken away no man's birth-right. The court at *York*, whosoever looks into it, was erected at the petition of the people, and yet the people did not mean to cast away their birth-right. The court of wards is mixed with discretion and equity; and yet I never heard that infants and innocents were deprived of their birth-right. *London*, which is the seat of the kingdom, hath a court of equity, and holdeth it for a grace and favour; how then cometh this case to be singular? And therefore these be new phrases and conceits proceeding of error or worse; and it makes me think that a few do make their own desires, the desires of the country, and that this court is desired by the greater number, though not by the greater stomachs.

IN answer to the third reason, if men be conversant in the statutes of this kingdom, it will appear to be no new thing to carry great matters in general words without other particular expressing. Consider but of the statute of 26 H. VIII. which hath carried estates tails under the general words of estates of inheritance. Consider of the statute of 16 R. II. of *præmunire*, and see what great matters are thought to be carried under the word *alibi*. And therefore it is an ignorant assertion to say that the statute would have named the shires, if it had meant them.

SECONDLY, the statute had more reason to pass it over in general words, because it did not ordain a new matter, but referreth to usage: and though the statute speaks generally, yet usage speaks plainly and particularly, which is the strongest kind of utterance or expressing. *Quid verba audiam, cum facta videam.*

AND thirdly, this argument of theirs may be strongly retorted against them: for as they infer that the shires were not meant, because they were not included by name; so we infer that they are meant, because they are not excepted by name, as is usual by way of *proviso* in like cases: and our inference hath far greater reason than theirs, because at the time of the making of the statute they were known to be under the jurisdiction: And therefore that ought to be most plainly expressed, which should work a change, and not that, which should continue things, as they were.

IN answer to their fourth reason, it makes likewise plainly against them; for there be three places, where the shires be named, the one for the extincting of the custom of *Gavelkind*; the second for the abolishing of certain forms of assurance which were too light to carry inheritance and freehold; the third for the restraining of certain franchises to that state they were in by a former statute. In these three places the words of the statute are the lordships marchers annexed unto the counties of *Hereford, Salop, &c.*

Now mark, if the statute conceived the word *marches* to signify lordships marchers, what needeth this long circumlocution? It had been easier to have said within the *marches*. But because it was conceived that the word *marches* would have comprehended the whole counties, and the statute meant but of the lordships marchers annexed; therefore they were enforced to use that *periphrasis*, or length of speech.

IN answer to the fifth reason, I give two several answers; the one, that the clause of attendance is supplied by the word *incidents*; for the clause of establishment of the court hath that word, *with all incidents to the same as heretofore hath been used*: for execution is ever incident to justice or jurisdiction. The other, because it is a court, that standeth not by the act of parliament alone, but by the King's instructions, whereto the act refers. Now no man will doubt but the King may supply the clause of attendance; for if the King grant forth a commission of *oyer and terminer*, he may command what sheriff he will to attend it; and therefore there is a plain diversity between this case, and the cases they vouch of the court of wards, survey, and augmentations: for they were courts erected *de novo* by parliament, and had no manner of reference either to usage or instructions; and therefore it was necessary that the whole frame of those courts, and their authority both for judicature and execution, should be described and expressed by parliament. So was it of the authority of the justices of *Wales* in the statute of 34 mentioned, because there are many ordinances *de novo* concerning them; so that it was a new erection, and not a confirmation of them.

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THUS have I in confutation of their reasons, greatly, as I conceive, confirmed our own, as it were with new matter; for most of that, they have said, made for us. But as I am willing to clear your judgments in taking away the objections; so I must farther pray in aid of your memory for those things, which we have said; whereunto they have offered no manner of answer; for unto all our proofs which we made, touching the intent of the statute, which they grant to be the spirit and life of this question, they said nothing; as not a word to this; That otherwise the word *marches* in the statute should be idle or superfluous: not a word to this; That the statute doth always omit the word *marches* in things, that concern only *Wales*: not a word to this; That the statute did not mean to innovate but to ratify, and therefore if the shires were in before, they are in still: not a word to the reason of the commixed government, as that it was necessary for the reclaiming of *Wales* to have them conjoin'd with the shires; that it was necessary for commerce and contracts, and properly for the ease of the subjects of *Wales* against the inhabitants of the shires; that it was not profitable that the parliament meant the Prince should have no jurisdiction civil in that place, where he kept his house. To all these things, which we esteem the weightiest, there is *altum silentium*, after the manner of children that skip over, where they cannot spell.

Now to pass from the intent to the word; first, I will examine the proofs they have brought that the word was used in their sense after the statute 27 and 34; then I will consider what is gained, if they should prove so much; and lastly, I will briefly state our own proofs, touching the use of the word.

FOR the first, it hath been said, that whereas I called the use of the word *marches* after the statute of 27, but a little chime at most of an old word, which soon after vanished, they will now ring us a peal of statutes to prove it; but if it be a peal, I am sure it is a peal of bells, and not a peal of shot: for it clatters, but it doth not strike: for of all that catalogue of statutes I find scarcely one, save those that were answered in my former argument; but we may with as good reason affirm in every of them the word *marches* to be meant of the counties marches, as they can of the lordships marchers: for to begin upwards.

THE statute 39 *Eliz.* for the repair of *Wilton-bridge* no doubt doth mean the word *marches* for the counties; for the bridge itself is in *Herefordshire*, and the statute imposeth the charge of reparation upon *Herefordshire* by compulsory means, and permitteth benevolence to be taken in *Wales*, and the marches; who doubts, but this meant of the other three shires, which have far greater use of the bridge than the remote counties of *Wales*?

FOR the statute 5 *Eliz.* it concerning perjury, it hath a proviso, that it shall not be prejudicial to the council of the marches for punishing of perjury; who can doubt, but that here marches is meant of the shires, considering the perjuries committed in them have been punished in that court as well as in *Wales*?

FOR 2 *Ed. VI.* and the clause therein for restraining tithes of marriage-portions in *Wales* and the marches, why should it not be meant of counties? For if any such customs had crept and incroached into the body of the shires out of the lordships marchers, no doubt the statute meant to restrain them as well there, as in the other places.

AND so for the statute of 32 *H. VIII.* which ordains that the benefit of that statute for distress to be had by *executors*, should not extend to any lordship

ship in *Wales*, or the marches of the same where *Mises* are paid, because that imports a general release; what absurdity is there, if there the marches be meant for the whole shires? for if any such custom had spread so far, the reason of the statute is alike.

As for the statutes of 37 H. VIII. and 4 Ed. VI. for the making and appointing of the *custos rotulorum*, there the word marches must needs be taken for limits, according to the *etymology* and derivation: for the words refer not to *Wales*, but are thus, *within England and Wales, and other the King's dominions, marches and territories*, that is *limits and territories*; so as I see no reason, but I may truly maintain my former assertion, that after the lordships marchers were extinct by the statute of 27, the name also of marches was discontinued, and rarely if ever used in that sense.

BUT if it should be granted that it was now and then used in that sense, it helps them little; for first it is clear that the legal use of it is gone, when the thing was extinct, for *nomen est rei nomen*; so it remains but *abusive*, as if one should call *Gulletta*, *Carthage*, because it was once *Carthage*; and next, if the word should have both senses, and that we admit an equivocation, yet we so overweigh them upon the intent, as the balance is soon cast.

YET one thing I will note more, and that is, that there is a certain confusion of tongues on the other side, and that they cannot well tell themselves what they would have to be meant by the word *marches*; for one while they say it is meant for the lordships marchers *generally*; another while they say that it is meant for the inward marches on *Wales side only*; and now at last they are driven to a poor shift, that there should be left some *little lordship marcher* in the dark, as *casus omissus*, not annexed at all to any county; but if they would have the statute satisfied upon that only, I say no more to them, but *aquila non capit muscas*.

Now I will briefly remember unto you the state of our proofs of the word.

FIRST, according to the laws of speech we prove it by the *etymology* or derivation, because *march* is the *Saxon* word for limit, and *marchio* is *comes limitaneus*; this is the opinion of *Camden* and others.

NEXT we prove the use of the word in the like case to be for counties, by the example of the marches of *Scotland*: for as it is prettily said in *Walker's case* by *Gawdy*, if a case have no cousin, it is a sign it is a bastard, and not legitimate; therefore we have shewed you a cousin, or rather a brother, here within our own island of the like use of the word. And whereas a great matter was made that the now middle shires were never called the marches of *Scotland*, but the marches of *England* against *Scotland*, or upon *Scotland*, it was first answered that that made no difference; because sometimes the *marches* take their name of the inward country, and sometimes of the out-country; so that it is but *inclusive* and *exclusive*: as for example, that which we call in vulgar speech this day *fortnight* excluding the day, that the law calls *quindena* including the day; and so likewise, who will make a difference between the banks of the sea, and the banks against the sea, or upon the sea? But now to remove all scruple, we shew them *Littleton* in his chapter of *grand serjeanty*, where he saith, there is a tenure by *Cornage* in the *marches* of *Scotland*: and we shew them likewise the statute of 25 Edw. III. of labourers, where they are also called the *marches* of *Scotland*.

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THEN we shew some number of bills exhibited to the council there before the statute, where the plaintiffs have the addition of place confessed within the bodies of the shires, and no lordships marchers, and yet are laid to be in the *marches*.

THEN we shew diverse accounts of *auditors* in the Duchy from *H. IV.* downwards, where the indorsement is in *marchiis Walliae*, and the contents are possessions only of *Hereford* and *Glocestershire*, (for in *Shropshire* and *Worcestershire* the Duchy hath no lands) and whereas they would put it off with a *cuique in sua arte credendum*, they would believe them, if it were in matter of accounts; we do not alledge them as *auditors*, but as those that speak *English* to prove the common use of the word, *loquendum ut vulgus*.

WE shew likewise an ancient record of a patent to *Harbert* in *15 E. IV.* where *Kilpeck* is laid to be in *com. Hereford in marchiis Walliae*; and lastly, we shew again the statute of *27 E. III.* where provision is made, that men shall labour in the summer, where they dwell in the winter; and there is an exception of the people of the counties of *Stafford* and *Lancashire*, &c. and of the marches of *Wales* and *Scotland*; where it is most plain, that the marches of *Wales* are meant for counties, because they are coupled both with *Stafford* and *Lancashire*, which are counties, and with the marches of *Scotland* which are likewise counties: and as it is informed, the labourers of those four shires do come forth of their shires, and are known by the name of *Cokers* to this day.

To this we add two things, which are worthy consideration; the one that there is no reason to put us to the proof of the use of this word *marches* sixty years ago, considering that usage speaks for us; the other that there ought not to be required of us to shew so frequent an use of the word *marches* of ancient time in our sense, as they shewed in theirs, because there was not the like occasion: for when a lordship marcher was mentioned it was of necessity to lay it in the *marches*, because they were out of all counties, but when land is mentioned in any of these counties, it is superfluous to add in the *marches*; so as there was no occasion to use the word *marches*, but either for a more brief and compendious speech to avoid the naming of the four shires, as it is in the statute of *25 E. III.* and in the indorsement of accounts, or to give a court cognizance and jurisdiction, as in the bills of complaint, or *ex abundanti*, as in the record of *Kilpeck*.

THERE resteth the third main part, whereby they endeavour to weaken and extenuate the proofs, which we offer touching practice and possession, wherein they alledge five things.

FIRST, that *Bristol* was in until *7 Eliz.* and then exempted.

SECONDLY, that *Cheshire* was in until *11 Eliz.* and then went out.

THIRDLY, they alledge certain words in the instructions to *Cholmley* vice-president in *11 Eliz.* at which time the shires were first comprehended in the instructions by name, and in these words *annexed by our commission*: whereupon they would infer that they were not brought in the statute, but only came in by instructions, and do imagine that when *Cheshire* went out, they came in.

FOURTHLY, they say that the intermeddling with those four shires before the statute was but an usurpation and toleration rather than any lawful and settled jurisdiction; and it was compared to that, which is done by the judges in their circuits, who end many causes upon petitions.

FIFTHLY,

FIFTHLY, they alledge Sir *John Mullen's* case, where it is said *consuetudo non praejudicat veritati*.

THERE was moved also, tho' it were not by the council, but from the judges themselves, as an extenuation, or at least an obscuring of the proofs of the usage and practice, in that we shew forth no instructions from 17 *H. VIII.* to 1 *Mariae*.

To these six points I will give answer, and as I conceive with satisfaction.

FOR *Bristol* I say, it teacheth them the right way, if they can follow it; for *Bristol* was not exempted by any opinion of law, but was left out of the instructions upon supplication made to the Queen.

FOR *Cheeshire* we have answered it before, that the reason was, because it was not probable that the statute meant to make that shire subject to the jurisdiction of that council, considering it was not subject to the high courts at *Westminster*, in regard it was a county *Palatine*. And whereas they said, that so was *Flintshire* too, it matcheth not, because *Flintshire* is named in the statute for one of the twelve shires of *Wales*.

WE shewed you likewise effectual differences between *Cheeshire* and these other shires: for that *Cheeshire* hath a chancery in itself, and over *Cheeshire* the Princes claim jurisdiction, as earl of *Chester*; to all which you reply nothing.

THEREFORE I will add this only, that *Cheeshire* went out *secundo flumine*, with the good will of the state; and this is sought to be evicted *adverso flumine*, cross the state; and as they have opinion of four judges for the excluding of *Cheeshire*, so we have the opinions of two great learned men, *Gerrard* and *Bromley*, for the including of *Worcester*; whose opinions, considering it was but matter of opinion, and came not judicially in question, are not inferior to any two of the other; but we say that there is no opposition or repugnancy between them, but both may stand.

FOR *Cholmley's* instructions, the words may well stand, that those shires are annexed by commission; for the King's commission or instructions (for those words are commonly confounded) must co-operate with the statute, or else they cannot be annexed. But for that conceit that they should come in but in 11, when *Cheeshire* went out, no man that is in his wits can be of that opinion, if he mark it: for we see that the town of *Glocester*, &c. is named in the instructions of 1 *Mar.* and no man I am sure will think that *Glocester* town should be in, and *Glocestershire* out.

FOR the conceit that they had but *jurisdictionem precariam*, the precedents shew plainly the contrary; for they had coercion, and they did fine and imprison, which the judges do not upon petitions; and besides, they must remember that many of our precedents, which we did shew forth, were not of suits originally commenced there, but of suits remanded from hence out of the King's courts, as to their proper jurisdiction.

FOR Sir *John Mullen's* case, the rule is plain and sound, that where the law appears contrary, usage cannot controull law, which doth not at all infringe the rule of *optima legum interpret consuetudo*; for usage may expound law, though it cannot over-rule law.

BUT of the other side I could shew you many cases, where statutes have been expounded directly against their express letter to uphold precedents and usage, as 2, & 3, *Phil. & Mar.* upon the statute of *Westminster*, that ordained that the judges *coram quibus formatum erit appellum* shall enquire of the damages, and yet the law ruled that it shall be enquired before the judges of

nisi prius. And the great reverence given to precedents, appeareth in 39 *H. VI.* 3 *E. IV.* and a number of other books; and the difference is exceedingly well taken in *Slade's case*, *Coke's reports* 4. that is, where the usage runs but amongst clerks, and where it is in the eye and notice of the judge; for there it shall be presumed, saith the book, that if the law were otherwise than the usage hath gone, that either the council or the parties would have excepted to it, or the judges *ex officio* would have discerned of it, and found it; and we have ready for you a calendar of judges more than fit at this table, that have exercised jurisdiction over the shires in that county.

As for exception, touching the want of certain instructions, I could wish we had them; but the want of them, in my understanding, obscureth the case little. For let me observe unto you, that we have three forms of instructions concerning these shires extant; the first names them not expressly, but by reference it doth, *viz.* that they shall hear and determine, &c. within any the *places* or *counties* within any of their commissions; and we have one of the commissions, wherein they were named; so as upon the matter they are named. And of this form is the ancient instructions before the statute 17 *H. VIII.* when the Princess *Mary* went down.

THE second form of instructions go farther, for they have the towns, and exempted places within the counties named, with *tanquam* as well within the city of *Glocester*, the liberties of the Duchy of *Lancaster*, &c. as within any of the counties of any of their commissions, which clearly admits the counties to be in before. And of this form are the instructions 1 *Mariae*, and so long until 11 *Eliz.*

AND the third form, which hath been continued ever since, hath the shires comprehended by name. Now it is not to be thought, but the instructions which are wanting, are according to one of these three forms, which are extant. Take even your choice, for any of them will serve to prove that the practice there was ever authorized by the instructions here: and so upon the whole matter, I pray report to be made to his Majesty, that the president and the council hath jurisdiction according to his instructions, over the four shires, by the true construction of the statute of 34 *H. VIII.*

A draught of an act against an usurious shift of gain, in delivering of commodities instead of money, made by the Lord Chancellor *Bacon*, found amongst his lordship's papers by Dr. *Rawley*, and recommended by him to be published.

WHEREAS it is an usual practice, to the undoing and overthrowing many young gentlemen and others, that when men are in necessity, and desire to borrow money, they are answered, that money cannot be had, but that they may have commodities sold unto them upon credit, whereof they may make money as they can: in which course it ever comes to pass, not only that such commodities are bought at extreme high rates, and sold again far under foot to a double loss; but also that the party which is to borrow, is wrapt in bonds and counter-bonds; so that upon a little money which he receiveth, he is subject to penalties and suits of great value.

BE it therefore enacted by the authority of this present parliament, that if any man after forty days, from the end of this present session of parliament to be accounted, shall sell in gross sale any quantity of wares or commodities unto such a one as is no retailer, chapman, or known broker of the same commodities, and knowing that it is bought to be sold again, to help and furnish any person that tradeth not in the same commodity with money, he shall be without all remedy by law, or custom, or decree, or otherwise to recover or demand any satisfaction for the said wares or commodities, what assurance soever he shall have by bond, surety, pawn or promise of the party, or any other in his behalf. And that all bonds and assurances whatsoever made for that purpose directly or indirectly, shall be utterly void.

AND be it farther enacted by the authority aforesaid, that every person, which shall after the time aforesaid be used or employed as a broker, mean or procurer, for the taking up of such commodities, shall forfeit for every such offence the sum of one hundred pounds, the same to be, &c. and shall be farther punished by six months imprisonment, without bail or mainprize, and by the pillory.

ORDINANCES

MADE

By the Lord Chancellor *BACON*,

For the better and more regular administration of justice in the chancery, to be daily observed, saving the prerogative of the court.

Decrees.

NO decree shall be reversed, altered, or explained, being once under the great seal, but upon bill of review; and no bill of review shall be admitted, except it contain either error in law, appearing in the body of the decree, without farther examination of matters in fact, or some new matter which hath risen in time after the decree, and not any new proof which might have been used when the decree was made: nevertheless upon new proof, that is come to light after the decree made, and could not possibly have been used at the time, when the decree passed, a bill of review may be grounded by the special licence of the court, and not otherwise.

2. IN case of miscasting (being a matter demonstrative) a decree may be explained, and reconciled by an order without a bill of review; not understanding by miscasting any pretended misrating or misvaluing, but only error in the auditing or numbering.

3. No bill of review shall be admitted, or any other new bill to change matter decreed, except the decree be first obeyed and performed; as if it be for land, that the possession be yielded; if it be for money, that the money be paid; if it be for evidences, that the evidences be brought in; and so in other cases which stand upon the strength of the decree alone.

4. BUT if any act be decreed to be done which extinguisheth the parties right at the common law, as making of assurance or release, acknowledging satisfaction, cancelling of bonds, or evidences, and the like; those parts of the decree are to be spared until the bill of review be determined; but such sparing is to be warranted by publick order made in court.

5. No bill of review shall be put in, except the party that prefers it enter into recognizance with sureties for satisfying of costs and damages for the delay, if it be found against him.

6. No decrees shall be made upon pretence of equity, against the express provision of an act of parliament: nevertheless if the construction of such act of parliament hath for a time gone one way in general opinion and reputation, and after by a later judgment hath been controlled, then relief may be given upon matter of equity, for cases arising before the said judgment, because the subject was in no default.

7. IMPRISONMENT for breach of a decree is in nature of an execution, and therefore the custody ought to be straight, and the party not to have any

any liberty to go abroad, but by special licence of the Lord Chancellor; but no close imprisonment is to be, but by express order for wilful and extraordinary contempts and disobedience, as hath been used.

8. IN case of enormous and obstinate disobedience in breach of a decree, an injunction is to be granted *sub poena* of a sum; and upon *affidavit*, or other sufficient proof, of persisting in contempt, fines are to be pronounced by the Lord Chancellor in open court, and the same to be estreated down into the hanaper if cause be, by a special order.

9. IN case of a decree made for the possession of land, a writ of execution goes forth; and if that be disobeyed, then process of contempt according to the course of the court against the person, unto a commission of rebellion; and then a Serjeant at Arms by special warrant: and in case the Serjeant at Arms cannot find him, or be resisted; or upon the coming in of the party, and his commitment, if he persist in disobedience, an injunction is to be granted for the possession; and in case also that be disobeyed, then a commission to the sheriff to put him into possession.

10. WHERE the party is committed for breach of a decree, he is not to be enlarged until the decree be fully performed in all things, which are to be done presently. But if there be other parts of the decree to be performed at days, or times to come, then he may be enlarged by order of the court upon recognizance, with sureties to be put in for the performance thereof *de futuro*, otherwise not.

11. WHERE causes come to a hearing in court, no decree bindeth any person who was not served with process *ad audiendum judicium*, according to the course of the court, or did appear *gratis* in person in court.

12. No decree bindeth any that cometh in *bona fide*, by conveyance from the defendant before the bill exhibited, and is made no party, neither by bill nor the order: but where he comes in *pendente lite*, and while the suit is in full prosecution, and without any colour of allowance or privity of the court, there regularly the decree bindeth; but if there were any intermission of suit, or the court made acquainted with the conveyance, the court is to give order upon the special matter according to justice.

13. WHERE causes are dismissed upon full hearing, and the dismissal signed by the Lord Chancellor, such causes shall not be retained again, nor new bill exhibited, except it be upon new matter, like to the case of the bill of review. Dismissions;

14. IN case of all other dismissions, which are not upon hearing of the cause, if any new bill be brought, the dismissal is to be pleaded; and after reference and report of the contents of both suits, and consideration taken of the former orders and dismissal, the court shall rule the retaining or dismissing of the new bill, according to justice and the nature of the case.

15. ALL suits grounded upon wills nuncupative, leases parol, or upon long leases that tend to the defeating of the King's tenures, or for the stablishing of perpetuities, or grounded upon remainders put into the crown, to defeat purchasers; or for brokage or rewards to make marriages; or for bargains at play and wagers; or for bargains for offices contrary to the statute of 5 and 6 *Edw. VI.* or for contracts upon usury or simony, are regularly to be dismissed upon motion, if they be the sole effect of the bill; and if there be no special circumstances to move the court to allow their proceedings, and all suits under the value of ten pounds, are regularly to be dismissed. *V. postea* Sect. 58, 60.

16. DISMISSIONS are properly to be prayed, and had, either upon hearing, or upon plea unto the bill, when the cause comes first into the court; but dismissions are not to be prayed after the parties have been at charge of examination, except it be upon special cause.

17. IF the plaintiff discontinue the prosecution, after all the defendants have answered, above the space of one whole term, the cause is to be dismissed of course without any motion; but after replication put in, no cause is to be dismissed without motion and order of the court.

Election of Suits.

18. DOUBLE vexation is not to be admitted; but if the party sue for the same cause at the common law, and in chancery, he is to have a day given to make his election where he will proceed, and in default of making such election to be dismissed.

Certiorari.

19. WHERE causes are removed by special *certiorari* upon a bill, containing matter of equity, the plaintiff is, upon receipt of his writ, to put in bond to prove his suggestions within fourteen days after the receipt; which if he do not prove, then upon certificate from either of the examiners presented to the Lord Chancellor, the cause shall be dismissed with costs, and a *procedendo* to be granted.

Injunction.

20. No injunction of any nature shall be granted, revived, dissolved or stayed upon any private petition.

21. No injunction to stay suits at the common law shall be granted upon priority of suit only, or upon surmise of the plaintiff's bill only; but upon matter confessed in the defendant's answer, or matter of record, or writing plainly appearing, or when the defendant is in contempt for not answering, or that the debt desired to be stayed appeareth to be old, and hath slept long, or the creditor or the debtor hath been dead some good time before the suit brought.

22. WHERE the defendant appears not, but fits an attachment; or when he doth appear, and departs without answer, and is under attachment for not answering; or when he takes oath he cannot answer without sight of evidences in the country; or where after answer he sues at common law by attorney, and absents himself beyond sea; in these cases an injunction is to be granted for the stay of all suits at the common law, until the party answer or appear in person in court, and the court give farther order: but nevertheless upon answer put in, if there be no motion made the same term, or the next general seal after the term, to continue the injunction in regard of the insufficiency of the answer put in, or in regard of matter confessed in the answer, then the injunction to die and dissolve without any special order.

23. IN the case aforesaid, where an injunction is to be awarded for stay of suits at the common law, if the like suit be in the chancery, either by *scire facias*, or privilege, or *English* bill, then the suit is to be stayed by order of the court, as it is in other courts by injunction, for that the court cannot enjoin itself.

24. WHERE an injunction hath been obtained for staying of suits, and no prosecution is had for the space of three terms, the injunction is to fall of itself without farther motion.

25. WHERE a bill comes in after an arrest at the common law for debt, no injunction shall be granted without bringing the principal money into court, except there appear in the defendant's answer, or by sight of writings plain matter tending to discharge the debt in equity: but if an injunction be awarded and disobeyed, in that case no money shall be brought in, or deposited in regard of the contempt.

26. IN-

26. INJUNCTIONS for possession are not to be granted before a decree, but where the possession hath continued by the space of three years, before the bill exhibited, and upon the same title; and not upon any title by lease; or otherwise determined.

27. IN case where the defendant sits all the process of contempt, and cannot be found by the Serjeant at Arms, or resists the Serjeant, or makes rescue, a sequestration shall be granted of the land in question; and if the defendant render not himself within the year, then an injunction for the possession.

28. INJUNCTIONS against felling of timber, ploughing up of ancient pastures, or for the maintaining of inclosures, or the like, shall be granted according to the circumstances of the case; but not in case where the defendant upon his answer claimeth an estate of inheritance, except it be where he claimeth the land in trust, or upon some other special ground.

29. No sequestration shall be granted but of lands, leases, or goods in question, and not of any other lands or goods; not contained in the suits. Sequestrations.

30. WHERE a decree is made for rent to be paid out of land, or a sum of money to be levied out of the profits of land, there a sequestration of the same lands being in the defendant's hands may be granted.

31. WHERE the decrees of the provincial council, or of the court of requests, or the Queen's court, are by contumacy or other means interrupted; there the court of chancery upon a bill preferred for corroborations of the same jurisdictions, decrees, and sentences; shall give remedy.

32. WHERE any cause comes to a hearing that hath been formerly decreed in any other of the King's courts at *Westminster*, such decree shall be first read, and then to proceed to the rest of the evidence on both sides.

33. SUITS after judgment may be admitted according to the antient custom of the chancery, and the late royal decision of his Majesty; of record, after solemn and great deliberation: but in such suits it is ordered, that bond be put in with good sureties to prove the suggestions of the bill. Suits after judgment.

34. DECREES upon suits brought after judgment shall contain no words to make void or weaken the judgment; but shall only correct the corrupt conscience of the party, and rule him to make restitution, or perform other acts, according to the equity of the cause.

Orders, and the Office of the REGISTERS.

35. THE registers are to be sworn; as hath been lately ordered.

36. IF any order shall be made, and the court not informed of the last material order formerly made, no benefit shall be taken by such order, as granted by abuse and surreption; and to that end the registers ought duly to mention the former order in the later.

37. No order shall be explained upon any private petition but in court as they are made, and the register is to set down the orders as they were pronounced by the court, truly at his peril, without troubling the Lord Chancellor by any private attending of him to explain his meaning; and if any explanation be desired, it is to be done by publick motion, where the other party may be heard.

38. No draught of any order shall be delivered by the register to either party, without keeping a copy by him, to the end that if the order be not entered, nevertheless the court may be informed what was formerly done;

and not put to new trouble and hearing; and to the end also that knowledge of orders be not kept back too long from either party, but may presently appear at the office.

39. WHERE a cause hath been debated upon hearing of both parties, and opinion hath been delivered by the court, and nevertheless the cause referred to treaty, the registers are not to omit the opinion of the court, in drawing of the order of reference, except the court doth specially declare that it be entred without any opinion either way; in which case nevertheless the registers are out of their short note, to draw up some more full remembrance of that that passed in court, to inform the court if the cause come back and cannot be agreed.

40. THE registers upon sending of their draught unto the counsel of the parties, are not to respect the interlineations, or alterations of the said counsel (be the said counsel never so great,) farther, than to put them in remembrance of that which was truly delivered in court, and so to conceive the order upon their oath and duty, without any farther respect.

41. THE registers are to be careful in the penning and drawing up of decrees, and special matters of difficulty and weight; and therefore when they present the same to the Lord Chancellor, they ought to give him understanding which are such decrees of weight, that they may be read and reviewed before his lordship sign them.

42. THE decrees granted at the rolls are to be presented to his lordship, with the orders whereupon they are drawn, within two or three days after, every term.

43. INJUNCTIONS for possession, or for stay of suits after verdict, are to be presented to his lordship, together with the orders whereupon they go forth, that his lordship may take consideration of the order before he sign them.

44. WHERE any order upon the special nature of the case shall be made against any of these general rules, there the register shall plainly and expressly set down the particulars, reasons and grounds, moving the court to vary from the general rule.

References. 45. No reference upon a demurrer, or question touching the jurisdiction of the court, shall be made to the masters of the chancery; but such demurrers shall be heard and ruled in court, or by the Lord Chancellor himself.

46. No order shall be made for the confirming or ratifying of any report without day first given, by the space of a sevennight at the least, to speak to it in court.

47. No reference shall be made to any masters of the court, or any other commissioners to hear and determine, where the cause is gone so far as to examination of witnesses, except it be in special causes of parties near in blood, or of extreme poverty, or by consent and general reference of the estate of the cause, except it be by consent of the parties to be sparingly granted.

48. No report shall be respected in court, which exceedeth the warrant of the order of reference.

49. THE masters of the court are required not to certify the state of any cause, as if they would make breviat of the evidence on both sides, which doth little ease the court, but with some opinion, or otherwise in case they think it too doubtful to give opinion, and therefore make such special certificate.

tificate; the cause is to go on to a judicial hearing, without respect had to the same.

50. MATTERS of account, unless it be in very weighty causes, are not fit for the court, but to be prepared by reference; with this difference nevertheless, that the cause comes first to a hearing; and upon the entrance into a hearing, they may receive some direction, and be turned over to have the accounts considered, except both parties before a hearing do consent to a reference of the examination of the accounts, to make it more ready for a hearing.

51. THE like course to be taken for the examination of court rolls, upon customs and copies, which shall not be referred to any one master, but to two masters at the least.

52. No reference to be made of the insufficiency of an answer, without shewing of some particular point of the defect, and not upon surmise of the insufficiency in general.

53. WHERE a trust is confessed by the defendant's answer, there needeth no farther hearing of the cause, but a reference presently to be made upon the account, and so to go on to a hearing of the accounts.

54. IN all suits where it shall appear, upon the hearing of the cause, that the plaintiff had not *probabilem causam litigandi*, he shall pay unto the defendant his utmost costs, to be assessed by the court. Suits in court.

55. IF any bill, answers, replication, or rejoinder, shall be found of an immoderate length, both the party and the counsel under whose hand it passeth shall be fined. Bills, demurrers, answers, pleadings, and copies.

56. IF there be contained in any bill, answer, or other pleadings, or any interrogatory, any matter libellous or slanderous against any that is not party to the suit, or against such as are parties to the suit, upon matters impertinent, or in derogation of the settled authorities of any of his Majesty's courts; such bills, answers, pleadings, or interrogatories shall be taken off the file and suppressed, and the parties severally punished by commitment or ignominy, as shall be thought fit for the abuse of the court, and the counsellors at law, who have set their hands, shall likewise receive reproof or punishment, if cause be.

57. DEMURRERS and pleas which tend to discharge the suit shall be heard first upon every day of orders, that the subject may know whether he shall need farther attendance or no.

58. A demurrer is properly upon matter defective, contained in the bill itself, and no foreign matter; but a plea is of foreign matter to discharge or stay the suit, as that the cause hath been formerly dismissed, or that the plaintiff is outlawed, or excommunicated; or there is another bill depending for the same cause, or the like: and such plea may be put in without oath, in case where the matter of the plea appear upon record; but if it be any thing that doth not appear upon record, the plea must be upon oath.

59. No plea of outlawry shall be allowed without pleading the record *sub pede sigilli*, nor plea of excommunication, without the seal of the ordinary.

60. WHERE any suit appeareth upon the bill to be of the natures which are regularly to be dismissed according to the fifteenth ordinance, such matter is to be set forth by way of demurrer.

61. WHERE an answer shall be certified insufficient, the defendant is to pay costs; and if a second answer be returned insufficient, in the points before certified insufficient, then double costs, and upon the third treble costs, and upon the fourth quadruple costs, and then to be committed also until he

he hath made a perfect answer, and to be examined upon interrogatories touching the points defective in his answer; but if any answer be certified sufficient, the plaintiff is to pay costs.

62. No insufficient answer can be taken hold of after replication put in, because it is admitted sufficient by the replication.

63. AN answer to a matter charged as the defendant's own fact must be direct, without saying it is to his remembrance, or as he believeth, if it be laid down within seven years before; and if the defendant deny the fact, he must traverse it directly, and not by way of negative pregnant; as if a fact be laid to be done with diverse circumstances, the defendant may not traverse it literally as it is laid in the bill, but must traverse the point of substance; so if he be charged with the receipt of one hundred pounds, he must traverse that he hath not received a hundred pounds, or any part thereof; and if he have received part, he must set forth what part.

64. IF a hearing be prayed upon bill and answer, the answer must be admitted to be true in all points, and a decree ought not to be made, but upon hearing the answer read in court.

65. WHERE no counsel appears for the defendant at the hearing, and the process appears to have been served, the answer of such defendant is to be read in court.

66. No new matter is to be contained in any replication, except it be to avoid matter set forth in the defendant's answer.

67. ALL copies in chancery shall contain fifteen lines in every sheet thereof, written orderly and unwaistfully, unto which shall be subscribed the name of the principal clerk of the office where it is written, or his deputy, for whom he will answer, for which only subscription no fee at all shall be taken.

Commissions,
examinations,
and depositions.

68. ALL commissions for examination of witnesses shall be *super interr. conclusis* only, and no return of depositions into the court shall be received, but such only as shall be either comprised in one roll, subscribed with the name of the commissioners, or else in diverse rolls, whereof each one shall be so subscribed.

69. IF both parties join in commission, and upon warning given the defendant bring his commissioners, but produceth no witnesses, nor ministreth interrogatories, but after seek a new commission, the same shall not be granted: but nevertheless upon some extraordinary excuse of the defendant's default, he may have liberty granted by special order to examine his witnesses in court upon the former interrogatories, giving the plaintiff or his attorney notice, that he may examine also if he will.

70. THE defendant is not to be examined upon interrogatories, except it be in very special cases, by express order of the court, to sift out some fraud or practice pregnantly appearing to the court, or otherwise upon offer of the plaintiff to be concluded by the answer of the defendant without any liberty to disprove such answer, or to impeach him after of perjury.

71. DECREES in other courts may be read upon hearing without the warrant of any special order: but no depositions taken in any other court are to be read but by special order, and regularly the court granteth no order for reading of depositions, except it be between the same parties, and upon the same title and cause of suit.

72. No examination is to be had of the credit of any witness but by special order, which is sparingly to be granted.

73. WITNESSES shall not be examined *in perpetuam rei memoriam*, except it be upon the ground of a bill first put in, and answer thereunto made, and the defendant or his attorney made acquainted with the names of the witnesses that the plaintiff would have examined, and so publication to be of such witnesses with this restraint nevertheless, that no benefit shall be taken of the depositions of such witnesses, in case they may be brought *viva voce* upon the trial, but only to be used in case of death before the trial, or age, or impotency, or absence out of the realm at the trial.

74. No witnesses shall be examined after publication, except it be by consent, or by special order, *ad informandam conscientiam judicis*, and then to be brought close sealed up to the court to peruse or publish, as the court shall think good. *Ad informandam conscientiam judicis.*

75. No affidavit shall be taken or admitted by any master of the chancery, tending to the proof or disproof of the title, or matter in question, or touching the merits of the cause, neither shall any such matter be colourably inserted in any affidavit for serving of process. *Affidavits.*

76. No affidavit shall be taken against affidavit, as far as the masters of the chancery can have knowledge; and if any such be taken, the latter affidavit shall not be used nor read in court.

77. IN case of contempts grounded upon force or ill words, upon serving of process, or upon words of scandal of the court, proved by affidavit, the party is forthwith to stand committed; but for other contempts against the orders or decrees of the court an attachment goes forth, first, upon affidavit made, and then the party is to be examined upon interrogatories, and his examination referred; and if upon his examination he confess matter of contempt, he is to be committed; if not, the adverse party may examine witnesses to prove the contempt: and therefore if the contempt appear, the party is to be committed, but if not, or if the party that pursues the contempt do fail in putting in interrogatories, or other prosecution, or fail in the proof of the contempt, then the party charged with the contempt is to be discharged with good costs.

78. THEY that are in contempt, specially so far as proclamation of rebellion, are not to be heard, neither in that suit, nor any other, except the court of special grace suspend the contempt.

79. IMPRISONMENT upon contempt for matters past, may be discharged of grace after sufficient punishment, or otherwise dispensed with: but if the imprisonment be for not performance of any order of the court in force, they ought not to be discharged except they first obey, but the contempt may be suspended for a time.

80. INJUNCTIONS, sequestrations, dismissions, retainers upon dismissions, or final orders, are not to be granted upon petitions. *Petitions;*

81. No former order made in court is to be altered, crossed, or explained upon any petition; but such orders may be stayed upon petition for a small stay, until the matter may be moved in court.

82. No commission for examination of witnesses shall be discharged; nor no examinations or depositions shall be suppressed upon petition, except it be upon point of course of the court first referred to the clerks, and certificate thereupon.

83. No demurrer shall be over-ruled upon petition.

84. No *scire facias* shall be awarded upon recognizances not enrolled, nor upon recognizances enrolled, unless it be upon examination of the record with the writ; nor no recognizance shall be enrolled after the year, except it be upon special order from the lord chancellor.

85. No writ of *ne exeat regnum*, prohibition, consultation, statute of *Northampton*, *certiorari* special, or *procedendo* special, or *certiorari* or *procedendo* general, more than once in the same cause; *habeas corpus*, or *corpus cum causa*, *vi laica removend'*, or restitution thereupon, *de coronatore & viridario eligendo*, in case of a moving *de homine repleg. assiz.* or special patent, *de ballivo amovend'*, *certiorari super praesentationibus fact. coram commissariis sewer'*, or *ad quod dampnum*, shall pass without warrant under the Lord Chancellor's hand, and signed by him, save such writs *ad quod dampnum*, as shall be signed by master attorney.

86. WRITS of privilege are to be reduced to a better rule, both for the number of persons that shall be privileged, and for the case of the privilege; and as for the number it shall be set down by *schedule*: for the case it is to be understood, that besides persons privileged as attendants upon the court, suitors and witnesses are only to have privilege, *eundo, redeundo, & morando*, for their necessary attendance, and not otherwise; and that such writ of privilege dischargeth only an arrest upon the first process, but yet, where at such times of necessary attendance the party is taken in execution, it is a contempt to the court, and accordingly to be punished.

87. No *supplicavit* for the good behaviour shall be granted, but upon articles grounded upon the oath of two at the least, or certificate of any one justice of assize, or two justices of the peace, with affidavit that it is their hands, or by order of the star-chamber, or chancery, or other of the King's courts.

88. No recognizance of the good behaviour, or the peace taken in the country, and certified into the petty-bag, shall be filed in the year without warrant from the Lord Chancellor.

89. WRITS of *ne exeat regnum* are properly to be granted according to the suggestion of the writ, in respect of attempts prejudicial to the King and state, in which case the lord chancellor will grant them upon prayer of any the principal secretaries without cause shewing, or upon such information as his lordship shall think of weight: but otherwise also they may be granted according to the practice of long time used in case of interlopers in trade, great bankrupts, in whose estate many subjects are interested, or other cases that concern multitudes of the King's subjects, also in case of duels and diverse others.

90. ALL writs, certificates, and whatsoever other process *ret. coram Rege in Canc.* shall be brought into the chapel of the rolls, within convenient time after the return thereof, and shall be there filed upon their proper files and bundles as they ought to be; except the depositions of witnesses, which may remain with any of the six clerks by the space of one year next after the cause shall be determined by decree, or otherwise be dismissed.

91. ALL injunctions shall be inrolled, or the transcript filed, to the end that if occasion be, the court may take order to award writs of *scire facias* thereupon, as in antient time hath been used.

92. ALL days given by the court to sheriffs to return their writs, or bring in their prisoners upon writs of privilege, or otherwise between party and party, shall be filed, either in the register's office, or in the petty-bag respectively; and all recognizances taken to the King's use, or unto the court, shall

be duly inrolled in convenient time, with the clerks of the inrollment, and calendars made of them, and the calendars every *Michaelmas* term to be presented to the Lord Chancellor.

93. IN case of suits upon the commissions for charitable uses, to avoid charge, there shall need no bill, but only exceptions to the decree, and answer forthwith to be made thereunto; and thereupon, and upon sight of the inquisition, and the decree brought unto the Lord Chancellor by the clerk of the petty-bag, his lordship, upon perusal thereof, will give order under his hand for an absolute decree to be drawn up.

94. UPON suit for the commission of sewers, the names of those that are desired to be commissioners are to be presented to the Lord Chancellor in writing; then his lordship will send the names of some privy counsellor, lieutenant of the shire, or justices of assize, being resident in the parts for which the commission is prayed, to consider of them, that they be not put in for private respects, and upon the return of such opinion, his lordship will give farther order for the commission to pass.

95. NO new commission of sewers shall be granted while the first is in force, except it be upon discovery of abuse or fault in the first commissioners, or otherwise upon some great or weighty ground.

96. NO commission of bankrupt shall be granted, but upon petition first exhibited to the Lord Chancellor, together with names presented, of which his lordship will take consideration, and always mingle some learned in the law with the rest; yet so as care be taken that the same parties be not too often used in commissions; and likewise care is to be taken that bond with good surety be entred into, in 200 *l.* at least, to prove him a bankrupt.

97. NO commission of delegates in any cause of weight shall be awarded, but upon petition preferred to the Lord Chancellor, who will name the commissioners himself, to the end they may be persons of convenient quality, having regard to the weight of the cause, and the dignity of the court from whence the appeal is.

98. ANY man shall be admitted to defend *in forma pauperis* upon oath, but for plaintiffs they are ordinarily to be referred to the court of requests, or to the provincial councils, if the case arise in those jurisdictions, or to some gentlemen in the country, except it be in some special cases of commiseration, or potency of the adverse party.

99. LICENCES to collect for losses by fire or water are not to be granted, but upon good certificate; and not for decays of suretyship or debt, or any other casualties whatsoever; and they are rarely to be renewed; and they are to be directed ever unto the county where the loss did arise, if it were by fire, and the counties that abut upon it, as the case shall require; and if it were by sea, then unto the county where the port is, from whence the ship went, and to some sea-counties adjoining.

100. No exemplification shall be made of letters patent (*inter alia*) with omission of the general words; nor of records made void, or cancelled; nor of the decrees of this court not inrolled; nor of depositions by parcel and fractions, omitting the residue of the depositions in court, to which the hand of the examiner is not subscribed; nor of records of the court not being inrolled or filed; nor of records of any other court, before the same be duly certified to this court, and orderly filed here; nor of any records upon the sight and examination of any copy in paper, but upon sight and examination of the original.

101. AND because time and experience may discover some of these rules to be inconvenient, and some other to be fit to be added; therefore his lordship intendeth in any such case from time to time to publish any such revocations or additions.

THE
LEARNED READING

OF

Mr. *FRANCIS BACON*,

One of her MAJESTY's Counfel at Law,

UPON THE

STATUTE of USES:

Being his double Reading to the Honourable SOCIETY
of *GRAYS-INN*. 42 *Eliz*.

I HAVE chofen to read upon the law of uses made 27 *Hen. VIII.* a law whereupon the inheritances of this realm are tossed at this day like a ship upon the sea, in such sort, that it is hard to say which bark will sink, and which will get to the haven; that is to say, what assurances will stand good, and what will not. Neither is this any lack or default in their pilots the grave and learned judges: But the tides and currents of received errors, and unwarranted and abusive experience have been so strong, as they were not able to keep a right course according to the law, so as this statute is in great part as a law made in the parliament, held 35 *Reginae*; for in 37 *Reginae*, by the notable judgment upon solemn arguments of all the judges assembled in the exchequer chamber, in the famous case between *Dillon* and *Freine*, concerning an assurance by *Chudleigh*, this law began to be reduced to a true and sound exposition, and the false and perverted exposition, which had continued for so many years, though never countenanced by any rule or authority of weight, but only entertained in a popular conceit, and in practice at adventure, grew to be controuled; since which time (as it cometh to pass always upon the first reforming of inveterate errors) many doubts, and perplexed questions have risen, which are not yet resolved, nor the law thereupon settled: the consideration whereof moved me to take the occasion of performing this particular duty to the house, to see if I could by my travel, bring the exposition thereof to a more general good of the commonwealth.

HEREIN though I could not be ignorant of the difficulty of the matter, which he that taketh in hand shall soon find; or much less of my own un-
ableness, which I had continual sense and feeling of; yet because I had more means of absolution than the younger sort, and more leisure than the
greater

greater sort, I did think it not impossible to work some profitable effect; the rather because where an inferior wit is bent and conversant upon one subject, he shall many times with patience and meditation dissolve and undo many of the knots, which a greater wit distracted with many matters would rather cut in two than unknit: And at least if my invention or judgment be too barren, or too weak; yet by the benefit of other arts, I did hope to dispose or digest, the authorities or opinions which are in cases of use in such order and method, as they should take light one from another, though they took no light from me. And like to the matter of my reading shall my manner be, for my meaning is to revive and recontinue the ancient form of reading, which you may see in Mr. *Frowicke's*; upon the prerogative, and all other readings of ancient time; being of less ostentation and more fruit, than the manner lately accustomed: for the use then was substantially to expound the statutes, by grounds and diversities; as you shall find the readings still to run upon case of the like law; and contrary law; whereof each one includes the learning of a ground; the other the learning of a difference: and not to stir concise and subtle doubts, or to contrive a multitude of tedious and intricate cases, whereof all saving one are buried, and the greater part of that one case which is taken, is commonly nothing to the matter in hand; but my labour shall be in the ancient course, to open the law upon doubts, and not to open doubts upon this law.

EXPOSITIO STATUTI.

THE exposition of this statute consists, upon the matter without the statute: upon the matter within the statute.

THREE things, are to be considered concerning this statute, and all other statutes, which are helps and inducements to the right understanding of any statute, and yet are no part of the statute itself.

1. THE consideration of the statute at the common law.
2. THE consideration of the mischief which the statute intendeth to redress, as also any other mischief, which an exposition of the statute this way or that way may breed.
3. CERTAIN maxims of the common law, touching exposition of statutes: having therefore framed six divisions according to the number of readings upon the statute itself, I have likewise divided the matter without the statute into six introductions or discourses, so that for every day's reading I have made a triple provision.

1. A PREFACE, or introduction.
2. A DIVISION upon the law itself.
3. A FEW brief cases, for exercise and argument.

THE last of which I would have forborn; and according to the ancient manner, you should have taken some of my points upon my divisions, one, two, or more, as you should have thought good; save that I had this regard, that the younger sort of the bar were not so conversant in matters upon the statutes; and for that cause only I have interlaced some matters at the common law that are more familiar within the books.

1. THE first matter I will discourse unto you, is the nature and definition of an use, and its inception and progression before the statute.
2. THE second discourse shall be of the second spring of this tree of uses since the statute.
3. THE third discourse shall be of the estate of the assurances of this realm

at this day upon uses, and what kind of them is convenient and reasonable and not fit to be touched, as far as sense of law and natural construction of the statute will give leave; and what kind of them is convenient and meet to be suppressed.

4. THE fourth discourse shall be of certain rules and expositions of laws applied to this present purpose.

5. THE fifth discourse shall be of the best course to remedy the same inconveniencies now a-foot, by construction of the statute, without offering violence to the letter or sense.

6. THE sixth and last discourse shall be of the best course to remedy the same inconveniencies, and to declare the law by act of parliament; which last I think good to reserve and not to publish.

THE nature of a use is best discerned by considering what it is not, and then what it is; for it is the nature of all human science and knowledge to proceed most safely by negative and exclusive, to what is affirmative and inclusive.

FIRST, use is no right, title, or interest in law; and therefore master attorney who read upon this statute said well, that there are but two rights: *Jus in Re*: *Jus ad Rem*. The one is an estate which is *Jus in Re*, the other a demand which is *Jus ad Rem*, but a use is neither; so that in 24 H. VIII. it is said that the saving of the statute of 1 R. III. which saveth any right or interest of intails, must be understood of intails of the possession, and not of the part of the use, because a use is no right nor interest; so again, you see *Littleton's* conceit, that an use should amount to a tenancy at will, whereupon a release might well inure, because of privity, is controuled by 4 and 5 H. VII. and divers other books, which say that *cestuy que use* is punishable in an action of trespass towards the feoffees; only 5 H. V. seemeth to be at some discord with other books, where it is admitted for law, that if there be *cestuy que use* of an advowson, and he be out-lawed in a personal action, the King should have the presentment; which case Master *Evans* in the argument of *Chudleigh's* case did seem to reconcile thus: where *cestuy que use* being out-lawed, had presented in his own name, there the King should remove his incumbent; but no such thing can be collected upon that book; and therefore I conceive the error grew upon this, that because it was generally thought, that a use was but a pernanity of profits; and then again because the law is, that upon outlawries, upon personal actions, the King shall have the pernanity of profits, they took that to be one and the self-same thing which *cestuy que use* had, and which the King was entitled unto, which was not so; for the King had remedy in law for his pernanity of profits, but *cestuy que use* had none. The books go farther and say, that a use is nothing, as in 2 H. VII. *det fuit port*, and counted *sur leas* for years rendring rent, &c. The defendant pleaded in bar, that the plaintiff *nihil habuit tempore dimissionis*: the plaintiff made a special replication, and shewed that he had an use, and issue joined upon that; wherefore it appeareth, that if he had taken issue upon the defendant's plea, it should have been found against him. So again in 4 *Reginae*, in the case of the Lord *Sands*, the truth of the case was a fine levied by *cestuy que use* before the statute, and this coming in question since the statute upon an averment by the plaintiff *quod partes finis nihil habuerunt*, it is said that the defendant may shew the special matter of the use, and it shall be no departure from the first pleading of the fine; and it is said farther that the averment given in 4 H. VII. *quod partes finis nihil habuerunt, nec in possessione, nec in usu*, was ousted upon this statute of 27 H. VIII. and was no more now to be accepted: but yet it appears, that if issue had been taken upon

upon the general averment, without the special matter shewed, it should have been found for him that took the averment, because a use is nothing. But these books are not to be taken generally or grossly, for we see in the same books, when an use is specially alledged, the law taketh knowledge of it; but the sense of it is, that use is nothing for which remedy is given by the course of the common law, so as the law knoweth it, but protects it not; and therefore when the question cometh whether it hath any being in nature or conscience the law accepteth of it; and therefore *Littleton's* case is good law, that he which hath but forty shillings free-hold in use, shall be sworn in an inquest, for it is ruled *secundum dominium naturale*, and not *secundum dominium legitimum*, nam *natura dominus est, quia fructum ex re percipit*. And so no doubt upon subsidies and taxes *cestuy que use* should be valued as an owner: so likewise if *cestuy que use* had released his use unto the feoffee for six pound, or contracted with a stranger for the like sum, there is no doubt but it is a good condition or contract whereon to ground an action upon the case: for money for release of a suit in the chancery is a good *quid pro quo*; therefore to conclude, though a use be nothing in law to yield remedy by course of law, yet it is somewhat in reputation of law and conscience: for that may be somewhat in conscience which is nothing in law, like as that may be something in law which is nothing in conscience; as if the feoffees had made a feoffment over in fee, *bona fide*, upon good consideration, and upon a *subpoena* brought against them, they pleaded this matter in chancery, this had been nothing in conscience, not as to discharge them of damages.

A SECOND negative fit to be understood is, that a use is no covin, nor is it a collusion, as the word is now used; for it is to be noted, that where a man doth remove the state and possession of land, or goods, out of himself unto another upon trust, it is either a special trust, or a general trust.

THE special trust is either lawful or unlawful.

THE special trust unlawful, is according to the case provided for by ancient statutes of perjury of the profits; as where it is to defraud creditors, or to get men to maintain suits, or to defeat the tenancy to the *praecipe*, or the statute of *mortmain*, or the lords of their wardships, or the like; and those are termed frauds, covins or collusions.

THE special trust lawful is, as when I infeoff some of my friends, because I am to go beyond the seas, or because I would free the land from some general statute, or bond, which I am to enter into, or upon intent to be reinfeoff'd, or intent to be vouched, and so to suffer a common recovery, or upon intent that the feoffees shall infeoff over a stranger, and infinite the like intents and purposes, which fall out in mens dealings and occasions: and this we call confidence, and the books do call them intents; but where the trust is not special, nor transitory, but general and permanent, there it is a use; and therefore these three are to be distinguished, and not confounded, the covin, confidence, and use.

So as now we are come by negatives to the affirmative, what a use is, agreeable to the definition in *Plowden*, 352. *Delamer's* case, where it is said:

USE is a trust reposed by any person in the terre-tenant, that he may suffer him to take the profits, and he that will perform his intent. But it is shorter speech to say, that

Ufus est dominium fiduciarium: Use is an ownership in trust.

So that *usus & status, sive possessio, potius differunt secundum rationem fori quam secundum naturam rei*, for that one of them is in court of law, the other in court of conscience; and for a trust which is the way to an use, it is exceeding well defined by a civilian of great understanding:

Fides est obligatio conscientiae unius ad intentionem alterius.

AND they have a good division likewise of rights:

Jus precarium : Jus fiduciarium : Jus legitimum.

1. A RIGHT in courtesy, for the which there is no remedy at all.
2. A RIGHT in trust, for which there is a remedy only but in conscience,
3. A RIGHT in law.

So much of the nature and definition of an use.

IT followeth to consider the parts and properties of an use: wherein by the consent of all books, as it was distinctly delivered by Justice *Walmesley* in 36 of *Elizabeth*:

A trust consisteth upon three parts.

THE first, that the feoffee will suffer the feoffor to take the profits.

THE second, that the feoffee upon request of the feoffor, or notice of his will, will execute the estates to the feoffor, or his heirs, or any other by his direction.

THE third, that if the feoffee be disseised, and so the feoffor disturbed, the feoffee will re-enter, or bring an action to re-continue the possession, so that those three, pertainancy of profits, execution of estates, and defence of the land, are the three points of trust.

THE properties of an use, they are exceeding well set forth by *Fenner*, justice, in the same case; and they be three:

1. USES (saith he) are created by confidence.
2. PRESERVED by privity, which is nothing else but a continuance of the confidence, without interruption: and
3. ORDERED and guided by conscience: either by the private conscience of the feoffee; or the general conscience of the realm, which is chancery.

THE two former of which (because they be matters more thoroughly beaten, and we shall have occasion hereafter to handle them) we will not now dilate upon:

BUT the third, we will speak somewhat of; both because it is a key to open many of the true reasons, and learnings of uses, and because it tendeth to decide our great and principal doubts at this day.

CROKE solicitor entring into his argument of *Chudleigh's* case, said sharply and fitly: I will put never a case but it shall be of an use, for a use in law hath no fellow; meaning, that the learning of uses is not to be matched with other learnings. *Anderson*, chief justice, in the argument of the same case, did truly and profoundly controul the vulgar opinion collected upon 5 E. IV. that there might be *possessio fratris* of a use; for he said that it was no more but that the chancellor would consult with the rules of law, where the intention of the parties did not specially appear; and therefore the private conceit which *Glanville* justice, cited in the 42 *Reginae* in the case of *Corbet* in the common pleas of one of *Lincolns-Inn*, whom he named not, but seemed to allow, is not found; which was, that a use was but a limitation, and did ensue the nature of a possession.

THIS very conceit was set on foot in 27 H. VIII. in the Lord *Darcie's* case, in which time they began to heave at uses; for there, after the realm had

had many ages together put in ure the passage of uses by will, they began to argue that an use was not deviseable, but that it did ensue the nature of the land; and the same year after, this statute was made; so that this opinion seemeth ever to be a prelude and forerunner to an act of parliament touching uses; and if it be so meant now, I like it well: but in the mean time the opinion itself is to be rejected; and because in the same case of *Corbet* three reverend judges of the court of common pleas did deliver and publish their opinion, though not directly upon the point adjudged, yet *obiter* as one of the reasons of their judgment, that an use of inheritance could not be limited to cease; and again, that the limitation of a new use could not be to a stranger; ruling uses merely according to the ground of possession; it is worth the labour to examine that learning. By 3 *Hen. VII.* you may collect, that if the feoffees had been disseised by the common law, and an ancestor collateral of *cestuy que use* had released unto the disseisor, and his warranty had attached upon *cestuy que use*; yet the chancellor upon this matter shewed, would have no respect unto it, to compel the feoffees to execute the estate unto the disseisor: for there the case being, that *cestuy que use* in tail having made an assurance by fine and recovery, and by warranty which descended upon his issue, two of the judges held, that the use is not extinct; and *Bryan* and *Hussey* that held the contrary, said, that the common law is altered by the new statute; whereby they admit, that by the common law that warranty will not bind and extinct a right of a use, as it will do a right of possession; and the reason is, because the law of collateral warranty is a hard law, and not to be considered in a court of conscience. In 5 *Edw. IV.* it is said, that if *cestuy que use* be attainted, *quaere*, who shall have the land, for the lord shall not have the land, so as there the use doth not limitate the possession; and the reason is, because the lord hath a rent by title; for that is nothing to the *Subpoena*, because the feoffees intent was never to advance the lord, but only his own blood; and therefore the *quaere* of the book ariseth what the trust and confidence of the feoffee did tye him to do, as whether he would not sell the land to the use of the feoffee's will, or in *pious usus*? So favourably they took the intent in those days, as you find in 27 *Hen. VI.* that if a man had appointed his use to one for life, the remainder in fee to another, and *cestuy que use* for life had refused, because the intent appeared not to advance the heir at all, nor him in reversion, presently the feoffee should have the estate for life of him that refused, some ways to the behoof of the feoffor. But to proceed in some better order towards the disproof of this opinion of limitation, there be four points wherein we will examine the nature of uses.

1. THE raising of them.
2. THE preserving of them.
3. THE transferring of them.
4. THE extinguishing of them.

1. IN all these four, you shall see apparently that uses stand upon their own reasons, utterly differing from cases of possession. I would have one case shewed by men learned in the law, where there is a deed; and yet there needs a consideration: as for paroll, the law adjudgeth it too light to give action without consideration; but a deed ever in law imports a consideration, because of the deliberation and ceremony in the confection of it: and therefore in 8 *Reginae* it is solemnly argued, that a deed should raise an use without any other consideration. In the *Queen's* case a false consideration, if it be of record, will hurt the patent, but want of consideration doth never hurt

it; yet they say that a use is but a nimble and light thing, and now contrariwise it seemeth to be weightier than any thing else: for you cannot weigh it up to raise it, neither by deed, nor deed inrolled, without the weight of a consideration; but you shall never find a reason of this to the world's end, in the law: But it is a reason of chancery, and it is this;

THAT no court of conscience will enforce *donum gratuitum*, though the intent appear never so clearly, where it is not executed, or sufficiently passed by law; but if money had been paid, and so a person damnified, or that it was for the establishment of his house, then it is a good matter in the chancery: so again I would see in the law, a case where a man shall take by a conveyance, be it by deed, livery, or word, that is not party to the grant: I do not say that the delivery must be to him that takes by the deed, for a deed may be delivery to one man to the use of another. Neither do I say that he must be party to the delivery of the deed, for he in the remainder may take though he be not party; but he must be party to the words of the grant: here again the case of the use goeth single, and the reason is, because a conveyance in use is nothing but a publication of the trust; and therefore so as the party trusted be declared, it is not material to whom the publication be. So much for the raising of uses. Now as to the preserving of them.

2. THERE is no case in the common law, wherein notice simply and nakedly is material to make a covin, or *particeps criminis*; and therefore if the heir which is in by descent, infeof one which had notice of the disseisin, if he were not a *disseisor de facto*, it is nothing: so in 33 H. VI. if a feoffment be made upon collusion, and feoffee makes a feoffment over upon good consideration, the collusion is discharged, and it is not material if they had notice or no. So as it is put in 14 H. VIII. if a sale be made in a market overt upon good consideration, although it be to one that hath notice that they are stolen goods, yet the property of a stranger is bound; though in the book before remembred 33 H. VI. some opine to the contrary, which is clearly no law; so in 31 E. III. if assets descend to the heir, and he alien it upon good consideration, although it be to one that had notice of the debt, or of the warranty, it is good enough. So 25 Aff. p. 1. if a man enter of purpose into my lands, to the end that a stranger which hath right, should bring his *praecipe* and evict the land, I may enter notwithstanding any such recovery; but if he enter, having notice that the stranger hath right, and the stranger likewise having notice of his entry, yet if it were not upon confederacy or collusion between them, it is nothing; and the reason of these cases is, because the common law looketh no farther than to see whether the act were merely *actus fictus in fraudem legis*; and therefore wheresoever it findeth consideration given, it dischargeth the covin.

BUT come now to the case of use, and there it is otherwise, as it is in 14 H. VIII. and 28 H. VIII. and divers other books; which prove that if the feoffee sell the land for good consideration to one that hath notice, the purchaser shall stand seised to the antient use; and the reason is because the chancery looketh farther than the common law, *viz.* to the corrupt conscience of him that will deal in the land, knowing it in equity to be another's; and therefore if there were *radix amaritudinis*, the consideration purgeth it not, but it is at the peril of him that giveth it: so that consideration, or no consideration is an issue at the common law, but notice or no notice is an issue in the chancery, and so much for the preserving of uses.

3. FOR the transferring of uses there is no case in law whereby an action is transferred, but the *Subpoena* in case of use was always assignable; nay farther, you

you find twice 27 *H. VIII. Fol. 10. Pla. 9.* and *Fol. 30. Pla. 21.* that a right of use may be transferred: for in the former case *Montague* maketh the objection and saith, that a right of use cannot be given by fine, but to him that hath the possession; *Fitz-Herbert* answereth, yes, well enough; *quaere* the reason, saith the book.

AND in the latter case, where *cestuy que use* was infeoffed by the disseisor of the feoffee, and made a feoffment over, *Englefield* doubted whether the second feoffee should have the use. *Fitz-Herbert* said, I marvel you will make a doubt of it, for there is no doubt but the use passeth by the feoffment to the stranger, and therefore this question needeth not to have been made. So the great difficulty in 10 *Reginae, Delamer's* case, where the case was in effect tenant in tail of an use, the remainder in fee; tenant in tail made a feoffment in fee; tenant, by the statute of 1 *R. III.* and the feoffee infeoffed him in the remainder of the use, who made it over; and there question being made whether the second feoffee should have the use in remainder, it is said that the second feoffee must needs have the best right in conscience; because the first feoffee claimed nothing but in trust, and the *cestuy que use* cannot claim it against his sale; but the reason is apparent, (as was touched before) that a use in *esse* was but a thing in action, or in suit to be brought in court of conscience, and where the *subpoena* was to be brought against the feoffee in possession to execute the estate, or against the feoffee out of possession to recontinue the estate, always the *subpoena* might be transferred; for still the action at the common law was not stir'd, but remained in the feoffee; and so no mischief of maintenance or transferring rights.

AND if a use being but a right may be assigned, and pass'd over to a stranger, *a multo fortiori*, it may be limited to a stranger upon the privity of the first conveyance, as shall be handled in another place: and as to what *Glanville*, justice, said, he could never find by any book, or evidence of antiquity, a contingent use limited over to a stranger; I answer, first, it is no marvel that you find no case before *E. IV.* his time, of contingent uses, where there be not six of uses in all; and the reason I doubt was, men did choose well whom they trusted, and trust was well observed: and at this day in *Ireland*, where uses be in practice, cases of uses come seldom in question, except it be sometimes upon the alienations of tenants in tail by fine, that the feoffees will not be brought to execute estates, to the disinheritance of antient blood. But for experience in the conveyance, there was nothing more usual in *Obits*, than to will the use of the land to certain persons and their heirs, so long as they shall pay the chantry priests their wages, and in default of payment to limit the use over to other persons and their heirs; and so in case of forfeiture, through many degrees; and such conveyances are as ancient as *R. II.* his time.

4. Now for determining and extinguishing of uses, I put the case of collateral warranty before, and to that the notable case of 14 *H. VIII. Halfpenny's* case, where this very point was as in the principal case; for a right out of land, and the land itself in case of possession, cannot stand together, but the rent shall be extinct; but there the case is, that the use of the land, and the use of the rent shall stand well enough together; for a rent charge was granted by the feoffee to one, that had notice of the use, and ruled, that the rent was to the ancient use, and both uses were *in esse simul & jemel*: and though *Brudenell* Chief Justice urged the ground of possession to be otherwise, yet he was over-ruled by the other three justices, and *Brooke* said unto him, he thought he argued much for his pleasure. And to conclude, we see that things may be avoided and determined by the ceremonies and acts, like unto those by which they are created and raised; that which passeth by livery ought to be avoided

avoided by entry; that which passeth by grant, by claim; that which passeth by way of charge, determineth by way of discharge: and so a use which is raised but by a declaration or limitation, may cease by words of declaration or limitation, as the civil law saith, *in his nil magis consentaneum est, quam ut iisdem modis res dissolvantur quibus constituentur.*

Inst. 1. 2.
Tit. 2.

FOR the inception and progression of uses, I have for a precedent in them searched other laws, because states and common-wealths have common accidents; and I find in the civil law, that that which cometh nearest in name to the use, is nothing like in matter, which is *usus fructus*: for *usus fructus & dominium* is with them, as with us particular tenancy and inheritance. But that which resembleth the use most is *fidei-commissum*, and therefore you shall find in *Justinian lib. 2.* that they had a form in testaments, to give inheritance to one to the use of another, *Haereditatem constituo Caium, rogo autem te, Caie, ut haereditatem restituas Seio.* And the text of the civilians saith, that for a great time if the heir did not, as he was required, *cestuy que use* had no remedy at all, until about the time of *Augustus Caesar* there grew in custom a flattering form of trust, for they penned it thus: *Rogo te per salutem Augusti, or per fortunam Augusti &c.* Whereupon *Augustus* took the breach of trust to sound in derogation of himself, and made a Rescript to the *praetor* to give remedy in such cases; whereupon within the space of a hundred years, these trusts did spring and speed so fast, as they were forced to have a particular chancellor only for uses, who was called *praetor fidei commissarius*; and not long after the inconvenience of them being found, they resorted unto a remedy much like unto this statute; for by two decrees of senate, called *senatus-consultum Trebellianum & Pegasianum*, they made *cestuy que use* to be heir in substance. I have fought likewise, whether there be any thing which maketh with them in our law, and I find that *Periam* chief baron in the argument of *Cbudleigh's* case compareth them to copyholders, and aptly for many respects.

FIRST, because as an use seemeth to be an hereditament in the court of chancery, so the copy-hold seemeth to be an hereditament in the Lords court.

SECONDLY, this conceit of limitation hath been troublesome in copy-holders as well as in uses; for it hath been of late days questioned, whether there should be dowers, tenancies by the courtesy, intails, discontinuances, and recoveries of copyholds, in the nature of inheritances at the common law; and still the judgments have weighed, that you must have particular customs in copyholds, as well as particular reasons of conscience in use, and the limitation rejected.

AND thirdly, because they both grew to strength and credit by degrees: for the copy-holder first had no remedy at all against the lord, and were as tenancy at will. Afterwards it grew to have remedy in chancery, and afterwards against their lords by trespass at the common law; and now lastly the law is taken by some, that they have remedy by *ejectione firmæ*, without a special custom of leasing. So no doubt in uses: At the first the chancery made question to give remedy, until uses grew more general, and the chancery more eminent; and then they grew to have remedy in conscience: but they could never obtain any manner of remedy at the common law, neither against the feoffee, nor against strangers; but the remedy against the feoffee was left to the *subpoena*; and the remedy against strangers to the feoffee.

NOW for the cases whereupon uses were put in practice, *Coke* in his reading doth say well, that they were produced sometimes for fear, and many times for fraud. But I hold that neither of these cases were so much the reasons of uses, as another reason in the beginning, which was, that lands by the common law of *England* were not testamentary, or deviseable; and of

Late

late years since the statute, the ease of the conveyance for sparing of purchases, and execution of estates; and now last of all an excess of evil in mens minds, affecting to have the assurance of their estate and possession to be revocable in their own times, and irrevocable after their own times.

Now for the commencement and proceeding of them, I have considered what it hath been in course of common law, and what it hath been in course of statute. For the common law the conceit of *Sbelley* in 24 H. 8. and of *Pollard* in 27 H. 8. seemeth to me to be without ground, which was that the use succeeded the tenure: for after that the statute of *Quia emptores terrarum*, which was made 18 E. I. had taken away the tenure between the feoffor and the feoffee, and left it to the lord *Paramount*; they said that the feoffment being then merely without consideration, should therefore intend an use to the feoffor, which cannot be; for by that reason, if the feoffment before the statute had been made *tenendum de capitalibus dominis*, as it must be, there should have been an use unto the feoffor before that statute. And again, if a grant had been made of such things as consist not in tenure, as advowsons, rents, villains, and the like, there should have been a use of them, wherein the law was quite contrary; for after the time that uses grew common, it was nevertheless a great doubt whether things that did lie in grant, did not carry a consideration in themselves because of the deed.

AND therefore I do judge that the intendment of a use to the feoffor, where the feoffment was made without consideration, grew long after, when uses waxed general; and for this reason, because when feoffments were made, and that it rested doubtful whether it were in use or in purchase, because purchases were things notorious, and uses were things secret, the Chancellor thought it more convenient to put the purchaser to prove his consideration, than the feoffor and his heirs to prove the trust; and so made the intendment towards the use, and put the proof upon the purchaser.

AND therefore as uses were at the common law in reason, for whatsoever is not by statute, nor against law, may be said to be at the common law; and both the general trust and the special, were things not prohibited by the law, though they were not remedied by the law; so the experience and practice of uses were not ancient; and my reasons why I think so, are these.

FIRST, I cannot find in any evidence before King R. II. his time, the clause *ad opus & usum*, and the very latin of it favoureth of that time; for in ancient time, about Edw. I. his time, and before, when lawyers were part civilians; the latin phrase was much purer, as you may see by *Bracton's* writing, and by ancient patents and deeds, and chiefly by the register of writs, which is good latin; wherein this phrase (*ad opus & usum*) and the words (*ad opus*) is a barbarous phrase, and like enough to be the penning of some chaplain that was not much past his grammar, where he had found *opus & usus* coupled together, and that they did govern an ablative case; as they do indeed since this statute, for they take away the land and put them into a conveyance.

SECONDLY, I find in no private act of attainder, the clause of forfeiture of lands, the words, which he hath in possession or in use, until Ed. IV's reign.

THIRDLY, I find the word (*use*) in no statute until 7 Rich. II. cap. 11. of provisors, and in 15 Rich. of Mortmain.

FOURTHLY, I collect out of *Croke's* speech in 8. Edw. IV. where he saith, that by the advice of all the judges, it was thought that the *subpoena* did not lie against the heir of the feoffee which was in by law, but *cestuy que use* was driven to his bill in parliament, that uses even in that time were but in their infancy; for no doubt but at the first the chancery made difficulty to give

remedy at all, and did leave it to the particular conscience of the feoffee: but after the chancery grew absolute, as may appear by the statute of 13 H. VI. that complainants in chancery should enter into bond to prove their suggestions, which sheweth that the chancery at that time began to embrace too far, and was used for vexation; yet nevertheless it made scruple to give remedy against the heir being in by act in law though he were privy; so that it cannot be that uses had been of any great continuance when they made that a question: as for the case of *matrimonii praelocuti*, it hath no affinity with uses; for wheresoever there was remedy at the common law by action, it cannot be intended to be of the nature of a use.

AND for the book commonly vouched of 8 Aff. where *Earl* calleth the possession of a conuzee upon a fine levied by consent an entry in *autre droit*, and 44 of E. III. where there is mention of the feoffors that sued by petition to the King, they be but implications of no moment. So as it appeareth the first practice of uses was about *Richard II.* his time; and the great multiplying and overspreading of them was partly during the wars in *France*, which drew most of the nobility to be absent from their possessions; and partly during the time of the trouble and civil war between the two houses about the title of the crown.

Now to conclude the progression of uses in course of statutes, I do note three special points.

1. THAT a use had never any force at all, at the common law, but by statute law.

2. THAT there was never any statute made directly for the benefit of *cestuy que use*, as that the descent of an use should toll an entry, or that a release should be good to the pignor of the profits, or the like; but always for the benefit of strangers and other persons against *cestuy que use*, and his feoffees: for though by the statute of *Richard III.* he might alter his feoffees, yet that was not the scope of the statute, but to make good his assurance to other persons, and the other came in *ex obliquo*.

3. THAT the special intent unlawful and covinous was the original of uses, though after it induced to the lawful intent general and special; for 30 *Edward III.* is the first statute I find, wherein mention is made of the taking of profits by one, where the estate in law is in another.

FOR as to the opinion in 27 *Hen. VIII.* that in case of the statute of *Marlebridge*, the feoffees took the profits, it is but a conceit; for the law is this day, that if a man infeoff his eldest son within age, and without consideration, although the profits be taken to the use of the son, yet it is a feoffment within the statute. And for the statute *de religiosis* 7 *Edward I.* which prohibits generally that religious persons should not purchase *arte vel ingenio*, yet it maketh no mention of a use, but it saith *colore donationis termini vel alicujus tituli*, reciting there three forms of conveyances, the gift, the long lease, and feigned recovery; which gift cannot be understood of a gift to a stranger to their use, for that came to be holpen by 15 *Richard II.* long after.

BUT to proceed, in 5 *Edward III.* a statute was made for the relief of creditors against such as made covinous gifts of their lands and goods, and conveyed their bodies into sanctuaries, there living high upon others goods; and therefore that statute made their lands liable to their creditors executions in that particular case, if they took the profits. In 1 *Richard II.* a statute was made for relief of those as had right of action, against those as had removed the tenancy of the *praecipe* from them, sometimes by infeoffing great persons, for maintenance, and sometimes by secret feoffments to others, whereof

whereof the defendants could have no notice; and therefore the statute maketh the recovery good in all actions against the first feoffors as they took the profits, and so as the defendants bring their action within a year of their expulsion. In 2 *Richard II. cap. 3. Session. 2.* an imperfection of the statute of 50 *Edward III.* was holpen; for whereas the statute took no place, but where the defendant appeared, and so was frustrated, the statute giveth upon proclamation made at the gate of the place privileged, that the land should be liable without appearance.

In 7 *R. II.* a statute was made for the restraint of aliens, to take any benefices, or dignities ecclesiastical, or farms, or administration to them, without the King's special licence, upon pain of the statute of provisors: which being remedied by a former statute, where the alien took it to his own use; it is by that statute remedied, where the alien took it to the use of another, as it is said in the book; though I guess, that if the record were searched, it should be, if any other purchased to the use of an alien, and that the words (or to the use of another) should be (or any other to his use.) In 15 *Rich. II. cap. 5.* a statute was made for the relief of lords against *Mortmain*, where feoffments were made to the use of corporations, and an ordinance made that for feoffments past, the feoffees should before a day, either purchase licence to amortise them, or alien them to some other use, or other feoffments to come, or they should be within the statute of *Mortmain*. In 4 *Hen. IV. cap. 7.* the statute of 1 *Richard II.* is enlarged in the limitation of time; for whereas the statute did limit the action to be brought within the year of the feoffment, this statute in case of a disseisin extends the time to the life of the disseisor; and in all other actions, leaves it to the year from the time of the action grown. In 11 *Henry VI. cap. 3.* that statute of 4 *Henry IV.* is declared, because the conceit was upon the statute, that in case of disseisin the limitation of the life of the disseisor went only to the assise of *novel disseisin*, and to no other action; and therefore that statute declareth the former law to extend to all other actions, grounded upon *novel disseisin*. In 11 *Henry VI. cap. 5.* a statute was made for relief of him in remainder against particular tenants, for lives, or years, that assigned over their estates, and took the profits, and then committed waste against them; therefore this statute giveth an action of waste, being perners of the profits. In all this course of statutes no relief is given to purchasers, that come in by the party, but to such as come in by law, as defendants in *praecipies*, whether they be creditors, disseisors, or lessors, and that only in case of *Mortmain*: and note also, that they be all in cases of special covinous intents, as to defeat executions, tenancy to the *praecipie*, and the statute of *Mortmain*, or provisors. From 11 *Henry VI.* to 1 *R. III.* being the space of fifty years, there is a silence of uses in the statute book, which was at that time, when, no question, they were favoured most. In 1 *Richard III. cap. 1.* cometh the great statute for relief of those that come in by the party, and at that time an use appeareth in his likeness; for there is not a word spoken of taking the profits, to describe a use by, but of claiming to a use; and this statute ordained, that all gifts, feoffments, grants, &c. shall be good against the feoffors, donors and grantors, and all other persons claiming only to their use; so as here the purchaser was fully relieved, and *cestuy que use* was *obiter* enabled to change his feoffees; because there were no words in the statute of feoffments, grants, &c. upon good consideration; but generally in *Henry VII.*'s time, new statutes were made for further help and remedy to those that came in by act in law; as 1 *Henry VII. cap. 1.* a *formedon* is given without limitation of time against *cestuy*

cestuy que use; and *obiter*, because they make him a tenant, they give him advantage of a tenant, as of age, and voucher: *quaere* 4 *Hen. VII.* 17. the wardship is given to the lord of the heir of *cestuy que use*, dying, and no will declared, is given to the lord, as if he had died seised in demesne, and action of waste given to the heir against the guardian, and damages, if the lord were barr'd in his writ of ward; and relief is likewise given unto the lord, if the heir holding the knight's-service be of full age. In 19 *Hen. VII. cap. 15.* there is relief given in three cases, first to the creditors upon matters of record, as upon recognizance, statute, or judgment, whereof the two former were not aided at all by any statute; and the last was aided by a statute of 50 *E. III.* and 2 *R. II.* only in case of sanctuary men. Secondly, to the lords in socage for their relief, and herriots upon death, which was omitted in the 4 *Hen. VII.* and lastly to the lords of villains, upon a purchase of their villains in use. In 23 *Henry VIII. cap. 10.* a further remedy was given in a case, like unto the case of *Mortmain*; for in the statute of 15 *Richard II.* remedy was given where the use came, *ad manum mortuam*, which was when it came to some corporation: now when uses were limited to a thing, act, or work, and to a body, as to the reparation of a church, or an abbot, or to a guild, or fraternities as are only in reputation, but not incorporate: as to parishes, or such guilds or fraternities as are only in reputation, but not incorporate, that case was omitted, which by this statute is remedied, not by way of giving entry unto the lord, but by way of making the use utterly void; neither doth the statute express to whose benefit the use shall be made void, either the feoffor, or feoffee, but leaveth it to law, and addeth a *proviso*, that uses may be limited twenty years from the gift, and no longer.

THIS is the whole course of statute law before this statute, touching uses. Thus have I set forth unto you the nature and definition of an use, the differences and trust of an use, and the parts and qualities of it; and by what rules and learnings uses shall be guided and ordered: by a precedent of them in our laws, the causes of the springing and spreading of uses, the continuance of them, and the proceedings that they have had both in common law and statute law; whereby it may appear, that a use is no more but a general trust, when any one will trust the conscience of another better than his own estate and possession, which is an accident or event of human society, which hath been, and will be in all laws, and therefore was at the common law, which is common reason. *Fitz-Herbert* saith in the 14 *H. VIII.* common reason is common law, and not conscience; but common reason doth define that uses should be remedied in conscience, and not in courts of law, and ordered by rules in conscience, and not by streight rules of law; for the common law hath a kind of a rule and survey over the chancery, to determine what belongs to the chancery. And therefore we may truly conclude, that the force and strength that a use had or hath in conscience, is by common law; and the force that it had or hath by common law is only by statutes.

Now followeth in time and matter, the consideration of this statute, which is of principal labour; for those former considerations which we have handled serve but for introduction.

THIS statute, as it is the statute which of all others hath the greatest power and operation over the heritages of the realm, so howsoever it hath been by the humour of the time perverted in exposition, yet in itself is most perfectly and exactly conceived and penned of any law in the book. 'Tis induced with the most declaring and persuading preamble, 'tis consisting and standing upon the wisest and fittest ordinances, and qualified with the most foreseeing
and

and circumspect favings and provisoos: and lastly 'tis the best ponder'd in all the words and clauses of it of any statute that I find; but before I come to the statute it self, I will note unto you three matters of circumstance.

1. THE time of the statute: 2. The title of it: 3. The precedent or pattern of it.

FOR the time of it was in 27 Hen. VIII. when the King was in full peace, and a wealthy and flourishing estate, in which nature of time men are most careful of their possessions; as well because purchasers are most stirring: as again, because the purchaser when he is full, is no less careful of his assurance to his children, and of disposing that which he hath gotten, than he was of his bargain for the compassing thereof.

ABOUT that time the realm likewise began to be enfranchised from the tributes of *Rome*, and the possessions that had been in *Mortmain* began to stir abroad; for this year was the suppression of the smaller houses of religion, all tending to plenty, and purchasing: and this statute came in consort with divers excellent statutes, made for the kingdom in the same parliament; as the reduction of *Wales* to a more civil government, the re-edifying of diverse cities and towns, the suppressing of depopulation and inclosures.

FOR the title, it hath one title in the roll, and another in course of pleading. The title in the roll is no solemn title, but an act entitled, an act expressing an order for uses and wills; the title in course of pleading is, *statutum de usibus, in possessionem transferendis*: wherein *Walmsly* justice noted well 4^o *Reginae*, that if a man look to the working of the statute, he would think that it should be turned the other way, *de possessionibus ad usus transferendis*; for that is the course of the statute, to bring possession to the use. But the title is framed not according to the work of the statute, but according to the scope and intention of the statute, *nam quod primum est in intentione, ultimum est in operatione*. The intention of the statute by carrying the possession to the use, is to turn the use to a possession; for the words are not *de possessionibus ad usus transferendis*; and as the grammarian saith, *praepositio (ad) denotat notam actionis, sed praepositio (in) cum accusativo denotat notam alterationis*: and therefore *King* *smill* justice in the same case saith, that the meaning of the statute was, to make a transubstantiation of the use into a possession. But it is to be noted, that titles of acts of parliament severally came in but in the 5 Hen. VIII. for before that time there was but one title of all the acts made in one parliament; and that was no title neither, but a general preface of the good intent of the King, tho' now it is parcel of the record.

FOR the precedent of this statute upon which it is drawn, I do find by the first *Richard III.* whereupon you may see the very mould whereon this statute was made, that the said King having been infeoffed (before he usurped) to uses, it was ordained that the land whereof he was jointly infeoffed should be as if he had not been named; and where he was solely infeoffed, it should be in *cestuy que use*, in estate, as he had the use.

Now to come to the statute it self, the statute consisteth, as other laws do, upon a preamble, the body of the law, and certain savings, and provisoos. The preamble setteth forth the inconveniencies, the body of the law giveth the remedy, and the savings and provisoos take away the inconveniences of the remedy. For new laws are like the apothecaries drugs, though they remedy the disease, yet they trouble the body; and therefore they use to correct with spices: so it is not possible to find a remedy for any mischief in the commonwealth, but it will beget some new mischief; and therefore they spice their laws with provisoos to correct and qualify them.

THE preamble of the law was justly commended by *Popham* chief justice in 36 *Reginae*, where he saith, that there is little need to search and collect out of cases, before this statute, what the mischief was which the scope of the statute was to redress; because there is a shorter way offered us, by the sufficiency and fulness of the preamble, and therefore it is good to consider it, and ponder it thoroughly.

THE preamble hath three parts.

FIRST a recital of the principal inconveniencies, which is the root of all the rest.

SECONDLY, an enumeration of diverse particular inconveniencies, as branches of the former.

THIRDLY, a taste or brief note of the remedy that the statute meaneth to apply. The principal inconvenience, which is *radix omnium malorum*, is the diverting from the grounds and principles of the common law, by inventing a mean to transfer lands and inheritances without any solemnity, or act notorious: so as the whole statute is to be expounded strongly towards the extinguishment of all conveyances, whereby the freehold or inheritance may pass without any new confessions of deeds, executions of estate or entries, except it be where the estate is of privity and dependance one towards the other; in which cases, *mutatis mutandis*, they might pass by the rules of the common law.

THE particular inconveniencies by the law rehearsed may be reduced into four heads.

1. FIRST, that these conveyances in use are weak for consideration.
2. SECONDLY, that they are obscure and doubtful for trial.
3. THIRDLY, that they are dangerous for want of notice and publication.
4. FOURTHLY, that they are exempted from all such titles as the law subjecteth possessions unto.

THE first inconvenience lighteth upon heirs.

THE second upon jurors and witnesses.

THE third upon purchasers.

THE fourth upon such as come in by gift in law.

ALL which are persons that the law doth principally respect and favour.

FOR the first of these are three impediments (to the judgment of man) in disposing justly and advisedly of his estate.

FIRST, trouble of mind.

SECONDLY, want of time.

THIRDLY, of wise and faithful counsel about him.

1. AND all these three the statute did find to be in the disposition of an use by will, whereof followed the unjust disinherison of heirs. Now the favour of law unto heirs appeareth in many parts of the law; as the law of descent privilegeth the possession of the heir, against the entry of him that hath right by the law: no man shall warrant against his heir, except he warrant against himself, and diverse other cases too long to stand upon: and we see the antient law in *Glanvill's* time was, that the ancestor could not disinherit his heir by grant, or other act executed in time of sickness; neither could he alien land which had descended unto him, except it were for consideration of money or service, but not to advance any younger brother without the consent of the heir.

2. FOR trials, no law ever took a straiter course that evidence should not be perplexed, nor juries inveigled, than the common law of *England*; as on the other

other side, never law took a more precise and strait course with juries, that they should give a direct verdict. For whereas in a manner all laws do give the tryers, or jurors (which in other laws are called judges *de facto*) a liberty to give *non liquet*, that is, to give no verdict at all, and so the case to stand abated; our law enforceth them to a direct verdict, general or special; and whereas other laws accept of plurality of voices to make a verdict, our law enforceth them all to agree in one; and whereas other laws leave them to their own time and ease, and to part, and to meet again; our law doth duress and imprison them in the hardest manner, without light or comfort, until they be agreed, in consideration of straitness and coercion: it is consonant, that the law do require in all matters brought to issue, that there be full proof and evidence; and therefore if the matter in itself be of that surety as in simple contracts, which are made by parol, without writing, it alloweth wager of law.

In issue upon the mere right (which is a thing hardly to discern) it alloweth wager of battail to spare jurors, if time have wore out the marks and badges of truth: from time to time there have been statutes of limitation, where you shall find this mischief of perjuries often recited; and lastly, which is the matter in hand, all inheritances could not pass but by acts overt and notorious, as by deeds, livery, and records.

3. FOR purchasers (*bona fide*) it may appear that they were ever favoured in our law, as first by the great favour of warranties which were ever for the help of purchasers: as where by the law in *Edw. III's* time, the disseisee could not enter upon the feoffee in regard of the warranty; so again the collateral garranty, which otherwise as a hard law, grew in doubt only upon favour of purchasers; so was the binding of fines at the common law, the invention and practice of recoveries, to defeat the statute of entails, and many more grounds and learnings are to be found, which respect to the quiet of the possession of purchasers. And therefore though the statute of 1 *Rich. III.* had provided for the purchaser in some sort, by enabling the acts and conveyances of *cestuy que use*; yet nevertheless, the statute did not at all disable the acts or charges of the feoffees; and so as *Walmesly* justice said 42 *Reginae*, they played at double hand, for *cestuy que use* might sell, and the feoffee might sell, which was a very great uncertainty to the purchaser.

4. FOR the fourth inconvenience towards those that come in by law; conveyances in uses were like privileged places or liberties; for as there the law doth not run, so upon such conveyances the law could take no hold, but they were exempted from all titles in law. No man is so absolute owner of his possessions, but that the wisdom of the law doth reserve certain titles unto others; and such persons come not in by the pleasure and disposition of the party, but by the justice and consideration of law, and therefore of all others they are most favour'd: and also they are principally three.

1. THE King and lords who lost the benefit of attainders, fines for alienations, escheats, aids, herriots, reliefs, &c.

2. THE defendants in *praecipies* either real or personal, for debt and damages, who lost the benefit of their recoveries and executions.

3. TENANTS in dower, and by the courtesy, who lost their estates and tithes.

1. FIRST for the King: no law doth endow the King or Sovereign with more prerogatives or privileges: for his person is privileged from suits and actions, his possessions from interruption and disturbance, his right from limitation of time, his patents and gifts from all deceits and false suggestions. Next the King is the lord, whose duties and rights the law doth much favour, because the law supposeth the land did originally come

come from him; for until the statute of *Quia emptores terrarum*, the lord was not forced to destruct or dismember his signiory or service. So until 15 H. VII. the law was taken, that the lord, upon his title of wardship, should put out a conuzee of a statute, or a termor; so again we see, that the statute of *Mortmain* was made to preserve the lord's escheats and wards; the tenant in dower is so much favoured, as that it is the common by-word in the law, that the law favoureth three things.

1. LIFE. 2. Liberty. 3. Dower.

So in case of voucher, the feme shall not be delayed, but shall recover against the heir incontinent; so likewise of tenant by courtesy it is called tenancy by the law of *England*, and therefore specially favoured, as a proper conceit and invention of our law; so as again the law doth favour such as have antient rights, and therefore it telleth us it is commonly said that a right cannot die: and that ground of law, that a freehold cannot be in suspense, sheweth it well, inasmuch that the law will rather give the land to the first comer, which we call an occupant, than want a tenant to a demandant's action.

AND again the other antient ground of law of *remitter*, sheweth that where the tenant falleth without folly in the defendant, the law executeth the antient right. To conclude therefore this point, when this practice of feoffments to use did prejudice and damnify all those persons that the antient common law favour'd; and did absolutely cross the wisdom of the law: to have conveyances considerate and not odious, and to have trial thereupon clear and not inveigled, it is no marvel that the statute concludeth, that their subtle imaginations and abuses, tended to the utter subversion of the antient common laws of this realm.

THE third part of the preamble giveth a touch of the remedy which the statute intendeth to minister, consisting in two parts.

FIRST, the extirpation of feoffments.

SECONDLY, the taking away of the hurt, damage and deceit of the uses, out of which have been gathered two extremities of opinions.

THE first opinion is, that the intention of the statute was to discontinue and banish all conveyances in use; grounding themselves upon the words, that the statute doth not speak of the extinguishment or extirpation of the use, *viz.* by an unity of possession, but of an extinguishment or extirpation of the feoffment, &c. which is the conveyance itself.

SECONDLY, out of the words (abuse and errors, heretofore used and accustomed) as if uses had not been at the common law, but had been only an erroneous device or practice.

To both which I answer.

To the former, that the extirpation which the statute meant was plain, to be of the feoffee's estate, and not to form of conveyances.

To the latter I say, that for the word (abuse) that may be an abuse of the law, which is not against law, as the taking long leases at this day of land *in capite* to defraud wardships, is an abuse of the law, which is not against law, but wandring or going astray, or digressing from the ancient practice of the law, and by the word (errors) the statute meant by it, not a mistaking of the law, into a by-course: as when we say (*erravimus cum patribus juris*) it is not meant of ignorance only, but of perversity. But to prove that the statute meant not to suppress the form of conveyances, there be three reasons which are not answerable.

THE first is, that the statute in the very branch thereof hath words, *de futuro* (that are seised, or hereafter shall be seised :) and whereas it may be

said that these words were put in, in regard of uses suspended by disseisins, and so no present seisin to the use, until a regrefs of the feoffees; that intendment is very particular, for commonly such cases are brought in by provisoes, or special branches, and not intermixed in the body of a statute; and it had been easy for the statute to have said, or hereafter shall be seised upon any feoffment, &c. heretofore had or made.

THE second reason is upon the words of the statute of inolments, which saith, that no hereditaments shall pass, &c. or any use thereof, &c. whereby it is manifest, that the statute meant to leave the form of conveyance with the addition of a farther ceremony.

THE third reason I make is out of the words of the proviso, where it is said, that no primer seisin, livery, no fine, nor alienation, shall be taken for any estate executed by force of the statute of 27, before the first of May 1536, but they shall be paid for uses made and executed in possession for the time after; where the word (made) directly goeth to conveyances in use made after the statute, and can have no other understanding; for the words (executed in possession) would have served for the case of regrefs: and lastly, which is more than all, if they have had any such intent, the case being so general and so plain, they would have had words express, that every limitation of use made after the statute should have been void; and this was the exposition, as tradition goeth, that a reader of *Grays-Inn*, which read soon after the statute, was in trouble for, and worthily, who, as I suppose, was *Boy*, whose reading I could never see; but I do now insist upon it, because now again some in an immoderate invective against uses, do relapse to the same opinion.

THE second opinion which I called a contrary extremity is, that the statute meant only to remedy the mischiefs in the preamble, recited as they grew by reason of divided uses; and although the like mischief may grow upon the contingent uses, yet the statute had no foresight of them at that time, and so it was merely a new case not comprised. Whereunto I answer, that it is the work of the statute to execute the divided use; and therefore to make an use void by this statute which was good before, though it doth participate of the mischief recited in the statute, were to make a law upon a preamble without a purview, which were grossly absurd. But upon the question what uses are executed, and what not; and whether out of possessions of a disseisor, or other possessions out of privity or not, there you shall guide your exposition according to the preamble; as shall be handled in my next day's discourse, and so much touching the preamble of this law.

FOR the body of the law, I would wish all readers that expound statutes to do as scholars are willed to do: that is, first to seek out the principal verb; that is, to note and single out the material words whereupon the statute is framed; for there are in every statute certain words, which are as veins where the life and blood of the statute cometh, and where all doubts do arise, and the rest are *literae mortuae* fulfilling words.

THE body of the statute consisteth upon two parts.

FIRST, a supposition or case put, as *Anderson 36 Reginae* calleth it.

SECONDLY, a purview or ordinance thereupon.

THE cases of the statute are three, and every one hath his purview.

THE general case.

THE case of co-feoffees to the use of some of them.

AND the general case of feoffees to the use or purnors of rents or profits.

THE general case is built upon eight material words.

FOUR on the part of the feoffees.

THREE on the part of *cestuy que use*, and one common to them both.

THE first material word on the part of the feoffees is the word (person.) This excludes all alliances; for there can be no trust repos'd but in a person certain: it excludes again all corporations; for they are equalled to a use certain: for note on the part of the feoffor-over the statute insists upon the word (person,) and on the part of *cestuy que use*, that added body politique.

THE second word material, is the word (seised:) this excludes chattels. The reason is, that the statute meant to remit the common law, and not but that the chattels might ever pass by testament or by parol; therefore the use did not pervert them. It excludes rights, for it is against the rules of the common law to grant, or transfer rights; and therefore the statute would execute them.

THIRDLY, it excludes contingent uses, because the seisin cannot be but to a fee-simple of a use; and when that is limited, the seisin of the feoffee is spent; for *Littleton* tells us, that there are but two seisins, one *in Dominio ut de feodo*, the other *ut de feodo & jure*; and the feoffee by the common law could execute but the fee-simple to uses present, and not post uses; and therefore the statute meant not to execute them.

THE third material word is (hereafter) that bringeth in again conveyances made after the statute; it brings in again conveyances made before, and disturb'd by disseisin, and recontinued after; for it is not said incoffed to use hereafter seisd.

THE fourth word is (hereditament) which is to be understood of those things whereof an inheritance is in *esse*: for if I grant a rent charge *de novo* for life to a use, this is good enough; yet there is no inheritance in being of this rent: this word likewise excludes annuities and uses themselves; so that a use cannot be to a use.

THE first word on the part of *cestuy que use*, is the word (use, confidence or trust) whereby it is plain that the statute meant to remedy the matter, and not words; and in all the clauses it still carrieth the words.

THE second word is the word (person) again, which excludeth all alliances; it excludeth also all contingent uses which are not to bodies, lively and natural, as the building of a church, the making of a bridge; but here (as noted before) it is ever coupled with body politick.

THE third word is the word (other;) for the statute meant not to cross the common law. Now at this time uses were grown to such a familiarity, as men could not think of possession, but in course of use; and so every man was seised to his own use, as well as to the use of others; therefore because statutes would not stir nor turmoil possessions settled at the common law, it putteth in precisely this word (other:) meaning the divided use, and not the conjoined use; and this causeth the clause of joint feoffees to follow in a branch by itself; for else that case had been doubtful upon this word (other.)

THE words that are common to both, are words expressing the conveyance whereby the use ariseth, of which words, those that breed any question are (agreement, will, or otherwise) whereby some have inferred that uses might be raised by agreement parol, so there were a consideration of money, or other matter valuable; for it is expressed in the words before (bargain, sale, and contract) but of blood, or kindred; the error of which collection appeareth in the word immediately following (*viz.* will) whereby they might as well include, that a man seised of land might raise an use by will, especially to any of his sons or kindred, where there is a real consideration; and by that reason,

reason, mean, betwixt this statute and the statute of 32 of wills, lands were deviseable, especially to any man's kindred, which was clearly otherwise; and therefore those words were put in, not in regard of uses raised by those conveyances, or without, or likewise by will, might be transferred; and there was a person seized to a use, by force of that agreement or will, (*viz.*) to the use of the assignee; and for the word (otherwise) it should by the generality of the word include a disseisin, to a use. But the whole scope of the statute crosseth that which was to execute such uses, as were confidences and trust, which could not be in case of disseisin; for if there were a commandment precedent, then the land was vested in *cestuy que use* upon the entry; and if the disseisin were of the disseisor's own head, then no trust. And thus much for the case of supposition of this statute; here follow the ordinance and purview thereupon.

THE purview hath two parts, the first *operatio statuti*, the effect that the statute worketh: and there is *modus operandi*, a fiction, or explanation how the statute doth work that effect. The effect is, that *cestuy que use* shall be in possession of like estate as he hath in the use; the fiction *quomodo* is, that the statute will have the possession of *cestuy que use*, as a new body compounded of matter and form; and that the feoffees shall give matter and substance, and the use shall give form and quality; the material words in the first part of the purview are four.

THE first words are remainder and reverter, the statute having spoken before of uses in fee-simple, in tail, for life, or years, addeth, (or otherwise in remainder or reverter:) whereby it is manifest, that the first words are to be understood of uses in possession. For there are two substantial and essential differences of estates, the one limiting the times, (for all estates are but times of their continuances) this maketh the difference of fee-simple, fee-tail, for life or years, and the other maketh difference of possession and remainder: all other differences of estate are but accidents, as shall be said hereafter: these two the statute meant to take hold of, and at the words, remainder and reverter it stops: it adds not words, (right, title or possibility) nor it hath not general words (or otherwise:) it is most plain, that the statute meant to execute no inferior uses to remainder or reverter; that is to say, no possibility or contingencies, but estates, only such as the feoffees might have executed by conveyance made. Note also, the very letter of the statute doth take notice of a difference between an use in remainder and an use in reverter; which though it cannot be properly so called, because it doth not depend upon particular estates, as remainders do, neither did then before the statute draw any tenures as reversions do; yet the statute intends that there is a difference when the particular use, and the use limited upon the particular use are both new uses; in which case it is a use in remainder; and where the particular use is a new use, and the remnant of the use is the old use, in which case it is a use in reverter.

THE next material word is (from henceforth) which doth exclude all conceit of relation that *cestuy que use* shall not come in: as from the time of the first feoffments to use, as *Brudnell's* conceit was in 14 *Hen. VIII.* That is, the feoffor had granted a rent charge, and *cestuy que use* had made a feoffment in fee, by the statute of 1 *Richard III.* the feoffor should have held it discharged, because the act of *cestuy que use* shall put the feoffor in, as if *cestuy que use* had been seized in from the time of the first use limited; and therefore the statute doth take away all such ambiguities, and expresseth that *cestuy que use* shall be in possession from henceforth; that is, from the time of the parliament

parliament for uses then in being, and from the time of the execution for uses limited after the parliament.

THE third material words are (lawful seisin, state and possession) not a possession in law only, but a seisin in fact; not a title to enter into the land, but an actual estate.

THE fourth words are of and in such estates as they had in the use; that is to say, like estates, fee-simple, fee-tail, for life, for years at will, in possession, and reversion, which are the substantial differences of estates, as was said before; but both these latter clauses are more fully perfected and expounded by the branch of the fiction of the statute which follows.

THIS branch of fiction hath three material words or clauses: the first material clause is, that the estate, right, title, and possession that was in such person, &c. shall be in *cestuy que use*; for that the matter and substance of the estate of *cestuy que use* is the estate of the feoffee, and more he cannot have; so as if the use were limited to *cestuy que use* and his heirs; and the estate out of which it was limited was but an estate for life, *cestuy que use* can have no inheritance: so if when the statute came the heir of the feoffee had not entred after the death of his ancestor, but had only a possession in law, *cestuy que use* in that case should not bring an assize before entry, because the heir of the feoffee could not; so that the matter whereupon the use must work is the feoffee's estate. But note here: whereas before when the statute speaks of the uses, it spake only of uses in possession, remainder and reverter, but not in title or right; now when the statute speaks what shall be taken from the feoffee, it speaks of title and right: so that the statute takes more from the feoffee than it executes presently, in case where there are uses in contingency which are but titles.

THE second word is (clearly) which seems properly and directly to meet with the conceit of *Scintilla Juris*, as well as the words in the preamble of extirpating and extinguishing such feoffments, so is their estate as clearly extinct.

THE third material clause is after such quality, manners, form and condition as they had in the use; so as now as the feoffee's estate gives matter, so the use gives form: and as in the first clause the use was endowed with the possession in points of estate, so here it is endowed with the possession in all accidents and circumstances of estate. Wherein first note, that it is gross and absurd to expound the form of the use any whit to destroy the substance of the estate; as to make a doubt, because the use gave no dower or tenancy by the courtesy, that therefore the possession when it is transferred would do so likewise: no, but the statute meant such quality, manner, form and condition, as it is not repugnant to the corporal presence and possession of the estate.

NEXT for the word (condition) I do not hold it to be put in for uses upon condition, though it be also comprised within the general words; but because I would have things stood upon learnedly, and according to the true sense, I hold it but for an explaining, or word of the effect; as it is in the statute of 26 of treasons, where it is said, that the offenders shall be attainted of the overt fact by men of their condition (in this place;) that is to say, of their degree or sort: and so the word condition in this place is no more, but in like quality, manner, form and degree or sort; so as all these words amount but to (*modo & forma.*) Hence therefore all circumstances of estate are comprehended as sole seisin, or joint seisin, by intieries, or by moieties, a circumstance of estate to have age as coming in by descent, or not age

as

as purchaser, or circumstance of estate descendable to the heir of the part of the father, or of the part of the mother. A circumstance of estate conditional or absolute, remitted or not remitted, with a condition of inter-marriage or without, all these are accidents and circumstances of estate, in all which the possession shall ensue the nature and quality of the use: and thus much of the first case, which is the general case.

THE second case of the joint feoffees needs no exposition; for it pursueth the penning of the general case: only this I will note, that although it had been omitted, yet the law upon the first case would have been taken as the case provided; so that it is rather an explanation than an addition: for turn that case the other way, that one were infeoffed to the use of himself, I hold the law to be, that in the former case they shall be seised jointly; and so in the latter case *cestuy que use* shall be seised solely: for the word (other) it shall be qualified by the construction of cases, as shall appear when I come to my division. But because this case of co-feoffees to the use of one of them was a general case in the realm, therefore they foresaw it, express'd it precisely, and pass'd over the case *e converso*, which was but an especial case: and they were loth to bring in this case, by inserting the word only into the first case, to have penned it to the use only of other persons; for they had experience what doubt the word (only) bred upon the statute of 1 R. III. after this third case: and before the third case of rents comes in the second saving; and the reason of it is worth the noting, why the savings are interlaced before the third case; the reason of it is, because the third case needeth no saving, and the first two cases did need savings; and that is the reason of that again.

IT is a general ground, that where an act of parliament is donor, if it be penned with an (*ac si*) it is not a saving, for it is a special gift, and not a general gift, which includes all rights; and therefore in 11 Henry VII. where upon the alienation of women, the statute intitles the heir of him in remainder to enter, you find never a stranger, because the statute gives entry not (*simpliciter*) but within an (*ac si*); as if no alienation had been made, or if the feme had been naturally dead. Strangers that had right might have entred; and therefore no saving needs. So in the statute of 32 of leases, the statute enacts, that the leases shall be good and effectual in law, as if the lessor had been seised of a good and perfect estate in fee-simple; and therefore you find no saving in the statute; and so likewise of diverse other statutes, where the statute doth make a gift or title good specially against certain persons, there needs no saving, except it be to exempt some of those persons; as in the statute of 1 R. III. Now to apply this to the case of rents, which is penned with an (*ac si*) (*viz.*) as if a sufficient grant, or lawful conveyance had been made, or executed by such as were seised; why if such a grant of a rent had been made, one that had an ancient right might have entred and have avoided the charge; and therefore no saving needeth: but the second first cases are not penned with an (*ac si*) but absolute, that *cestuy que use* shall be adjudged in estate and possession, which is a judgment of parliament stronger than any fine, to bind all rights; nay, it hath farther words (*viz.*) in lawful estate and possession, which maketh it stronger than any in the first clause. For if the words only had stood upon the second clause (*viz.*) that the estate of the feoffee should be in *cestuy que use*, then perhaps the gift should have been special, and so the saving superfluous: and this note is material in regard of the great question, whether the feoffees may make any regrefs; which opinion (I mean, that no regrefs is left unto them)

is principally to be argued out of the saving; as shall be now declared: for the savings are two in number; the first saveth all strangers rights, with an exception of the feoffees; the second is a saving out of the exception of the first saving (*viz.*) of the feoffees in case where they claim to their own proper use: it had been easy in the first saving out of the statute (other than such persons as are seised, or hereafter should be seised to any use) to have added these words (executed by this statute;) or in the second saving to have added unto the words (claiming to their proper use) these words (or to the use of any other, and executed by this statute;) but the regrefs of the feoffee is shut out between the two savings; for it is the right of a person claiming to an use, and not unto his own proper use; but it is to be added, that the first saving is not to be understood as the letter implieth, that feoffees to use shall be barr'd of their regrefs, in case that it be of another feoffment than that whereupon the statute hath wrought, but upon the same feoffment; as if the feoffee before the statute had been disseised, and the disseised had made a feoffment in fee to *I. D.* his use, and then the statute came: this executeth the use of the second feoffment; but the first feoffees may make a regrefs, and they yet claim to an use, but not by that feoffment upon which the statute hath wrought.

Now followeth the third case of the statute, touching execution of rents; wherein the material words are four:

FIRST, whereas diverse persons are seised, which hath bred a doubt that it should only go to rents in use, at the time of the statute; but it is explained in the clause following (*viz.*) as if a grant had been made to them by such as are or shall be seised.

THE second word is (*profit*) for in the putting of the case, the statute speaketh of a rent; but after in the purview is added these words (or *profit*.)

THE third word is (*ac si*) *scil.* that they shall have the rent as if a sufficient grant or lawful conveyance had been made and executed unto them.

THE fourth words are the words of liberty and remedies attending upon such rent, *scil.* that he shall distrain, &c. and have such suits, entries, and remedies, relying again with an (*ac si*) as if the grant had been made with such collateral penalties and advantages.

Now for the provisoes; the makers of this law did so abound with policy and discerning, as they did not only foresee such mischiefs as were incident to this new law immediately, but likewise such as were consequent in a remote degree; and therefore besides the express provisoes, they did add three new provisoes which are in themselves subtractive laws: for foreseeing that by the execution of uses, wills formerly made should be overthrown; they made an ordinance for wills. Foreseeing likewise, that by execution of uses, women should be doubly advanced; they made an ordinance for dowers and jointures. Foreseeing again, that the execution of uses would make *franktenement* pass by contracts paroll, they made an ordinance for in-rollments of bargains and sales. The two former they inserted into this law, and the third they distinguished into a law apart, but without any preamble as may appear, being but a proviso to this statute. Besides all these provisionall laws; and besides four provisoes, whereof three attend upon the law of jointure, and one of persons born in *Wales*, which are not material to the purpose in hand: There are six provisoes which are natural and true members and limbs of the statute, whereof four concern the part of *cestuy que use*, and two concern

concern the part of the feoffees: The four which concern the part of *cestuy que use*, tend all to save him from prejudice by the execution of the estate.

THE first saveth him from the extinguishment of any statute or recognizance, as if a man had an extent of a hundred acres, and an use of the inheritance of one. Now the statute executing the possession to that one, would have extinguish'd his extent being intire in all the rest: or as if the conusee of a statute having ten acres liable to the statute, had made a feoffment in fee to a stranger of two, and after had made a feoffment in fee to the use of the conusee and his heirs. And upon this proviso there arise three questions: First, whether this proviso were not superfluous, in regard that *cestuy que use* was comprehended in the general saving, though the feoffees be excluded?

SECONDLY, whether this proviso doth save statutes or executions, with an apportionment or entire?

THIRDLY, because it is penned indefinitely in point of time, whether it shall go to uses limited after the statute, as well as to those that were in being at the time of the statute; which doubt is rather inforced by this reason, because there was for \dagger uses at the time of the statute; for that the execution of the statute might be waived: but both possession and use, since the statute, may be waived.

THE second proviso saveth *cestuy que use* from the charge of *primer seisin*, *liveries*, *ouster le maines*, and such other duties to the King, with an express limitation of time: that he shall be discharged for the time past, and charged for the time to come to the King, *viz.* May 1536. to be *communis terminus*.

THE third proviso doth the like for fines, reliefs, and herriots, discharging them for the time past, and speaking nothing of the time to come.

THE fourth proviso giveth to *cestuy que use* all collateral benefits of vouchers, aid-priors, actions of waste, trespass, conditions broken, and which the feoffees might have had; and this is expressly limited for estates executed before 1 May 1536. And this proviso giveth occasion to intend that none of these benefits would have been carried to *cestuy que use*, by the general words in the body of the law, *scil.* that the Feoffees estate, right, title, and possession, &c.

FOR the two provisos on the part of the tertenant, they both concern the saving of strangers from prejudice, &c.

THE first saves actions depending against the feoffees, that they shall not abate.

THE second saves wardships, liveries, and *ouster le maines*, whereof title was vested in regard of the heir of the feoffee, and this in case of the King only.

What persons may be seised to an use, and what not.

What persons may be cestuy que use, and what not.

What persons may declare an use, and what not.

THOUGH I have opened the statute in order of words, yet I will make my division in order of matter, *viz.*

1. THE raising of uses.

2. THE interruption of uses.

3. THE executing of uses.

AGAIN, the raising of uses doth easily divide it self into three parts.

THE persons that are actors to the conveyance to use.

THE use it self.

THE form of the conveyance.

THEN

\dagger The text here is manifestly corrupted, nor does any probable conjecture occur for its amendment.

THEN it is first to be seen what persons may be seised to an use, and what not; and what persons may be *cestuy que use*, and what not.

THE King cannot be seised to an use; no, not where he taketh in his natural body, and to some purpose as a common person; and therefore if land be given to the King and *I. D. per terme de lour vies*, this use is void for a moiety.

LIKE law is, if the King be seised of land in the right of his duchy of *Lancaster*, and covenanteth by his letters patent under the duchy seal to stand seised to the use of his son, nothing passeth.

LIKE law, if King *R. III.* who was feoffee to diverse uses before he took upon him the crown, had after he was King by his letters patent granted the land over, the uses had not been renewed.

THE Queen, (speaking not of an imperial Queen but by marriage) cannot be seised to an use, though she be a body enabled to grant and purchase, without the King: yet in regard of the government and interest the King hath in her possession, she cannot be seised to an use.

A CORPORATION cannot be seised to an use, because their capacity is to a use certain; again, because they cannot execute an estate without doing wrong to their corporation or founder; but chiefly because of the letter of this statute which (in any clause when it speaketh of the feoffee) resteth only upon the word (person,) but when it speaketh of *cestuy que use*, it addeth person or body politick.

IF a bishop bargain and sell lands whereof he is seised in the right of his see, this is good during his life; otherwise it is where a bishop is infeoffed to him and his successors, to the use of *I. D.* and his heirs, that is not good, no not for the bishop's life, but the use is merely void.

CONTRARY law of tenant in tail; for if I give land in tail by deed since the statute to *A*, to the use of *B* and his heirs; *B* hath a fee-simple determinable upon the death of *A* without issue. And like law, though doubtful before the statute, was; for the chief reason which bred the doubt before the statute, was because tenant in tail could not execute an estate without wrong; but that since the statute is quite taken away, because the statute saveth no right of intail, as the statute of *1 R. III.* did; and that reason likewise might have been answered before the statute, in regard of the common recovery.

A FEME covert and an infant, though under years of discretion, may be seised to an use; for as well as land might descend unto them from a feoffee to use, so may they originally be infeoffed to an use; yet if it be before the statute, and they had (upon a *subpoena* brought) executed their estate during the coverture or infancy, they might have defeated the same; and when they should have been seised again to the use, and not to their own use; but since the statute no right is saved unto them.

IF a feme covert or an infant be infeoffed to an use precedent since the statute, the infant or baron come too late to discharge or root up the feoffment; but if an infant be infeoffed to the use of himself and his heirs, and *I. D.* pay such a sum of money to the use of *I. G.* and his heirs, the infant may disagree and overthrow the contingent use.

CONTRARY law, if an infant be infeoffed to the use of himself for life, the remainder to the use of *I. S.* and his heirs, he may disagree to the feoffment as to his own estate, but not to divest the remainder, but it shall remain to the benefit of him in remainder.

AND

AND yet if an attainted Person be infeoffed to an use, the King's title, after office found, shall prevent the use, and relate above it; but until office the *cestuy que use* is seised of the land.

LIKE law of an alien; for if land be given to an alien to an use, the use is not void *ab initio*: yet neither alien or attainted person can maintain an action to defend the land.

THE King's villain if he be infeoffed to an use, the King's title shall relate above the use, otherwise in case of a common person.

BUT if the lord be infeoffed to the use of his villain, the use neither riseth, but the lord is in by the common law, and not by the statute discharged of the use.

BUT if the husband be infeoffed to the use of his wife for years, if he die the wife shall have the term, and it shall not inure by way of discharge, although the husband may dispose of the wife's term.

So if the lord of whom the land is held be infeoffed to the use of a person attainted, the lord shall not hold by way of discharge of the use, because of the King's title, *Annum diem & vastum*.

A PERSON uncertain is not within the statute, nor any estate *in nubibus* or suspense executed: as if I give land to *I. S.* the remainder to the right heirs of *I. D.* to the use of *I. N.* and his heirs, *I. N.* is not seised of the fee-simple of an estate *pur vie* of *I. S.* till *I. D.* be dead, and then in fee-simple.

LIKE law, if before the statute I give land to *I. S.* *pur autre vie* to an use, and *I. S.* dieth, living *cestuy que use*, whereby the freehold is in suspense, the statute cometh, and no occupant entreth; the use is not executed out of the freehold in suspense for the occupant, the disseisor, the lord by escheat. The feoffee upon consideration, not having notice, and all other persons which shall be seised to use, not in regard of their persons but of their title; I refer them to my division touching disturbance and interruption of uses.

IT followeth now to see what person may be a *cestuy que use*. The King may be *cestuy que use*; but it behoveth both the declaration of the use, and the conveyance it self, to be matter of record, because the King's title is compounded of both; I say, not appearing of record, but by conveyance of record. And therefore if I covenant with *I. S.* to levy a fine to him to the King's use, which I do accordingly; and this deed of covenant be not inroll'd, and the deed be found by office, the use vesteth not. *E converso*, if inroll'd. If I covenant with *I. S.* to infeof him to the King's use, and the deed be inroll'd, and the feoffment also be found by office, the use vesteth.

BUT if I levy a fine, or suffer a recovery to the King's use, and declare the use by deed of covenant enroll'd, though the King be not party, yet it is good enough.

A CORPORATION may take an use, and yet it is not material whether the feoffment or the declaration be by deed; but I may infeoff *I. S.* to the use of a corporation, and this use may be averred.

A USE to a person uncertain is not void in the first limitation, but executeth not till the person be *in esse*; so that this is positive, that an use shall never be in abeyance as a remainder may be, but ever in a person certain upon the words of the statute, and the estate of the feoffees shall be in him or them which have the use. The reason is, because no confidence can be reposed in a person unknown and uncertain; and therefore if I make a feoffment to the use of *I. S.* for life, and then to the use of the right heirs

of *I. D.* the remainder is not in abeyance, but the reversion is in the feoffor, (*quousque.*) So that upon the matter all persons uncertain in use, are like conditions or limitations precedent.

LIKE law, if I enfeoff one to the use of *I. S.* for years, the remainder to the right heirs of *I. D.* This is not executed in abeyance, and therefore not void.

LIKE law, if I make a feoffment to the use of my wife that shall be, or to such persons as I shall maintain, though I limit no particular estate at all; yet the use is good, and shall in the interim return to the feoffor.

CONTRARY law, if I once limit the whole fee-simple of the use out of land, and part thereof to a person uncertain, it shall never return to the feoffor by way of fraction of the use: but look how it should have gone unto the feoffor; if I begin with a contingent use, so it shall go to the remainder; if I entail a contingent use, both estates are alike subject to the contingent use when it falleth; as when I make a feoffment in fee to the use of my wife for life, the remainder to my first begotten son; I having no son at that time, the remainder to my brother and his heirs: if my wife die before I have any son, the use shall not be in me, but in my brother. And yet if I marry again, and have a son, it shall divest from my brother, and be in my son, which is the skipping they talk so much of.

So if I limit an use jointly to two persons, not *in esse*, and the one cometh to be *in esse*, he shall take the entire use; and yet if the other afterwards come *in esse*, he shall take jointly with the former; as if I make a feoffment to the use of my wife that shall be, and my first begotten son for their lives, and I marry; my wife taketh the whole use, and if I afterwards have a son, he taketh jointly with my wife.

BUT yet where words of abeyance work to an estate executed in course of possession, it shall do the like in uses; as if I enfeoff *A* to the use of *B* for life, the remainder to *C* for life, the remainder to the right heirs of *B*, this is a good remainder executed.

So if I enfeoff *A* to the use of his right heirs, *A* is in the fee-simple, not by the statute, but by the common law.

Now are we to examine a special point of the disability of such persons as do take by the statute: and that upon the words of the statute, where diverse persons are seised to the use of other persons; so that by the letter of the statute, no use is contained: but where the feoffor is one, and *cestuy que use* is another.

THEREFORE it is to be seen in what cases the same persons shall be both seised to the use and *cestuy que use*, and yet in by the statute; and in what cases they shall be diverse persons, and yet in by the common law; wherein I observe unto you three things: First, that the letter is full in the point. Secondly, that it is strongly urged by the clause of joint estates following. Thirdly, that the whole scope of the statute was to remit the common law, and never to intermeddle where the common law executed an estate; therefore the statute ought to be expounded, that where the party seised to the use, and the *cestuy que use* is one person, he never taketh by the statute, except there be a direct impossibility or impertinency for the use, to take effect by the common law.

AND if I give land to *I. S.* to the use of himself and his heirs; and if *I. D.* pay a sum of money, then to the use of *I. D.* and his heirs, *I. S.* is in of an estate for life, or for years, by way of abridgment of estate in course of possession, and *I. D.* in of the fee-simple by the statute.

So if I bargain and sell my land after seven years, the inheritance of the use only passeth; and there remains an estate for years by a kind of subtraction of the inheritance or occupier of my estate, but merely at the common law.

BUT if I enfeoff *I. S.* to the use of himself in tail, and then to the use of *I. D.* in fee, or covenant to stand seised to the use of my self in tail, and to the use of my wife in fee; in both these cases the estate tail is executed by this statute; because an estate tail cannot be re-occupied out of a fee-simple, being a new estate, and not like a particular estate for life or years, which are but portions of the absolute fee; and therefore if I bargain and sell my land to *I. S.* after my death without issue, it doth not leave an estate tail in me, nor vesteth any present fee in the bargainee, but is an use expectant.

So if I enfeoff *I. S.* to the use of *I. D.* for life, and then to the use of himself and his heirs, he is in of the fee-simple merely in course of possession, and as of a reversion, and not of a remainder.

CONTRARY law, if I enfeoff *I. S.* to the use of *I. D.* for life, then to the use of himself for life, the remainder to the use of *I. N.* in fee: Now the law will not admit fraction of estates; but *I. S.* is in with the rest by the statute.

So if I enfeoff *I. S.* to the use of himself and a stranger, they shall be both in by the statute, because they could not take jointly, taking by several titles.

LIKE law, if I enfeoff a bishop and his heirs to the use of himself, and his successors, he is in by the statute in the right of his fee.

AND as I cannot raise a present use to one out of his own seisin; so if I limit a contingent or future use to one being at the time of limitation not seised, but after become seised at the time of the execution of the contingent use, there is the same reason and the same law, and upon the same difference which I have put before.

As if I covenant with my son, that after his marriage I will stand seised of land to the use of himself and his heirs; and before marriage I enfeoff him to the use of himself and his heirs, and then he marieth; he is in by the common law, and not by the statute; like law of a bargain and sale.

BUT if I had let to him for life only, then he should have been in for life only by the common law, and of the fee-simple by statute. Now let me advise you of this, that it is not a matter of subtilty or conceit to take the law right, when a man cometh in by the law in course of possession, and where he cometh in by the statute in course of possession; but it is material for the deciding of many causes and questions, as for warranties, actions, conditions, waivers, and diverse other provisos.

FOR example; a man's farmer committed waste: after he in reversion covenanteth to stand seised to the use of his wife for life, and after to the use of himself and his heirs; his wife dies; if he be in his fee untouch'd, he shall punish the waste; if he be in by the statute, he shall not punish it.

So if I be infeoffed with warranty, and I covenant with my son to stand seised to the use of my self for life, and after to him and his heirs; if I be in by the statute, it is clear my warranty is gone; but if I be in by the common law, it is doubtful.

So if I have an eigne right, and be infeoffed to the use of *I. S.* for life, then to the use of my self for life, then to the use of *I. D.* in fee, *I. S.* dieth. If I be in by the common law, I cannot wave my estate, having agreed

to the feoffment: but if I am in by the statute, yet I am not remitted, because I come in by my own act: but I may waive my use, and bring an action presently; for my right is saved unto me by one of the savings in the statute. Now on the other side it is to be seen, where there is a feisin to the use of another person; and yet it is out of the statute which is in special cases upon the ground, wheresoever *cestuy que use* had remedy for the possession by course of common law, there the statute never worketh; and therefore if a disseisin were committed to an use, it is in him by the common law upon agreement; so if one enter as occupant to the use of another, it is in him till disagreement.

So if a feme enfeoff a man (*causa matrimonii praelocuti*) she hath remedy for the land again by course of the law; and therefore in those special cases the statute worketh not; and yet the words of the statute are general, (where any person stands seised by force of any fine, recovery, feoffment, bargain and sale, agreement or otherwise) but yet the feme is to be restrained for the reason aforesaid.

It remaineth to shew what persons may limit and declare an use: wherein we must distinguish; for there are two kinds of declarations of uses, the one of a present use upon the first conveyance, the other upon a power of revocation or new declaration; the latter of which I refer to the division of revocation: now for the former.

THE King upon his letters patent may declare an use, though the patent itself implieth an use, if none be declared.

IF the King gives lands by his letters to *I. S.* and his heirs, to the use of *I. S.* for life, the King hath the inheritance of the use by implication of the patent, and no office needeth; for implication out of matter of record, amounteth ever to matter of record.

IF the Queen give land to *I. S.* and his heirs to the use of all the churchwardens of the church of *Dale*, the patentee is seised to his own use, upon that confidence or intent; but if a common person had given land in that manner, the use had been void by the stat. of 23 *H. VIII.* and the use had returned to the feoffor and his heirs. A corporation may take an use without deed, as hath been said before; but can limit no use without deed.

AN infant may limit an use upon a feoffment, fine, or recovery, and he cannot countermand or avoid the use, except he avoid the conveyance; contrary, if an infant covenant in consideration of blood or marriage to stand seised to an use, the use is merely void.

IF an infant bargain and sell his land for money, for commons or teaching, it is good with averment; if for money, otherwise: if it be proved it is avoidable; if for money recited and not paid, it is void; and yet in the case of a man of full age the recital sufficeth.

IF baron and feme be seised in the right of the feme, or by joint purchase during the coverture, and they join in a fine, the baron cannot declare the use for longer time than the coverture, and the feme cannot declare alone; but the use goeth according to the limitation of law, unto the feme and her heirs: but they may both join in declaration of the use in fee; and if they sever, then it is good for so much of the inheritance as they concurr'd in; for the law avoucheth all one as if they join'd: as if the baron declare an use to *I. S.* and his heirs, and the feme another to *I. D.* for life, and then to *I. S.* and his heirs, the use is good to *I. S.* in fee.

AND if upon examination the feme will declare the use to the judge, and her husband agree not to it, it is void, and the baron's use is only good; the rest of the use goeth according to the limitation of law.

T H E

THE
A R G U M E N T
O F

Sir *FRANCIS BACON*, Kt.

His MAJESTY's Sollicitor General,

In the Case of the *POST-NATI* of *SCOTLAND*, in the Exchequer-Chamber, before the Lord Chancellor and all the Judges of *England*.

May it please your Lordships,

THIS case your lordships do well perceive to be of exceeding great consequence. For whether you do measure that by place, that reacheth not only to the realm of *England*, but to the whole island of *Great-Britain*; or whether you measure that by time, that extended not only to the present time, but much more to future generations:

Et nati natorum, & qui nascentur ab illis:

AND therefore as that is to receive at the bar a full and free debate, so I doubt not but that shall receive from your lordships a sound and just resolution according to law, and according to truth. For my lords, though he were thought to have said well that said that for his word, *Rex fortissimus*; yet he was thought to have said better, even in the opinion of a King himself, that said, *veritas fortissima & praevalet*: And I do much rejoice to observe such a concurrence in the whole carriage of this cause; to this end, that truth may prevail. The case no feigned, or framed case; but a true case between true parties.

THE title handled formerly in some of the King's courts, and free-hold upon it; used indeed by his Majesty in his high wisdom to give an end to this great question, but not raised; *occafio*, as the schoolmen say, *arrepta non porrecta*.

THE case argued in the King's-bench by M. *Walter* with great liberty, and yet with good approbation of the court: The persons assigned to be of counsel on that side, inferior to none of their quality and degree in learning; and some of them most conversant and exercised in the question.

THE judges in the King's-bench have adjourned it to this place for conference with the rest of their brethren. Your lordship, my Lord Chancellor, though you be absolute judge in the court where you sit, and might have called to you such assistance of judges as to you had seemed good; yet would not forerun or lead in this case by any opinion there to be given; but have chosen rather to come your self to this assembly; all tending (as I said) to this end; whereunto I for my part do heartily subscribe, *ut vincat veritas*, that truth may first appear, and then prevail. And I do firmly hold, and doubt not but I shall well maintain, that this is the truth, that *Calvin* the plaintiff is *ipso jure* by the law of *England* a natural born subject, to purchase

free-hold, and to bring real actions within *England*. In this case I must so consider the time, as I must much more consider the matter. And therefore though it may draw my speech into farther length; yet I dare not handle a case of this nature confusedly, but purpose to observe the ancient and exact form of pleadings; which is,

FIRST, to explain or induce.

THEN, to confute, or answer objections.

AND lastly, to prove, or confirm.

AND first for explanation. The outward question in this case is no more, but whether a child born in *Scotland* since his Majesty's happy coming to the crown of *England*, be naturalized in *England* or no? But the inward question or state of the question evermore beginneth, where that which is confessed on both sides doth leave.

IT is confessed, that if these two realms of *England* and *Scotland* were united under one law and one parliament, and thereby incorporated and made as one kingdom, that the *Post-natus* of such an union should be naturalized.

IT is confessed, that both realms are united in the person of our sovereign; or (because I will gain nothing by surreption, in the putting of the question) that one and the same natural person is King of both realms.

IT is confessed, that the laws and parliaments are several. So then, whether this privilege and benefit of naturalization be an accessory or dependency upon that which is one and joint, or upon that which is several, hath been, and must be the depth of this question. And therefore your lordships do see the state of this question doth evidently lead me by way of inducement to speak of three things. The king, the law, and the privilege of naturalization. For if you well understand the nature of the two principals, and again the nature of the accessory; then shall you discern, to whether principal the accessory doth properly refer, as a shadow to a body, or iron to an adamant.

AND there your lordships will give me leave in a case of this quality, first to visit and open the foundations and fountains of reason, and not to begin with the positions and eruditions of a municipal law; for so was that done in the great case of mines; and so ought that to be done in all cases of like nature. And this doth not at all detract from the sufficiency of our laws, as incompetent to decide their own cases, but rather addeth a dignity unto them, when their reason appearing as well as their authority, doth shew them to be as fine monies, which are current not only by the stamp, because they are so received, but by the natural metal, that is the reason and wisdom of them.

AND master *Littleton* himself in his whole book doth commend but two things to the professors of the law by the name of his sons; the one the inquiring and searching out the reasons of the law, and the other the observing of the forms of pleadings. And never was there any case that came in judgment that required more, than *Littleton's* advice should be followed in those two points, than doth the present case in question: and first of the King.

IT is evident that all other commonwealths (monarchies only excepted) do subsist by a law precedent. For where authority is divided amongst many officers, and they not perpetual, but annual or temporary, and not to receive their authority but by election, and certain persons to have voice only to that election, and the like; these are busy and curious frames, which of necessity

necessity do pre-suppose a law precedent, written or unwritten, to guide and direct them: but in monarchies, especially hereditary, that is, when several families or lineages of people do submit themselves to one line, imperial or royal, the submission is more natural and simple, which afterwards by laws subsequent is perfected and made more formal; but that is grounded upon nature. That this is so, it appeareth notably in two things; the one the platforms and patterns which are found in nature of monarchies; the original submissions, and their motives and occasions. The platforms are three:

THE first is that of a father, or chief of a family; who governing over his wife by prerogative of sex, over his children by prerogative of age, and because he is author unto them of being, and over his servants by prerogative of virtue and providence, (for he that is able of body, and improvident of mind, is *natura servus*) that is a very model of a King. So is the opinion of *Aristotle*, lib. 3. pol. cap. 14. where he saith, *Verum autem regnum est, cum penes unum est rerum summa potestas: quod regnum procuracionem familiarie imitatur.*

AND therefore *Lycurgus*, when one counselled him to dissolve the kingdom, and to establish another form of estate: he answered, Sir, begin to do that which you advise first at home in your own house, noting, that the chief of a family is as a King; and that those that can least endure Kings abroad, can be content to be Kings at home. And this is the first platform, which we see is merely natural.

THE second is, that of a shepherd and his flock, which *Xenophon* saith, *Cyrus* had ever in his mouth. For shepherds are not owners of the sheep; but their office is to feed and govern: no more are Kings proprietaries, or owners of the people; for God is sole owner of people. The nations, as the scripture saith, are his inheritance: but the office of Kings is to govern, maintain, and protect people. And that is not without a mystery, that the first King that was instituted by God, *David*, (for *Saul* was but an untimely fruit) was translated from a shepherd, as you have it in *Psal. lxxviii. Et elegit David servum suum, de gregibus ovium sustulit eum, — pascere Jacob servum suum, & Israel haereditatem suam.* This is the second platform; a work likewise of nature.

THE third platform is the government of God himself over the world, whereof lawful monarchies are a shadow. And therefore both amongst the Heathen, and amongst the Christians, the word (*sacred*) hath been attributed unto Kings, because of the conformity of a monarchy with the divine Majesty; never to a senate or people. And so you find it twice in the lord *Coke's* reports; once in the second book, the bishop of *Winchester's* case; and his fifth book, *Cawdrie's* case; and more anciently in the 10 of *H. VII. fo. 18. Rex est persona mixta cum sacerdote*; an attribute which the senate of *Venice*, or a canton of *Swisses* can never challenge. So we see there be precedents, or platforms of monarchies, both in nature and above nature; even from the monarch of heaven and earth to the King (if you will) in an hive of bees. And therefore other states are the creatures of the law; and this state only subsisteth by nature.

FOR the original submissions, they are four in number: I will briefly touch them: The first is paternity or patriarchy, which was when a family growing so great as it could not contain itself within one habitation, some branches of the descendents were forced to plant themselves into new families, which second families could not by a natural instinct and inclination, but bear a reverence and yield an obeisance to the eldest line of the ancient family from which they were derived.

THE

THE second is, the admiration of virtue, or gratitude towards merit, which is likewise naturally infused into all men. Of this *Aristotle* putteth the case well, when it was the fortune of some one man, either to invent some arts of excellent use towards man's life, or to congregate people, that dwelt scattered, into one place, where they might cohabit with more comfort, or to guide them from a more barren land to a more fruitful, or the like: upon these deserts, and the admiration and recompense of them, people submitted themselves.

THE third, which was the most usual of all, was conduct in war, which even in nature induceth as great an obligation as paternity. For as men owe their life and being to their parents in regard of generation, so they owe that also to favours in the wars in regard of preservation. And therefore, we find in chap. xviii. of the book of *Judges*, ver. 22. *Dixerunt omnes viri ad Gideon, dominare nostri, tu & filii tui, quoniam servasti nos de manu Madian.* And so we read when it was brought to the ears of *Saul*, that the people sung in the streets, *Saul hath kill'd his thousand*, and *David his ten thousand* of enemies, he said straightways: *Quid ei superest nisi ipsum regnum?* For whosoever hath the military dependence, wants little of being King.

THE fourth is an enforced submission, which is conquest, whereof it seemed *Nimrod* was the first precedent, of whom it is said, *Ipse coepit potens esse in terra, & erat robustus venator coram Domino.* And this likewise is upon the same root, which is the saving or gift as it were of life and being; for the conqueror hath power of life and death over his captives; and therefore where he giveth them themselves, he may reserve upon such a gift what service and subjection he will. All these four submissions are evident to be natural and more ancient than law.

To speak therefore of law, which is the second part of that which is to be spoken of by way of inducement. Law no doubt is the great organ by which the sovereign power doth move, and may be truly compared to the sinews in a natural body, as the sovereignty may be compared to the spirits; for if the sinews be without the spirits, they are dead and without motion; if the spirits move in weak sinews, it causeth trembling: so the laws without the King's power are dead; the King's power, except the laws be corroborate, will never move constantly, but be full of staggering and trepidation. But towards the King himself, the law doth a double office or operation: the first is to entitle the King, or design him; and in that sense *Bracton* saith well, lib. 1. fol. 5. and lib. 3. fol. 107. *Lex facit quod ipse sit Rex*; that is, it defines his title as in our law; that the kingdom shall go to the issue female; that it shall not be departable amongst daughters; that the half-blood shall be respected, and other points differing from the rules of common inheritance. The second is (that whereof we need not fear to speak in good and happy times, such as these are) to make the ordinary power of the King more definite or regular; for it was well said by a father, *plenitudo potestatis est plenitudo tempestatis.* And although the King, in his person, be *solutus legibus*, yet his acts and grants are limited by law, and we argue them every day.

BUT I demand, do these offices or operations of law evacuate or frustrate the original submission, which was natural? Or shall it be said that all the allegiance is by law? No more than it can be said, that *potestas patris*, the power of the father over the child, is by law: and yet no doubt laws do diversly define of that also; the law of some nations having given fathers power to put their children to death; others, to sell them thrice; others

to disinherit them by testament at pleasure, and the like. Yet no man will affirm, that the obedience of the child is by law, though laws in some points do make it more positive: and even so it is of allegiance of subjects to hereditary monarchs, which is corroborate, and confirmed by law, but is the work of the law of nature. And therefore you shall find the observation true, and almost general in all states, that their law-givers were long after their first Kings, who governed for a time by natural equity without law: so was *Theseus* long before *Solon* in *Athens*: so was *Eurytion* and *Sous* long before *Lycurgus* in *Sparta*: So was *Romulus* long before the *decemviri*. And even amongst our selves, there were more ancient Kings of the *Saxons*; and yet the laws ran under the name of *Edgar's* laws. And in the refounding of the kingdom in the person of *William* the Conqueror, when the laws were in some confusion for a time, a man may truly say, that King *Edward I.* was the first law-giver, who enacting some laws, and collecting others, brought the law to some perfection. And therefore I will conclude this point with the style which divers acts of parliaments do give unto the King: which term him very effectually and truly, our natural sovereign liege lord. And as it was said by a principal judge here present when he served in another place, and question was moved by some occasion of the title of *Bullein's* lands, that he would never allow that *Queen Elizabeth* (I remember it for the efficacy of the phrase) should be a statute Queen, but a common law Queen: so surely I shall hardly consent that the King shall be esteemed or called only our rightful sovereign, or our lawful sovereign, but our natural liege sovereign; as acts of parliament speak: for as the common law is more worthy than the statute law; so the law of nature is more worthy than them both. Having spoken now of the King and the law, it remaineth to speak of the privilege and benefit of naturalization it self; and that according to the rules of the law of *England*. Naturalization is best discerned in the degrees whereby the law doth mount and ascend thereunto. For it seemeth admirable unto me, to consider with what a measured hand, and with how true proportions our law doth impart and confer the several degrees of this benefit: the degrees are four.

THE first degree of persons (as to this purpose) that the law takes knowledge of, is an alien enemy; that is, such a one as is born under the obedience of a prince or state that is in hostility with the King of *England*. To this person the law giveth no benefit or protection at all, but if he come into the realm after war proclaimed, or war in fact, he comes at his own peril, he may be used as an enemy: for the law accounts of him, but (as the scripture saith) as of a spy that comes to see the weakness of the land. And so it is in 2 *Ric. III.* fol. 2. Nevertheless, this admitteth a distinction. For if he come with safe conduct, otherwise it is: For then he may not be violated, either in person or goods. But yet he must fetch his justice at the fountain head, for none of the conduit pipes are open to him; he can have no remedy in any of the King's courts; but he must complain himself before the King's privy council: there he shall have a proceeding summary from hour to hour, the cause shall be determined by natural equity, and not by rules of law; and the decree of the council shall be executed by aid of the chancery, as is 13 *Ed. IV.* And this is the first degree.

THE second person is an alien friend, that is, such a one as is born under the obedience of such a King or state as is confederate with the King of *England*, or at least not in war with him. To this person the law allotteth this benefit, that as the law accounts that the hold it hath over him, is but

a transitory hold (for he may be an enemy,) so the law doth indue him but with a transitory benefit, that is, of moveable goods and personal actions. But for free-hold, or lease, or actions real or mixt, he is not enabled, except it be in *autre droit*. And so it is 9 E. IV. fol. 7. 19 E. IV. fol. 6. 5 Mar. and divers other books.

THE third person is a denizen, using the word properly; (for sometimes it is confounded with a natural born subject.) This is one that is but *subditus insitivus*, or *adoptivus*, and is never by birth, but only by the King's charter, and by no other mean, come he never so young into the realm, or stay he never so long. Mansion or habitation will not indizenize him, no, nor swearing obedience to the King in a leet, which doth in-law the subject; but only (as I said) the King's grace and gift. To this person the law giveth an ability and capacity abridged, not in matter, but in time. And as there was a time when he was not subject, so the law doth not acknowledge him before that time. For if he purchase free-hold after his denization, he may take it; but if he have purchased any before, he shall not hold it: so if he have children after, they shall inherit; but if he have any before, they shall not inherit. So as he is but privileged *a parte post*, as the schoolmen say, and not *a parte ante*.

THE fourth and last degree, is a natural born subject, which is evermore by birth, or by act of parliament; and he is complete and entire. For in the law of *England* there is *nil ultra*, there is no more subdivision or more subtle division beyond these: and therein it seemeth to me that the wisdom of the law (as I said) is to be admired both ways, both because it distinguisheth so far, and because it doth not distinguish farther. For I know that other laws do admit more curious distinction of this privilege; for the *Romans* had besides *jus civitatis*, which answereth to naturalization, *jus suffragii*. For although a man were naturalized to take lands and inheritance, yet he was not enabled to have a voice at passing of laws, or at election of officers. And yet farther they have *jus petitionis*, or *jus honorum*. For though a man had a voice, yet he was not capable of honour and office. But these be the devices commonly of popular or free estates, which are jealous whom they take into their number, and are unfit for monarchies; but by the law of *England* the subject that is natural born, hath a capacity or ability to all benefits whatsoever; I say capacity or ability: But to reduce *potentiam in actum*, is another case. For an earl of *Ireland*, though he be naturalized in *England*, yet hath no voice in parliament of *England*, except he have either a call by writ, or a creation by patent; but he is capable of either. But upon this quadripartite division of the ability of persons, I do observe to your lordships three things, being all effectually pertinent to the question in hand.

THE first is, that if any man conceive that the reasons for the *Post-nati* might serve as well for the *Ante-nati*, he may by the distribution which we have made, plainly perceive his error. For the law looketh not back, and therefore cannot by any matter *ex post facto*, after birth, alter the state of the birth; wherein no doubt the law hath a grave and profound reason; which is this, in few words, *nemo subito fingitur; aliud est nasci, aliud fieri*: we indeed more respect and affect those worthy gentlemen of *Scotland* whose merits and conversations we know: but the law that proceeds upon general reason, and looks upon no mens faces, affecteth and privilegeth those which drew their first breath under the obedience of the King of *England*.

THE second point is, that by the former distribution, it appeareth that there be but two conditions by birth, either alien or natural born, (*nam tertium penitus ignoramus.*) It is manifest then, that if the *Post-nati* of Scotland be not natural born, they are alien born, and in no better degree at all than *Flemings, French, Italians, Spanish, Germans,* and others; which are all at this time alien friends, by reason his Majesty is in peace with all the world.

THE third point seemeth to me very worthy the consideration; which is, that in all the distributions of persons, and the degrees of abilities or capacities, the King's act is all in all, without any manner of respect to law or parliament. For it is the King that makes an alien enemy, by proclaiming a war, wherewith the law or parliament intermeddles not: So the King only grants safe conducts, wherewith law and parliament intermeddle not. It is the King likewise that maketh an alien friend, by concluding a peace, wherewith law and parliament intermeddle not. It is the King that makes a denizen by his charter, absolutely of his prerogative and power, wherewith law and parliament intermeddle not. And therefore it is strongly to be inferred, that as all these degrees depend wholly upon the King's act, and no ways upon law or parliament; so the fourth, although it cannot by the King's patent, but by operation of law, yet that the law, in that operation, respecteth only the King's person, without respect of subjection to law or parliament. And thus much by way of explanation and inducement; which being all matter in effect confessed, is the strongest ground-work to that which is contradicted or controverted.

THERE followeth the confutation of the arguments on the contrary side:

THAT which hath been materially objected, may be reduced to four heads.

THE first is, that the privilege of naturalization followeth allegiance, and that allegiance followeth the kingdom.

THE second is drawn from that common ground, *cum duo jura concurrunt in una persona, aequum est, ac si essent in duobus*; a rule, the words whereof are taken from the civil law; but the matter of it is received in all laws; being a very line or rule of reason, to avoid confusion.

THE third consisteth of certain inconveniencies conceived to ensue of this general naturalization, *ipso jure.*

THE fourth is not properly an objection, but a pre-occupation of an objection or proof on our part, by a distinction devised between countries devolute by descent, and acquired by conquest.

FOR the first, it is not amiss to observe that those which maintain this new opinion, whereof there is *altum silentium* in our books of law, are not well agreed in what form to utter and express that: for some said that allegiance hath respect to the law, some to the crown, some to the kingdom, some to the body politick of the King; so there is confusion of tongues amongst them, as it commonly cometh to pass in opinions that have their foundations in subtilty and imagination of man's wit, and not in the ground of nature. But to leave their words, and to come to their proofs, they endeavour to prove this conceit, by three manner of proofs: first, by reason; then, by certain inferences out of statutes; and lastly, by certain book-cases, mentioning and reciting the forms of pleadings.

THE reason they bring is this; that naturalization is an operation of the law of *England*; and so indeed it is, that may be the true *genus* of it.

THEN

THEN they add, (that granted) that the law of *England* is of force only within the kingdom and dominions of *England*, and cannot operate, but where it is in force. But the law is not in force in *Scotland*, therefore that cannot endure this benefit of naturalization by a birth in *Scotland*.

THIS reason is plausible and sensible, but extremely erroneous. For the law of *England*, for matters of benefit, or forfeitures in *England*, operateth over the world. And because it is truly said that *respublica continetur poena, & praemio*; I will put a case or two of either.

IT is plain that if a subject of *England* had conspired the death of the King in foreign parts, it was by the common law of *England*, treason. How prove I that? By the statute of 35 *H. VIII. cap. 2.* wherein you shall find no words at all of making any new case of treason which was not treason before, but only of ordaining a form of trial, *ergo* it was treason before: And if so, then the law of *England* works in foreign parts. So of contempts, if the King send his privy seal to any subject beyond the seas, commanding him to return, and he disobey, no man will doubt but there is a contempt, and yet the fact enduring the contempt was committed in foreign parts.

THEREFORE the law of *England* doth extend to acts or matters done in foreign parts. So of reward, privilege or benefit, we need seek no other instance than the instance in question; for I will put you a case that no man shall deny, where the law of *England* doth work and confer the benefit of naturalization upon a birth neither within the dominions of the kingdom, nor King of *England*. By the statute of 25 *E. III.* which, if you will believe *Hussey*, is but a declaration of the common law, all children born in any parts of the world, if they be of *English* parents, continuing at that time as liege subjects to the King, and having done no act to forfeit the benefit of their allegiance, are *ipso facto* naturalized. Nay, if a man look narrowly into the law in this point, he shall find a consequence that may seem at the first strange, but yet cannot well be avoided; which is, that if divers families of *Englishmen* and women plant themselves at *Middleborough*, or at *Roan*, or at *Lisbon*, and have issue, and their descendants do intermarry amongst themselves, without any intermixture of foreign blood; such descendants are naturalized to all generations: for every generation is still of liege parents, and therefore naturalized; so as you may have whole tribes and lineages of *English* in foreign countries.

AND therefore it is utterly untrue that the law of *England* cannot operate or confer naturalization, but only within the bounds of the dominions of *England*.

TO come now to their inferences upon statutes; the first is out of this statute which I last recited. In which statute it is said, that in four several places there are words, born within the allegiance of *England*; or again born without the allegiance of *England*, which (say they) applies the allegiance to the kingdom, and not to the person of the King. To this the answer is easy; for there is no trope of speech more familiar than to use the place of addition for the person. So we say commonly the line of *York*, or the line of *Lancaster*, for the lines of the duke of *York*, or the duke of *Lancaster*.

So we say the possessions of *Somerset* or *Warwick*, intending the possessions of the dukes of *Somerset*, or earls of *Warwick*. So we see earls sign, *Salisbury*, *Northampton*, for the earls of *Salisbury* or *Northampton*. And in the very same manner the statute speaks, allegiance of *England*, for allegiance

giance of the King of *England*. Nay more, if there had been no variety in the penning of that statute, this collection had had a little more force; for those words might have been thought to have been used of purpose, and in propriety; but you may find in three other several places of the same statute, allegiance and obeisance of the King of *England*, and especially in the material and concluding place, that is to say, children whose parents were at the time of their birth at the faith and obeisance of the King of *England*; so that it is manifest by this indifferent and promiscuous use of both phrases, the one proper, the other improper, that no man can ground any inference upon these words, without danger of cavillation.

THE second statute out of which they infer, is a statute made in 32 *Henr. VIII.* touching the policy of strangers and tradesmen within this realm. For the parliament finding that they did eat the *Englishmen* out of trade, and that they entertained no apprentices, but of their own nation, did prohibit that they should receive any apprentice, but the King's subjects. In which statute is said, that in nine several places there is to be found this context of words, aliens born out of the King's obedience; which is pregnant (say they) and doth imply that there be aliens born within the King's obedience. Touching this inference, I have heard it said, *qui haeret in litera, haeret in cortice*; but this is not worthy the name of *cortex*, it is but *musculus corticis*, the moss of the bark. For it is evident that the statute meant to speak clearly and without equivocation, and to a common understanding. Now then there are aliens in common reputation, and aliens in precise construction of law; the statute then meaning not to comprehend *Irishmen*, or *Ferseymen*, or *Calismen*, for explanation sake, left the word alien might be extended to them in a vulgar acceptance, added those further words, born out of the King's obedience: Nay, what if we should say, that those words, according to the received laws of speech, are no words of difference or limitation, but of declaration or description of an alien, as if it had been said, with a *videlicet*, aliens; that is, such as are born out of the King's obedience? they cannot put us from that construction. But sure I am, if the bark make for them, the pith makes for us; for the privilege or liberty which the statute means to deny to aliens of entertaining apprentices, is denied to none born within the King's obedience, call them aliens or what you will. And therefore by their reason, a *Post-natus* of *Scotland* shall by that statute keep what stranger apprentices he will, and so is put in the degree of an *English*. The third statute out of which inference is made, is the statute of 14 *E. III. cap. solo*, which hath been said to be our very case; and I am of that opinion too, but directly the other way. Therefore to open the scope and purpose of that statute: After that the title to the crown of *France* was devolute to *K. E. III.* and that he had changed his style, changed his arms, changed his seal, (as his Majesty hath done,) the subject of *England* (saith the statute) conceived a fear that the realm of *England* might become subject to the realm of *France*, or to the King as King of *France*. And I will give you the reasons of the double fear, that it should become subject to the realm of *France*. They had this reason of fear: *Normandy* had conquered *England*, *Normandy* was feudal of *France*, therefore because the superior seigniorie of *France* was now united in right with the tenancy of *Normandy*, and that *England*, in regard of the conquest, might be taken as a perquisite to *Normandy*, they had probable reason to fear that the kingdom of *England* might be drawn to be subject to the realm of *France*. The other fear that *England* might become subject to the King as

King of *France*, grew no doubt of this foresight, that the Kings of *England* might be like to make their mansion and seat of their estate in *France*, in regard of the climate, wealth, and glory of that kingdom; and thereby the kingdom of *England* might be governed by the King's mandates and precepts issuing, as from the King of *France*. But they will say, whatsoever the occasion was, here you have the difference authorised of subjection to a King generally, and subjection to a King as King of a certain Kingdom: but to this I give an answer three-fold:

FIRST, it presseth not the question; for doth any man say that a *Post-natus* of *Scotland* is naturalized in *England*, because he is a subject of the King, as King of *England*? No, but generally because he is the King's subject.

SECONDLY, The scope of this law is to make a distinction between crown and crown; but the scope of their argument is to make a difference between crown and person. Lastly, this statute (as I said) is our very case retorted against them; for this is a direct statute of separation, which presupposeth that the common law had made an union of the crowns in some degree, by virtue of the union in the King's person: if this statute had not been made to stop and cross the course of the common law in that point, as if *Scotland* now should be suitors to the King, that an act might pass to like effect, and upon like fear. And therefore if you will make good your distinction in this present case, shew us a statute for that. But I hope you can shew no statute of separation between *England* and *Scotland*. And if any man say that this was a statute declaratory of the common law, he doth not mark how that is penned: for after a kind of historical declaration in the preamble, that *England* was never subject to *France*, the body of the act is penned thus: The King doth grant and establish; which are words merely introductive *novae legis*, as if the King gave a charter of franchise, and did invest by a donative, the subjects of *England* with a new privilege or exemption, which by the common law they had not.

To come now to the book-cases which they put; which I will couple together, because they receive one joint answer.

THE first is 42 E. III. fol. where the book saith, exception was taken that the plaintiff was born in *Scotland* at *Ross*, out of the allegiance of *England*.

THE next is 22 H. VI. fol. 38. *Adrian's* case; where it is pleaded that a woman was born at *Bruges*, out of the allegiance of *England*.

THE third is 13 Eliz. Dyer, fol. 300. where the case begins thus: *Doctor Story qui notorie dignoscitur esse subditus regni Angliae*. In all these three (say they) that is pleaded that the party is subject of the kingdom of *England*, and not of the King of *England*.

To these books I give this answer, that they be not the pleas at large, but the words of the reporter, who speaks compendiously and narratively, and not according to the solemn words of the pleading. If you find a case put, that it is pleaded a man was seized in fee-simple, you will not infer upon that, that the words of the pleading were in *in feodo simplici*, but *sibi & haeredibus suis*. But shew me some precedent of a pleading at large, of *natus sub ligeantia regni Angliae*; for whereas Mr. *Walter* said that pleadings are variable in this point, he would fain bring it to that; but there is no such matter; for the pleadings are constant and uniform in this point: they may vary in the word *fides*, or *ligeantia*, or *obedientia*, and some other circumstances; but in the form of *regni* and *regis* they vary not: neither can there,

there, as I am persuaded, be any one instance shewed forth to the contrary. See 9 *Eliz.* 4. *Baggot's Assize*, fol. 7. where the pleading at large is entred in the book; there you have *alienigena natus extra ligeantiam domini regis Angliæ*. See the precedents in the book of entries, *Pl.* 7. and two other places; for there be no more: and there you shall find still *sub ligeantia domini regis*, or *extra ligeantiam domini regis*. And therefore the forms of pleading, which are things so reverend, and are indeed towards the reasons of the law, as *palma*, and *pugnus*, containing the reason of the law, opened or unfolded, or displayed, they make all for us. And for the very words of reporters in books, you must acknowledge and say, *ilicet obruimur numero*. For you have 22 *Aff. Pl.* 25. 27 *Aff.* the *Prior of Shells case*, *Pl.* 48. 14 *H. IV.* fol. 19. 3 *H. VI.* fol. 35. 6 *H. VIII.* in my *Lord Dyer*, fol. 2. In all these books, the very words of the reporters have the allegiance of the King, and not the allegiance of *England*. And the book in the 24 *Eliz.* 3. which is your best book, although while it is tossed at the bar, you have sometimes the word allegiance of *England*, yet when it comes to *Thorp*, chief justice, to give the rule, he saith, we will be certified by the roll, whether *Scotland* be within the allegiance of the King. Nay, that farther form of pleading beateth down your opinion. That it sufficeth not to say that he is born out of the allegiance of the King, and stay there, but he must shew in the affirmative, under the allegiance of what King or state he was born. The reason whereof cannot be, because it may appear whether he be a friend or an enemy, for that in a real action is all one: nor it cannot be because issue shall be taken thereupon; for the issue must arise on the other side upon *indigena* pleaded and traversed. And therefore it can have no other reason, but to apprise the court more certainly, that the country of the birth is none of those that are subject to the King. As for the trial, that it should be impossible to be tried, I hold it not worth the answering; for the *venire facias* shall go either where the natural birth is laid, although it be but by fiction, or if it be laid according to the truth, it shall be tried where the action is brought, otherwise you fall upon a main rock, that breaketh your argument in pieces; for how should the birth of an *Irishman* be tried, or of a *Jerseyman*? Nay, how should the birth of a subject be tried, that is born of *English* parents in *Spain* or *Florence*, or any part of the world? For to all these, the like objection of trial may be made, because they are within no counties, and this receives no answer. And therefore I will now pass on to the second main argument.

It is a rule of the civil law, say they, *cum duo jura*, &c. when two rights do meet in one person, there is no confusion of them, but they remain still in eye of law distinct, as if they were in several persons, and they bring examples of one man bishop of two sees, or one person that is rector of two churches. They say, this unity in the bishop or the rector doth not create any privity between the parishioners or dioceseners, more than if there were several bishops, or several parsons. This rule I allow (as was said) to be a rule not of the civil law only, but of common reason, but receiveth no forced or coined, but a true and sound distinction or limitation, which is, that it evermore faileth and deceiveth in cases where there is any vigour or operation of the natural person; for generally in corporations the natural body is but *suffulcimentum corporis corporati*, it is but as a stock to uphold and bear out the corporate body, but otherwise it is in the case of the crown, as shall be manifestly proved in due place. But to shew that this rule receiveth this distinction, I will put but two cases: the statute of the 21 *H. VIII.* ordaineth

ordaineth that a marquess may retain six chaplains qualified, a lord treasurer of England four, a privy counsellor three. The Lord Treasurer *Paulet* was marquess of *Winchester*, Lord Treasurer of *England* and Privy Counsellor all at once. Question was, whether he should qualify thirteen chaplains? Now by the rule *cum duo jura* he should; but adjudged he should not. And the reason was because the attendance of chaplains concerned and respected his natural person; he had but one soul, though he had three offices. The other case which I will put is the case of homage: a man doth homage to his lord for a tenancy held of the manor of *Dale*; there descendeth unto him afterwards a tenancy held of the manor of *Sale*, which manor of *Sale* is likewise in the hands of the same lord. Now by the rule *cum duo jura*, he should do homage again, two tenancies and two feignories, though but one tenant and one lord, *aequum est ac si esset in duobus*: But ruled that he should not do homage again: nay in the case of the King he shall not pay a second respect of homage, as upon grave and deliberate consideration it was resolved, 24 *Hen. VIII.* and *usus scaccarii*, as is there said accordingly. And the reason is no other but because when a man is sworn to his lord he cannot be sworn over again: he hath but one conscience, and the obligation of this oath trencheth between the natural person of the tenant and the natural person of the lord. And certainly the case of homage and tenure, and of homage liege, which is one case, are things of a near nature, save that the one is much inferior to the other; but it is good to behold these great matters of state in cases of lower element, as the eclipse of the sun is used to be in a pail of water.

THE third main argument containeth certain supposed inconveniencies, which may ensue of a general naturalization *ipso jure*, of which kind three have been especially remembered.

THE first is the loss of profit to the King upon letters of denization and purchases of aliens.

THE second is the concurrence of *Scotsmen* into this kingdom, to the infeebling of that realm of *Scotland* in people, and the impoverishing of this realm of *England* in wealth.

THE third is, that the reason of this case stayeth not within the compass of the present case; for although it were some reason that *Scotsmen* were naturalized, being people of the same island and language, yet the reason which we urge, which is, that they are subject to the same King, may be applied to persons every way more estranged from us than they are; as if in future time in the King's descendants, there should be a match with *Spain*, and the dominions of *Spain* should be united with the crown of *England*, by one reason (say they) all the *West-Indies* should be naturalized; which are people not only *alterius soli*, but *alterius coeli*. To these conceits of inconvenience, how easy it is to give answer, and how weak they are in themselves, I think no man that doth attentively ponder them, can doubt; for how small revenue can arise of such denizations, and how honourable it were for the King to take escheats of his subjects, as if they were foreigners (for seizure of aliens lands are in regard the King hath no hold or command of their persons and services) every one may perceive. And for the concurrence of *Scotsmen*, I think we all conceive the spring-tide is past at the King's first coming in. And yet we see very few families of them throughout the cities and boroughs of *England*. And for the naturalizing of the *Indies* we can readily help that, when the case comes; for we can make an act of parliament of separation if we like not their consort. But these being

ing reasons politick, and not legal, and we are not now in parliament, but before a judgment seat) I will not meddle with them, especially since I have one answer which avoids and confounds all their objections in law; which is, that the very self-same objections do hold in countries purchased by conquest. For in subjects obtained by conquest, it were more profit to indenizate by the poll; in subjects obtained by conquest, they may come in too fast. And if King *Henry VII.* had accepted the offer of *Christopher Columbus*, whereby the crown of *England* had obtained the *Indies* by conquest or occupation, all the *Indies* had been naturalized by the confession of the adverse part. And therefore since it is confessed, that subjects obtained by conquest are naturalized, and that all these objections are common and indifferent, as well to case of conquest as case of descent, these objections are in themselves destroyed.

AND therefore to proceed now to overthrow that distinction of descent and conquest. *Plato* saith well, the strongest of all authorities is, if a man can allege the authority of his adversaries against himself, we do urge the confession of the other side, that they confessed the *Irish* are naturalized; that they confess the subjects of the isles of *Jersey* and *Guernsey*, and *Berwick* to be naturalized, and the subjects of *Calais* and *Tournay* when they were *English* were naturalized; as you may find in the 5 *E. VI.* in *Dyer*, upon the question put to the judges by Sir *Nicholas Bacon*, Lord Keeper.

To avoid this, they fly to a difference, which is new coined, and is (I speak not to the disadvantage of the persons that use it; for they are driven to it *tanquam ad ultimum refugium*; but the difference itself;) it is, I say, full of ignorance and error. And therefore to take a view of the supports of this difference, they allege four reasons.

THE first is, that countries of conquest are made parcel of *England*; because they are acquired by the arms and treasure of *England*. To this I answer, that it were a very strange argument, that if I wax rich upon the manor of *Dale*, and upon the revenue thereof purchase a close by it, that it should make that parcel of the manor of *Dale*. But I will set this new learning on ground with a question or case put. For I oppose them that hold this opinion with this question, if the King should conquer any foreign country by an army compounded of *Englishmen* and *Scotsmen*, as it is like whensoever wars are, so it will be, I demand whether this country conquered shall be naturalized both in *England* and *Scotland*, because it was purchased by the joint arms of both? And if yea, whether any man will think it reasonable, that such subjects be naturalized in both kingdoms; the one kingdom not being naturalized towards the other? These are the intricate consequences of conceits.

A SECOND reason they allege is, that countries won by conquest become subject to the laws of *England*, which countries patrimonial are not, and that the law doth draw the allegiance, and allegiance naturalization.

BUT to the major proposition of that argument, touching the dependency of allegiance upon law, somewhat hath been already spoken, and full answer shall be given when we come to it. But in this place it shall suffice to say, that the minor proposition is false; that is, that the laws of *England* are not superinduced upon any country by conquest; but that the old laws remain until the King by his proclamation or letters patent declare other laws; and then if he will he may declare laws which be utterly repugnant, and differing from the laws of *England*. And hereof many ancient precedents and records may be shewed, that the reason why *Ireland* is subject to the laws of *England* is not *ipso jure* upon conquest, but grew by a charter

of King *John*; and that extended but to so much as was then in the King's possession; for there are records in the time of King *E. I.* and *II.* of divers particular grants to sundry subjects of *Ireland* and their heirs, that they might use and observe the laws of *England*.

THE third reason is, that there is a politick necessity of intermixture of people in case of subjection by conquest, to remove alienations of mind, and to secure the state, which holdeth not in case of descent. Here I perceive Mr. *Walter* hath read somewhat in matter of state; and so have I likewise; though we may both quickly lose our selves in a cause of this nature. I find by the best opinions, that there be two means to assure and retain in obedience countries conquered, both very differing, almost in extremes, the one towards the other.

THE one is by colonies, and intermixture of people, and transplantation of families, which Mr. *Walter* spoke of; and it was indeed the *Roman* manner: but this is like an old relique, much revered, and almost never used. But the other, which is the modern manner, and almost wholly in practice and use, is by garisons and citadels, and lifts or companies of men of war, and other like matters of terror and bridle.

To the first of these (which is little used) it is true that naturalization doth conduce, but to the later it is utterly opposite, as putting too great pride and means to do hurt in those that are meant to be kept short and low. And yet in the very first case of the *Roman* proceeding, naturalization did never follow by conquest, during all the growth of the *Roman* empire; but was ever conferred by charters or donations, sometimes to cities and towns, sometimes to particular persons, and sometimes to nations, until the time of *Adrian* the Emperor, and the law in *Orbe romano*: and that law or constitution is not referred to title of conquest and arms only, but to all other titles; as by the donation and testament of Kings, by submission and dedication of states, or the like: so as this difference was as strange to them as to us. And certainly I suppose it will sound strangely in the hearing of foreign nations, that the law of *England* should *ipso facto* naturalize subjects of conquests, and should not naturalize subjects which grow unto the King by descent; that is, that it should confer the benefit and privilege of naturalization upon such as cannot at the first but bear hatred and rancour to the state of *England*, and have had their hands in the blood of the subjects of *England*, and should deny the like benefit to those that are conjoined with them by a more amiable mean; and that the law of *England* should confer naturalization upon slaves and vassals (for people conquered are no better in the beginning) and should deny it to freemen: I say it will be marvelled at abroad, of what complexion the laws of *England* be made that breedeth such differences. But there is little danger of such scandals; for this is a difference that the law of *England* never knew.

THE fourth reason of this difference is, that in case of conquest the territory united can never be separated again. But in case of descent, there is a possibility; if his Majesty's line should fail, the kingdoms may sever again to their respective heirs; as it is in the case of 8 *Hen. VI.* where it is said, that if land descend to a man from the ancestor, on the part of his father, and a rent issuing out of it from an ancestor, on the part of the mother; if the party die without issue, the rent is revived. As to this reason I know well the continuance of the King's line is no less dear to those that allege the reason than to us that confute it. So as I do not blame the passing of the reason: but it is answered with no great difficulty; for first the law doth never

ver respect remote and foreign possibilities, as notably appeared in the great case between Sir *Hugh Cholmley* and *Halsford* in the exchequer, where one in the remainder, to the end to bridle tenant in tail from suffering a common recovery, granted his remainder to the King; and because he would be sure to have it out again without charge or trouble when his turn was served, he limited it to the King during the life of tenant in tail. Question grew whether this grant of remainder were good, yea or no. And it was said to be frivolous and void, because it could never by any possibility execute; for tenant in tail cannot surrender; and if he died, the remainder likewise ceased. To which it was answered, that there was a possibility that it might execute, which was thus: Put case, that tenant in tail should enter into religion, having no issue; then the remainder should execute, and the King should hold the land during the natural life of tenant in tail, notwithstanding his civil death. But the court *una voce* exploded this reason, and said, that monasteries were down, and entries into religion gone, and they must be up again ere this could be; and that the law did not respect such remote and foreign possibilities; and so we may hold this for the like: for I think we all hope, that neither of those days shall ever come, either for monasteries to be restored, or for the King's line to fail; but the true answer is, that the possibility subsequent, remote or not remote, doth not alter the operation of law for the present. For that should be, as if in case of the rent which you put, you should say, that in regard that the rent may be severed it should be said to be *in esse* in the mean time, and should be grantable, which is clearly otherwise. And so in the principal case, if that should be (which God of his goodness forbid) *cessante causâ cessat effectus*, the benefit of naturalization for the time to come is dissolved. But that altereth not the operation of the law; *rebus sic stantibus*. And therefore I conclude, that this difference is but a devise full of weakness and ignorance; and that there is one and the same reason of naturalizing subjects by descent, and subjects by conquest; and that is the union in the person of the King; and therefore that the case of *Scotland* is as clear as that of *Ireland*, and they that grant the one cannot deny the other. And so I conclude the second part touching confutation.

To proceed therefore to the proofs of our part, your lordships cannot but know many of them must be already spent in the answer which we have made to the objections. For *corruptio unius, generatio alterius*, holds as well in arguments as in nature, the destruction of an objection begets a proof. But nevertheless, I will avoid all iteration, lest I should seem either to distract your memories, or to abuse your patience; but will hold my self only to these proofs, which stand substantially of themselves, and are not intermixed with matter of confutation. I will therefore prove unto your lordships, that the *post-natus* of *Scotland* is by the law of *England* natural, and ought so to be adjudged by three courses of proof.

1. FIRST, upon point of favour of law.

2. SECONDLY, upon reasons and authorities of law.

3. AND lastly, upon former precedents and examples.

1. FAVOUR of law: what mean I by that? The law is equal, and favoureth not: it is true, not persons, but things or matters it doth favour. Is it not a common principle, that the law favoureth three things, life, liberty, and dower? And what is the reason of this favour? 'Tis because our law is grounded upon the law of nature. And these three things do flow from the law of nature, preservation of life natural, liberty, which every beast or bird seeketh

seeketh and affecteth naturally, the society of man and wife, whereof dower is the reward natural. It is well, doth the law favour liberty so highly, as a man shall enfranchise his bondman when he thinketh not of it, by granting to him lands or goods? And is the reason of it *quia natura omnes homines erant liberi*? And that servitude or villenage doth cross and abridge the law of nature? And doth not the self-same reason hold in the present case? For my lords, by the law of nature all men in the world are naturalized one towards another; they were all made of one lump of earth, of one breath of God; they had the same common parents: nay, at the first they were, as the scripture sheweth, *unius labii*, of one language, until the curse; which curse (thanks be to God) our present case is exempted from. It was civil and national laws that brought in these words, and differences of *cives* and *exterus*, alien and native. And therefore because they tend to abridge the law of nature, the law favoureth not them, but takes them strictly; even as our law hath an excellent rule, that customs of towns and boroughs shall be taken and construed strictly and precisely, because they do abridge and derogate from the law of the land. So by the same reason all national laws whatsoever are to be taken strictly and hardly in any point, wherein they abridge, and derogate from the law of nature. Whereupon I conclude that your lordships cannot judge the law for the other side, except the case be *lucē clarius*. And if it appear to you but doubtful, as I think no man in his right senses but will yield it to be at least doubtful, then ought your lordships (under your correction be it spoken) to pronounce for us, because of the favour of the law. Furthermore as the law of *England* must favour naturalization, as a branch of the law of nature, so it appears manifestly, that it doth favour it accordingly. For is it not much to make a subject naturalized? By the law of *England*, it should suffice, either place or parents, if he be born in *England* it is no matter though his parents be *Spaniards*, or what you will. On the other side, if he be born of *English* parents, it skilleth not though he be born in *Spain*, or in any other place of the world. In such sort doth the law of *England* open her lap to receive in people to be naturalized, which indeed sheweth the wisdom and excellent composition of our law. And that it is the law of a warlike and magnanimous nation, fit for empire. For look, and you shall find that such kind of estates have been ever liberal in point of naturalization: whereas merchant-like and envious estates have been otherwise. For the reasons of law joined with authorities, I do first observe to your lordships, that our assertion or affirmation is simple and plain: that it sufficeth to naturalization, that there be one King, and that the party be *natus ad fidem regis*, agreeable to the definition of *Littleton*, which is, alien is he which is born out of the allegiance of our lord the King. They of the other side speak of respects, and *quoad* and *quatenus*, and such subtilties and distinctions. To maintain therefore our assertion, I will use three kinds of proofs.

THE first is, that allegiance cannot be applied to the law or kingdom, but to the person of the King, because the allegiance of the subject is more large and spacious, and hath a greater latitude and comprehension than the law or the kingdom. And therefore it cannot be a dependency of that, without the which it may of itself subsist.

THE second proof which I will use, is, that the natural body of the King hath an operation and influence into his body politick, as well as his body politick hath upon his body natural; and therefore that although his body politick of King of *England*, and his body politick of King of *Scotland* be

be several and distinct, yet nevertheless his natural person, which is one, hath an operation upon both, and createth a privity between them.

AND the third proof is the binding text of five several statutes.

FOR the first of these I shall make it manifest, that the allegiance is of a greater extent and dimension than laws or kingdom, and cannot consist by the laws merely; because it began before laws, it continueth after laws, and it is in vigour where laws are suspended and have not their force. That it is more ancient than law appeareth by that which was spoken in the beginning by way of inducement, where I did endeavour to demonstrate, that the original age of kingdoms was governed by natural equity, that Kings were more ancient than law-givers, that the first submissions were simple, and upon confidence to the person of Kings, and that the allegiance of subjects to hereditary monarchies can no more be said to consist by laws, than the obedience of children to parents.

THAT allegiance continueth after laws, I will only put the case, which was remembred by two great judges in a great assembly, the one of them now with God: which was; that if a King of *England* should be expelled his kingdom, and some particular subjects should follow him in flight or exile in foreign parts, and any of them there should conspire his death; that upon his recovery of his kingdom, such a subject might by the law of *England* be proceeded with for treason committed and perpetrated at what time he had no kingdom, and in place where the law did not bind.

THAT allegiance is in vigour and force where the power of law hath a cessation appeareth notably in time of wars, for *silent leges inter arma*. And yet the sovereignty and imperial power of the King is so far from being then extinguished or suspended, as contrariwise it is raised and made more absolute; for then he may proceed by his supreme authority, and martial law, without observing formalities of the laws of his kingdom. And therefore whosoever speaketh of laws, and the King's power by laws, and the subjects obedience or allegiance to laws, speak but of one half of the crown. For *Bracton* out of *Justinian* doth truly define the crown to consist of laws and arms, power civil and martial, with the latter whereof the law doth not intermeddle; so as where it is much spoken, that the subjects of *England* are under one law, and the subjects of *Scotland* are under another law, it is true at *Edinburgh* or *Stirling*, or again in *London* or *York*; but if *Englishmen* and *Scotsmen* meet in an army royal before *Calais*, I hope then they are under one law. So likewise not only in time of war, but in time of peregrination: If a King of *England* travel or pass through foreign territories, yet the allegiance of his subjects followeth him; as appeareth in that notable case which is reported in *Fleta*, where one of the train of King *Edward I.* as he past through *France* from the *Holy Land*, imbezelled some silver plate at *Paris*, and jurisdiction was demanded of this crime by the *French* King's counsel at law, *ratione soli*, and demanded likewise by the officers of King *Edward* *ratione personae*; and after much solemnity and contestation and interpleading, it was ruled and determined for King *Edward*, and the party tried and judged before the knight marshal of the King's house, and hang'd after the *English* law, and execution in *St. Germain's* meadows. And so much for my first proof.

FOR my second main proof, that is drawn from the true and legal distinction of the King's several capacities; for they that maintain the contrary opinion do in effect destroy the whole force of the King's natural capacity, as if it were drowned and swallowed up by his politick. And therefore I

will first prove to your lordships, that his two capacities are in no sort confounded. And secondly, that as his capacity politick worketh so upon his natural person, as it makes it differ from all other the natural persons of his subjects; so *e converso*, his natural body worketh so upon his politick, as the corporation of the crown utterly differeth from all other corporations within the realm.

For the first I will vouch you the very words which I find in that notable case of the duchy, where the question was, whether the grants of King Edward VI. for duchy lands should be avoided in points of nonage. The case, as your lordships know well, is reported by Mr. *Plowden* as the general resolution of all the judges of *England*, and the King's learned counsel, *Rouswell* the solicitor only except; there I find the said words, comment. fol. 215. There is in the King not a body natural alone, nor a body politick alone, but a body natural and politick together: *corpus incorporatum in corpore naturali, & corpus naturale in corpore incorporato*. The like I find in the great case of the Lord *Berkley* set down by the same reporter, comment. fol. 234. Though there be in the King two bodies, and that those two bodies are conjoined, yet are they by no means confounded the one by the other.

Now then to see the mutual and reciprocal intercourse, as I may term it, or influence, or communication of qualities that these bodies have one upon the other: The body politick of the crown indueth the natural person of the King with these perfections. That the King in law shall never be said to be within age: that his blood shall never be corrupted; and that if he were attainted before, the very assumption of the crown purgeth it. That the King shall not take but by matter of record, although he take in his natural capacity as upon a gift in tail. That his body in law shall be said to be as it were immortal; for there is no death of the King in law, but a demise, as it is termed: with many other the like privileges and differences from other natural persons too long to rehearse, the rather because the question laboureth not in that part. But on the contrary part let us see what operations the King's natural person hath upon his crown and body politick: of which the chiefest and greatest is, that it causeth the crown to go by descent, which is a thing strange, and contrary to the course of all corporations, which evermore take in succession, and not by descent; for no man can shew me in all the corporations of *England*, of what nature soever, whether they consist of one person, or of many; or whether they be temporal or ecclesiastical, any one takes to him and his heirs, but all to him and his successors. And therefore here you may see what a weak course that is, to put cases of bishops and parsons, and the like, and to apply them to the crown. For the King takes to him and his heirs in the manner of a natural body, and the word successors is but superfluous; and where that is used, that is ever duly placed after the word heirs, the King, his heirs and successors.

AGAIN no man can deny but *uxor & filius sunt nomina naturae*. A corporation can have no wife, nor a corporation can have no son: how is it then that it is treason to compass the death of the Queen or of the Prince? There is no part of the body politick of the crown in either of them, but it is entirely in the King. So likewise we find in the case of the Lord *Berkley*, the question was whether the statute of 35 *Henry VIII.* for that part which concerned Queen *Katharine Par's* jointure were a publick act or no, of which the judges ought to take notice, not being pleaded; and judged a publick act. So the like question came before your lordship, my Lord Chancellor, in Serjeant *Heale's* case; whether the statute of 11 *Edward III.* concerning

cerning the intailing of the dukedom of *Cornwall* to the Prince were a publick act or no, and ruled likewise a publick act. Why? No man can affirm but these be operations of law, proceeding from the dignity of the natural person of the King; for you shall never find that another corporation whatsoever of a bishop or master of a college or mayor of *London* worketh any thing in law upon the wife or son of the bishop or the mayor. And to conclude this point, and withal to come near to the case in question, I will shew you where the natural person of the King hath not only an operation in the case of his wife and children, but likewise in the case of his subjects, which is the very question in hand. As for example, I put this case: Can a *Scotsman* who is a subject to the natural person of the King, and not to the crown of *England*; can a *Scotsman*, I say, be an enemy by the law to the subjects of *England*? Or must he not of necessity if he should invade *England* be a rebel and no enemy, not only as to the King, but as to the subject? Or can any letters of mart or reprisal be granted against a *Scotsman* that shall spoil an *Englishman's* goods at sea? And certainly this case doth press exceeding near the principal case; for it proveth plainly, that the natural person of the King hath such a communication of qualities with his body politic, as it makes the subjects of either kingdom stand in another degree of privity one towards the other, than they did before. And so much for the second proof.

For the five acts of parliament which I spoke of, which are concluding to this question:

THE first of them is, that concerning the banishment of *Hugh Spencer* in the time of King *Edward II.* In which act there is contained the charge and accusation whereupon his exile proceeded. One article of which charge is set down in these words: Homage and oath of the subject is more by reason of the crown than by reason of the person of the King. So that if the King doth not guide himself by reason in right of the crown, his lieges are bound by their oath to the crown to remove the King.

By which act doth plainly appear the perilous consequence of this distinction concerning the person of the King and the crown. And yet I do acknowledge justly and ingenuously a great difference between that assertion and this, which is now maintained: for it is one thing to make things distinct, another thing to make them separable, *aliud est distinctio, aliud separatio*; and therefore I assure myself, that those that now use and urge that distinction do as firmly hold, that the subjection to the King's person and to the crown are inseparable, though distinct, as I do. And it is true that the poison of the opinion and assertion of *Spencer* is like the poison of a scorpion, more in the tail than in the body: for it is the inference that they make, which is, that the King may be deposed or removed, that is the treason and disloyalty of that opinion. But by your leave, the body is never a whit the more wholesome meat for having such a tail belonging to it: therefore we see that is *locus lubricus*, an opinion from which a man may easily slide into an absurdity. But upon this act of parliament, I will only note one circumstance more, and so leave it, which may add authority unto it in the opinion of the wisest; and that is, that these *Spencers* were not ancient nobles or great patriots that were charged and prosecuted by upstarts and favourites: for then that might be said, that it was but the action of some flatterers, who use to extol the power of monarchs to be infinite: but it was contrary; a prosecution of those persons being favourites by the nobility, so as the nobility themselves which seldom do subscribe to the opinion of an infinite power of monarchs,

monarchs, yet even they could not endure, but their blood did rise to hear that opinion, that subjection is owing to the crown rather than to the person of the King.

THE second act of parliament which determined this case, is the act of recognition in the first year of his Majesty, wherein you shall find, that in two several places, the one in the preamble, the other in the body of the act, the parliament doth recognize, that these two realms of *England* and *Scotland* are under one imperial crown. The parliament doth not say under one monarchy or King, which might refer to the person, but under one imperial crown, which cannot be applied but to the sovereign power of regiment comprehending both kingdoms. And the third act of parliament is the act made in the fourth year of his Majesty's reign, for the abolition of hostile laws; wherein your lordships shall find likewise in two places, that the parliament doth acknowledge, that there is an union of these two kingdoms already begun in his Majesty's person: So as by the declaration of that act, they have not only one King, but there is an union in inception in the kingdoms themselves.

THESE two are judgments in parliament by way of declaration of law, against which no man can speak. And certainly these are righteous and true judgments to be relied upon; not only for the authority of them, but for the verity of them; for to any that shall well and deeply weigh the effects of law upon this conjunction, it cannot but appear, that although *partes integrales* of the kingdom (as the philosophers speak) such as the laws, the officers, the parliament, are not yet commixed; yet nevertheless there is but one, and the self-same fountain of sovereign power depending upon the ancient submission, whereof I spake in the beginning; and in that sense the crowns and the kingdoms are truly said to be united.

AND the force of this truth is such, that a grave and learned gentleman that defended the contrary opinion, did confess thus far: That in ancient times when monarchies (as he said) were but heaps of people without any exact form of policy; that then naturalization and communication of privileges did follow the person of the monarch; but otherwise, since states are reduced to a more exact form: so as thus far we did consent; but still I differ from him in this, that these more exact forms wrought by time and custom, and laws, are nevertheless still upon the first foundation, and do serve only to perfect and corroborate the force and bond of the first submission, and in no sort to disannul or destroy it.

AND therefore with these two acts do I likewise couple the act of 14 *Edward III.* which hath been alledged of the other side. For by collating of that act with this former too, the truth of that we affirm will the more evidently appear, according unto the rule of reason: *opposita juxta se posita magis elucescunt.* That act of 14 is an act of separation. These two acts formerly recited are acts tending to union. This act is an act that maketh a new law; it is by the words of grant and establish. These two acts declare the common law, as it is, being by words of recognition and confession.

AND therefore upon the difference of these laws you may substantially ground this position: That the common law of *England* upon the adjunction of any kingdom unto the King of *England* doth make some degree of union in the crowns and kingdoms themselves; except by a special act of parliament they be dissevered.

LASTLY, the fifth act of parliament which I promised, is the act made in the 42 of *E. III.* cap. 10. which is express decision of the point in question.

The

The words are, *Item*, (upon the petition put into parliament by the commons,) that infants born beyond the seas in the feignories of *Calais*, and elsewhere, within the lands and feignories that pertain to our sovereign lord the King beyond the seas, be as able and inheritable of their heritage in *England*, as other infants born within the realm of *England*, it is accorded that the common law and the statute formerly made, be holden.

UPON this act, I infer thus much; first, that such as the petition mentioneth, were naturalized, the practice shews; then if so, it must be either by common law or statute, for so the words report: not by statute, for there is no other statute but 25 of *E. III.* and that extends to the case of birth out of the King's obedience, where the parents are *English*; ergo it was by the common law, for that only remains. And so by the declarations of this statute at the common law, all infants born within the lands and feignories (for I give you the very words again) that pertain to our sovereign lord the King, it is not said, as are the dominions of *England*, are as able and inheritable of their heritage in *England*, as other infants born within the realm of *England*. What can be more plain? And so I leave the statutes, and go to precedents; for though the one do bind more, yet the other sometimes doth satisfy more. For precedents in the producing and using of that kind of proof, of all others it behoveth them to be faithfully vouched; for the suppressing or keeping back of a circumstance, may change the case: and therefore I am determined to urge only such precedents, as are without all colour or scruple of exception or objections, even of those objections which I have, to my thinking, fully answered and confuted. This is now, by the providence of God, the fourth time that the line and Kings of *England* have had dominions and feignories united unto them as patrimonies, and by descent of blood; four unions, I say, there have been inclusive with this last. The first was of *Normandy*, in the person of *William*, commonly called the conqueror. The second was of *Gascoign*, and *Guienne*, and *Anjou*, in the person of King *Henry II.* In his person, I say, though by several titles. The third was of the crown of *France*, in the person of King *Edward III.* And the fourth of the kingdom of *Scotland*, in his Majesty. Of these I will set aside such as by any cavillation can be excepted unto. First, I will set aside *Normandy*, because it will be said, that the difference of countries accruing by conquest, from countries annexed by descent in matter of communication of privileges, holdeth both ways; as well of the part of the conquering kingdom, as the conquered. And therefore that although *Normandy* was not conquest of *England*, yet *England* was a conquest of *Normandy*, and so a communication of privileges between them. Again, set aside *France*, for that it will be said, that although the King had a title in blood, and by descent, yet that title was executed and recovered by arms, so as it is a mixt title of conquest and descent, and therefore the precedent not so clear.

THERE remains then *Gascoigne* and *Anjou*, and that precedent likewise I will reduce and abridge to a time to avoid all question. For it will be said of them also, that after they were lost and recovered *in ore gladii*, that the ancient title of blood was extinct; and that the King was in upon his new title by conquest: and Mr. *Walter* hath found a book-case in 13 *H. VI.* abridged by Mr. *Fitz-Herbert*, in title of protection, *placito* 56. where a protection was cast, *quia profecturus in Gasconiam* with the Earl of *Huntingdon*, and challenged because it was not a voyage royal; and the justices thereupon requiring the sight of the commission, which was brought before

them, and purported power to pardon felonies, and treason, power to coin money, and power to conquer them that resist: whereby Mr. *Walter* finding the word conquest, collected that the King's title at that time was reputed to be by conquest; wherein I may not omit to give *obiter* that answer, which law and truth provideth, namely, that when any King obtaineth by war a country whereunto he hath right by birth, that he is ever in upon his ancient right, not upon his purchase by conquest; and the reason is, that there is as well a judgment and recovery by war and arms, as by law and course of justice. For war is a tribunal seat, wherein God giveth the judgment, and the trial is by battel, or duel, as in the case of trial of private right: and then it follows, that whosoever cometh in by eviſion, comes in his *remitter*: so as there will be no difference in countries whereof the right cometh by descent, whether the possession be obtained peaceably, or by war; but yet nevertheless, because I will utterly take away all manner of evasion, and subterfuge, I will yet set apart that part of time, in and during the which, the subjects of *Gascoigne* and *Guienne* might be thought to be subdued by a re-conquest. And therefore I will not meddle with the prior of *Shelley's* case, though it be an excellent case; because it was in the time of 27 *E. III.* neither will I meddle with any cases, records, or precedents, in the time of King *H. V.* or King *H. VI.* for the same reason; but will hold my self to a portion of time, from the first uniting of these provinces in the time of King *H. II.* until the time of King *John*. At what time those provinces were lost, and from that time again unto the seventeenth year of the reign of King *E. 2.* at what time the statute of *prærogativa regis* was made, which altered the law in the point in hand.

THAT both in these times the subjects of *Gascoigne* and *Guienne*, and *Anjou*, were naturalized for inheritance in *England* by the laws of *England*, I shall manifestly prove; and the proof proceeds, as to the former time (which is our case,) in a very high degree, *a minore ad majus*, and as we say, *a multo fortiori*. For if this privilege of naturalization remained unto them when the countries were lost, and became subjects in possession to another King; much more did they enjoy it, as long as they continued under the King's subjection.

THEREFORE to open the state of this point. After these provinces were through the perturbations of the state in the unfortunate time of King *John* lost, and severed, the principal persons which did adhere unto the *French*, were attainted of treason, and their escheats here in *England* taken and seized. But the people that could not resist the tempest, when their heads and leaders were revolted, continued inheritable to their possessions in *England*, and reciprocally the people of *England* inherited and succeeded to their possessions in *Gascoigne*, and were both accounted *ad fidem utriusque regis*, until the statute of *prærogativa regis*, wherein the wisdom and justice of the law of *England* is highly to be commended. For of this law, there are two grounds of reason, the one of equity, the other of policy: that of equity was, because the common people were in no fault, but as the scripture saith in a like case, *quid fecerunt oves israel?* It was the cowardice and disloyalty of their governors that deserved punishment, but what had these sheep done? And therefore to have punish'd them, and deprived them of their lands and fortunes, had been unjust. That of policy was, because if the law had forthwith upon the loss of the countries by an accident of time, pronounced the people for aliens, it had been a kind of cession of their right, and a disclaimer in them, and so a greater difficulty to recover them. And therefore

fore we see the statute which altered the law in this point, was made in the time of a weak King, that, as it seemed, despaired ever to recover his right; and therefore thought better to have a little present profit by escheats, than the continuance of his claim, and the countenance of his right, by the admitting of them to enjoy their inheritances as they did before.

THE state therefore of this point being thus opened, it resteth to prove our assertion that they were naturalized; for the clearing whereof, I shall need but to read the authorities, they be so direct and pregnant. The first is the very text of the statute of *praerogativa regis*. *Rex habebit escaetas de terris Normannorum, cujusunque feodi fuerint, salvo servitio, quod pertinet ad capitales dominos feodi illius: & hoc similiter intelligendum est, si aliqua haereditas descendat alicui nato in partibus transmarinis, & cujus antecessores fuerunt ad fidem regis Franciae, ut tempore regis Johannis, & non ad fidem regis Angliae, sicut contigit de baronia Monumetae, &c.*

By which statute it appears plainly, that before the time of King John, there was no colour of any escheat, because they were the King's subjects in possession, as Scotland now is, but only it determines the law from that time forward.

THIS statute, if it had in it any obscurity, it is taken away by two lights, the one placed before it, and the other placed after it; both authors of great credit, the one for ancient, the other for late times: the former is *Braeton*, in his *cap. de exceptionibus*, lib. 5. fol. 427. and his words are these, *Est etiam & alia exceptio quae tenenti competit ex persona petentis, propter defectum nationis, quae dilatoria est, & non perimit actionem, ut si quis alienigena qui fuerit ad fidem regis Franciae, & actionem instituat versus aliquem, qui fuerit ad fidem regis Angliae, tali non respondeatur, saltem donec terrae fuerint communes.*

By these words it appeareth, that after the loss of the provinces beyond the seas, the naturalization of the subjects of those provinces was in no sort extinguished, but only was in suspense during time of war, and no longer; for he saith plainly, that the exception which we call plea to the person of an alien, was not peremptory, but only dilatory, that is to say, during the time of war, and until there were peace concluded, which he terms by these words, *donec terrae fuerint communes*: which though the phrase seem somewhat obscure, is expounded by *Braeton* himself in his fourth book, fol. 297. to be of peace made and concluded, whereby the inhabitants of England and those provinces might enjoy the profits and fruits of their lands in either place *communiter*, that is, respectively, or as well the one as the other: so as it is clear they were no aliens in right, but only interrupted and debarred of suits in the King's courts in time of war.

THE authority after the statute, is, that of Mr. *Stamford*, the best expofitor of a statute that hath been in our law; a man of reverend judgment, and excellent order in his writings: his words are in his exposition upon the branch of the statute which we read before. By this branch it should appear, that at this time men of *Normandy*, *Gascoigne*, *Guienne*, *Anjou*, and *Britain*, were inheritable within this realm, as well as *Englishmen*, because that they were sometimes subjects to the Kings of England, and under their dominion, until King John's time, as is aforesaid; and yet after his time, those men (saving such whose lands were taken away for treason,) were still inheritable within this realm till the making of this statute, and in the time of peace between the two Kings of England and France, they were answerable within this realm, if they had brought any action for their lands and tenements.

So as by these three authorities, every one so plainly pursuing the other, we conclude that the subjects of *Gascoigne*, *Guienne*, *Anjou*, and the rest, from their first union by descent, until the making of the statute of *prærogativa regis*, were inheritable in *England*, and to be answered in the King's courts in all actions, except it were in time of war. Nay more, (which is *de abundantia*;) that when the provinces were lost, and disannexed, and that the King was but King *de jure* over them, and not *de facto*; yet nevertheless, the privilege of naturalization continued.

THERE resteth yet one objection, rather plausible to a popular understanding, than any ways forcible in law or learning, which is a difference taken between the kingdom of *Scotland* and these duchies, for that the one is a kingdom, and the other was not so; and therefore that those provinces being of an inferior nature, did acknowledge our laws and seals, and parliament, which the kingdom of *Scotland* doth not.

THIS difference was well given over by Mr. *Walter*; for it is plain that a kingdom and absolute dukedom, or any other sovereign estate, do differ *honore*, and not *potestate*: for divers duchies and countries that are now, were sometimes kingdoms; and divers kingdoms that are now, were sometimes duchies, or of other inferior style: wherein we need not travail abroad, since we have in our own state so notorious an instance of the country of *Ireland*, whereof King *H. VIII.* of late time was the first that writ himself King, the former style being lord of *Ireland*, and no more; and yet Kings had the same authority before, that they have had since, and the same nation the same marks of a sovereign state, as their parliaments, their arms, their coins, as they now have; so as this is too superficial an allegation to labour upon.

AND if any do conceive that *Gascoigne* and *Guienne* were governed by the laws of *England*: first, that cannot be in reason; for it is a true ground that whosoever any prince's title unto any country is by law, he can never change the laws, for that they create his title: and therefore no doubt those duchies retained their own laws; which if they did, then they could not be subject to the laws of *England*.

AND next, again, the fact or practice was otherwise, as appeareth by all consent of story and record: for those duchies continued governed by the civil law, their trials by witnesses, and not by jury, their lands testamentary, and the like.

NOW for the colours that some have endeavoured to give, that they should have been subordinate to the government of *England*; they were partly weak, and partly such as make strongly against them: for as to that, that writs of *habeas corpus* under the great seal of *England* have gone to *Gascoigne*, it is no manner of proof; for that the King's writs, which are mandatory, and not writs of ordinary justice, may go to his subjects into any foreign parts whatsoever, and under what seal it pleaseth him to use; and as to that, that some acts of parliament have been cited, wherein the parliaments of *England* have taken upon them to order matters of *Gascoigne*, if those statutes be well looked into, nothing doth more plainly convince the contrary, for they intermeddle with nothing but that that concerneth either the *English* subjects personally, or the territories of *England* locally, and never the subjects of *Gascoigne*; for look upon the statute of 27 *E. III. cap. 5.* there it is said, that there shall be no fore-stalling of wines, but by whom? Only by *English* merchants; not a word of the subjects of *Gascoigne*, and yet no doubt they might be offenders in the same kind.

So in the sixth chapter it is said, that all merchants *Gascoignes* may safely bring wines into what part it shall please them; here now are the persons of *Gascoignes*; but then the place whither? Into the realm of *England*. And in the seventh chap. that erects the ports of *Bordeaux* and *Bayonne* for the staple towns of wine; the statute ordains that if any; but who? *English* merchant or his servants shall buy or bargain other where, his body shall be arrested by the steward of *Gascoigne*, or the constable of *Bordeaux*: true, for the officers of *England* could not catch him in *Gascoigne*; but what shall become of him, shall he be proceeded with within *Gascoigne*? No, but he shall be sent over into *England* into the tower of *London*.

AND this doth notably disclose the reason of that custom which some have sought to wrest the other way: That custom, I say, whereof a form doth yet remain, that in every parliament the King doth appoint certain committees in the upper-house to receive the petitions of *Normandy*, *Guienne*, and the rest; which, as by the former statute doth appear, could not be for the ordering of the governments there, but for the liberties and good usage of the subjects of those parts when they came hither, or *via versa*, for the restraining of the abuses and misdemeanors of our subjects when they went thither.

WHEREFORE I am now at an end. For us to speak of the mischiefs, I hold it not fit for this place, lest we should seem to bend the laws to policy, and not take them in their true and natural sense. It is enough that every man knows, that it is true of these two kingdoms, which a good father said of the churches of Christ: *si inseparabiles insuperabiles*. Some things I may have forgot, and some things perhaps I may forget willingly; for I will not press any opinion or declaration of late time which may prejudice the liberty of this debate; but *ex dictis*, & *ex non dictis*, upon the whole matter I pray judgment for the plaintiff.

A B R I E F
 D I S C O U R S E
 Of the Happy
 U N I O N
 O F T H E
 K I N G D O M S
 O F
E N G L A N D and *S C O T L A N D*.

Dedicated in private to His MAJESTY.

I Do not find it strange, excellent King, that when *Heracitus* (he that was surnamed the obscure) had set forth a certain book which is not now extant, many men took it for a discourse of nature, and many others took it for a treatise of policy. For there is a great affinity and consent between the rules of nature, and the true rules of policy: the one being nothing else but an order in the government of the world; and the other an order in the government of an estate. And therefore the education and erudition of the Kings of *Persia*, was in a science which was termed by a name then of great reverence; but now degenerate and taken in the ill part. For the *Persian* magick, which was the secret literature of their Kings, was an application of the contemplations and observations of nature unto a sense politick: taking the fundamental laws of nature, and the branches and passages of them, as an original or first model, whence to take and describe a copy and imitation for government.

AFTER this manner the aforesaid instructors set before their Kings the examples of the celestial bodies, the Sun, the Moon, and the rest, which have great glory and veneration, but no rest or intermission; being in a perpetual office of motion, for the cherishing (in turn and in course) of inferior bodies: expressing likewise the true manner of the motions of government, which though they ought to be swift and rapid in respect of dispatch and occasions, yet are they to be constant and regular, without wavering or confusion.

So did they represent unto them how the heavens do not enrich themselves by the earth and the seas, nor keep no dead stock, nor untouched treasures of that they draw to them from below: but whatsoever moisture they do levy and take from both elements in vapours, they do spend and turn back again in showers, only holding and storing them up for a time, to the end to issue and distribute them in season.

BUT

BUT chiefly, they did exprefs and expound unto them that fundamental law of nature, whereby all things do fubfift and are preferved ; which is that every thing in nature, although it hath its private and particular affection and appetite, and doth follow and purfue the fame in fmall moments ; and when it is free and delivered from more general and common refpects, yet nevertheless, when there is queftion or cafe for fuftraining of the more general, they forfake their own particularities, and attend and confpire to uphold the publick.

So we fee the iron in fmall quantity will afcend and approach to the load-ftone, upon a particular fympathy : but if it be any quantity of moment, it leaveth its appetite of amity to the *loadftone*, and like a good patriot to the earth, which is the place and region of mafly bodies.

So again the water, and other like bodies, do fall towards the centre of the earth, which is (as was faid) their region or country : and yet we fee nothing more ufual in all water-works and engines, than that the water (rather than to fuffer any diftraction or difunion in nature) will afcend, forfaking the love to its own region or country, and applying itfelf to the body next adjoining.

BUT it were too long a digreffion to proceed to more examples of this kind. Your Majefty yourfelf did fall upon a paffage of this nature in your gracious fpeech of thanks unto your counfel, when acknowledging princely their vigilancies and well defervings, it pleafed you to note, that it was a fuccefs and event above the courfe of nature, to have fo great change with fo great a quiet : Forasmuch as fudden mutations as well in ftate as in nature, are rarely without violence and perturbation : So as ftill I conclude there is (as was faid) a congruity between the principles of nature and policy. And left that inftance may feem to oppone to this affertion, I may even in that particular, with your Majefty's favour, offer unto you a type or pattern in nature, much refembling this event in your ftate ; namely, earthquakes, which many of them bring ever much terror and wonder, but no actual hurt ; the earth trembling for a moment, and fuddenly ftablifhing in perfect quiet as it was before.

THIS knowledge then of making the government of the world a mirror for the government of a ftate, being a wifdom almoft loft, (whereof the reafon I take to be becaufe of the difficulty for one man to embrace both philofophies) I have thought good to make fome proof (as far as my weaknefs and the ftraits of time will fuffer) to revive in the handling of one particular wherewith now I moft humbly prefent your Majefty : for furely, as hath been faid, it is a form of difcourfe anciently ufed towards Kings ; and to what King fhould it be more proper, than to a King that is ftudious to conjoin contemplative virtue, and active virtue together ?

YOUR Majefty is the firft King that had the honour to be *lapis angularis*, to unite thefe two mighty and warlike nations of *England* and *Scotland* under one fovereignty and monarchy. It doth not appear by the records and memoirs of any true hiftory ; or fcarcely by the fiction and pleafure of any fabulous narration or tradition, that ever, of any antiquity, this ifland of *Great Britain* was united under one King before this day. And yet there be no mountains nor races of hills, there be no feas or great rivers, there is no diversity of tongue or language that hath invited or provoked this ancient feparation or divorce. The lot of *Spain* was to have the feveral kingdoms of that continent (*Portugal* only excepted) to be united in an age not long paff ; and now in our age that of *Portugal* alfo, which was the laft that held out

to be incorporate with the rest. The lot of *France* hath been much about the same time likewise, to have re-annexed unto that crown the several duchies and portions which were in former times dismembred. The lot of this island is the last reserved for your Majesty's happy times, by the special providence and favour of God, who hath brought your Majesty to this happy conjunction with great consent of hearts, and in the strength of your years, and in the maturity of your experience. It resteth but that (as I promised) I set before your Majesty's princely consideration, the grounds of nature touching the union and commixture of bodies, and the correspondence which they have with the grounds of policy in the conjunction of states and kingdoms.

FIRST, therefore, that position, *vis unita fortior*; being one of the common notions of the mind, needeth not much to be induced or illustrated.

WE see the sun when he entereth, and while he continueth under the sign of *Leo* causeth more vehement heats than when he is in *Cancer*, what time his beams are nevertheless more perpendicular. The reason whereof, in great part, hath been truly ascribed to the conjunction and cor-radiation in that place of heaven, of the sun with the four stars of the first magnitude, *Sirius*, *Canicula*, *Cor Leonis*, and *Cauda Leonis*.

So the moon likewise by ancient tradition, while she is in the same sign of *Leo*, is said to be at the heart, which is not for any affinity which that place of heaven can have with that part of man's body, but only because the moon is then by reason of the conjunction and nearness with the stars aforementioned, in greatest strength of influence, and so worketh upon that part in inferior bodies, which is most vital and principal.

So we see waters and liquors, in small quantity, do easily putrify and corrupt; but in large quantity subsist long, by reason of the strength they receive by union.

So in earthquakes, the more general do little hurt, by reason of the united weight which they offer to subvert; but narrow and particular earthquakes have many times overturned whole towns and cities.

So then this point touching the force of union is evident: and therefore it is more fit to speak of the manner of union; wherein again it will not be pertinent to handle one kind of union, which is union by victory, when one body doth merely subdue another, and converteth the same into its own nature, extinguishing and expelling what part soever of it, it cannot overcome. As when the fire converteth the wood into fire, purging away the smoke and the ashes as unapt matter to inflame: Or when the body of a living creature doth convert and assimilate food and nourishment, purging and expelling whatsoever it cannot convert. For these representations do answer in matter of policy to union of countries by conquest, where the conquering state doth extinguish, extirpate, and expulse any part of the state conquered, which it findeth so contrary as it cannot alter and convert it. And therefore leaving violent unions, we will consider only of natural unions.

THE difference is excellent which the best observers in nature do take between *compositio* and *mistio*, putting together and mingling: the one being but a conjunction of bodies in place, the other in quality and consent: the one the mother of sedition and alteration, the other of peace and continuance: the one rather a confusion than an union, the other properly an union. Therefore we see those bodies, which they call *imperfectè mista*, last not, but are speedily dissolved. For take for example snow or froth, which are compositions of air and water, and in them you may behold how easily

easily they sever and dissolve the water, closing together and excluding the air.

So those three bodies which the alchymists do so much celebrate as the three principles of things; that is to say, earth, water, and oil; (which it pleaseth them to term salt, mercury, and sulphur,) we see, if they be united only by composition or putting together, how weakly and rudely they do incorporate: for water and earth make but an imperfect slime; and if they be forced together by agitation, yet upon a little settling, the earth resideth in the bottom. So water and oil, though by agitation it be brought into an ointment, yet after a little settling, the oil will float on the top. So as such imperfect mixtures continue no longer than they are forced; and still in the end the worthiest getteth above.

BUT otherwise it is of perfect mixtures. For we see these three bodies of earth, water, and oil, when they are joined in a vegetable or mineral, they are so united, as without great subtlety of art and force of extraction, they cannot be separated and reduced into the same simple bodies again. So as the difference between *compositio* and *mistio* clearly set down is this; that *compositio* is the joining or putting together of bodies without a new form; and *mistio* is the joining or putting together of bodies under a new form: For the new form is *commune vinculum*, and without that the old forms will be at strife and discord.

Now to reflect this light of nature upon matter of estate; there hath been put in practice in government these two several kinds of policy in uniting and conjoining of states and kingdoms; the one to retain the ancient form still severed, and only conjoined in sovereignty; the other to superinduce a new form agreeable and convenient to the entire estate. The former of these hath been more usual, and is more easy; but the latter is more happy. For if a man do attentively revolve histories of all nations, and judge truly thereupon, he will make this conclusion, that there was never any states that were good commixtures but the *Roman*; which because it was the best state of the world, and is the best example of this point, we will chiefly insist thereupon.

IN the antiquities of *Rome* *Virgil* bringeth in *Jupiter* by way of oracle or prediction, speaking of the mixture of the *Trojans* and the *Italians*.

*Sermonem Ausonii patrium moresque tenebunt:
Utque est nomen erit; commixti corpore tantum,
Subsident Teucris; morem, ritusque sacrorum
Adjiciam; faciamque omnes uno ore Latinos.
Hinc genus Ausonio mistum, quod sanguine surget,
Supra homines, supra ire Deos pietate videbis.* Æn. xii. 834.

Wherein *Jupiter* maketh a kind of partition or distribution: that *Italy* should give the language and the laws; *Troy* should give a mixture of men, and some religious rites; and both people should meet in one name of *Latins*.

SOON after the foundation of the city of *Rome*, the people of the *Romans* and the *Sabines* mingled upon equal terms: wherein the interchange went so even that (as *Livy* noteth) the one nation gave the name to the place, the other to the people. For *Rome* continued the name, but the people were called *Quirites*, which was the *Sabine* word derived of *Cures* the country of *Tatius*.

BUT that which is chiefly to be noted in the whole continuance of the *Roman* government; they were so liberal of their naturalizations, as in effect

they made perpetual mixtures. For the manner was to grant the same, not only to particular persons, but to families and lineages; and not only so, but to whole cities and countries. So as in the end it came to that, that *Rome* was *communis patria*, as some of the civilians call it.

So we read of *St. Paul*, after he had been beaten with rods, and thereupon charged the officer with the violation of the privilege of a citizen of *Rome*; the captain said to him, Art thou then a *Roman*? That privilege hath cost me dear. To whom *St. Paul* replied, but I was so born; and yet, in another place, *St. Paul* professeth himself, that he was a *Jew* by tribe: so as it is manifest that some of his ancestors were naturalized; and so it was conveyed to him and their other descendents.

So we read, that it was one of the first despites that was done to *Julius Caesar*, that whereas he had obtained naturalization for a city in *Gaul*, one of the city was beaten with rods of the consul *Marcellus*.

So we read in *Tacitus*, that in the Emperor *Claudius's* time, the nation of *Gaul* (that part which is called *Comata*, the wilder part) were suitors to be made capable of the honour of being senators and officers of *Rome*. His words are these; *Cum de supplendo senatu ageretur, primoresque Galliae, quae Comata appellatur, foedera & civitatem Romanam pridem assecuti, jus adipiscendorum in urbe honorum, expeterent; multus, ea super re, variusque rumor, & studiis diversis, apud principem certabatur.* And in the end, after long debate, it was ruled they should be admitted.

So likewise, the authority of *Nicholas Machiavel* seemeth not to be condemned; who enquiring the causes of the growth of the *Roman* Empire, doth give judgment; there was not one greater than this, that the state did so easily compound and incorporate with strangers.

It is true, that most estates and kingdoms have taken the other course; of which this effect hath followed, that the addition of further empire and territory hath been rather matter of burthen, than matter of strength unto them: yea, and farther it hath kept alive the seeds and roots of revolts and rebellions for many ages; as we may see in a fresh and notable example of the kingdom of *Aragon*: which, though it were united to *Castile* by marriage, not by conquest; and so descended in hereditary union by the space of more than an hundred years; yet because it was continued in a divided government, and not well incorporated and cemented with the other crowns, entered into a rebellion upon point of their *fueros*, or liberties, now of very late years.

Now to speak briefly of the several parts of that form, whereby states and kingdoms are perfectly united, they are (besides the sovereignty it self) four in number; union in name, union in language, union in laws, union in employments.

For name, though it seem but a superficial and outward matter, yet it carrieth much impression and enchantment: The general and common name of *Graecia* made the *Greeks* always apt to unite (though otherwise full of divisions amongst themselves) against other nations whom they called barbarous. The *Helvetian* name is no small band to knit together their leagues and confederacies the faster. The common name of *Spain* (no doubt) hath been a special means of the better union and conglutination of the several kingdoms of *Castile*, *Arragon*, *Granada*, *Navarre*, *Valentia*, *Catalonia*, and the rest, comprehending also now lately *Portugal*.

For language, it is not needful to insist upon it; because both your Majesty's kingdoms are of one language, though of several dialects; and the difference

difference is so small between them as promiseth rather an enriching of one language than a continuance of two.

FOR laws which are the principal sinews of government, they may be of three natures; *jura*, which I will term freedoms or abilities, *leges*, and *mores*.

FOR abilities and freedoms they were amongst the *Romans* of four kinds, or rather degrees. *Jus connubii*, *jus civitatis*, *jus suffragii*, and *jus petitionis* or *honorum*. *Jus connubii* is a thing in these times out of use: for marriage is open between all diversities of nations. *Jus civitatis* answereth to that we call denization or naturalization. *Jus suffragii* answereth to the voice in parliament. *Jus petitionis* answereth to place in counsel or office. And the *Romans* did many times sever these freedoms; granting *Jus connubii*, *sine civitate*, and *civitatem*, *sine suffragio*, and *suffragium*, *sine jure petitionis*, which was commonly with them the last.

FOR those we called *leges*. It is as matter of curiosity, and inconveniency to seek either to extirpate all particular customs, or to draw all subjects to one place or resort of judicature and session. It sufficeth there be a uniformity in the principal and fundamental laws, both ecclesiastical and civil: for in this point the rule holdeth which was pronounced by an ancient father, touching the diversity of rites in the church; for finding the vesture of the Queen in the psalm (which did prefigure the church) was of divers colours; and finding again that Christ's coat was without a seam, he concludeth well, *in veste varietas sit, scissura non sit*.

FOR manners; a consent in them is to be sought industriously, but not to be enforced: for nothing amongst people breedeth so much pertinacy in holding their customs as sudden and violent offers to remove them.

AND as for employments it is no more, but in indifferent hand, and execution of that verse:

Tros, Tyriusque mihi nullo discrimine agetur.

THERE remaineth only to remember out of the grounds of nature the two conditions of perfect mixture; whereof the former is time: For the natural philosophers say well, that *compositio* is *opus hominis*, and *mixtio* *opus naturae*. For it is the duty of man to make a fit application of bodies together: but the perfect fermentation and incorporation of them must be left to time and nature; and unnatural hastening thereof doth disturb the work and not dispatch it.

So we see, after the graft is put into the stock and bound, it must be left to time and nature to make that *continuum*, which at the first was but *contiguum*. And it is not any continual pressing or thrusting together that will prevent nature's season, but rather hinder it. And so in liquors those commixtures which are at the first troubled, grow after clear and settled by the benefit of rest and time.

THE second condition is, that the greater draw the less. So we see when two lights do meet, the greater doth darken and dim the less. And when a smaller river runneth into a greater, it loseth both its name and stream. And hereof to conclude, we see an excellent example in the Kingdoms of *Judab* and *Israel*. The Kingdom of *Judab* contained two tribes; the Kingdom of *Israel* contained ten. King *David* reigned over *Judab* for certain years; and after the death of *Isbosheth*, the son of *Saul* obtained likewise the Kingdom of *Israel*. This union continued in him, and likewise in his son *Solomon*, by the space of 70 years, at least between them both: But yet, because

UNION OF ENGLAND AND SCOTLAND.

because the seat of the kingdom was kept still in *Judab*, and so the less fought to draw the greater; upon the first occasion offered, the kingdom brake again, and so continued ever after.

THUS having in all humbleness made oblation to your Majesty of these simple fruits of my devotion and studies: I do wish, and do wish it not in the nature of an impossibility, (to my apprehension) that this happy union of your Majesty's two kingdoms of *England* and *Scotland* may be in as good an hour, and under the like divine providence, as that was between the *Romans* and the *Sabines*.

CERTAIN
ARTICLES
OR
CONSIDERATIONS
Touching the
UNION
OF THE
KINGDOMS
OF
ENGLAND and SCOTLAND:

Collected and dispersed for His Majesty's better service.

YOUR Majesty being, I doubt not, directed and conducted by a better oracle than that which was given for light to *Æneas* in his peregrination, (*antiquam exquirite matrem*) hath a royal, and indeed an heroicall desire to reduce these two kingdoms of *England* and *Scotland* into the unity of their ancient mother Kingdom of *Britain*. Wherein as I would gladly applaud unto your Majesty, or sing aloud that hymn or anthem, *Sic itur ad astra*; so in a more soft and submissive voice, I must necessarily remember unto your Majesty that warning or caveat *ardua quae pulchra*: It is an action that requireth, yea, and needeth much, not only of your Majesty's

Majesty's wisdom, but of your felicity. In this argument I presumed at your Majesty's first entrance to write a few lines, indeed scholastically and speculatively, and not actively or politickly, as I held it fit for me at that time; when neither your Majesty was in that your desire declared, nor my self in that service used or trusted. But now that both your Majesty hath opened your desire and purpose with much admiration even of those who give it not so full an approbation, and that my self was by the commons graced with the first vote of all the commons selected for that cause; not in any estimation of my ability, (for therein so wise an assembly could not be so much deceived) but in an acknowledgment of my extreme labours and integrity. In that business I thought my self every way bound both in duty to your Majesty, and in trust to that house of parliament, and in consent to the matter itself, and in conformity to mine own travels and beginning, not to neglect any pains that may tend to the furtherance of so excellent a work; wherein I will endeavour that that which I shall set down be *nihil minus quam verba*: For length and ornament of speech are to be used for persuasion of multitudes, and not for information of Kings; especially such a King as is the only instance that ever I knew to make a man of *Plato's* opinion, that all knowledge is but remembrance, and that the mind of man knoweth all things, and demandeth only to have her own notions excited and awaked: Which your Majesty's rare and indeed singular gift and faculty of swift apprehension and infinite expansion or multiplication of another man's knowledge by your own, as I have often observed, so I did extremely admire in *Goodwin's* cause, being a matter full of secrets and mysteries of our laws, merely new unto you, and quite out of the path of your education, reading and conference: wherein nevertheless upon a spark of light given, your Majesty took in so dextrously and profoundly, as if you had been indeed *anima legis*, not only in execution but in understanding: The remembrance whereof, as it will never be out of my mind, so it will always be a warning to me to seek rather to excite your judgment briefly than to inform it tediously; and if in a matter of that nature, how much more in this, wherein your princely cogitations have wrought themselves, and been conversant, and wherein the principal light proceeded from your self.

AND therefore my purpose is only to break this matter of the union into certain short articles and questions, and to make a certain kind of anatomy or analysis of the parts and members thereof: not that I am of opinion that all the questions which I now shall open were fit to be in the consultation of the commissioners propounded. For I hold nothing so great an enemy to good resolution, as the making of too many questions; especially in assemblies, which consist of many. For Princes for avoiding of distraction must take many things by way of admittance; and if questions must be made of them, rather to suffer them to arise from others, than to grace them and authorize them as propounded for themselves. But unto your Majesty's private consideration, to whom it may better sort with me rather to speak as a remembrancer than as a counsellor, I have thought good to lay before you all the branches, lineaments, and degrees of this union, that upon the view and consideration of them and their circumstances, your Majesty may the more clearly discern, and more readily call to mind which of them is to be embraced, and which to be rejected: and of these, which are to be accepted, which of them to be presently proceeded in, and which to be put over to farther time. And again, which of them shall require authority of parliament, and which are fitter to be effected by your Majesty's royal power and

prerogative, or by other policies or means; and lastly, which of them is liker to pass with difficulty and contradiction, and which with more facility and smoothness.

FIRST, therefore to begin with that question, that I suppose will be out of question.

Statutes concerning Scotland, and the Scottish nation. WHETHER it be not meet, that the statutes, which were made touching Scotland or the Scottish nation, while the kingdoms stood severed, be repealed?

It is true, that there is a diversity in these; for some of these laws consider Scotland as an enemy's country; other laws consider it as a foreign country only: As for example; the law of Rich. II. Anno 7. which prohibiteth all armour or victual to be carried to Scotland; and the law of 7 of K. H. VII. that enacteth all the Scottish men to depart the realm within a time prefix'd. Both these laws, and some others respect Scotland as a country of hostility: but the law of 22 of Edw. IV. that endueth Berwick with the liberty of a staple, where all Scottish merchandizes should resort that should be uttered for England; and likewise all English merchandizes that should be uttered for Scotland. This law beholdeth Scotland only as a foreign nation; and not so much neither; for there have been erected staples in towns of England for some commodities, with an exclusion and restriction of other parts of England.

Laws, customs, commissions, officers of the borders or marches.

BUT this is a matter of the least difficulty; your Majesty shall have a calendar made of the laws, and a brief of the effect; and so you may judge of them: And the like or reciproque is to be done by Scotland for such laws as they have concerning England and the English nation.

The second question is, what laws, customs, commissions, officers, garrisons, and the like, are to be put down, discontinued or taken away upon the borders of both realms?

To this point, because I am not acquainted with the orders of the marches, I can say the less.

HEREIN falleth that question, whether that the tenants, who hold their tenant rights in a greater freedom and exemption, in consideration of their service upon the borders, and that the countries themselves, which are in the same respect discharged of subsidies and taxes, should not now be brought to be in one degree with other tenants and countries; *nam cessante causa, tollitur effectus*: wherein, in my opinion, some time would be given; *quia adhuc eorum messis in herba est*: but some present ordinance would be made to take effect at a future time, considering it is one of the greatest points and marks of the division of the Kingdoms. And because reason doth dictate, that where the principal solution of continuity was, there the healing and consolidating plaister should be chiefly applied; there would be some farther device for the utter and perpetual confounding of those imaginary bounds, (as your Majesty termeth them :) and therefore it would be considered, whether it were not convenient to plant and erect at Carlisle or Berwick some council or court of justice, the jurisdiction whereof might extend part into England and part into Scotland, with a commission not to proceed precisely or merely, according to the laws and customs either of England or Scotland, but mixtly, according to instruction by your Majesty to be set down, after the imitation and precedent of the council of the marches here in England, erected upon the union of Wales?

THE third question is that which many will make a great question of, though perhaps your Majesty will make no question of it: and that is, whether

ther your Majesty should not make a stop or stand here, and not to proceed to any farther union, contenting your self with the two former articles or points.

Farther union besides the removing of inconvenient and dissenting laws and usages.

FOR it will be said, that we are now well, (thanks be to God) and your Majesty, and the state of neither kingdom is to be repented of; and that it is true which *Hippocrates* saith, that *sana corpora difficile medicationes ferunt*, it is better to make alterations in sick bodies than in sound. The consideration of which point will rest upon these two branches: What inconveniencies will ensue with time, if the realms stand as they are divided, which are yet not found nor sprung up. For it may be the sweetness of your Majesty's first entrance, and the great benefit that both nations have felt thereby, hath covered many inconveniencies: which nevertheless be your Majesty's government never so gracious and politick, continuance of time and the accidents of time may breed and discover, if the kingdoms stand divided.

THE second branch is; allow no manifest or important peril or inconvenience should ensue of the continuing of the kingdoms divided, yet on the other side, whether that upon the farther uniting of them, there be not like to follow that addition and encrease of wealth and reputation, as is worthy your Majesty's virtues and fortune, to be the author and founder of, for the advancement and exaltation of your Majesty's royal posterity in time to come?

BUT admitting that your Majesty should proceed to this more perfect and entire union, wherein your Majesty may say *magis opus morio*. To enter into the parts and degrees thereof, I think fit first to set down as in a brief table in what points the nations stand now at this present time already united, and in what points yet still severed and divided, that your Majesty may the better see what is done, and what is to be done; and how that which is to be done is to be inferred upon that which is done.

Points wherein the nations stand already united.

THE points wherein the nations stand already united are:

IN sovereignty.

IN the relative thereof, which is subjection,

IN religion.

IN continent.

IN language.

AND now lastly, by the peace by your Majesty concluded with *Spain* in leagues and confederacies; for now both nations have the same friends and the same enemies.

YET notwithstanding there is none of the six points, wherein the union is perfect and consummate; but every of them hath some scruple or rather grain of separation enwrapped and included in them.

FOR the sovereignty, the union is absolute in your Majesty and your generation; but if it should so be, (which God of his infinite mercy defend) that your issue should fail, then the descent of both realms doth resort to the several lines of the several bloods royal.

Sovereignty, line royal.

FOR subjection I take the law of *England* to be clear, (what the law of *Scotland* is I know not) that all *Scotsmen* from the very instant of your Majesty's reign begun, are become denizens, and the *Post-nati* are naturalized subjects of *England* for the time forward: for by our laws none can be an alien but he that is of another allegiance, than our sovereign lord the King: for there be but two sorts of aliens, whereof we find mention in our law an alien ami, and an alien enemy; whereof the former is a subject of a state in amity with the King, and the latter a subject of a state in hostility: but whether

Subjection, obedience.

Alien, naturalization.

ther he be one or other, it is an essential difference unto the definition of an alien, if he be not of the King's allegiance; as we see it evidently in the precedent of *Ireland*, who since they were subjects to the crown of *England*, have ever been inheritable and capable as natural subjects; and yet not by any statute or act of parliament, but merely by the common-law, and the reason thereof. So as there is no doubt, that every subject of *Scotland* was, and is in like plight and degree, since your Majesty's coming in, as if your Majesty had granted particularly your letters of denization or naturalization to every of them, and the *Post-nati* wholly natural. But then on the other side for the time backwards, and for those that were *Ante-nati*, the blood is not by law naturalized, so as they cannot take it by descent from their ancestors without act of parliament: And therefore in this point there is a defect in the union of subjection.

Religion,
church go-
vernment.
Continent,
borders.

FOR matter of religion, the union is perfect in points of doctrine; but in matter of discipline and government it is imperfect.

FOR the continent, it is true there are no natural boundaries of mountains or seas, or navigable rivers; but yet there are badges and memorials of borders; of which point I have spoken before.

Language,
dialect.

FOR the language, it is true the nations are *unius labii*, and have not the first curse of disunion, which was confusion of tongues, whereby one understood not another. But yet the dialect is differing, and it remaineth a kind of mark of distinction. But for that *tempori permittendum*, it is to be left to time. For considering that both languages do concur in the principal office and duty of a language, which is to make a man's self understood; for the rest, it is rather to be accounted (as was said) a diversity of dialect than of language: and, as I said in my first writing, it is like to bring forth the enriching of one language, by compounding and taking in the proper and significant words of either tongue, rather than a continuance of two languages.

Leagues, con-
federacies,
treaties.

FOR leagues and confederacies, it is true, that neither nation is now in hostility with any state, wherewith the other nation is in amity: but yet so, as the leagues and treaties have been concluded with either nation respectively, and not with both jointly, which may contain some diversity of articles of straitness of amity with one more than with the other.

BUT many of these matters may perhaps be of that kind as may fall within that rule, *in veste varietas sit, scissura non sit*.

Now to descend to the particular points wherein the realms stand severed and divided, over and besides the former six points of separation, which I have noted and placed as defects or abatements of the six points of the union, and therefore shall not need to be repeated: The points I say yet remaining I will divide into external and internal.

External
points of the
separation
and union.

THE external points therefore of the separation are four.

1. THE several crowns, I mean the ceremonial and material crowns.
2. THE second is the several names, styles, or appellations.
3. The third is the several prints of the seals.
4. THE fourth is the several stamps or marks of the coins or monies.

IT is true, that the external are in some respects and parts much mingled and interlaced with considerations internal; and that they may be as effectual to the true union which must be the work of time as the internal, because they are operative upon the conceits and opinions of the people; the uniting of whose hearts and affections is the life and true end of this work.

FOR the ceremonial crowns, the question will be whether there shall be framed one new imperial crown of *Britain* to be used for the times to come? The ceremonial or material crowns. Also admitting that to be thought convenient, whether in the frame thereof there shall not be some reference to the crowns of *Ireland* and *France*?

ALSO whether your Majesty should repeat or iterate your own coronation and your Queen's, or only ordain that such new crown shall be used by your posterity hereafter?

THE difficulties will be in the conceit of some inequality, whereby the realm of *Scotland* may be thought to be made an accession unto the realm of *England*. But that resteth in some circumstances; for the compounding of the two crowns is equal; the calling of the new crown the crown of *Britain* is equal. Only the place of coronation, if it shall be at *Westminster*, which is the ancient, august and sacred place for the Kings of *England*, may seem to make an inequality. And again, if the crown of *Scotland* be discontinued, then that ceremony which I hear is used in the parliament of *Scotland* in the absence of the Kings, to have the crowns carried in solemnity, must likewise cease.

FOR the name, the main question is whether the contracted name of *Britain* shall be by your Majesty used, or the divided names of *England* and *Scotland*? The styles and names.

ADMITTING there shall be an alteration, then the case will require these inferior questions.

FIRST, whether the name of *Britain* shall only be used in your Majesty's style, where the entire style is recited; and in all other forms the divided names to remain, both of the realms and of the people? or otherwise, that the very divided names of realms and people shall likewise be changed or turned into special or subdivided names of the general name; that is to say, for example, whether your Majesty in your style shall denominate your self King of *Britain*, *France*, and *Ireland*, &c. And yet nevertheless in any commission, writ, or otherwise, where your Majesty mentions *England* or *Scotland*, you shall retain the ancient names, as *secundum consuetudinem regni nostri Angliae*; or whether those divided names shall be for ever lost and taken away, and turned into the subdivisions of *South-Britain* and *North-Britain*, and the people to be *South-Britains* and *North-Britains*? And so in the example aforesaid, the tenour of the like clause to run *secundum consuetudinem Britanniae australis*.

ALSO if the former of these shall be thought convenient, whether it were not better for your Majesty to take that alteration of style upon you by proclamation, as *Edward* the third did the style of *France*, than to have it enacted by parliament?

ALSO in the alteration of the style, whether it were not better to transpose the kingdom of *Ireland*, and put it immediately after *Britain*, and so place the islands together; and the kingdom of *France* being upon the continent last, in regard that these islands of the western ocean seem by nature and providence an entire empire in themselves; and also, that there was never King of *England* so entirely possessor of *Ireland* as your Majesty is: so as your style to run King of *Britain*, *Ireland*, and the islands adjacent, and of *France*, &c.

THE difficulties in this have been already thoroughly beaten over; but they gather but to two heads.

THE one, point of honour and love to the former names.

THE other, doubt, lest the alteration of the name may induce and involve an alteration of the laws and policies of the kingdom; both which, if your Majesty shall assume the style by proclamation, and not by parliament, are in themselves satisfied: for then the usual names must needs remain in writs and records, the forms whereof cannot be altered but by act of parliament, and so the point of honour satisfied. And again, your proclamation altereth no law, and so the scruple of a tacit or implied alteration of laws likewise satisfied. But then it may be considered, whether it were not a form of the greatest honour, if the parliament, though they did not enact it, yet should become suitors and petitioners to your Majesty to assume it.

The seals.

FOR the seals, that there should be but one great seal of *Britain*, and one chancellor, and that there should only be a seal in *Scotland* for processess and ordinary justice; and that all patents of grants of lands or otherwise, as well in *Scotland* as in *England*, should pass under the great seal here, kept about your person; it is an alteration internal, whereof I do not now speak.

BUT the question in this place is, whether the great seals of *England* and *Scotland* should not be changed into one and the same form of image and superscription of *Britain*, which nevertheless is requisite should be, with some one plain manifest alteration, lest there be a buzz, and suspect, that grants of things in *England*, may be passed by the seal of *Scotland*, or a *converso*?

ALSO, whether this alteration of form may not be done without act of parliament, as the great seals have used to be heretofore changed as to their impressions?

FOR the monies, as to the real and internal consideration thereof, the question will be, whether your Majesty should not continue two mints, which, the distance of territory considered, I suppose will be of necessity?

The standards and stamps, monies.

SECONDLY, how the standard (if it be not already done, as I hear some doubt made of it in popular rumour) may be reduced into an exact proportion for the time to come; and likewise the computation, tale, or valuation to be made exact for the monies already beaten?

THAT done, the last question is, (which is only proper to this place) whether the stamp or the image and superscription of *Britain* for the time forwards should not be made the self-same in both places, without any difference at all? A matter also which may be done as our law is, by your Majesty's prerogative without act of parliament.

THESE points are points of demonstration, *ad faciendum populum*, but so much the more they go to the root of your Majesty's intention, which is to imprint and inculcate into the hearts and heads of the people, that they are one people and one nation.

OF this kind also I have heard it pass abroad in speech of the erection of some new order of knighthood, with a reference to the union, and an oath appropriate thereunto, which is a point likewise deserves a consideration. So much for the external points.

Internal points of union.

THE internal points of separation are as followeth,

1. SEVERAL parliaments.
2. SEVERAL councils of state.
3. SEVERAL officers of the crown.
4. SEVERAL nobilities.
5. SEVERAL laws.
6. SEVERAL courts of justice, trials, and processess.

7. SEVERAL receipts and finances.
8. SEVERAL admiralties and merchandizings.
9. SEVERAL freedoms and liberties.
10. SEVERAL taxes and imposts.

As touching the several states ecclesiastical, and the several mints and standards, and the several articles and treaties, of intercourse with foreign nations, I touched them before.

In these points of the strait and more inward union, there will intervene one principal difficulty and impediment growing from that root, which *Aristotle* in his politicks maketh to be the root of all division and dissension in commonwealths, and that is equality and inequality. For the realm of *Scotland* is now an ancient and noble realm, substantive of itself. But when this island shall be made *Britain*, then *Scotland* is no more to be considered as *Scotland*, but as a part of *Britain*; no more than *England* is to be considered as *England*, but as a part likewise of *Britain*; and consequently neither of these are to be considered as things entire of themselves, but in the proportion that they bear to the whole. And therefore let us imagine (*Nam id mente possumus, quod actu non possumus*) that *Britain* had never been divided, but had ever been one kingdom; then that part of soil or territory, which is comprehended under the name of *Scotland*, is in quantity (as I heard it esteemed, how truly I know not) not past a third part of *Britain*; and that part of soil or territory which is comprehended under the name of *England*, is two parts of *Britain*, leaving to speak of any difference of wealth or population, and speaking only of quantity. So then if for example *Scotland* should bring to parliament as much nobility as *England*, then a third part should countervail two parts; *nam si inaequalibus aequalia addas, omnia erunt inaequalia*. And this I protest before God and your Majesty, I do speak not as a man born in *England*, but as a man born in *Britain*. And therefore to descend to the particulars:

FOR the parliaments, the consideration of that point will fall into four ^{1. Parliament} questions.

1. THE first, what proportion shall be kept between the votes of *England* and the votes of *Scotland*?

2. THE second touching the manner of proposition, or possessing of the parliament of causes there to be handled; which in *England* is used to be done immediately by any member of the parliament, or by the prolocutor; and in *Scotland* is used to be done immediately by the lords of the articles; whereof the one form seemeth to have more liberty, and the other more gravity and maturity: and therefore the question will be, whether of these shall yield to other, or whether there should not be a mixture of both, by some commissions precedent to every parliament in the nature of lords of the articles, and yet not excluding the liberty of propounding in full parliament afterwards?

3. THE third, touching the orders of parliament, how they may be compounded, and the best of either taken?

4. THE fourth, how those which by inheritance or otherwise, have offices of honour and ceremony in both the parliaments, as the lord steward with us, &c. may be satisfied and duplicity accommodated?

FOR the councils of estate, while the kingdoms stand divided, it should ^{2. Councils of estate.} seem necessary to continue several councils; but if your Majesty should proceed to a strict union, then howsoever your Majesty may establish some provincial councils in *Scotland*, as there is here of *York*, and in the marches of

Wales, yet the question will be, whether it will not be more convenient for your Majesty, to have but one privy council about your Person, whereof the principal officers of the crown of *Scotland* to be for dignity sake, howsoever their abiding and remaining may be as your Majesty shall employ their service? But this point belongeth merely and wholly to your Majesty's royal will and pleasure.

3. Officers of the crown.

FOR the officers of the crown, the consideration thereof will fall into these questions.

FIRST in regard of the latitude of your kingdom and the distance of place, whether it will not be matter of necessity to continue the several officers, because of the impossibility for the service to be performed by one?

THE second admitting the duplicity of officers should be continued, yet whether there should not be a difference that one should be the principal officer, and the other to be but special and subaltern? as for example, one to be chancellor of *Britain*, and the other to be chancellor with some special addition, as here of the duchy, &c.

THE third, if no such specialty or inferiority be thought fit, then whether both officers should not have the title and the name of the whole island and precincts? as the Lord Chancellor of *England* to be Lord Chancellor of *Britain*, and the Lord Chancellor of *Scotland* to be Lord Chancellor of *Britain*, but with several provisos that they shall not intromit themselves but within their several precincts.

4. Nobilities.

FOR the nobilities, the consideration thereof will fall into these questions.

THE first of their votes in parliament (which was touched before) what proportion they shall bear to the nobility of *England*? wherein if the proportion which shall be thought fit be not full, yet your Majesty may, out of your prerogative, supply it; for although you cannot make fewer of *Scotland*, yet you may make more of *England*.

THE second is touching the place and precedence wherein to marshal them according to the precedence of *England* in your Majesty's style, and according to the nobility of *Ireland*; that is, all *English* Earls first, and then *Scottish* will be thought unequal for *Scotland*. To marshal them according to antiquity, will be thought unequal for *England*. Because I hear their nobility is generally more ancient: and therefore the question will be whether the indifferentest way were not to take them interchangeably; as for example, first, the ancient Earl of *England*; and then the ancient Earl of *Scotland*, and so *alternis vicibus*?

5. Laws.

FOR the laws to make an entire and perfect union, it is a matter of great difficulty and length, both in the collecting of them, and in the passing of them. For first, as to the collecting of them, there must be made by the lawyers of either nation a digest under titles of their several laws and customs, as well common laws as statutes, that they may be collated and compared, and that the diversities may appear and be discerned of. And for the passing of them, we see by experience that *patrius mos* is dear to all men, and that men are bred and nourished up in the love of it; and therefore how harsh changes and innovations are. And we see likewise what disputation and argument the alteration of some one law doth cause and bring forth, how much more the alteration of the whole corps of the law? Therefore the first question will be, whether it be not good to proceed by parts, and to take that that is most necessary, and leave the rest to time? The parts therefore or subject of laws, are for this purpose fittest distributed, according to that ordinary division of criminal and civil, and those of criminal causes into capital and penal.

THE

THE second question therefore is, allowing the general union of laws to be too great a work to embrace, whether it were not convenient that cases capital were the same in both nations; I say the cases, I do not speak of the proceedings or trials; that is to say, whether the same offences were not fit to be made treason or felony in both places?

THE third question is, whether cases penal, though not capital, yet if they concern the publick state, or otherwise the discipline of manners, were not fit likewise to be brought into one degree, as the case of misprision of treason, the case of *praemunire*, the case of fugitives, the case of incest, the case of simony, and the rest?

BUT the question that is more urgent than any of these is, whether these cases, at the least be they of an higher or an inferior degree, wherein the fact committed, or act done in *Scotland*, may prejudice the state and subjects of *England*, or *e converso*, are not to be reduced into one uniformity of law and punishment? As for example, a perjury committed in a court of justice in *Scotland*, cannot be prejudicial in *England*, because depositions taken in *Scotland* cannot be produced and used here in *England*. But a forgery of a deed in *Scotland*, I mean with a false date of *England*, may be used and given in evidence in *England*. So likewise the depopulating of a town in *Scotland*, doth not directly prejudice the state of *England*: but if an *English* merchant shall carry silver and gold into *Scotland* (as he may) and thence transport it into foreign parts, this prejudiceth the state of *England*, and may be an evasion to all the laws of *England* ordained in that case; and therefore had need to be bridled with as severe a law in *Scotland*, as it is here in *England*.

OF this kind there are many laws.

THE law of the 5th of *Richard II.* of going over without licence, if there be not the like law in *Scotland*, will be frustrated and evaded: for any subject of *England* may go first into *Scotland*, and thence into foreign parts.

So the laws prohibiting transportation of sundry commodities, as gold, and silver, ordnance, artillery, corn, &c. if there be not a correspondence of laws in *Scotland*, will in like manner be deluded and frustrate; for any *English* merchant or subject may carry such commodities first into *Scotland*, as well as he may carry them from port to port in *England*: And out of *Scotland* into foreign parts, without any peril of law.

So libels may be devised and written in *Scotland*, and published and scattered in *England*.

TREASONS may be plotted in *Scotland* and executed in *England*.

AND so in many other cases, if there be not the like severity of law in *Scotland* to restrain offences that there is in *England*, (whereof we are here ignorant whether there be or no;) it will be a gap or stop even for *English* subjects to escape and avoid the laws of *England*.

BUT for treasons the best is that by the statute of 26 K. *Henry VIII. cap. 13.* any treason committed in *Scotland*, may be proceeded with in *England* as well as treasons committed in *France*, *Rome*, or elsewhere.

FOR courts of justice, trials, process, and other administration of laws, to make any alteration in either nation, it will be a thing so new and unwonted to either people, that it may be doubted it will make the administration of justice (which of all other things ought to be known and certain as the beaten way) to become intricate and uncertain. And besides, I do not see that the severalty of administration of justice, though it be by court sovereign

⁶ Courts of justice, and administration of laws.

of last resort, (I mean without appeal or error;) is any impediment at all to the union of a kingdom: as we see by experience in the several courts of parliament in the kingdom of *France*. And I have been always of opinion, that the subjects of *England* do already fetch justice somewhat far off, more than in any nation that I know, the largeness of the kingdom considered, though it be holden in some part by the circuits of the judges; and the two councils at *York*, and in the marches of *Wales* established.

BUT it may be a question, whether as *commune vinculum*, of the justice of both nations, your Majesty should not erect some court about your person in the nature of the grand council of *France*: to which court you might, by way of evocation, draw causes from the ordinary judges of both nations; for so doth the *French* King from all the courts of parliament in *France*; many of which are more remote from *Paris* than any part of *Scotland* is from *London*.

7. Receipts, Fi-
nances, and
Patrimonies
of the crown.

FOR receipts and finances I see no question will arise, in regard it will be matter of necessity to establish in *Scotland* a receipt of treasure for payments, and erogations to be made in those parts: and for the treasure of *Spain*, in either receipts, the custodies thereof may well be several; considering by your Majesty's commandment, they may be at all times removed or disposed according to your Majesty's occasions.

FOR the patrimonies of both crowns, I see no questions will arise, except your Majesty would be pleased to make one compounded annexation, for an inseparable patrimony to the crown out of the lands of both nations: and so the like for the principality of *Britain*, and for other appennages of the rest of your children; erecting likewise such duchies and honours compounded of the possessions of both nations as shall be thought fit.

8. Admiralty,
navy, and
merchandiz-
ing.

FOR admiralty or navy I see no great question will arise; for I see no inconvenience for your Majesty to continue shipping in *Scotland*. And for the jurisdiction of the admiralties, and the profits and casualties of them, they will be respective unto the coasts, over-against which the seas lie and are situated; as it is here with the admiralties of *England*.

AND for merchandizing it may be a question, whether that the companies of the merchant adventurers of the *Turkey* merchants and the *Muscovite* merchants, (if they shall be continued) should not be compounded of merchants of both nations, *English* and *Scotish*. For to leave trade free in the one nation, and to have it restrained in the other, may percase breed some inconvenience.

9. Freedoms
and liberties.

FOR freedoms and liberties the charters of both nations may be reviewed; and of such liberties as are agreeable and convenient for the subjects and people of both nations, one great charter may be made and confirmed to the subjects of *Britain*; and those liberties which are peculiar or proper to either nation to stand in state as they do.

10. Taxes
and imposts.

BUT for imposts and customs, it will be a great question how to accommodate them and reconcile them: for if they be much easier in *Scotland*, than they be here in *England* (which is a thing I know not;) then this inconvenience will follow; that the merchants of *England* may unlade in the ports of *Scotland*; and this kingdom to be served from thence, and your Majesty's customs abated.

AND for the question, whether the *Scotish* merchants should pay strangers custom in *England*, that resteth upon the point of naturalization, which I touched before.

THUS have I made your Majesty a brief and naked memorial of the articles and points of this great cause, which may serve only to excite and stir up

up your Majesty's royal judgment, and the judgment of wiser men whom you will be pleased to call to it : wherein I will not presume to persuade or dissuade any thing ; nor to interpose mine own opinion, but do expect light from your Majesty's royal directions ; unto the which I shall ever submit my judgment, and apply my travails. And I most humbly pray your Majesty in this which is done to pardon my errors, and to cover them with my good intention and meaning and desire I have to do your Majesty service, and to acquit the trust that was reposed in me, and chiefly in your Majesty's benign and gracious acceptation,

SPEECHES

S P E E C H E S.

A S P E E C H in P A R L I A M E N T,

39 of E L I Z A B E T H, upon the Motion of Subsidy.

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

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

sweet odour of honour and reputation to our nation throughout the world. But I will only insist upon the natural and inviolate law of preservation.

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

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

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

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

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

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

SINCE the last parliament it is also notorious in every man's knowledge and remembrance, that the *Spaniards* have possessed themselves of that avenue and place of approach for *England*, which was never in the hands of any King of *Spain* before; and that is *Calais*; which in true reason and consideration of estate, of what value or service it is I know not; but in common understanding, it is a knocking at our doors.

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

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

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

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

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

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

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

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

A

S P E E C H

MADE BY

Sir *FRANCIS BACON*, Kt.

Chosen by the COMMONS to present a petition touching Purveyors, delivered to his MAJESTY in the withdrawing-chamber at *Whitehall*, in the Parliament held 1^o & 2^o *Jacobi*, the first Session.

IT is well known to your Majesty, (excellent King) that the Emperors of *Rome*, for their better glory and ornament, did use in their titles the additions of the countries and nations where they had obtained victories: as *Germanicus*, *Britannicus*, and the like. But after all those names, as in the higher place, followed the name of *Pater Patriae*, as the greatest name of all human honour immediately preceding that name of *Augustus*; whereby they took themselves to express some affinity that they had (in respect of their office) with divine honour. Your Majesty might, with good reason, assume unto your self many of those other names; as *Germanicus*, *Saxonicus*, *Britannicus*, *Francicus*, *Danicus*, *Gothicus*, and others, as appertaining to you not by blood-shed, (as they bare them) but by blood; your Majesty's royal person being a noble confluence of streams and veins wherein the royal blood of many kingdoms of *Europe* are met and united. But no name is more worthy of you, nor may more truly be ascribed unto you, than that name of father of your people, which you bear and express not in the formality of your style, but in the real course of your government. We ought not to say unto you as was said to *Julius Caesar*; *Quae miremur, habemus; quae laudemus, expectamus*: That we have already wherefore to admire you, and that now we expect somewhat for which to commend you: for we may (without suspicion of flattery) acknowledge, that we have found in your Majesty great cause, both of admiration and commendation. For great is the admiration, wherewith you have possessed us since this parliament began in those two causes wherein we have had access unto you, and heard your voice: That of the return of Sir *Francis Goodwin*, and that of the union; whereby it seemeth unto us, the one of these being so subtle a question of law; and the other so high a cause of estate, that as the scripture saith of the wisest King, *that his heart was as the sands of the sea*; which, though it be one of the largest and vastest bodies, yet it consisteth of the smallest motes and portions: So, I say, it appeareth unto us in these two examples, that God hath given your Majesty a rare sufficiency, both to compass and fathom the greatest matters, and to discern the least. And for matter of praise and commendation, which chiefly belongeth to goodness, we cannot but with great thankfulness profess, that your Majesty, within the circle of one year of your reign, (*infra orbem anni vertentis*) hath endeavoured to unite your church, which was divided; to supply your nobility, which was diminished, and to ease your people in cases where they were burthened and oppressed.

IN

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

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

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

To come now to the substance of our petition. It is no other than, by the benefit of your Majesty's laws, to be relieved of the abuses of purveyors; which abuses do naturally divide themselves into three sorts: the first they take in kind, that they ought not to take; the second they take in quantity, a far greater proportion than cometh to your Majesty's use; the third they take in an unlawful manner, in a manner (I say) directly and expressly prohibited by divers laws.

For the first of these, I am a little to alter their name; for instead of takers, they become taxers; instead of taking provision for your Majesty's service, they tax your people, *ad redimendam vexationem*: imposing upon them, and

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

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

AND therefore to descend, if it may please your Majesty, to the third sort of abuse, which is of the unlawful manner of their taking, whereof this omission is a branch; and it is so manifold, as it rather asketh an enumeration of some of the particulars, than a prosecution of all. For their price by law they ought to take as they can agree with the subject; by abuse they take, at an imposed and enforced price: by law they ought to make but one appraisement by neighbours in the country; by abuse they make a second appraisement at the court-gate; and when the subject's cattle come up many miles lean, and out of plight, by reason of their travel, then they prize them a-new at an abated price: by law they ought to take between sun and sun; by abuse they take by twilight, and in the night-time, a time well chosen for malefactors: by law they ought not to take in the high-ways, (a place by your Majesty's high prerogative protected, and by statute by special words excepted;) by abuse they take in the ways in contempt of your

Majesty's prerogative and laws: by law they ought to shew their commission, and the form of commission is by law set down: the commissions they bring down, are against the law; and because they know so much, they will not shew them. A number of other particulars there are, whereof I have given your Majesty a taste; so the chief of them upon deliberate advice are set down in writing by the labour of some committees, and approbation of the whole house, more particularly and lively than I can express them: my self having them at the second hand by reason of my abode above. But this writing is a collection of theirs who dwell amongst the abuses of these offenders, and the complaints of the people; and therefore must needs have a more perfect understanding of all the circumstances of them.

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

It resteth, that according to the command laid upon me, I do in all humbleness present this writing to your Majesty's royal hands, with the most humble petition on the behalf of the commons, that as your Majesty hath been pleased to vouchsafe your gracious audience to hear me speak, so you would be pleased to enlarge your patience to hear this writing read, which is more material.

S P E E C H

USED BY

Sir FRANCIS BACON, Kt.

In the Honourable House of Commons, *quinto* JACOBI,

Concerning the ARTICLE of the GENERAL NATURALIZATION of
the *Scotish* Nation.

IT may please you, Master Speaker, pface I will use none, but put my self upon your good opinion, to which I have been accustomed, beyond my deservings; neither will I hold you in suspense what way I will chuse, but now at the first declare my self, that I mean to counsel the house to naturalize this nation, wherein nevertheless I have a request to make unto you, which is of more efficacy to the purpose I have in hand than all that I shall say afterwards. And it is the same request, which *Demosthenes* did more than once in great causes of estate, make to the people of *Athens*, *ut cum calculis suffragiorum sumant magnanimitatem reipublicae*, that when they took into their hands the balls, whereby to give their voices, (according as the manner of them was) they would raise their thoughts, and lay aside those considerations which their private vocations and degrees might minister and represent unto them, and would take upon them cogitations and minds agreeable to the dignity and honour of the estate.

FOR, Master Speaker, as it was aptly and sharply said by *Alexander* to *Parmenio*, when upon their recital of the great offers which *Darius* made; *Parmenio* said unto him, I would accept these offers, were I as *Alexander*: he turned it upon him again, So would I, saith he, were I as *Parmenio*. So in this cause, if an honest *English* merchant; (I do not single out that state in disgrace, for this island ever held it honourable, but only for an instance of a private profession) if an *English* merchant should say, Surely I would proceed no farther in the union, were I as the King; it might be reasonably answered, No more would the King, were he as an *English* merchant. And the like may be said of a gentleman in the country, be he never so worthy or sufficient, or of a lawyer be he never so wise or learned; or of any other particular condition of men in this Kingdom: for certainly, Master Speaker, if a man shall be only or chiefly sensible of those respects which his particular vocation and degree shall suggest and infuse into him, and not enter into true and worthy considerations of estates, he shall never be able aright to give counsel, or take counsel in this matter. So that if this request be granted, I account the cause obtained.

BUT to proceed to the matter itself: all consultations do rest upon questions comparative; for when a question is *de vero*, it is simple, for there is but one truth; but when a question is *de bono*, it is for the most part comparative; for there be differing degrees of good and evil, and the best of the good

good is to be preferred and chosen, and the worst of the evil is to be declined and avoided; and therefore in a question of this nature you may not look for answer proper to every inconvenience alledged; for somewhat that cannot be especially answered may nevertheless be encountered and over-weighed by matter of greater moment; and therefore the matter which I shall set forth unto you, will naturally receive the distribution of three parts.

The answer to the inconveniences objected concerning the naturalization.

FIRST, an answer to those inconveniences which have been alledged to ensue, if we should give way to this naturalization, which I suppose you will find not to be so great as they have been made; but that much dross is put into the balance to help to make weight.

SECONDLY, an encounter against the remainder of these inconveniences, which cannot properly be answered but by much greater inconveniences, which we shall incur if we do not proceed to this naturalization.

THIRDLY, an encounter likewise, but of another nature, that is, of the good and benefit which we shall draw and purchase to our selves by proceeding to this naturalization. And yet to avoid confusion, which ever more followeth upon too much generality, it is necessary for me (before I proceed to persuasion) to use some distribution of the points or parts of naturalization, which certainly can be no better, or none other than the ancient distinction of *jus civitatis*, *jus suffragii vel tribus*, and *jus petitionis sive honorum*: for all ability and capacity is either of private interest of *meum & tuum*, or of publick service; and the publick consisteth chiefly either in voice or in action or office. Now it is the first of these, Master Speaker, that I will only handle at this time and in this place, and refer the other two for a committee, because they receive more distinction and restriction.

To come therefore to the inconveniences alledged on the other part, the first of them is, that there may ensue of this naturalization a surcharge of people upon this realm of *England*, which is supposed already to have the full charge and content; and therefore there cannot be an admission of the adoptive without a diminution of the fortunes and conditions of those that are native subjects of this realm. A grave objection, Master Speaker, and very dutiful; for it proceeds not of any unkindness to the *Scotish* nation, but of a natural fastness to our selves; for that answer of the virgins, *ne forte non sufficiat vobis & nobis*, proceeds not out of any envy or malign humour, but out of providence, and the original charity which begins with our selves. And I must confess, Master Speaker, that as the gentleman said, when *Abraham* and *Lot*, in regard of the greatness of their families, grew pent and straitened, brethren though they were, they grew to difference, and to those words, *vade tu ad dexteram, & ego ad sinistram*, &c. But certainly, I should never have brought that example on that side; for we see what followed of it, how that this separation *ad dexteram & ad sinistram*, caused the miserable captivity of the one brother, and the dangerous, though prosperous war of the other, for his rescue and recovery.

BUT to this objection, Master Speaker, being so weighty and so principal, I mean to give three several answers, every one of them being to my understanding by it self sufficient.

The opinion of the number of the *Scotish* Nation.

THE first of them is, that this opinion of the number of the *Scotish* nation that should be likely to plant themselves here amongst us will be found to be a thing rather in conceit than in event; for, Master Speaker, you shall find those plausible similitudes of a tree that will thrive the better if it be removed into the more fruitful soil, and of sheep or cattel, that if they find a gap or passage open will leave the more barren pasture, and get into the more rich

rich and plentiful, to be but arguments merely superficial, and to have no sound resemblance with the transplanting or transferring of families; for the tree, we know by nature, as soon as it is set in the better ground, can fasten upon it, and take nutriment from it; and a sheep, as soon as he gets into the better pasture, what should let him to graze or feed? But there belongeth more, I take it, to a family or particular person, that shall remove from one nation to another: for if, Master Speaker, they have not stock, means, acquaintances, custom, habitation, trades, countenance, and the like, I hope you doubt not but they will starve in the midst of the rich pasture, and are far enough from grazing at their pleasure: and therefore in this point, which is conjectural, experience is the best guide; for the time past is a pattern of the time to come. I think no man doubteth, Master Speaker, but his Majesty's first coming in, was as the greatest spring-tide for the confluence and entrance of that nation. Now I would fain understand in these four years space, and in this fulness and strength of the current and tide, how many families of *Scotsmen* are planted in the cities, boroughs, and towns of this kingdom; for I do assure my self, that of more than some persons of quality, about his Majesty's person here at court, and in *London*, and some other inferior persons, that have a dependance upon them, the return and certificate, if such a survey should be made, would be of a number extremely small: I report me to all your knowledges of the places where you inhabit.

Now, Master Speaker, as I said, *si in ligno viridi ita sit, quit fiet in arido?* I am sure there will be no more such spring-tides. But you will tell me of a multitude of families of the *Scotish* nation in *Polonia*; and if they multiply in a country so far, how much more here at hand? For that, Master Speaker, you must impute it of necessity to some special accident of time and place that draws them thither: For you see plainly before your eyes, that in *Germany*, which is much nearer, and in *France*, where they are invited with privileges, and the very privilege of naturalization, and yet no such number is to be found; so, it cannot either be nearness of place, or privilege of person, that is the cause. But shall I tell you, Master Speaker, what I think? Of all places in the world, near or far off, they will never take that course of life in this kingdom, which they content themselves with in *Poland*; for we see it to be the nature of all men that they will rather discover poverty abroad, than at home. There is never a gentleman that hath over-reached himself in expences, and thereby must abate his countenance, but he will rather travel, and do it abroad, than at home; and we know well they have good high stomachs, and have ever stood in some terms of emulation with us: and therefore they will never live here, except they live in good sort. So as I assure you, Master Speaker, I am of opinion that the strife, which we now have to admit them, will have like sequel as that contention had between the nobility and people of *Rome*, for the admitting of a *plebeian* consul; which whilst it was in passage was very vehement, and mightily stood upon, and when the people had obtained it, they never made any *plebeian* consul, not in 60 years after: and so will this be for many years, as I am persuaded, rather a matter in opinion and reputation, than in use or effect; and this is the first answer that I give to this main inconvenience pretended of surcharge of people.

THE second answer which I give to this objection, is this, I must have leave to doubt, Master Speaker, that this realm of *England* is not yet peopled to the full; for certain it is, that the territories of *France*, *Italy*, *Flanders*, and some part of *Germany*, do in equal space of ground bear and contain a far

greater quantity of people, if they were mustered by the poll; neither can I see, that this kingdom is so much inferior unto those foreign parts in fruitfulness, as it is in population; which makes me conceive we have not our full charge. Besides, I do see manifestly amongst us, the badges and tokens rather of scarceness, than of press of people, as drowned grounds, commons, wastes, and the like; which is a plain demonstration that howsoever there may be an over-swelling throng and press of people here about *London*, which is most in our eye, yet the body of the kingdom is but thin sown with people: And whosoever shall compare the ruins and decays of ancient towns in this realm, with the erections and augmentations of new, cannot but judge that this realm hath been far better peopled in former times; it may be in the Heptarchy, or otherwise: for generally the rule holdeth, the smaller the state, the greater the population *pro rata*. And whether this be true or no, we need not seek farther, than to call to our remembrance how many of us serve here in this place for desolate and decayed boroughs.

Mediterrane,
not maritime
countries,
furcharged
with people.

AGAIN, Master Speaker, whosoever looketh into the principles of estate, must hold that it is the mediterrane countries, and not the maritime, which need to fear surcharge of people; for all sea-provinces, and especially *Flanders*, have another element besides the earth and soil, for their sustentation. For what an infinite number of people are, and may be, sustained by fishing, carriage by sea, and merchandizing? Wherein again I do discover, that we are not at all pinched by the multitude of people; for if we were, it were not possible that we should relinquish and resign such an infinite benefit of fishing to the *Flemings*, as it is well known we do. And therefore I see, that we have wastes by sea, as well as by land; which still is an infallible argument that our industry is not awakened to seek maintenance by any great press or charge of people. And lastly, Master Speaker, there was never any kingdom in the ages of the world, had, I think, so fair and happy means to issue and discharge the multitude of their people (if it were too great) as this kingdom hath, in regard of that desolate and wasted realm of *Ireland*; which being a country blessed with almost all the dowries of nature, as rivers, havens, woods, quarries, good soil, and temperate climate, and now at last under his Majesty blest also with obedience, doth, as it were, continually call unto us for our colonies and plantations. And so I conclude my second answer, to this pretended inconvenience of surcharge of people.

THE third answer, Master Speaker, which I give, is this; I demand what is the worst effect that can follow the surcharge of people? Look into all stories, and you shall find it none other than some honourable war, for the enlargement of their borders, which find themselves pent upon foreign parts; which inconvenience, in a valourous and warlike nation, I know not whether I should term an inconvenience or no; for the saying is most true, though in another sense, *omne solum forti patria*. It was spoken indeed of the patience of an exiled man, but it is no less true of the valour of a warlike nation. And certainly, Master Speaker, I hope I may speak it without offence, that if we did hold our selves worthy, whensoever a just cause should be given, either to recover our ancient rights, or to revenge our late wrongs, or to attain the honour of our ancestors, or to enlarge the patrimony of our posterities, we would never in this manner forget the considerations of amplitude and greatness, and fall at variance about profit and reckonings; fitter a great deal for private persons, than for parliaments and kingdoms. And thus, Master Speaker, I leave this first objection to such satisfaction as you have heard.

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THE second objection is, that the fundamental laws of both these kingdoms of *England* and *Scotland* are yet diverse and several; nay more that it is declared by the instrument, that they shall so continue, and that there is no intent in his Majesty to make innovation in them; and therefore that it should not be seasonable to proceed to this naturalization, whereby to endow them with our rights and privileges, except they should likewise receive and submit themselves to our laws; and this objection likewise (Mr. Speaker) I allow to be a weighty objection, and worthy to be well answered and discussed.

The fundamental laws of *England* and *Scotland* are diverse and several.

THE answer which I shall offer is this: It is true, for my own part, (Mr. Speaker) that I wish the *Scotish* nation governed by our laws, for I hold our laws with some reducements worthy to govern, and it were the world: but this is that which I say, and I desire therein your attention, that according to true reason of estate, naturalization is in order first and precedent to union of laws; in degree a less matter than union of laws; and in nature separable, and not inseparable from union of laws; for naturalization doth but take out the marks of a foreigner, but union of laws makes them entirely as our selves. Naturalization taketh away separation; but union of laws doth take away distinction. Do we not see, Master Speaker, that in the administration of the world under the great monarch God himself, that his laws are diverse; one law in spirits, another in bodies; one law in regions celestial, another in elementary; and yet the creatures are all one mass or lump, without any vacuum or separation? Do we not likewise see in the state of the church, that amongst people of all languages and lineages there is one communion of saints, and that we are all fellow-citizens and naturalized of the heavenly *Jerusalem*; and yet nevertheless divers and several ecclesiastical laws, policies and hierarchies, according to the speech of that worthy father, *in velle varietas sit, scissura non sit*? And therefore certainly, Master Speaker, the bond of law is the more special and private bond, and the bond of naturalization the more common and general; for the laws are rather *figura reipublicae* than *forma*, and rather bonds of perfection than bonds of entireness: and therefore we see in the experience of our own government, that in the kingdom of *Ireland* all our statute laws, since *Poyning's law*, are not of force; and yet we deny them not the benefit of naturalization. In *Guernsey* and *Jersey* and the isle of *Man*, our common laws are not in force, and yet they have the benefit of naturalization; neither need any man doubt but that our laws and customs must in small time gather and win upon theirs; for here is the seat of the kingdom, whence come the supreme directions of estate: here is the King's person and example, of which the verse saith, *Regis ad exemplum totus componitur orbis*. And therefore it is not possible, although not by solemn and formal act of estates, yet by the secret operation of no long time, but they will come under the yoke of our laws, and so *dulcis tractus pari jugo*; and this is the answer I give to the second objection.

The answer to the second objection.

Poyning's law

THE third objection is some inequality in the fortunes of these two nations, *England* and *Scotland*, by the commixture whereof there may ensue advantage to them and loss to us. Wherein, Master Speaker, it is well that this difference or disparity consisteth but in the external goods of fortune; for indeed it must be confessed, that for the goods of the mind and the body, they are *alteri nos*, other our-selves; for to do them but right, we know in their capacities and understandings they are a people ingenious, in labour industrious, in courage valiant, in body hard, active and comely. More might be said, but in commending them we do but in effect commend our selves; for they

Inequality in the fortunes between *England* and *Scotland*.

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are of one piece and continent with us; and the truth is, we are participant both of their virtues and vices. For if they have been noted to be a people not so tractable in government, we cannot, without flattering our selves, free our selves altogether from that fault, being a thing indeed incident to all martial people; as we see it evident by the example of the *Romans* and others; even like unto free horses, that though they be of better service than others, yet are they harder to guide and manage.

BUT for this objection, Master Speaker, I purpose to answer it, not by the authority of Scriptures, which saith, *beatius est dare quam accipere*, but by an authority framed and derived from the judgment of our selves and our ancestors in the same case, as to this point. For, Master Speaker, in all the line of our Kings none useth to carry greater commendation than his Majesty's noble progenitor King *Edward* the first of that name; and amongst his other commendations, both of war and policy, none is more celebrated than his purpose and enterprize for the conquest of *Scotland*, as not bending his designs to glorious acquests abroad, but to solid strength at home; which nevertheless if it had succeeded well could not but have brought in all those inconveniences of the commixture of a more opulent kingdom with a less that are now alleged. For it is not the yolk, either of our laws or arms, that can alter the nature of the climate or the nature of the soil; neither is it the manner of the commixture that can alter the matter of the commixture; and therefore, Master Speaker, if it were good for us then, it is good for us now, and not to be prized the less because we payed not so dear for it. But a more full answer to this objection I refer over to that, which will come after, to be spoken touching surety and greatness.

Laws or arms
cannot alter
the nature of
climates.

THE fourth objection, Master Speaker, is not properly an objection, but rather a pre-occupation of an objection of the other side; for it may be said, and very materially, whereabouts we do contend? The benefit of naturalization is by the law, in as many as have been, or shall be born since his Majesty's coming to the crown, already settled and invested. There is no more then but to bring the *Ante-nati* into the degree of the *Post-nati*, that men grown that have well deserved may be in no worse case than children which have not deserved, and elder brothers in no worse case than younger brothers; so as we stand upon *quiddam*, not *quantum*, being but a little difference of time of one generation from another. To this, Master Speaker, it is said by some, that the law is not so, but that the *Post-nati* are aliens as well as the rest. A point that I mean not much to argue, both because it hath been well spoken to by the gentleman that spoke last before me; and because I do desire in this case and in this place to speak rather of conveniency than of law: only this I will say, that that opinion seems to me contrary to reason of law, contrary to form of pleading in law, and contrary to authority and experience of law. For reason of law, when I meditate of it, methinks the wisdom of the common laws of *England* well observed, is admirable in the distribution of the benefit and protection of the laws, according to the several conditions of persons in an excellent proportion. The degrees are four, but bipartite, two of aliens and two of subjects.

The first de-
gree of an
alien.

THE first degree is of an alien born under a King or state, that is an enemy. If such an one come into this kingdom without safe conduct, it is at his peril; the law giveth him no protection, neither for body, lands nor goods; so as if he be slain there is no remedy by any appeal at the party's suit, although his wife were an *English* woman: marry at the King's suit, the case may be otherwise in regard of the offence to the crown.

THE second degree is of an alien that is born under the faith and allegiance of a King or State that is a friend. Unto such a person the law doth impart a greater benefit and protection, that is, concerning things personal, transitory, and immoveable, as goods and chattels, contracts and the like, but not concerning freehold and inheritance. And the reason is, because he may be an enemy, though he is not; for the state under the obedience of which he is, may enter into a quarrel and hostility; and therefore as the law hath but a transitory assurance of him, so it rewards him but with transitory benefits.

The second degree of an alien born under a state that is a friend.

THE third degree is of a subject, who having been an alien, is made free by charter and denization. To such an one the law doth impart yet a more ample benefit; for it gives him power to purchase freehold and inheritance to his own use, and likewise enables the children born after his denization to inherit. But yet nevertheless he cannot make title or convey pedigree from any ancestor paramount; for the law thinks not good to make him in the same degree with a subject born, because he was once an alien, and so might once have been an enemy: And *nemo subito fingitur*, mens affections cannot be so settled by any benefit, as when from their nativity they are inbred and inherent.

The third degree of an alien subject.

AND the fourth degree, which is the perfect degree, is of such a person as neither is enemy, nor could have been enemy in time past, nor can be enemy in time to come; and therefore the law gives unto him the full benefit of naturalization.

The fourth degree the perfect degree.

Now, Master Speaker, if these be the true steps and paces of the law, no man can deny but whosoever is born under the King's obedience, never could in *aliquo puncto temporis* be an enemy; (a rebel he might be, but no enemy:) and therefore in reason of law is naturalized. Nay, contrariwise, he is bound *jure nativitatis* to defend this kingdom of *England* against all invaders or rebels; and therefore as he is obliged to the protection of arms, and that perpetually and universally, so he is to have the perpetual and universal benefit and protection of law, which is naturalization.

For form of pleading it is true that hath been said, that if a man would plead another to be an alien, he must not only set forth negatively and privatively, that he was born out of the obedience of our sovereign lord the King, but affirmatively, under the obedience of a foreign King or State in particular, which can never be done in this case.

As for authority, I will not press it; you know all what hath been published by the King's proclamation. And for experience of law we see it in the subjects of *Ireland*, in the subjects of *Guernsey* and *Jersey*, parcels of the duchy of *Normandy*; in the subjects of *Calais*, when it was *English*, which was parcel of the crown of *France*. But, as I said, I am not willing to enter into argument of law, but to hold my self to point of conveniency, so as for my part I hold all *Post-nati* naturalized *ipso jure*; but yet I am far from opinion, that it should be a thing superfluous to have it done by parliament. Chiefly in respect of that true principle of state, *principum actiones precipue ad famam sunt componendæ*. It will lift up a sign to all the world of our loves towards them, and good agreement with them. And these are, Master Speaker, the material objections which have been made on the other side, whereunto you have heard my answers; weigh them in your wisdoms, and so I conclude that general part.

Now, Master Speaker, according as I promised, I must fill the other balance in expressing unto you the inconveniences which we shall incur, if we shall

not proceed to this naturalization, wherein that inconvenience which above all others, and alone by itself, if there were none other, doth exceedingly move me, and may move you, is a position of estate, collected out of the records of time, which is this: That wheresoever several kingdoms or estates have been united in sovereignty, if that union hath not been fortified and bound in with a farther union, and namely, that which is now in question (of naturalization,) this hath followed, that at one time or other they have broken again, being upon all occasions apt to relapse and revolt to the former separation.

The union between the Romans and the Latins.

OF this assertion the first example which I will set before you, is of that memorable union which was between the *Romans* and the *Latins*, which continued from the battle at the lake of *Regilla*, for many years unto the consulships of * *C. Plautius*, and *L. Æmilius Mamercus*.

AT which time there began, about this very point of naturalization, that war which was called *Bellum Sociale*, being the most bloody and pernicious war that ever the *Roman* state endured: wherein, after numbers of battles and infinite sieges and surprizes of towns, the *Romans* in the end prevailed and mastered the *Latins*: But as soon as ever they had the honour of the war, looking back into what perdition and confusion they were near to have been brought, they presently naturalized them all. You speak of a naturalization in blood; there was a naturalization indeed in blood.

Sparta and Peloponnesus.

LET me set before you again the example of *Sparta*, and the rest of the *Peloponnesus* their associates. The state of *Sparta* was a nice and jealous state in this point of imparting naturalization to their confederates. But what was the issue of it? After they had held them in a kind of society and amity for divers years, upon the first occasion given, (which was no more than the surprisal of the castle of *Thebes*, by certain desperate conspirators in the habit of maskers) there ensued immediately a general revolt and defection of their associates; which was the ruin of their state, never afterwards to be recovered.

The union of the Kingdom of Aragon.

OF later times let me read your considerations to behold the like events in the kingdom of *Aragon*; which kingdom was united with *Castile* and the rest of *Spain* in the persons of *Ferdinando* and *Isabella*, and so continued many years; but yet so as that it stood a kingdom sever'd and divided from the rest of the body of *Spain* in privileges, as directly in this point of naturalization, or capacity of inheritance. What came of this? Thus much, that now of fresh memory, not past twelve years since, only upon the voice of a condemned man out of the grate of a prison towards the street, that cried, *Fueros Libertad, Libertad*, (which is as much as liberties or privileges) there was raised a dangerous rebellion, which was suppressed with great difficulty with an army royal. After which victory nevertheless, to shun farther inconvenience, their privileges were disannulled, and they were incorporated with *Castile* and the rest of *Spain*. Upon so small a spark, notwithstanding so long continuance, were they ready to break and sever again.

Florence and Pisa.

THE like may be said of the states of *Florence* and *Pisa*, which city of *Pisa* being united unto *Florence*, but not endowed with the benefit of naturalization, upon the first sight of foreign assistance, by the expedition of *Charles VIII.* of *France* into *Italy*, did revolt; though it be since again reunited and incorporated, and did obtain the foresaid benefit.

* 169 years after that battle. There are extant at this day coins or medals, in memory of a battle fought by this *C. Plautius* at *Prævernium*. Another copy hath of *T. Manlius* and *P. Decius*.

THE same effect we see in the most barbarous government, which shews it the rather to be an effect of nature; for it was thought a fit policy by the council of *Constantinople*, to retain the three provinces of *Transylvania*, *Wallachia*, and *Moldavia*, (which were as the very nurses of *Constantinople*, in respect of their provisions) to the end they might be the less wasted, only under *Waywods* as vassals and homagers, and not under *Bashaws*, as provinces of the *Turkish* empire; which policy we see by late experience proved unfortunate, as appeared by the revolt of the same three provinces, under the arms and conduct of *Sigismund* prince of *Transylvania*; a leader very famous for a time; which revolt is not yet fully recovered. Whereas we seldom or never hear of revolts of provinces incorporate to the *Turkish* empire.

The like effects in barbarous governments.

ON the other part, Mr. Speaker, because it is true which the logicians say, *opposita juxta se posita magis elucescunt*: let us take a view, and we shall find that wheresoever Kingdoms and States have been united, and that union incorporated by a bond of mutual naturalization, you shall never observe them afterwards upon any occasion of trouble or otherwise, to break and sever again: as we see most evidently before our eyes, in divers provinces of *France*, that is to say *Guienne*, *Provence*, *Normandy*, *Britain*, which notwithstanding the infinite infesting troubles of that Kingdom, never offered to break again.

Naturalization a sure bond.

WE see the like effect in all the Kingdoms of *Spain*, which are mutually naturalized, as *Leon*, *Castile*, *Valentia*, *Andalusia*, *Granada*, *Murcia*, *Toledo*, *Catalonia*, and the rest, except *Aragon*, which held the contrary course, and therefore had the contrary success, (as was said) and *Portugal*, of which there is not yet sufficient trial. And lastly, we see the like effect in our own nation, which never rent asunder after it was once united; so as we now scarce know whether the heptarchy were a true story or a fable; and therefore, Master Speaker, when I revolve with my self, these examples and others, so lively expressing the necessity of a naturalization to avoid a relapse into a separation; and do hear so many arguments and scruples made on the other side; it makes me think on the old bishop, which upon a publick disputation of certain Christian divines with some learned men of the heathen, did extremely press to be heard; and they were loth to suffer him, because they knew he was unlearned, though otherwise an holy and well-meaning man: but at last, with much ado, he got to be heard; and when he came to speak, instead of using argument, he did only say over his belief: but did it with such assurance and constancy, that it did strike the minds of those that heard him, more than any argument had done. And so, Master Speaker, against all these witty and subtle arguments, I say that I do believe, and I would be sorry to be found a prophet in it, that except we proceed with this naturalization, though perhaps not in his Majesty's time, who hath such interest in both nations, yet in the time of his descendents these realms will be in continual danger to divide and break again. Now if any man be of that careless mind, *maneat nostras ea cura nepotes*; or of that hard mind, to leave things to be tried by the sharpest sword: sure I am, he is not of *St. Paul's* opinion, who affirmeth, that whosoever useth not fore-sight and provision for his family, is worse than an unbeliever; much more, if we shall not use fore-sight for these two kingdoms, that comprehend in them so many families, but leave things open to the peril of future divisions. And thus have I expressed unto you the inconvenience which of all others sinketh deepest with me as the most weighty: neither do there want other inconveniences, Mr. Speaker, the effects and influence whereof, I fear, will not be adjourned to so long a day as this that I have spoken of: for I leave it to
your

England never sever'd after once united.

A binding inconvenience.

your wisdom to consider whether you do not think, in case by the denial of this naturalization, any pique, alienation, or unkindness, I do not say should be, but should be thought to be, or noised to be between these two nations, whether it will not quicken and excite all the envious and malicious humours, wheresoever (which are now covered) against us, either foreign or at home; and so open the way to practices and other engines and machinations, to the disturbance of this state? As for that other inconvenience of his Majesty's engagement to this action, it is too binding, and too pressing to be spoken of, and may do better a great deal in your minds than in my mouth, or in the mouth of any man else; because, as I say, it doth press our liberty too far; and therefore, Master Speaker, I come now to the third general part of my division, concerning the benefits which we shall purchase by knitting this knot surer and straiter between these two kingdoms, by the communicating of naturalization: the benefits may appear to be two, the one surety, the other greatness.

The benefit of surety.

TOUCHING surety, Mr. Speaker, it was well said by *Titus Quintius the Roman*, touching the state of *Peloponnesus*, that the tortoise is safe within her shell, *testudo intra tegumen tuta est*; but if there be any parts that lie open, they endanger all the rest. We know well, that although the state at this time be in a happy peace, yet for the time past, the more ancient enemy to this kingdom hath been the *French*, and the more late the *Spaniard*; and both these had as it were their several postern gates, whereby they might have approach and entrance to annoy us. *France* had *Scotland*, and *Spain* had *Ireland*; for these were the two accesses which did comfort and encourage both these enemies to assail and trouble us. We see that of *Scotland* is cut off by the union of these two kingdoms, if that it shall be now made constant and permanent; that of *Ireland* is cut off likewise by the convenient situation of the west of *Scotland* towards the north of *Ireland*, where the fore was: which we see being suddenly closed hath continued closed by means of this salve; so that as now there are no parts of this state exposed to danger to be a temptation to the ambition of foreigners, but their approaches and avenues are taken away: for I do little doubt but those foreigners which had such little success when they had those advantages, will have much less comfort now that they be taken from them; and so much for surety.

The benefit of greatness.

FOR greatness, Mr. Speaker, I think a man may speak it soberly and without bravery, that this kingdom of *England*, having *Scotland* united, *Ireland* reduced, the sea-provinces of the Low Countries contracted, and shipping maintained, is one of the greatest monarchies, in forces truly esteemed, that hath been in the world. For certainly the kingdoms here on earth have a resemblance with the kingdom of heaven, which our Saviour compareth not to any great kernel or nut, but to a very small grain, yet such an one as is apt to grow and spread; and such do I take to be the constitution of this kingdom; if indeed we shall refer our counsels to greatness and power, and not quench them too much with the consideration of utility and wealth. For, Mr. Speaker, was it not, think you, a true answer that *Solon* of *Greece* made to the rich King *Cræsus* of *Lydia* when he shewed unto him a great quantity of gold that he had gathered together, in ostentation of his greatness and might? But *Solon* said to him, contrary to his expectation, Why, Sir, if another come that hath better iron than you, he will be lord of all your gold. Neither is the authority of *Machiavel* to be despised, who scorned that proverb of state, taken first from a speech of *Mucianus*, that moneys are the sinews of war; and saith, there are no true sinews of war, but the very sinews of the arms of valiant men.

NAY more, Mr. Speaker, whosoever shall look into the seminaries and beginnings of the monarchies of the world, he shall find them founded in poverty. The beginning of monarchies founded in poverty.

PERSIA a country barren and poor, in respect of *Media*, which they subdued.

MACEDON, a kingdom ignoble and mercenary until the time of *Philip Macedon*, the son of *Amyntas*.

ROME had poor and pastoral beginnings. Rome.

THE Turks, a band of *Sarmathian Scythes*, that in a vagabond manner made incursion upon that part of *Asia*, which is yet called *Turcomania*; out of which, after much variety of fortune, sprung the *Ottoman* family, now the terror of the world. The Turks.

So we know the *Goths*, *Vandals*, *Alans*, *Huns*, *Lombards*, *Normans*, and the rest of the northern people, in one age of the world made their descent or expedition upon the *Roman* empire, and came not as rovers to carry away prey and be gone again; but planted themselves in a number of rich and fruitful provinces, where not only their generations, but their names remain to this day; witness *Lombardy*, *Catalonia*, (a name compounded of *Goth* and *Aland*) *Andalusia*, (a name corrupted from *Vandalitia*) *Hungaria*, *Normandy*, and others.

NAY the fortune of the *Swisses* of late years, which are bred in a barren and mountainous country, is not to be forgotten; who first ruined the duke of *Burgundy*, the same who had almost ruined the kingdom of *France*, what time after the battel near *Granson* the rich jewel of *Burgundy* prized at many thousands was sold for a few pence by a common *Swiss*, that knew no more what a jewel meant than did *Æsop's* cock. And again, the same nation in revenge of a scorn was the ruin of the *French King's* affairs in *Italy*, *Lewis XII*. For that King, when he was pressed somewhat rudely by an agent of the *Switzers* to raise their pensions, brake into words of choler: What, saith he, will these villains of the mountains put a tax upon me? Which words lost him his duchy of *Milan*, and chased him out of *Italy*. The Switzers.

ALL which examples, Mr. Speaker, do well prove *Solon's* opinion of the authority and mastery that iron hath over gold. And therefore if I shall speak unto you mine own heart, methinks we should a little disdain that the nation of *Spain*, which howsoever of late it hath grown to rule, yet of ancient time served many ages, first under *Carthage*, then under *Rome*, after under *Saracens*, *Goths*, and others, should of late years take unto them that spirit as to dream of a monarchy in the west, according to that device, *video solem orientem in occidente*, only because they have ravish'd from some wild and unarmed people mines and store of gold; and on the other side, that this island of *Britain*, seated and manned as it is, and that hath, I make no question, the best iron in the world, that is, the best soldiers in the world, shall think of nothing but accounts and audits, and *meum & tuum*, and I cannot tell what.

Mr. Speaker, I have, I take it, gone through the parts which I propounded to my self, wherein if any man shall think that I have sung a *placebo*, for mine own particular, I would have him know that I am not so unseen in the world, but that I discern it were much alike for my private fortune to rest a *tacebo*, as to sing a *placebo* in this business: But I have spoken out of the fountain of my heart, *Credidi propter quod locutus sum*: I believed, therefore I spake, so as my duty is performed: the judgment is yours; God direct it for the best.

S P E E C H

USED BY

Sir *FRANCIS BACON*, Kt.

In the Lower House of Parliament, by occasion of a motion concerning the UNION of LAWS.

AND it please you, Master Speaker, were it now a time to wish, as it is to advise, no man should be more forward or more earnest than my self in this wish, that his Majesty's subjects of *England* and *Scotland* were governed by one law; and that for many reasons.

FIRST, Because it will be an infallible assurance that there will never be any relapse in succeeding ages to a separation.

SECONDLY, *Dulcis tractus pari jugo*. If the draught lie most upon us, and the yoke lie least on them, it is not equal.

THIRDLY, The qualities and (as I may term it) the elements of their laws and ours are such as do promise an excellent temperature in the compounded body: for if the prerogative here be too indefinite, it may be the liberty there is too unbounded; if our laws and proceedings be too prolix and formal, it may be theirs are too informal and summary.

FOURTHLY, I do discern to my understanding, there will be no great difficulty in this work; for their laws, by that I can learn, compared with ours, are like their language compared with ours: for as their language hath the same roots that ours hath, but hath a little more mixture of *Latin* and *French*; so their laws and customs have the like grounds that ours have, with a little more mixture of the civil law and *French* customs.

LASTLY, The mean to this work seemeth to me no less excellent than the work itself: for if both laws shall be united, it is of necessity for preparation and inducement thereunto, that our own laws be reviewed and re-compiled, than the which I think there cannot be a work that his Majesty can undertake in these his times of peace more politic, more honourable, nor more beneficial to his subjects for all ages:

*Pace data in terris, animum ad civilia vertit
Jura suum, legesque tulit justissimus auctor.*

FOR this continual heaping up of laws without digesting them, maketh but a *chaos* and confusion, and turneth the laws many times to become but snares to the people, as was well said, *Pluet super eos laqueos: non sunt autem peiores laquei, quam laquei legum*. And therefore this work I esteem to be indeed a work (rightly to term it) heroical. So that for this good wish of union of laws I do consent to the full: and I think you may perceive by that which I have said, that I came not in this to the opinion of others, but that I was long ago settled in it my self: nevertheless as this is moved out of zeal, so I take it to be moved out of time, as commonly all zealous motions are, while men are

are so fast carried on to the end, as they give no attention to the means: for if it be time to talk of this now, it is either because the business now in hand cannot proceed without it, or because in time and order this matter should be precedent, or because we shall lose some advantage towards this effect so much desired, if we should go on in the course we are about. But none of these three in my judgment are true; and therefore the motion (as I said) unseasonable.

FOR first, that there may not be a naturalization without an union in laws cannot be maintained. Look into the example of the church, and the union thereof. You shall see general churches, that join in one faith, one baptism, which are the points of spiritual naturalization, do many times in policy, constitutions, and customs differ: and therefore one of the fathers made an excellent observation upon the two mysteries; the one, that in the gospel the garment of Christ is said to have been without seam; the other, that in the psalm the garment of the Queen is said to have been of divers colours; and concludeth, *in veste varietas fit, scissura non fit*. And so in this case, Master Speaker, we are now in hand to make this monarchy of one piece, and not of one colour. Look again into the examples of foreign countries, and take that next us of *France*, and there you shall find that they have this distribution, *Pais du droit escrit*, and *pais du droit coutumier*. For *Gascoigne*, *Languedoc*, *Provence*, *Dauphiny*, are countries governed by the letter, or text of the civil law: But the isle of *France*, *Tourain*, *Berry*, *Anjou*, and the rest, and most of all *Britain* and *Normandy* are governed by customs, which amount to a municipal law, and use the civil law but only for grounds, and to decide new and rare cases; and yet nevertheless naturalization passeth through all.

SECONDLY, That this union of laws should precede the naturalization, or that it should go on *pari passu*, hand in hand, I suppose likewise can hardly be maintained: but the contrary, that naturalization ought to precede, and that not in the precedence of an instant; but in distance of time: of which my opinion, as I could yield many reasons; so because all this is but a digression, and therefore ought to be short; I will hold my self now only to one, which is briefly and plainly this; that the union of laws will ask a great time to be perfected, both for the compiling and for the passing of them. During all which time, if this mark of strangers should be denied to be taken away, I fear it may induce such a habit of strangeness, as will rather be an impediment than a preparation to farther proceeding: for he was a wise man that said, *opportuni magnis conatibus transitus rerum*, and in these cases, *non progredi, est regredi*. And like as in a pair of tables, you must put out the former writing before you can put in new; and again, that which you write in, you write letter by letter; but that which you put out, you put out at once: so we have now to deal with the tables of men's hearts, wherein it is in vain to think you can enter the willing acceptance of our laws and customs, except you first put forth all notes either of hostility or foreign condition: and these are to be put out *simul & semel*, at once without gradations; whereas the other points are to be imprinted and engraven distinctly and by degrees.

THIRDLY, Whereas it is conceived by some, that the communication of our benefits and privileges is a good hold that we have over them to draw them to submit themselves to our laws, it is an argument of some probability, but yet to be answered many ways. For first, the intent is mistaken, which is not, as I conceive it, to draw them wholly to a subjection to our laws, but to draw both nations to one uniformity of law. Again, to think that there should

should be a kind of articulate and indented contract, that they should receive our laws to obtain our privileges, it is a matter in reason of estate not to be expected, being that which scarcely a private man will acknowledge, if it come to that whereof *Seneca* speaketh, *Beneficium accipere est libertatem vendere*. No, but courses of estate do describe and delineate another way, which is to win them either by benefit or by custom: for we see in all creatures that men do feed them first, and reclaim them after. And so in the first institution of kingdoms, Kings did first win people by many benefits and protections, before they prest any yolk. And for custom, which the poet calls, *imponere morem*; who doubts but that the seat of the kingdom, and the example of the King resting here with us, that our manners will quickly be theirs to make all things ready for our laws? And lastly, the naturalization which is now propounded, is qualified with such restrictions as there will be enough kept back to be used at all times for an adamant of drawing them farther on towards our desires. And therefore to conclude, I hold this motion of union of laws very worthy, and arising from very good minds; but yet not proper for this time.

To come therefore to that, which is now in question, it is no more but whether there should be a difference made between the *Ante-nati* and the *Post-nati* in point of law, but only in point of convenience; as if a law were now newly to be framed. In which question I will at this time answer two objections, and use two arguments, and so leave it to your judgment.

THE first objection hath been, that if a difference should be, it ought to be in favour of the *Ante-nati*, because they are persons of merit, service, and proof; whereas the *Post-nati* are infants, that (as the scripture saith) know not the right hand from the left.

THIS were good reason, Master Speaker, if the question were of naturalizing some particular persons by a private bill; but it hath no proportion with the general case: for now we are not to look to respects, that are proper to some; but to those, which are common to all. Now then how can it be imagined, but that those, which took their first breath since this happy union, inherent in his Majesty's person, must be more assured and affectionate to this kingdom, than those generally can be presumed to be, which were sometimes strangers; for *Nemo subito fingitur*: the conversions of minds are not so swift as the conversions of times. Nay in effects of grace, which exceed far the effects of nature, we see St. *Paul* makes a difference between those he calls *Neophytes*, that is, newly grafted into Christianity, and those that are brought up in the faith. And so we see by the laws of the church, that the children of christians shall be baptized in regard of the faith of their parents: but the child of an ethnic may not have baptism till he be able to make an understanding profession of his faith.

ANOTHER objection hath been made, that we ought to be more provident and reserved to restrain the *Post-nati* than the *Ante-nati*; because during his Majesty's time, being a prince of so approved wisdom and judgment, we need no better caution than the confidence we may repose in him; but in the future reigns of succeeding ages, our caution must be *in re*, and not *in persona*.

BUT, Mr. Speaker, in this I answer, that as we cannot expect a prince hereafter less like to err in respect of his judgment; so again, we cannot expect a prince so like to exceed, if I may so term it, in this point of beneficence to that nation, in respect of the occasion. For whereas all princes and all men are won either by merit or consideration, there is no appearance, that any of his Majesty's descendants can have either of these causes of bounty towards

wards that nation in so ample a degree as his Majesty hath. And these be the two observations, which seem to me most material, why the *Post-nati* should be concluded in the same restrictions or greater than the *Ante-nati*, whereunto you have heard the answers.

THE two reasons, which I will use on the other side, are briefly these; the one, being a reason of common sense; the other, a reason of estate.

WE see, Mr. Speaker, the time of the nativity is in most cases principally regarded. In nature, the time of planting and setting is chiefly observed; and we see the astrologers pretend to judge of the fortune of the party by the time of the nativity. In laws, we may not unfitly apply the case of legitimation to the case of naturalization; for it is true, that the common-law doth put the *Ante-natus* and the *Post-natus* in one degree. But when it was moved to the parliament of England, *Barones una voce responderunt, Nolumus leges Angliae mutare*. And though it must be confessed, that the *Ante-nati* and *Post-nati* are in the same degree in dignities; yet were they never so in abilities: for no man doubts, but the son of an earl or baron, before his creation or call, shall inherit the dignity, as well as the son born after. But the son of an attainted person, born before the attainder, shall not inherit, as the after born shall, notwithstanding charter of pardon.

THE reason of state is, that any restriction of the *Ante-nati* is temporary, and expireth with the generation; but if you make the *Post-nati* in all one degree, you do but in substance pen a perpetuity of separation.

MR. Speaker, in this point I have been short, because I little expected this doubt, as to point of convenience; and therefore will not much labour, where I suppose there is no greater opposition.



REPORT

MADE BY

Sir FRANCIS BACON, Kt.

In the HOUSE of COMMONS,

Of a SPEECH delivered by the Earl of *Salisbury*; and another SPEECH delivered by the Earl of *Northampton*, at a conference concerning the Petition of the Merchants upon the *Spanish* grievances, Parliament 5 *Jacobi*.

AND may it please you, (Mr. Speaker,) I do not find my self any ways bound to report that which passed at the last conference touching the *Spanish* grievances, having been neither employed to speak, nor appointed to report in that cause. But because it is put upon me by a silent expectation, grounded upon nothing (that I know) more than that I was observed diligently to take notes: I am content (if that provision which I made for mine own remembrance may serve this house for a report) not to deny you that sheaf that I have in haste bound up. It is true, that one of his Majesty's principal counsellors in causes of estate, did use a speech that contained a world of matter; but now I shall be able to make a globe of that world, therein I fear mine own strength.

HIS lordship took the occasion of this, which I shall now report, upon the answer which was by us made, to the amendments propounded upon the bill of hostile laws; quitting that business with these few words; that he would discharge our expectation of reply, because their lordships had no warrant to dispute. Then continuing his speech, he fell into this other cause, and said; that being now to make answer to a proposition of ours, as we had done to one of theirs, he wished it could be passed over with like brevity. But he did foresee his way, that it would prove not only long, but likewise hard to find, and hard to keep; this cause being so to be carried, as above all no wrong be done to the King's sovereignty and authority: and in the second place, no misunderstanding do ensue between the two houses. And therefore that he hoped his words should receive a benign interpretation; knowing well that pursuit and drift of speech, and multitude of matter, might breed words to pass from him beyond the compass of his intention: and therefore he placed more assurance and caution in the innocency of his own meaning, and in the experience of our favours, than in any his wariness or watchfulness over his own speech.

THIS respective preface used, his lordship descended to the matter it self; which he divided into three considerations: for he said he would consider of the petition,

FIRST,

FIRST, As it proceeded from the merchants.

SECONDLY, As from them it was offered to the lower house.

AND thirdly, As from the lower house it was recommended to the higher house.

IN the first of these considerations there fell out naturally a subdivision into the persons of the petitioners, and the matter and parts of the petition. In the persons of the merchants his lordship made (as I have collected them) in number eight observations, whereof the three first respected the general condition of merchants; and the five following were applied to the particular circumstances of the merchants now complaining.

HIS lordship's first general observation was, that merchants were of two sorts; the one sought their fortunes (as the verse saith) *per saxa, per ignes*; and, as it is said in the same place, *extremos currit mercator ad Indos*; subjecting themselves to weather and tempest; to absence, and, as it were, exile, out of their native countries; to arrests in entrances of war; to foreign injustice and rigor in times of peace; and many other sufferances and adventures. But that there were others that took a more safe, but a less generous course in raising their fortunes. He taxed none, but did attribute much more respect to the former.

THE second general observation which his lordship made was, that the complaints of merchants were usually subject to much error, in regard that they spake (for the most part) but upon information; and that carried through many hands; and of matters done in remote parts; so as a false or factious factor might oftentimes make great tragedies upon no great ground. Whereof, towards the end of his speech, he brought an instance of one trading into the *Levant*; that complained of an arrest of his ship, and possessed the council-table with the same complaint in a vehement and bitter fashion; desiring and pressing some present and expostulatory letters touching the same. Whereupon some counsellors well acquainted with the like heats, and forwardness in complaints, happened to say to him out of conjecture, and not out of any intelligence, what will you say if your ship which you complain to be under arrest, be now under sail in way homewards? Which fell out accordingly; the same person confessing, six days after, to the lords, that she was indeed in her way homewards.

THE third general observation which his lordship made was this, in effect; that although he granted that the wealth and welfare of the merchant was not without a sympathy with the general stock and state of a nation, especially an island; yet nevertheless, it was a thing too familiar with the merchant, to make the case of his particular profit, the publick case of the kingdom.

THERE follow the particular observations, which have a reference and application to the merchants that trade to *Spain* and the *Levant*; wherein his lordship did first honourably and tenderly acknowledge, that their grievances were great, that they did multiply, and that they do deserve compassion and help; but yet nevertheless, that he must use that loving plainness to them as to tell them, that in many things they were authors of their own miseries. For since the dissolving of the company, which was termed the monopoly, and was set free by the special instance of this house, there hath followed such a confusion and relaxation in order and government amongst them, as they do not only incur many inconveniences, and commit many errors; but in the pursuits of their own remedies and suits they do it so impolitickly, and after such a fashion, as except lieger ambassadors (which are the eyes of Kings

in foreign parts,) should leave their centinel, and become merchants factors and solicitors, their causes can hardly prosper. And which is more, such is now the confusion in the trade, as shop-keepers and handycraft-men become merchants there; who being bound to no orders, seek base means, by gifts and bribery, to procure favours at the hands of officers there. So as the honest merchant that trades like a substantial merchant, and loves not to take servile courses to buy the right, due to him by the amity of the princes, can have no justice without treading in their steps.

SECONDLY, His lordship did observe some improbability that the wrongs should be so great, considering trading into those parts was never greater; whereas if the wrongs and griefs were so intolerable and continual as they propound them and voiced them, it would work rather a general discouragement and coldness of trade in fact, than an earnest and hot complaint in words.

THIRDLY, His lordship did observe, that it is a course (howsoever, it may be with a good intent, yet) of no small presumption, for merchants upon their particular grievances to urge things tending to a direct war, considering that nothing is more usual in treaties, than that such particular damages and molestations of subjects are left to a form of justice to be righted: and that the more high articles do retain nevertheless their vigour inviolably; and that the great bargain of the kingdom for war and peace, may in no wise depend upon such petty forfeitures, no more than in common assurance between man and man, it were fit that, upon every breach of covenants, there should be limited a re-entry.

FOURTHLY, His lordship did observe, in the manner of preferring their petition, they had inverted due order, addressing themselves to the foot, and not to the head. For considering that they prayed no new law for their relief, and that it concerned matter of inducement to war or peace, they ought to have begun with his Majesty, unto whose royal judgment, power, and office did properly belong the discerning of that which was desired, the putting in act of that which might be granted, and the thanks for that which might be obtained.

FIFTHLY, His lordship did observe, that as they had not preferred their petition as it should be, so they had not pursued their own direction as it was. For having directed their petition to the King, the lords spiritual and temporal, and the commons in parliament assembled, it imported, as if they had offered the like petition to the lords, which they never did; contrary not only to their own direction, but likewise to our conceit, who pre-supposed (as it should seem by some speech that passed from us at a former conference,) that they had offered several petitions of like tenor to both houses. So have you now those eight observations, part general, part special, which his lordship made touching the persons of those which exhibited the petition, and the circumstances of the same.

FOR the matter of the petition it self, his lordship made this division, that it consisteth of three parts.

FIRST, Of the complaints of wrongs in fact.

SECONDLY, Of the complaints of wrongs in law, as they may be truly termed, that is, of the inequality of laws which do regulate the trade.

AND thirdly, The remedy desired by letters of mart.

THE wrongs in fact receive a local distribution of three. In the trade to *Spain*, in the trade to the *West-Indies*, and in the trade to the *Levant*.

CONCERNING the trade to *Spain*; although his lordship did use much figuration of compassion of the injuries which the merchants received; and attributed

attributed so much to their profession and estate, as from such a mouth in such a presence, they ought to receive, for a great deal of honour and comfort, (which kind of demonstration he did interlace throughout his whole speech, as proceeding *ex abundantia cordis*;) yet nevertheless he did remember four excusations, or rather extenuations of those wrongs.

THE first was, that the injustices complained of were not in the highest degree, because they were delays and hard proceedings, and not inique sentences, or definitive condemnations: wherein I called to mind what I heard a great bishop say, that courts of justice, though they did not turn justice into worm-wood by corruption, yet they turned it into vinegar by delays, which soured it. Such a difference did his lordship make, which, no question, is a difference, *secundum majus & minus*.

SECONDLY, His lordship ascribed these delays, not so much to malice or alienation of mind towards us, as to the nature of the people and nation, which is proud and therefore dilatory: for all proud men are full of delays, and must be waited on; and especially to the multitudes and diversities of tribunals and places of justice, and the number of the King's councils full of referrals, which ever prove of necessity to be deferrals; besides the great distance of territories: all which have made the delays of *Spain* to come into a by-word through the world. Wherein I think his lordship might allude to the proverb of *Italy*, *mi venga la morte di Spagna*: let my death come from *Spain*, for then it is sure to be long a coming.

THIRDLY, His lordship did use an extenuation of these wrongs, drawn from the nature of man, (*nemo subito fingitur*.) For that we must make an account, that though the fire of enmity be out between *Spain* and us, yet it vapoureth: the utter extingishing whereof must be the work of time.

BUT lastly, His lordship did fall upon that extenuation, which of all the rest was most forcible; which was, that many of these wrongs were not sustained without some aspersions of the merchants own fault in ministering the occasion, which grew chiefly in this manner.

THERE is contained an article in the treaty between *Spain* and us, that we shall not transport any native commodities of the *Low-Countries* into *Spain*; nay more, that we shall not transport any *opificia*, manufactures of the same countries: so that if an *English* cloth take but a dye in the *Low-Countries*, it may not be transported by the *English*. And the reason is, because even those manufactures, although the materials come from other places, do yield unto them a profit and sustentation in regard their people are set on work by them; they have a gain likewise in the price; and they have a custom in the transporting. All which the policy of *Spain* is to debar them of; being no less desirous to suffocate the trade of the *Low-Countries* than to reduce their obedience. This article the *English* merchant either doth not or will not understand: but being drawn with his three-fold cord of love, hate, and gain, they do venture to transport the *Low-Country* commodities of these natures, and so draw upon themselves these arrests and troubles.

FOR the trade to the *Indies*, his lordship did discover unto us the state of it to be thus: The policy of *Spain* doth keep that treasury of theirs under such lock and key, as both confederates, yea, and subjects, are excluded of trade into those countries; insomuch as the *French* King, who hath reason to stand upon equal terms with *Spain*, yet nevertheless is by express capitulation debarred. The subjects of *Portugal*, whom the state of *Spain* hath studied by all means to content, are likewise debarred: such a vigilant dragon is there that keepeth this golden fleece; yet nevertheless, such was his Majesty's

magnanimity in the debate and conclusion of the last treaty, as he would never condescend to any article, importing the exclusion of his subjects from that trade; as a prince that would not acknowledge that any such right could grow to the crown of *Spain* by the donative of the pope, whose authority he disclaimeth; or by the title of a dispersed and punctual occupation of certain territories in the name of the rest, but stood firm to reserve that point in full question to farther times and occasions; so as it is left by the treaty in suspense, neither debarred nor permitted: The tenderness and point of honour whereof was such, as they that went thither must run their own peril. Nay farther, his lordship affirmed, that if yet at this time his Majesty would descend to a course of entreaty for the release of the arrests in those parts, and so confess an exclusion, and quit the point of honour, his Majesty might have them forthwith released. And yet his lordship added, that the offences and scandals of some had made this point worse than it was, in regard that this very last voyage to *Virginia*, intended for trade and plantation, where the *Spaniard* hath no people nor possession, is already become infamed for piracy. Witness *Bingley*, who first insinuating his purpose to be an actor in that worthy action of enlarging trade and plantation, is become a pirate, and hath been so pursued, as his ship is taken in *Ireland*, though his person is not yet in hold.

FOR the trade to the *Levant*, his lordship opened unto us that the complaint consisted in effect but of two particulars: the one, touching the arrest of a ship called the *Trial* in *Sicily*; the other, of a ship called the *Vineyard* in *Sardinia*. The first of which arrests, was upon pretence of piracy: the second, upon pretence of carrying ordnance and powder to the *Turk*. That process concerning the trial hath been at the merchants instance drawn to a review in *Spain*, which is a favour of exceeding rare precedent, being directly against the liberties and privileges of *Sicily*. That of the *Vineyard*, notwithstanding it be of that nature, as (if it should be true) tendeth to the great dishonour of our nation; (whereof hold hath been already taken by the *French* ambassador residing at *Constantinople*, who entred into a scandalous expostulation with his Majesty's ambassador there, upon that and the like transportations of ammunition to the *Turk*;) yet nevertheless there is an answer given, by letters from the King's ambassador *Liegier* in *Spain*, that there shall be some course taken to give reasonable contentment in that cause, as far as may be: in both which ships (to speak truly) the greatest mass of loss may be included; for the rest are mean, in respect of the value of those two vessels. And thus much his lordship's speech comprehended concerning the wrongs in fact.

CONCERNING the wrongs in law; that is to say, the rigour of the *Spanish* laws extended upon his Majesty's subjects that traffick thither, his lordship gave this answer. That they were no new statutes or edicts devised for our people, or our times; but were the ancient laws of that kingdom: *Suus cuique mos*. And therefore, as travellers must endure the extremities of the climate, and temper of the air where they travel; so merchants must bear with the extremities of the laws, and temper of the estate where they trade. Whereunto his lordship added, that our own laws here in *England* were not exempted from the like complaints in foreign parts; especially in point of marine causes and depredations, and that same swift alteration of property, which is claimed by the admiralty in case of goods taken in pirates hands. But yet that we were to understand thus much of the King of *Spain*'s care and regard of our nation; that he had written his letters to all corregidores, officers of ports, and other his ministers, declaring his will and pleasure to have his Majesty's subjects

subjects used with all freedom and favour; and with this addition, that they should have more favour when it might be shewed than any other. Which words, howsoever the effects prove, are not suddenly to be requited with peremptory resolutions till time declare the direct issue.

For the third part of the matter of the petition, which was the remedy sought by letters of mart, his lordship seemed desirous to make us capable of the inconvenience of that which was desired, by setting before us two notable exceptions thereunto: the one, that the remedy was utterly incompetent and vain; the other, that it was dangerous and pernicious to our merchants, and in consequence to the whole state.

For the weakness of the remedy, his lordship wished us to enter into consideration what the remedy was, which the statute of *Henry* the fifth, (which was now sought to be put in execution) gave in this case: which was thus; That the party grieved should first complain to the keeper of the privy seal, and from him should take letters unto the party that had committed the spoil for restitution; and in default of restitution to be made upon such letters served, then to obtain of the chancellor letters of mart or reprisal: which circuit of remedy promised nothing but endless and fruitless delay, in regard that the first degree prescribed was never likely to be effected; it being so wild a chace, as to serve process upon the wrong doer in foreign parts. Wherefore his lordship said, that it must be the remedy of state that must do good in this case; which useth to proceed by certificates, attestations, and other means of information; not depending upon a privy seal to be served upon the party, whom haply they must seek out in the *West Indies*.

For the danger of the remedy, his lordship directed our considerations to take notice of the proportions of the merchants goods in either kingdom: as that the stock of goods of the *Spaniard*, which is within his Majesty's power and distress, is a trifle; whereas the stock of *English* goods in *Spain* is a mass of mighty value. So as if this course of letters of mart should be taken to satisfy a few hot pursuitors here, all the goods of the *English* subjects in *Spain* shall be exposed to seizure and arrest; and we have little or nothing in our hands on this side to mend our selves upon. And thus much, Mr. Speaker, is that which I have collected out of that excellent speech, concerning the first main part, which was the consideration of the petition as it proceeded from the merchant.

THERE followeth now the second part, considering the petition as it was offered in this house. Wherein his lordship, after an affectionate commemoration of the gravity, capacity, and duty, which he generally found in the proceedings of this house, desired us nevertheless to consider with him, how it was possible that the entertaining of petitions concerning private injuries, and of this nature, could avoid these three inconveniences: the first, of injustice; the second, of derogation from his Majesty's supreme and absolute power of concluding war or peace; and the third, of some prejudice in reason of estate.

For injustice, it is plain, and cannot be denied, that we hear but the one part: whereas that rule, *audi alteram partem*, is not of the formality, but of the essence of justice: which is therefore figured with both eyes shut, and both ears open; because she should hear both sides, and respect neither. So that if we should hap to give a right judgment, it might be *justum*, but not *juste*, without hearing both parties.

For the point of derogation, his lordship said, he knew well we were no less ready to acknowledge than himself, that the crown of *England* was
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ever invested (amongst other prerogatives not disputable) of an absolute determination and power of concluding and making war and peace: Which that it was no new dotation, but of an ancient foundation in the crown, he would recite unto us a number of precedents in the reigns of several Kings, and chiefly of those Kings, which come nearest his Majesty's own worthiness; wherein he said, that he would not put his credit upon ciphers and dates; because it was easy to mistake the year of a reign, or number of a roll, but he would avouch them in substance to be perfect and true, as they are taken out of the records. By which precedents it will appear, that petitions made in parliament to Kings of this realm, his Majesty's progenitors, intermeddling with matter of war or peace, or inducement thereunto, received small allowance or success, but were always put off with dilatory answers; sometimes referring the matter to their council, sometimes to their letters, sometimes to their farther pleasure and advice, and such other forms; expressing plainly, that the Kings meant to reserve matter of that nature entirely to their own power and pleasure.

IN the eighteenth year of King *Edward I.* complaint was made by the commons, against the subjects of the earl of *Flanders*, with petition of redress. The King's answer was, *Rex nihil aliud potest, quam eodem modo petere*: that is, the King could do no more but make request to the earl of *Flanders*, as request had been made to him; and yet no body will imagine but King *Edward* the first was potent enough to have had his reason of a count of *Flanders* by a war; and yet his answer was, *nihil aliud potest*; as giving them to understand, that the entering into a war was a matter transcendent, that must not depend upon such controversies.

IN the fourth year of King *Edward III.* the commons petitioned, that the King would enter into certain covenants and capitulations with the duke of *Brabant*; in which petition there was also inserted somewhat touching a money matter. The King's answer was, that for that which concerned the monies, they might handle and examine it; but touching the peace, he would do as to himself seemed good.

IN the eighteenth year of King *Edward III.* the commons petitioned, that they might have the trial and proceeding with certain merchants strangers as enemies to the state. The King's answer was, it should remain as it did till the King had taken farther order.

IN the forty-fifth year of King *Edward III.* the commons complained that their trade with the *Easterlings* was not upon equal terms, (which is one of the points insisted upon in the present petition;) and prayed an alteration and reduction. The King's answer was, it shall be so as occasion shall require.

IN the fiftieth year of the same King, the commons petitioned to the King for remedy against the subjects of *Spain*, as they now do. The King's answer was, that he would write his letter for remedy. Here is letters of request, no letters of mart: *Nibil potest nisi eodem modo petere*.

IN the same year the merchants of *York* petitioned in parliament against the *Hollanders*, and desired their ships might be stayed both in *England* and at *Calais*. The King's answer was; let it be declared to the King's council, and they shall have such remedy as is according to reason.

IN the second year of King *Richard II.* the merchants of the sea-coast did complain of divers spoils upon their ships and goods by the *Spaniard*. The King's answer was, that with the advice of his council he would procure remedy.

HIS lordship cited two other precedents; the one, in the second year of King Henry IV. of a petition against the merchants of *Genova*; the other, in the eleventh year of King Henry VI. of a petition against the merchants of the stillyard, which I omit, because they contain no variety of answer.

HIS lordship farther cited two precedents concerning other points of prerogative, which are likewise flowers of the crown; the one, touching the King's supremacy ecclesiastical, the other, touching the order of weights and measures. The former of them was in the time of King Richard II. at what time the commons complained against certain encroachments and usurpations of the pope; and the King's answer was, the King hath given order to his council to treat with the bishops thereof. The other was in the eighteenth year of King Edward I. at which time complaint was made against uneven weights; and the King's answer was, *vocentur partes ad placita regis, & fiat justitia*: whereby it appeared, that the Kings of this realm still used to refer causes petitioned in parliament to the proper places of cognizance and decision. But for the matter of war and peace, as appears in all the former precedents, the Kings ever kept it *in scrinio pectoris*, in the shrines of their own breast, assisted and advised by their council of estate. In as much as his lordship did conclude his enumeration of precedents with a notable precedent in the seventeenth year of King Richard II. a prince of no such glory nor strength; and yet when he made offer to the commons in parliament that they should take into their considerations matter of war and peace then in hand; the commons in modesty excused themselves, and answered, the commons will not presume to treat of so high a charge. Out of all which precedents his lordship made this inference, that as *dies diem docet*, so by these examples wise men will be admonished to forbear those petitions to princes, which are not likely to have either welcome hearing, or an effectual answer.

AND for prejudice that might come of handling and debating matter of war and peace in parliament, he doubted not, but that the wisdom of this house did conceive upon what secret considerations and motives that point did depend. For that there is no King which will providently and maturely enter into a war, but will first balance his own forces; seek to anticipate confederacies and alliances, revoke his merchants, find an opportunity of the first breach, and many other points; which if they once do but take wind, will prove vain and frustrate. And therefore that this matter, which is *arcanum imperii*, one of the highest mysteries of estate, must be suffered to be kept within the veil: His lordship adding, that he knew not well whether in that which he had already said, out of an extreme desire to give us satisfaction, he had not communicated more particulars than perhaps was requisite. Nevertheless he confessed, that sometimes parliaments had been made acquainted with matter of war and peace in a generality; but it was upon one of these two motives; when the King and council conceived, that either it was material to have some declaration of the zeal and affection of the people; or else when the King needed to demand monies and aids for the charge of the wars; wherein if things did sort to war, we were sure enough to hear of it: His lordship hoping that his Majesty would find in us no less readiness to support it than to persuade it.

Now, Mr. Speaker, for the last part; wherein his lordship considered the petition, as it was recommended from us to the upper house; his lordship delivered thus much from their lordships; that they would make a good con-

struction of our desires, as those which they conceived did rather spring out of a feeling of the King's strength, and out of a feeling of the subjects wrongs; nay more, out of a wisdom and depth to declare our forwardness, if need were, to assist his Majesty's future resolutions, (which declaration might be of good use for his Majesty's service, when it should be blown abroad;) rather I say than that we did in any sort determine by this their overture, to do that wrong to his Highness's supreme power, which haply might be inferred by those that were rather apt to make evil than good illations of our proceedings. And yet, that their lordships, for the reasons before made, must plainly tell us, that they neither could or would concur with us, nor approve the course; and therefore concluded, that it would not be amiss for us, for our better contentment, to behold the conditions of the last peace with *Spain*, which were of a strange nature to him that duly observes them; no forces recalled out of the *Low-Countries*; no new forces (as to volunteers) restrained to go thither; so as the King may be in peace, and never a subject in *England* but may be in war: and then to think thus with our selves, that that King which would give no ground in making his peace, will not lose any ground upon just provocation to enter into an honourable war. And that in the mean time we should know thus much, that there could not be more forcible negotiation on the King's part but blows to procure remedy of those wrongs; nor more fair promises on the King of *Spain's* part to give contentment concerning the same; and therefore that the event must be expected.

AND thus, Mr. Speaker, have I passed over the speech of this worthy lord, whose speeches (as I have often said) in regard of his place and judgment, are extraordinary lights to this house; and have both the properties of light, that is, conducting and comforting. And although, Mr. Speaker, a man would have thought nothing had been left to be said, yet I shall now give you account of another speech full of excellent matter and ornaments, and without iteration: which nevertheless I shall report more compendiously, because I will not offer the speech that wrong as to report it at large, when your minds percase and attentions are already wearied.

THE other earl, who usually doth bear a principal part upon all important occasions, used a speech, first of preface, then of argument. In his preface he did deliver, that he was persuaded that both houses did differ rather in credulity and belief, than in intention and desire: For it might be their lordships did not believe the information so far, but yet desired the reformation as much.

HIS lordship said farther, that the merchant was a state and degree of persons, not only to be respected, but to be prayed for, and graced them with the best additions; that they were the convoys of our supplies, the vents of our abundance, *Neptune's* alms-men, and fortune's adventurers. His lordship proceeded and said, this question was new to us, but ancient to them; assuring us that the King did not bear in vain the device of the thistle, with the word, *nemo me lacessit impune*; and that as the multiplying of his kingdoms maketh him feel his own power; so the multiplying of our loves and affections made him to feel our griefs.

FOR the arguments or reasons, they were five in number, which his lordship used for satisfying us why their lordships might not concur with us in this petition. The first was the composition of our house, which he took in the first foundation thereof to be merely democratical, consisting of knights of shires, and burgesses of towns, and intended to be of those that have their residence, vocation, and employment in the places for which they serve: and therefore

therefore to have a private and local wisdom, according to that compass, and so not fit to examine or determine secrets of estate, which depend upon such variety of circumstances, and therefore added to the precedent formerly vouched of the seventeenth of King *Richard II.* when the commons disclaimed to intermeddle in matter of war and peace; that their answer was, that they would not presume to treat of so high and variable a matter. And although his lordship acknowledged that there be divers gentlemen in the mixture of our house, that are of good capacity and insight in matters of estate; yet that was the accident of the person, and not the intention of the place; and things were to be taken in the institution, not in the practice.

HIS lordship's second reason was, that both by philosophy and civil law; *ordinatio belli & pacis est absoluti imperii*, a principal flower of the crown; which flowers ought to be so dear unto us, as we ought, if need were, to water them with our blood: For if those flowers should by neglect, or upon facility and good affection wither and fall, the garland would not be worth the wearing.

HIS lordship's third reason was, that Kings did so love to imitate *primum mobile*, as that they do not like to move in borrowed motions: so that in those things that they do most willingly intend, yet they indure not to be prevented by request: Whereof he did alledge a notable example in King *Edward III.* who would not hearken to the petition of his commons, that besought him to make the black prince, prince of *Wales*: But yet after that repulse of their petition, out of his own mere motion he created him.

HIS lordship's fourth reason was, that it might be some scandal to step between the King and his own virtue; and that it was the duty of subjects rather to take honours from Kings servants and give them to Kings, than to take honours from Kings and give them to their servants: which he did very elegantly set forth in the example of *Joab*, who lying at the siege of *Rabbah*, and finding it could not hold out, writ to *David* to come and take the honour of taking the town.

HIS lordship's last reason was, that it may cast some aspersion upon his Majesty; implying, as if the King slept out the sobs of his subjects until he was awaked with the thunderbolt of a parliament.

BUT his lordship's conclusion was very noble, which was with a protestation, that what civil threats, contestation, art, and argument, can do, hath been used already to procure remedy in this cause; and a promise, that if reason of state did permit, as their lordships were ready to spend their breath in the pleading of that we desire, so they would be ready to spend their bloods in the execution thereof.

THIS was the substance of that which passed.

THESE arguments were presented to the King, who was then at *Hampton Court*, and he was so much pleased with them, that he commanded them to be printed, and that the Commons should be informed of the same. And thus the petition of the Commons was presented to the King, and he was so much pleased with them, that he commanded them to be printed, and that the Commons should be informed of the same. And thus the petition of the Commons was presented to the King, and he was so much pleased with them, that he commanded them to be printed, and that the Commons should be informed of the same.

S P E E C H

Used to the

K I N G,

By his Majesty's Sollicitor, being chosen by the Commons as their mouth and messenger, for the presenting to his Majesty the instrument or writing of their Grievances, in the Parliament 7 *Jacobi*.

MOST gracious Sovereign, the knights, citizens, and burgesſes aſſembled in parliament, in the houſe of your commons, in all humbleneſs do exhibit and preſent unto your ſacred Maſteſty, in their own words, though by my hand, their petitions and grievances. They are here conceived and ſet down in writing, according to ancient cuſtom of parliament: They are alſo prefaced according to the manner and taſte of theſe later times. Therefore for me to make any additional preface, were neither warranted, nor convenient; eſpecially ſpeaking before a King; the exactneſs of whoſe judgment ought to ſcatter and chaſe away all unneceſſary ſpeech as the ſun doth a vapour. This only I muſt ſay; ſince this ſeſſion of parliament we have ſeen your glory in the ſolemnity of the creation of this moſt noble prince; we have heard your wiſdom in ſundry excellent ſpeeches which you have delivered amongſt us: Now we hope to find and feel the effects of your goodneſs, in your gracious answer to theſe our petitions. For this we are perſuaded that the attribute which was given by one of the wiſeſt writers to two of the beſt Emperors, *divus Nerva & divus Trajanus* (ſo ſaith *Tacitus*) *res olim inſcſciabiles miſcuerunt, imperium & libertatem*; may be truly applied to your Maſteſty. For never was there ſuch a conſervator of regality in a crown, nor ever ſuch a protector of lawful freedom in a ſubject.

ONLY this, excellent Sovereign, let not the ſound of grievances (though it be ſad) ſeem harſh to your princely ears: it is but *gemitus columbae*, the mourning of a dove; with that patience and humility of heart which appertaineth to loving and loyal ſubjects. And far be it from us, but that in the miſt of the ſenſe of our grievances, we ſhould remember and acknowledge the infinite benefits which by your Maſteſty, next under God, we do enjoy; which bind us to wiſh unto your life fulneſs of days; and unto your line royal a ſucceſſion and continuance even unto the world's end.

IT reſteth, that unto theſe petitions here included I do add one more that goeth to them all: which is, that if in the words and frame of them there be any thing offensive; or that we have expreſſed our ſelves otherwiſe than we ſhould or would; that your Maſteſty would cover it, and caſt the veil of your grace upon it; and accept of our good intentions, and help them by your benign interpretation.

LASTLY,

LASTLY, I am most humbly to crave a particular pardon for my self that have used these few words: and scarcely should have been able to have used any at all, in respect of the reverence which I bear to your person and judgment, had I not been somewhat relieved and comforted, by the experience which in my service and access I have had of your continual grace and favour.

A

S P E E C H

OF THE

KING'S SOLICITOR,

Used unto the Lords at a Conference by Commission from the Commons, moving and persuading the Lords to join with the Commons in Petition to the King, to obtain liberty to treat of a Composition with his Majesty for Wards and Tenures, in the Parliament, 7 *Jacobi*.

THE knights, citizens, and burgeses of the house of commons have commanded me to deliver to your lordships the causes of the conference by them prayed, and by your lordships assented, for the second business of this day. They have had report made unto them faithfully of his Majesty's answer declared by my Lord Treasurer, touching their humble desire to obtain liberty from his Majesty to treat of compounding for tenures. And first, they think themselves much bound unto his Majesty, that in *re nova*, in which case princes use to be apprehensive, he hath made a gracious construction of their proposition. And so much they know of that that belongs to the greatness of his Majesty and the greatness of the cause; as themselves acknowledge, they ought not to have expected a present resolution, though the wise man faith, hope deferred is the fainting of the soul. But they know their duty to be to attend his Majesty's times at his good pleasure. And this they do with the more comfort, because that in his Majesty's answer (matching the times, and weighing the passages thereof,) they conceive, in their opinion, rather hope than discouragement.

BUT the principal causes of the conference now prayed, (besides these significations of duty not to be omitted) are two propositions. The one matter of excuse of themselves; the other matter of petition. The former of which grows thus. Your lordship, my Lord Treasurer, in your last declaration of his Majesty's answer, (which according to the attribute then given unto it, had *imaginem Cæsaris*, fair and lively graven) made this true and effectual distribution, that there depended upon tenures, considerations of honour, of conscience, and of utility: of these three, utility, as his Majesty set it by for the present out of the greatness of his mind, so we set it by out of

the justness of our desires: for we never meant but a goodly and worthy augmentation of the profit now received, and not a diminution. But, to speak truly, that consideration falleth naturally to be examined, when liberty of treaty is granted: but the former two indeed may exclude treaty, and cut it off before it be admitted.

NEVERTHELESS, in this that we shall say concerning those two, we desire to be conceived rightly: we mean not to dispute with his Majesty what belongeth to sovereign honour, or his princely conscience; because we know we are not capable to discern them otherwise than as men use sometimes to see the image of the sun in a pail of water. But this we say for ourselves, God forbid that we, knowingly, should have propounded any thing that might in our sense and persuasion touch either or both; and therefore herein we desire to be heard, not to inform or persuade his Majesty, but to free and excuse ourselves.

AND first, in general, we acknowledge, that this tree of tenures was planted into the prerogative by the ancient common law of this land: that it hath been fenced in and preserved by many statutes; and that it yieldeth at this day to the King the fruit of a great revenue. But yet notwithstanding, if upon the stem of this tree may be raised a pillar of support to the crown permanent and durable as the marble, by investing the crown with a more ample, more certain, and more loving dowry than this of tenures; we hope we propound no matter of disservice.

BUT to speak distinctly of both, and first of honour: wherein I pray your lordships, give me leave in a subject that may seem *supra nos*, to handle it rather as we are capable, than as the matter perhaps may require. Your lordships well know the various mixture and composition of our house. We have in our house learned civilians that profess a law, that we reverence and sometimes consult with: they can tell us, that all the laws *de feodis* are but additions to the ancient civil law; and that the Roman Emperors, in the full height of their monarchy, never knew them; so that they are not imperial. We have grave professors of the common law, who will define unto us that those are parts of sovereignty, and of the royal prerogative, which cannot be communicated with subjects: but for tenures in substance, there is none of your lordships but have them, and few of us but have them. The King indeed hath a priority or first service of his tenures, which shews that they are not regal, nor any point of sovereignty. We have gentlemen of honourable service in the wars both by sea and land, who can inform us, that when it is in question, who shall set his foot foremost towards the enemy; it is never asked, whether he holds in knight's service or in socage. So have we many deputy lieutenants to your lordships, and many commissioners that have been for musters and levies, that can tell us, that the service and defence of the realm hath in these days little dependency upon tenures. So then we perceive that it is no bond or ligament of government; no spur of honour, no bridle of obedience. Time was, when it had other uses, and the name of knight's service imports it: but *vocabula manent, res fugiunt*. But all this which we have spoken we confess to be in a vulgar capacity, which nevertheless may serve for our excuse, though we submit the thing it self wholly to his Majesty's judgment.

FOR matter of conscience, far be it from us to cast in any thing willingly, that may trouble that clear fountain of his Majesty's conscience. We do confess it is a noble protection, that these young birds of the nobility and good families, should be gathered and clocked under the wings of the crown.

But

But yet, *naturae vis maxima* : and *suus cuique discretus sanguis*. Your lordships will favour me, to observe my former method. The common law itself, which is the best bounds of our wisdom, doth even, *in hoc individuo*, prefer the prerogative of the father before the prerogative of the King : for if lands descend held in chief from an ancestor on the part of a mother, to a man's eldest son, the father being alive, the father shall have the custody of the body, and not the King. It is true, that this is only for the father, and not any other parent or ancestor : but then if you look to the high law of tutelage and protection, and of obedience and duty, which is the relative thereunto ; it is not said, honour thy father alone, but honour thy father and mother, &c. Again, the civilians can tell us, that there was a special use of the pretorian power for pupils, and yet no tenures. The citizens of London can tell us, there be courts of orphans, and yet no tenures. But all this while we pray your lordships to conceive, that we think ourselves not competent to discern of the honour of his Majesty's crown, or the shrine of his conscience ; but leave it wholly unto him, and alledge these things but in our own excuse.

For matter of petition, we do continue our most humble suit by your lordship's loving conjunction, that his Majesty will be pleased to open unto us this entrance of his bounty and grace, as to give us liberty to treat. And lastly, we know his Majesty's times are not subordinate at all but to the globe above. About this time the sun hath got even with the night, and will rise apace ; and we know Solomon's temple (whereof your lordship, my lord treasurer, spake) was not built in a day : and if we shall be so happy as to take the ax to hew, and the hammer to frame, in this case, we know it cannot be without time ; and therefore, as far as we may with duty, and without importunity, we most humbly desire an acceleration of his Majesty's answer, according to his good time and royal pleasure

A

S P E E C H

OF THE

KING'S SOLLICITOR,

Persuading the House of Commons to desist from farther question of receiving the King's Messages by their Speaker, and from the Body of the Council, as well as from the King's Person ; in the Parliament 7 Jac.

IT is my desire, that if any the King's business, either of honour or profit, shall pass the House, it may be not only with external prevailing, but with satisfaction of the inward man. For in consent, where tongue-strings, not heart-strings, make the musick, that harmony may end in discord. To this I shall always bend my endeavours.

THE

THE King's sovereignty, and the liberty of parliament, are as the two elements and principles of this estate; which, though the one be more active, the other more passive, yet they do not cross or destroy the one the other; but they strengthen and maintain the one the other. Take away liberty of parliament, the griefs of the subject will bleed inwards: Sharp and eager humours will not evaporate; and then they must exulcerate; and so may indanger the sovereignty itself. On the other side, if the King's sovereignty receive diminution, or any degree of contempt with us that are born under an hereditary monarchy, (so as the motions of our estate cannot work in any other frame or engine) it must follow, that we shall be a *metcor*, or *corpus imperfecte mixtum*; which kind of bodies come speedily to confusion and dissolution. And herein it is our happiness, that we may make the same judgment of the King, which *Tacitus* made of *Nerva*: *Divus Nerva, res olim dissociabiles miscuit, imperium & libertatem*. *Nerva* did temper things, that before were thought incompatible, sovereignty and liberty. And it is not amiss in a great council and a great cause to put the other part of the difference, which was significantly expressed by the judgment which *Apollonius* made of *Nero*; which was thus: When *Vespasian* came out of *Judea* towards *Italy* to receive the empire, as he passed by *Alexandria*, he spake with *Apollonius*, a man much admired; and asked him a question of state: What was *Nero's* fall or overthrow? *Apollonius* said, *Nero* could tune the harp well: but in government he always either wound up the pins too high, and strain'd the strings too far; or let them down too low, and slackened the strings too much. Here we see the difference between regular and able princes, and irregular and incapable, *Nerva* and *Nero*. The one tempers and mingles the sovereignty with the liberty of the subject wisely; and the other doth interchange it, and vary it unequally and absurdly. Since therefore we have a prince of so excellent wisdom and moderation, of whose authority we ought to be tender, as he is likewise of our liberty, let us enter into a true and indifferent consideration, how far forth the case in question may touch his authority, and how far forth our liberty: And to speak clearly, in my opinion it concerns his authority much, and our liberty nothing at all.

THE questions are two: The one, whether our Speaker be exempted from delivery of a message from the King without our licence? The other, whether it is not all one whether he received it from the body of the council, as if he received it immediately from the King? And I will speak of the last first, because it is the circumstance of the present case.

FIRST, I say, let us see how it concerns the King, and then how it concerns us? for the King certainly, if it be observed, it cannot be denied, but if you may not receive his pleasure by his representative body, which is his council of his estate, you both streighten his Majesty in point of conveniency, and weaken the reputation of his council. All Kings, though they be Gods on earth, yet (as he said) they are Gods of earth, frail as other men; they may be children, they may be of extreme age; they may be indisposed in health; they may be absent. In these cases, if their councils may not supply their persons, to what infinite accidents do you expose them? Nay more, sometimes in policy Kings will not be seen, but cover themselves with their council; and if this be taken from them, a great part of their safety is taken away. For the other point of weakening the council, you know they are nothing without the King: they are no body-politic; they have no commission under seal. So as if you begin to distinguish and disjoin them from the King, they are *corpus opacum*; for they have *lumen de lumine*: and so by distinguishing you extinguish the principal engine

engine of the estate. For it is truly affirmed, that *concilium non habet potestatem delegatam, sed inbærentem*: and it is but *Rex in cathedra*; the King in his chair or consistory, where his will and decrees, which are in privacy more changeable, are settled and fixed.

Now for that which concerns our selves. First for dignity, no man must think this a disparagement for us: for the greatest Kings in *Europe*, by their ambassadors, receive answers and directions from the council in the King's absence; and if that negotiation be fit for the fraternity and party of Kings, it may much less be excepted to by subjects.

For use or benefit, no man can be so raw and unacquainted in the affairs of the world, as to conceive there should be any disadvantage in it, as if such answers were less firm and certain. For it cannot be supposed, that men of so great caution, as counsellors of estate commonly are, (whether you take caution for wisdom or providence, or for pledges of estate or fortune) will ever err, or adventure so far as to exceed their warrant. And therefore I conclude, that in this point there can be unto us neither disgrace nor disadvantage.

For the point of the Speaker. First, on the King's part, it may have a shrewd illation: for it hath a shew, as if there could be a stronger duty, than the duty of a subject to a King. We see the degrees and differences of duties in families, between father and son, master and servant; in corporate bodies, between communalities and their officers; recorders, stewards, and the like; yet all these give place to the King's commandments. The bonds are more special, but not so forcible. On our part, it concerns us nothing. For first it is but *de canali*, of the pipe; how the King's message shall be conveyed to us, and not of the matter? Neither hath the Speaker any such dominion, as that coming out of his mouth it presseth us more than out of a privy counsellor's. Nay, it seems to be a great trust of the King's towards the house, when the King doubteth not to put his message into their mouth, as if he should speak to the city by their recorder: therefore methinks we should not entertain this unnecessary doubt. It is one use of wit to make clear things doubtful; but it is a much better use of wit to make doubtful things clear; and to that I would men would bend themselves.

S P E E C H

In the end of the Session of Parliament 7 JACOBI, perswading some supply to be given to his MAJESTY; which seemed then to stand upon doubtful terms, and passed upon this Speech.

THE proportion of the King's supply is not now in question: for when that shall be, it may be I shall be of opinion, that we should give so now, as we may the better give again. But as things stand for the present, I think the point of honour and reputation is that which his Majesty standeth most upon, that our gift may at least be like those showers that may serve to lay the winds, though they do not sufficiently water the earth.

To labour to persuade you, I will not: for I know not into what form to cast my speech. If I should enter into a laudative (though never so due and just) of the King's great merits, it may be taken for flattery: If I should speak of the strait obligations which intercede between the King and the subject, in case of the King's want, it were a kind of concluding the house: If I should speak of the dangerous consequence, which want may reverberate upon subjects, it might have shew of a secret menace.

THESE arguments are, I hope, needless, and do better in your minds than in my mouth. But this give me leave to say, that whereas the example of Cyrus was used, who sought his supply from those upon whom he had bestowed his benefits; we must always remember, that there are as well benefits of the scepter as benefits of the hand, as well of government as of liberality. These I am sure we will acknowledge to have come, *plena manu*, amongst us all, and all those whom we represent; and therefore it is every man's head in this case that must be his counsellor, and every man's heart his orator; and those inward powers are more forcible than any man's speech. I leave it, and wish it may go to the question.

S P E E C H

Deliver'd by the KING's Attorney,

Sir *FRANCIS BACON*,

In the Lower House, when the House was in great heat, and much troubled about the undertakers; which were thought to be some able and forward Gentlemen; who to ingratiate themselves with the KING, were said to have undertaken, that the KING's business should pass in that House as his MAJESTY could wish. In the Parliament 12 *Jacobi*.

Mr. SPEAKER,

I HAVE been hitherto silent in this matter of undertaking, wherein, as I perceive, the house is much enwrapped.

FIRST, because (to be plain with you) I did not well understand what it meant, or what it was; and I do not love to offer at that that I do not thoroughly conceive. That private men should undertake for the commons of *England*; why! a man might as well undertake for the four elements. It is a thing so giddy, and so vast, as cannot enter into the brain of a sober man: and especially in a new parliament; when it was impossible to know who should be of the parliament: and when all men that know never so little the constitution of this house, do know it to be so open to reason, as men do not know when they enter into these doors, what mind themselves will be of, until they hear things argued and debated. Much less can any man make a policy of assurance, what ship shall come safe home into the harbour in these seas. I had heard of undertakings in several kinds. There were undertakers for the plantations of *Derry* and *Colerane* in *Ireland*, the better to command and bridle those parts. There were not long ago some undertakers for the north-west passage: and now there are some undertakers for the project of dyed and dressed cloths; and in short, every novelty useth to be strengthened and made good by a kind of undertaking: But for the ancient parliament of *England*, which moves in a certain manner and sphere, to be undertaken, it passes my reach to conceive what it should be. Must we be all dyed and dressed, and no pure whites amongst us? Or must there be a new passage found for the King's business by a point of the compass that was never failed by before? Or must there be some forts built in this house that may command and contain the rest? Mr. Speaker, I know but two forts in this house which the King ever hath; the fort of affection, and the fort of reason: the one commands the hearts, and the other commands the heads; and others I know none. I think *Æsop* was a wise man that described the nature of the fly that sat upon the spoke of the chariot wheel, and said to herself, what a dust do I raise? So, for my part, I think that all this dust is raised by light rumours and buzzes, and not upon any solid ground.

THE

THE second reason that made me silent was, because this suspicion and rumour of undertaking settles upon no person certain. It is like the birds of *Paradise* that they have in the *Indies*, that have no feet; and therefore they never light upon any place, but the wind carries them away: and such a thing do I take this rumour to be.

AND lastly, when that the King had in his two several speeches freed us from the main of our fears, in affirming directly, that there was no undertaking to him; and that he would have taken it to be no less derogation to his own Majesty than to our merits, to have the acts of his people transferred to particular persons; that did quiet me thus far, that these vapours were not gone up to the head, howsoever they might glow and estuate in the body.

NEVERTHELESS, since I perceive that this cloud still hangs over the house, and that it may do no hurt, as well in fame abroad as in the King's ear, I resolved with myself to do the part of an honest voice in this house, to counsel you what I think to be the best.

WHEREIN first, I will speak plainly of the pernicious effects of the accident of this bruit, and opinion of undertaking towards particulars, towards the house, towards the King, and towards the people.

SECONDLY, I will tell you, in mine opinion, what undertaking is tolerable, and how far it may be justified with a good mind; and on the other side, this same ripping up of the question of undertakers, how far it may proceed from a good mind, and in what kind it may be thought malicious and dangerous.

THIRDLY, I will shew you my poor advice, what means there are to put an end to this question of undertaking; not falling for the present upon a precise opinion, but breaking it, how many ways there be by which you may get out of it, and leaving the choice of them to a debate at the committee.

AND lastly, I will advise you how things are to be handled at the committee, to avoid distraction and loss of time.

FOR the first of these, I can say to you but as the scripture saith, *Si invicem mordetis, ab invicem consumemini*; if ye fret and gall one another's reputation, the end will be, that every man shall go hence, like coin cried down, of less price than he came hither. If some shall be thought to fawn upon the King's business openly, and others to cross it secretly, some shall be thought practisers that would pluck the cards, and others should be thought papists that would shuffle the cards; what a misery is this, that we should come together to fool one another, instead of procuring the public good?

AND this ends not in particulars, but will make the whole house contemptible: for now I hear men say, that this question of undertaking is the predominant matter of this house. So that we are now, according to the parable of *Jotham* in the case of the trees of the forest, that when question was, whether the vine should reign over them? that might not be: and whether the olive would reign over them? that might not be: but we have accepted the bramble to reign over us. For it seems that the good vine of the King's graces, that is not so much in esteem; and the good oil, whereby we should salve and relieve the wants of the estate and crown, that is laid aside too: and this bramble of contention and emulation; this *Abimelech*, which, (as was truly said by an understanding gentleman) is a bastard; (for every fame that wants a head, is *filius populi*) this must reign and rule amongst us.

THEN for the King, nothing can be more opposite, *ex diametro*, to his ends and hopes than this: for you have heard him profess like a King, and like

like a gracious King, that he doth not so much respect his present supply as this demonstration, that the people's hearts are more knit to him than before. Now then if the issue shall be this, that whatsoever shall be done for him, shall be thought to be done but by a number of persons that shall be laboured and pack'd; this will rather be a sign of diffidence and alienation, than of a natural benevolence and affection in his people at home; and rather matter of disreputation, than of honour abroad. So that to speak plainly to you, the King were better call for a new pair of cards, than play upon these if they be pack'd.

AND then for the people, it is my manner ever to look as well beyond a parliament, as upon a parliament; and if they abroad shall think themselves betrayed by those that are their deputies and attorneys here, it is true we may bind them and conclude them, but it will be with such murmur and insatiation as I would be loth to see.

THESE things might be dissembled, and so things left to bleed inwards; but that is not the way to cure them. And therefore I have searched the fore, in hope that you will endeavour the medicine.

BUT this to do more thoroughly, I must proceed to my second part, to tell you clearly and distinctly what is to be set on the right hand, and what on the left in this business.

FIRST, if any man hath done good offices to advise the King to call a parliament, and to increase the good affection and confidence of his Majesty towards his people; I say, that such a person doth rather merit well than commit any error. Nay farther, if any man hath, out of his own good mind, given an opinion touching the minds of the parliament in general; how it is probable they are like to be found, and that they will have a due feeling of the King's wants, and will not deal dryly or illiberally with him; this man that doth but think of other men's minds, as he finds his own, is not to be blamed. Nay farther, if any man hath coupled this with good wishes and propositions, that the King do comfort the hearts of his people, and testify his own love to them, by filing off the harshness of his prerogative, retaining the substance and strength; and to that purpose, like the good householder in the scripture, that brought forth old store and new, hath revolved the petitions and propositions of the last parliament, and added new, I say this man hath sown good seed; and he that shall draw him into envy for it sows tares. Thus much of the right hand. But on the other side, if any shall mediate or immediately infuse into his Majesty, or to others, that the parliament is as *Cato* said of the *Romans*, like sheep, that a man were better drive a flock of them than one of them: And however they may be wise men severally, yet in this assembly they are guided by some few, which if they be made and assured, the rest will easily follow: This is a plain-robbery of the King of honour, and his subjects of thanks, and it is to make the parliament vile and servile in the eyes of their Sovereign; and I count it no better than a supplanting of the King and kingdom. Again, if a man shall make this impression, that it shall be enough for the King to send us some things of shew that may serve for colours, and let some eloquent tales be told of them, and that will serve *ad faciendum populum*, any such person will find, that this house can well skill of false lights, and that it is no wooing tokens, but the truest love already planted in the breast of the subjects that will make them do for the King. And this is my opinion, touching those that may have persuaded a parliament. Take it on the other side (for I mean in all things to deal plainly) if any man hath been diffident touching the call of a parliament,

thinking that the best means were first for the King to make his utmost tryal to subsist of himself, and his own means; I say an honest and faithful heart might consent to that opinion, and the event it seems doth not greatly discredit it hitherto. Again, if any man shall have been of opinion, that it is not a particular party that can bind the house; nor, that it is not shews or colours can please the house; I say, that man though his speech tend to discouragement, yet it is coupled with providence. But by your leave, if any man since the parliament was called, or when it was in speech, shall have laid plots to cross the good will of the parliament to the King; by possessing them that a few shall have the thanks, and that they are (as it were) bought, and sold, and betrayed; and that that which the King offers them are but baits prepared by particular persons; or have raised rumours that it is a pack'd parliament; to the end nothing may be done, but that the parliament may be dissolved (as gamesters use to call for new cards, when they mistrust a pack:) I say, these are engines and devices, naught, malign, and seditious.

Now for the remedy, I shall rather break the matter, as I said in the beginning, than advise positively. I know but three ways. Some message of declaration to the King. Some entry or protestation amongst our selves, or some strict and punctual examination. As for the last of these, I assure you I am not against it, if I could tell where to begin, or where to end. For certainly I have often seen it, that things when they are in smother trouble more than when they break out. Smoke blinds the eyes, but when it blazeth forth into flame it gives light to the eyes. But then if you fall to an examination, some person must be charged, some matter must be charged; and the manner of that matter must be likewise charged; for it may be in a good fashion, and it may be in a bad, in as much difference as between black and white: and then how far men will ingenuously confess, how far they will politickly deny, and what we can make and gather upon their confession; and how we shall prove against their denial, it is an endless piece of work, and I doubt that we shall grow weary of it.

For a message to the King, it is the course I like best, so it be carefully and considerately handled: for if we shall represent to the King the nature of this body as it is, without the veils or shadows that have been cast upon it, I think we shall do him honour, and our selves right.

For any thing that is to be done amongst ourselves, I do not see much gained by it, because it goes no farther than ourselves; yet if any thing can be wisely conceived to that end, I shall not be against it; but I think the purpose of it is fittest to be, rather that the house conceives that all this is but a misunderstanding, than to take knowledge that there is indeed a just ground, and then to seek by a protestation to give it a remedy. For protestations, and professions, and apologies, I never found them very fortunate; but they rather encrease suspicion than clear it.

WHY then the last part is, that these things be handled at the committee seriously and temperately; wherein I wish that these four degrees of questions were handled in order.

FIRST, whether we shall do any thing at all in it, or pass by it, and let it sleep?

SECONDLY, whether we shall enter into a particular examination of it?

THIRDLY, whether we shall content our selves with some entry or protestation among ourselves?

AND fourthly, whether we shall proceed to a message to the King; and what?

THUS

SPEECH ON RECEIVING THE GREAT SEAL. 271

THUS I have told you my opinion. I know it had been more safe and politic to have been silent, but it is perhaps more honest and loving to speak. The old verse is; *Nam nulli tacuisse nocet, nocet esse locutum.* But by your leave *David* saith, *filii a bonis, & dolor meus renovatus est.* When a man speaketh, he may be wounded by others; but if he hold his peace from good things he wounds himself. So I have done my part, and leave it to you to do that which you shall judge to be the best.

The Effect of that which was spoken by the LORD KEEPER of the GREAT SEAL of *England*, at the taking of his place in Chancery; in performance of the CHARGE his MAJESTY had given him when he received the Seal 1617.

BEFORE I enter into the business of the court, I shall take advantage of so many honourable witnesses to publish and make known summarily, what charge the King's most excellent Majesty gave me when I received the seal, and what orders and resolutions my self have taken in conformity to that charge, that the King may have the honour of direction, and I the part of obedience; whereby your lordships, and the rest of the presence, shall see the whole time of my sitting in the chancery, (which may be longer or shorter, as please God and the King) contracted into one hour. And this I do for three causes.

FIRST, to give an account to the King of his commandment.

SECONDLY, that I may be a guard and custody to my self, and my own doings; that I do not swerve or recede from any thing that I have professed in so noble a company.

AND thirdly, that all men that have to do with the chancery, or the seal, may know what they shall expect, and both set their hearts and my ears at rest; not moving me to any thing against these rules; knowing that my answer is now turned from a *nolumus* into a *non possumus*. It is no more, I will not, but I cannot after this declaration.

AND this I do also under three cautions.

THE first is that there be some things of a more secret and council-like nature, which are rather to be acted than published. But these things which I shall speak of to-day are of a publick nature.

THE second is, that I will not trouble this presence with every particular, which would be too long; but select those things which are of greatest efficacy, and conduce most *ad summas rerum*; leaving many other particulars to be set down in a public table, according to the good example of my last predecessor, in his beginning.

AND lastly, that these imperatives, which I have made but to my self, and my times, be without prejudice to the authority of the court, or wiser men that may succeed me: and chiefly that they are wholly submitted unto the great wisdom of my Sovereign, (the absolute Prince in judicature that hath been in the christian world;) for if any of these things which I intend to be subordinate to his directions, shall be thought by his Majesty to be inordinate, I shall be most ready to reform them. These things are but *tantumquam alburn prætoris*; for so did the *Roman prætors* (which have the greatest affinity with

with the jurisdiction of the chancellor here) who used to set down at their entrance, how they would use their jurisdiction. And this I shall do, my lords, in *verbis masculis*; no flourishing or painted words, but such as are fit to go before deeds.

THE King's charge, which is my lanthorn, rested upon four heads.

THE first was, that I should contain the jurisdiction of the court within its true and due limits, without swelling or excess.

THE second, that I should think the putting of the great seal to letters patents, was not a matter of course after precedent warrants; but that I should take it to be the maturity and fullness of the King's intentions: and therefore that it was one of the greatest parts of my trust, if I saw any scruple or cause of stay, that I should acquaint him, concluding with a *quod dubites ne feceris*.

THE third was, that I should retrench all unnecessary delays, that the subject might find that he did enjoy the same remedy against the fainting of the seal, and against the consumption of the means and estate; which was speedy justice; *bis dat, qui cito dat*.

THE fourth was, that justice might pass with as easy charge as might be; and that those same brambles that grow about justice of needless charge and expence, and all manner of exactions, might be rooted out so far as might be.

THESE commandments, my lords, are righteous, and (as I may term them) sacred; and therefore to use a sacred form, I pray God bless the King for his great care over the justice of the land, and give me, his poor servant, grace and power to observe his precepts.

Now for a beginning towards it, I have set down and applied particular orders to every one of these four general heads.

FOR the excess or tumour of this court of chancery, I shall divide it into five natures.

THE first is, when the court doth embrace or retain causes both in matter and circumstance merely determinable and fit for the common law: For, my lords, the chancery is ordained to supply the law, and not to subvert the law. Now to describe unto you, or delineate what those causes are (and upon what differences) that are fit for the court, were too long a lecture. But I will tell you what remedy I have prepared. I will keep the keys of the court my self, and I will never refer any demurrer or plea (tending to discharge or dismiss the court of the cause) to any master of the chancery, but judge of it myself, or at least the master of the rolls. Nay farther, I will appoint regularly, that on *Tuesday* in every week (which is the day of orders) first to hear all motions of that nature before any other, that the subject may have his *vale* at first without farther attending, and that the court do not keep and accumulate a miscellany and confusion of causes of all natures.

THE second point concerneth the time of the complaint, and the late comers into the chancery; which stay till a judgment be passed against them at the common law, and then complain; wherein your lordships may have heard a great rattle and a noise of a *praemunire*, and I cannot tell what. But that question the King hath settled according to the ancient precedents in all times continued. And this I will say, that the opinion not to relieve any case after judgment, would be a guilty opinion; guilty of the ruin and naufrage, and perishing of infinite subjects: and as the King found it well out, why should a man fly into the chancery before he be hurt? The whole need not the physician, but the sick. But, my lords, the power would be preserved,

served, but then the practice would be moderate. My rule shall be therefore, that in case of complaints after judgment, (except the judgments be upon *nihil dicit*, which are but disguises of judgment obtained in contempt of a preceeding order of this court) yea, and after verdicts also, I will have the party complainant enter into good bond to prove his suggestion: so that if he will be relieved against a judgment at common law upon matter of equity, he shall do it, *tanquam in vinculis*, at his peril.

THE third point of excess may be the over-frequent and facile granting of injunctions for the staying of the common laws, or the altering possessions; wherein these shall be my rules.

I WILL grant no injunction merely upon priority of suit; that is to say, because this court was first possessed: a thing that was well reformed in the late lord chancellor's time, but used in Chancellor *Bromley's* time; inasmuch, as I remember, that Mr. *Dalton* the counsellor at law put a pasquil upon the court in nature of a bill; for seeing it was no more: but, my lord, the bill came in on *Monday*, and the arrest at common law was on *Tuesday*, I pray the injunction upon priority of suit: He caused his client that had a loose debtor, to put a bill into the chancery before the bond due to him was forfeited, to desire an order that he might have his money at the day, because he would be sure to be before the other. I do not mean to make it a matter of an horse-race or posting who shall be first in chancery, or in courts of law.

NEITHER will I grant an injunction upon matter contained in the bill only, be it never so smooth and specious; but upon matter confessed in the defendant's answer, or matter pregnant in writing, or of record; or upon contempt of the defendant in not appearing, or not answering, or trifling with the court by insufficient answering. For then it may be thought the defendant stands out upon purpose to get the start at the common law, and so to take advantage of his own contempt, which may not be suffered.

As for injunctions for possession, I shall maintain possessions as they were at the time of the bill exhibited; and for the space of a year before, except the possession were gotten by force or by any trick.

NEITHER will I alter possession upon interlocutory orders, until a decree; except upon matter plainly confessed in the defendant's answer, joined with a plain disability and insolvency of the defendant's to answer the profits.

As for taking the possession away in respect of contempts, I will have all the proceedings of the court spent first, and a sequestration of the profits before I come to an injunction.

THE fourth part of excess is concerning the communicating of the authority of the chancellor too far; and making, upon the matter, too many chancellors, by relying too much upon reports of the masters of the chancery as concludent. I know, my lords, the masters of the chancery are reverend men; and the great mass of business of the court cannot be sped without them; and it is a thing the chancellor may soon fall into for his own ease, to rely too much upon them. But the course that I will take generally shall be this; that I will make no binding order upon any report of the master's, without giving a seven night's day at the least, to shew cause against the report; (which nevertheless I will have done modestly, and with due reverence towards them:) and again, I must utterly discontinue the making of an hypothetical or conditional order; that if a master of the chancery do certify thus, that then it is ordered without farther motion; for that is a surprize, and gives no time for contradiction.

THE last point of excess is, if a chancellor shall be so much of himself as he should neglect assistance of reverend judges in cases of difficulty, (especially if they touch upon law) or calling them, shall do it, but *pro forma tantum*, and give no due respect to their opinions: wherein, my lords, preserving the dignity and majesty of the court, (which I count rather increased than diminished by grave and due assistance) I shall never be found so sovereign or abundant in mine own sense, but I shall both desire and make true use of assistants. Nay, I assure your lordships, if I should find any main diversity of opinion of my assistants from mine own, though I know well the judicature wholly resides in myself; yet I think I should have recourse to the oracle of the King's own judgment, before I should pronounce. And so much for the temperate use of the authority of this court, wherein the health of the court doth much consist, as that of the body consists in temperance.

FOR the second commandment of his Majesty, touching staying of grants at the great seal; there may be just cause of stay, either in the matter of the grant, or in the manner of passing the same. Out of both which I extract these six principal cases which I will now make known: All which, nevertheless, I understand to be wholly submitted to his Majesty's will and pleasure, after by me he shall have been informed: for if *iteratum mandatum* do come, obedience is better than sacrifice.

THE first case is, where any matter of revenue, or treasure, or profit, passeth from his Majesty; my first duty shall be to examine, whether the grant hath passed in the due and natural course by the great officers of the revenue (the lord treasurer and chancellor of the exchequer) and with their privy; which if I find it not to be, I must presume it to have passed in the dark, and by a kind of surreption; and will make stay of it till his Majesty's pleasure be farther known.

SECONDLY, if it be a grant that is not merely vulgar, and hath not of course passed at the signet by a *fac simile*, but needeth science, my duty shall be to examine whether it hath passed by the learned counsel and had their dockets; which is that which his Majesty reads, and that leads him. And if I find it otherwise (although the matter were not in itself inconvenient) yet I hold it just cause of stay (for precedent's sake) to keep men in the right way.

THIRDLY, if it be a grant which I conceive (out of my little knowledge) to be against the law; of which nature *Theodosius* was wont to say, when he was pressed, I said it, but I granted it not if it be unlawful: I will call the learned counsel to it, (as well him that drew the book as the rest) or some of them: and if we find cause, I will inform his Majesty of our opinion, either by my self or some of them. For as for the judges they are judges of grants past, but not of grants to come, except the King call them.

FOURTHLY, if the grants be against the King's book of bounty, I am expressly commanded to stay them until the King either revise his book in general, or give direction in the particular.

FIFTHLY, if as a counsellor of estate, I do foresee inconvenience to ensue by the grant in reason of estate, in respect of the King's honour, or discontent, or murmur of the people; I will not trust mine own judgment, but I will either acquaint his Majesty with it, or the council table, or some such of my lords as I shall think fit.

LASTLY, for matter of pardons; if it be of treason, misprision of treason, murder, either expressed or involute, by a *non-obstante*; or of a piracy, or *præmunire*, or of fines, or exemplary punishment in star-chamber, or of some other natures;

natures; I shall by the grace of God stay them until his Majesty (who is the fountain of grace) may resolve between God and him (understanding the case) how far grace shall abound, or super-abound.

AND if it be of persons attainted and convicted of robbery, burglary, &c. then will I examine whether the pardons passed the hand of any justice of assize, or other commissioners, before whom the trial was made; and if not, I think it my duty also to stay them.

THUS your lordships see in this matter of the seal, agreeable to the commandment I have received, I mean to walk in the light; so that men may know where to find me: and this publishing thereof plainly, I hope will save the King from a great deal of abuse, and me from a great deal of envy; when men shall see that no particular turn or end leads me, but a general rule.

FOR the third general head of his Majesty's precepts concerning speedy justice, I am resolved that my decree shall come speedily (if not instantly) after the hearing, and my signed decree pronounced. For it hath been a manner much used of late in my lord's last time, (of whom I learn much to imitate, and with due reverence to his memory let me speak it, much to avoid;) that upon the solemn and full hearing of a cause nothing is pronounced in court, but breviate is required to be made; which I do not dislike in itself in causes perplexed. For I confess I have somewhat of the cunctative; and I am of opinion, that whosoever is not wiser upon advice than upon the sudden, the same man is no wiser at fifty years old than he was at thirty. And it was my father's ordinary word, you must give me time. But yet I find that when such breviate was taken, the cause was sometimes forgotten a term or two, and then set down for a new hearing, or a rehearing three or four terms after. Of which kind of intermission I see no use, and therefore I will promise regularly to pronounce my decree within few days after my hearing; and to sign my decree at least in the vacation after the pronouncing. For fresh justice is the sweetest. And besides, justice ought not to be delayed; and it will also avoid all means-making or labouring; for there ought to be no labouring in causes, but the labouring of the counsel at the bar.

AGAIN, because justice is a sacred thing, and the end for which I am called to this place, and therefore is my way to heaven; (and if it be shorter, it is never a whit the worse) I shall by the grace of God (as far as God will give me strength) add the afternoon to the forenoon, and some fourth night of the vacation to the term, for the expediting and clearing of the causes of the court; only the depth of the three long vacations I would reserve in some measure free for business of estate, and for studies of arts and sciences, to which in my nature I am most inclined.

THERE is another point of true expedition, which resteth much in my self, and that is in the manner of giving orders. For I have seen an affectation of dispatch turn utterly to delay and length: for the manner of it is to take the tale out of the counsellor at bar his mouth, and to give a cursory order, nothing tending or conducing to the end of the business. It makes me remember what I heard one say of a judge that sat in the chancery; that he would make eighty orders in a morning out of the way, and it was out of the way indeed; for it was nothing to the end of the business: and this is that which makes sixty, eighty, a hundred orders in a cause, to and fro, begetting one another; and like *Penelope's* web, doing and undoing. But I mean not to purchase the praise of expeditiveness in that kind; but as one that have a feeling of my duty, and of the case of others, my endeavour shall be to hear patiently,
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and to cast my order into such a mould as may soonest bring the subject to the end of his journey.

As for such delays as may concern others, the great abuse is, that if the plaintiff have got an injunction to stay suits at common law, then he will spin on his cause at length. But by the grace of God, I will make injunctions an hard pillow to sleep on; for if I find that he prosecutes not with effect, he may hap, when he is awake, find not only his injunction dissolved, but his cause dismissed.

THERE be other particular orders, I mean to take for *non* prosecution or faint prosecution, wherewith I will not trouble you now, because *summa sequar fastigia rerum*. And so much for matter of expedition.

Now for the fourth and last point of the King's commandment; for the cutting off of unnecessary charge of the subject, a great part of it is fulfilled in the precedent article, touching expedition; for it is the length of suits that doth multiply charge chiefly; but yet there are some other remedies that conduce thereunto.

FIRST, therefore I shall maintain strictly, and with severity, the former orders which I find made by my lord chancellor for the immoderate and needless prolixity, and length of bills, and answers, and so forth; as well in punishing the party, as fining the counsel, whose hand I shall find at such bills, answers, &c.

SECONDLY, for all the examinations taken in the court, I do give charge unto the examiners (upon peril of their places) that they do not use idle repetitions, or needless circumstances, in setting down the depositions taken by them; and I would I could help it likewise in commissions in the country, but that is almost impossible.

THIRDLY, I shall take a diligent survey of the copies in chancery, that they have their just number of lines, and without open and wasteful writing.

FOURTHLY, I shall be careful that there be no exaction of any new fees, but according as they have been heretofore set and tabled.

As for lawyers fees, I must leave to the conscience and merit of the lawyer; and the estimation and gratitude of the client: but yet this I can do; I know there have used to attend this bar a number of lawyers that have not been heard sometimes, scarce once or twice in a term; and that makes the client seek to great counsel and favourites (as they call them, a term fitter for Kings than judges) and that for every order that a mean lawyer might dispatch, and as well. Therefore to help the generality of lawyers, and therein to ease the client, I will constantly observe that every *Tuesday*, and other days of orders, after nine a clock stricken, I will hear the bar until eleven, or half an hour after ten at the least. And since we are upon the point whom I will hear, your lordships will give me leave to tell you a fancy. It falls out, that there be three of us the King's servants in great place, that are lawyers by descent, Mr. Attorney son of a judge, Mr. Solicitor likewise son of a judge, and my self a chancellor's son.

Now because the law roots so well in my time, I will water it at the root thus far, as besides these great ones, I will hear any judge's son before a serjeant, and any serjeant's son before a reader.

LASTLY, for the better ease of the subjects, and the bridling of contentious suits, I shall give better (that is greater) costs where the suggestions are not proved, than hath been hitherto used.

THERE be divers other orders for the better reglement of this court; and for granting of writs, and for granting of benefices and other things which I shall set down in a table. But I will deal with no other

to-day, but such as have a proper relation to his Majesty's commandment; it being my comfort that I serve such a master that I shall need to be but a conduit for the conveying only of his goodness to his people. And it is true, that I do affect and aspire to make good that saying; that *optimus magistratus præstat optimæ legi*; which is true in his Majesty. But for my self, I doubt I shall not attain it. But yet I have a domestical example to follow. My lords, I have no more to say, but now I will go on to the business of the court.

T H E

S P E E C H

Which was used by the LORD-KEEPER of the GREAT SEAL in the STAR-CHAMBER before the Summer Circuits, the KING being then in *Scotland*, 1617.

THE King by his perfect declaration published in this place concerning judges and justices, hath made the speech of his chancellor, accustomed before the circuits, rather of ceremony than of use. For as in his book to his son he hath set forth a true character and platform of a King; so in this his speech he hath done the like of a judge and justice: which sheweth, that as his Majesty is excellently able to govern in chief; so he is likewise well seen and skilful in the inferior offices and stages of justice and government; which is a thing very rare in Kings.

YET nevertheless, somewhat must be said to fulfil an old observance; but yet upon the King's grounds, and very briefly: for as *Solomon* saith in another case, In these things who is he that can come after the King?

FIRST, You that are the judges of circuits, are as it were the planets of the kingdom; (I do you no dishonour in giving you that name;) and no doubt you have a great stroke in the frame of this government, as the other have in the great frame of the world. Do therefore as they do, move always, and be carried with the motion of your first mover, which is your Sovereign. A popular judge is a deformed thing: and *plaudites* are fitter for players than for magistrates. Do good to the people, love them and give them justice; but let it be as the *Psalms* saith, *nihil inde expectantes*; looking for nothing, neither praise nor profit.

YET my meaning is not when I wish you to take heed of popularity, that you should be imperious and strange to the gentlemen of the country. You are above them in power, but your rank is not much unequal; and learn this, that power is ever of greatest strength, when it is civilly carried.

SECONDLY, You must remember, that besides your ordinary administration of justice, you do carry the two glasses or mirrors of the state; for it is your duty in these your visitations, to represent to the people the graces and care of the King: And again, upon your return, to present to the King the distastes and griefs of the people.

MARK what the King says in his book ; procure reverence to the King and the law ; inform my people truly of me, (which we know is hard to do according to the excellency of his merit, but yet endeavour it) how zealous I am for religion ; how I desire law may be maintained and flourish ; that every court should have its jurisdiction ; that every subject should submit himself to the law. And of this you have had of late no small occasion of notice and remembrance, by the great and strait charge that the King hath given me as keeper of his seal, for the governing of the chancery without tumour or excess.

AGAIN, *e re nata*, you at this present ought to make the people know and consider the King's blessed care and providence in governing this realm in his absence : so that sitting at the helm of another kingdom, not without great affairs and business ; yet he governs all things here by his letters and directions, as punctually and perfectly as if he were present.

I ASSURE you, my lords of the council and I do much admire the extension and latitude of his care in all things.

IN the high commission he did conceive a sinew of government was a little shrunk ; he recommended the care of it.

HE hath called for the accounts of the last circuit from the judges to be transmitted unto him in *Scotland*.

TOUCHING the infestation of pirates, he hath been careful, and is, and hath put things in a way.

ALL things that concern the reformation or the plantation of *Ireland* ; he hath given in them punctual and resolute directions. All this in absence.

I GIVE but a few instances of a public nature ; the secrets of council I may not enter into, though his dispatches into *France*, *Spain*, and the *Low-Countries*, now in his absence, are also notorious as to the outward sending. So that I must conclude, that his Majesty wants but more kingdoms, for I see he could suffice to all.

As for the other glass I told you of, of representing to the King the griefs of his people, without doubt it is properly your part ; for the King ought to be informed of any thing amiss in the state of his countries from the observations and relations of the judges (that indeed know the pulse of the country) rather than from discourse. But for this glass (thanks be to God) I do hear from you all, that there was never greater peace, obedience, and contentment in the country ; though the best governments be always like the fairest crystals, wherein every little icicle or grain is seen, which in a fouler stone is never perceived.

Now to some particulars, and not many : of all other things I must begin as the King begins ; that is with the cause of religion, and especially the hollow church-papist. St. *Augustin* hath a good comparison of such men, affirming, that they are like the roots of nettles which themselves sting not, but yet they bear all the stinging leaves : let me know of such roots, and I will root them out of the country.

NEXT, for the matter of religion ; in the principal place I recommend both to you and to the justices, the countenancing of godly and zealous preachers. I mean not sectaries or novellists, but those which are sound and conform, and yet pious and reverend : for there will be a perpetual defection, except you keep men in by preaching, as well as law doth by punishing ; and commonly spiritual diseases are not cured but by spiritual remedies.

NEXT, let me commend unto you the repressing (as much as may be) of faction in the countries, of which ensue infinite inconveniencies, and perturbations

bations of all good order, and crossing of all good service in court or country, or wheresoever. *Cicero*, when he was consul, had devised a fine remedy (a mild one, but an effectual and apt one) for he saith, *eos qui otium perturbant reddam otiosos*. Those that trouble others quiet, I will give them quiet; they shall have nothing to do, nor no authority shall be put into their hands. If I may know from you, of any who are in the country that are heads or hands of faction, or men of turbulent spirits; I shall give them *Cicero's* reward, as much as in me is.

To conclude, study the King's book, and study your selves how you profit by it, and all shall be well. And you the justices of peace in particular, let me say this to you, never King of this realm did you so much honour as the King hath done you in his speech, by being your immediate director, and by sorting you and your service with the service of ambassadors, and of his nearest attendants. Nay more, it seems his Majesty is willing to do the state of justice of peace honour actively also; by bringing in with time the like form of commission into the government of *Scotland*, as that glorious King *Edward* the third did plant this commission here in this kingdom. And therefore you are not fit to be copies, except you be fair written without blots or blurs, or any thing unworthy your authority: And so I will trouble you no longer for this time.

THE
S P E E C H
USED BY

Sir *FRANCIS BACON*,

LORD-KEEPER of the Great Seal of *England*, to Sir WILL. JONES,
upon his calling to be Lord Chief Justice of *Ireland*, 1617.

Sir WILLIAM JONES,

THE King's most excellent Majesty being duly informed of your sufficiency every way, hath called you, by his writ now returned, to the state and degree of a serjeant at law; but not to stay there, but being so qualified, to serve him as his chief justice of his King's bench in his realm of *Ireland*. And therefore that which I shall say to you, must be applied not to your serjeant's place (which you take but in passage) but to that great place where you are to settle; and because I will not spend time to the delay of the business of causes of the court, I will lead you the short journey by examples, and not the long by precepts.

THE place that you shall now serve in, hath been fortunate to be well served in four successions before you: do but take unto you the constancy and integrity of Sir *Robert Gardiner*; the gravity, temper, and direction of Sir *James Lea*; the quickness, industry, and dispatch of Sir *Humphry Winch*; the care
and

and affection to the commonwealth, and the prudent and politic administration of Sir *John Denham*, and you shall need no other lessons. They were all *Lincoln-Inn* men as you are, you have known them as well in their beginnings, as in their advancement.

BUT because you are to be there not only chief justice, but a counsellor of estate, I will put you in mind of the great work now in hand, that you may raise your thoughts according unto it. *Ireland* is the last, *ex filiis Europae*, which hath been reclaimed from desolation, and a desert, (in many parts) to population and plantation; and from savage and barbarous customs, to humanity and civility. This is the King's work in chief: it is his garland of heroic virtue and felicity, denied to his progenitors, and reserved to his times. The work is not yet conducted to perfection, but is in fair advance: and this I will say confidently, that if God bless this kingdom with peace and justice, no usurer is so sure in seventeen years space to double his principal with interest, and interest upon interest, as that kingdom is within the same time to double the stock both of wealth and people. So as that kingdom which once within these twenty years, wise men were wont to doubt whether they should wish it to be in a pool; is like now to become almost a garden, and younger sister to *Great Britain*. And therefore you must set down with your self to be not only a just governor, and a good chief justice (as if it were in *England*;) but under the King and the deputy you are to be a master builder, and a master planter, and reducer of *Ireland*. To which end, I will trouble you at this time but with three directions.

THE first is, that you have special care of the three plantations. That of the north, which is in part acted; that of *Wexford*, which is now in distribution; and that of *Longford* and *Letrim*, which is now in survey. And take this from me, that the bane of a plantation is, when the undertakers or planters make such haste to a little mechanical present profit as disturbeth the whole frame and nobleness of the work for times to come. Therefore hold them to their covenants, and the strict ordinances of plantation.

THE second is, that you be careful of the King's revenues, and by little and little constitute him a good demesne, if it may be, which hitherto is little or none. For the King's case is hard, when every man's land shall be improved in value with increase manifold, and the King shall be tied to his dry rent.

My last direction (though first in weight) is that you do all good endeavours to proceed resolutely and constantly (and yet with due temperance and equality) in matters of religion; lest *Ireland* civil, become more dangerous to us than *Ireland* savage. So God give you comfort of your place.

After Sir *William Jones's* speech:

I had forgotten one thing, which was this. You may take exceeding great comfort, that you shall serve with such a deputy; one that (I think) is a man ordain'd of God to do great good to that kingdom. And this I think good to say to you, that the true temper of a chief justice towards a deputy is neither servilely to second him, nor factiously to oppose him.

THE

THE
L O R D - K E E P E R ' S
S P E E C H

In the EXCHEQUER to Sir JOHN DENHAM, when he was
called to be one of the Barons of the Exchequer.

SIR *John Denham*, the King of his grace and favour hath made choice of you to be one of the barons of the exchequer, to succeed to one of the gravest and most reverend judges of this kingdom; for so I hold Baron *Altam* was. The King takes you not upon credit but proof, and great proof of your former service; and that in both those kinds wherein you are now to serve: for as you have shewed your self a good judge between party and party, so you have shewed your self a good administer of the revenue, both when you were chief baron, and since as counsellor of estate there in *Ireland*, where the council as you know doth, in great part, manage and mesuage the revenue.

AND to both these parts I will apply some admonitions, but not vulgar or discursive, but apt for the times, and in few words, for they are best remembered.

FIRST, Therefore above all you ought to maintain the King's prerogative, and to set down with your self, that the King's prerogative and the law are not two things; but the King's prerogative is law, and the principal part of the law; the first-born or *pars prima* of the law; and therefore in conserving or maintaining that, you conserve and maintain the law. There is not in the body of man one law of the head, and another of the body, but all is one entire law.

THE next point that I would now advise you is, that you acquaint your self diligently with the revenue; and also with the ancient records and precedents of this court. When the famous case of the copper-mines was argued in this court, and judged for the King, it was not upon the fine reasons of wit; as that the King's prerogative drew to it the chief *in quaque specie*: the lion is the chief of beasts, the eagle the chief of birds, the whale the chief of fishes, and so copper the chief of minerals; for these are but dalliances of law and ornaments: but it was the grave records and precedents that grounded the judgment of that cause; and therefore I would have you both guide and arm your self with them against these vapours and fumes of law, which are extracted out of men's inventions and conceits.

THE third advice I will give you hath a large extent; it is that you do your endeavour in your place so to manage the King's justice and revenue, as the King may have most profit, and the subject least vexation: for when there is much vexation to the subject, and little benefit to the King, then the exchequer is sick: and when there is much benefit to the King, with less trouble and vexation to the subject, then the exchequer is sound. As for example; if there shall be much racking for the King's old debts; and the more fresh and late debts shall be either more negligently called upon, or over-

easily discharged, or over indulgently stalled: or if the number of informations be many, and the King's part or fines for compositions a trifle; or if there be much ado to get the King new land upon concealments, and that which he hath already be not known and surveyed, nor the woods preserved, (I could put you many other cases) this falls within that which I term the sick estate of the exchequer: and this is that which makes every man ready with their undertakings and their projects to disturb the ancient frame of the exchequer, (than the which I am persuaded there is not a better;) this being the burthen of the song: That much goeth out of the subject's purse, and little cometh to the King's purse. Therefore, give them not that advantage so to say. Sure I am, that besides your own associates, the barons, you serve with two superior great officers, that have honourable and true ends, and desire to serve the King and right the subject.

There resteth, that I deliver you your patent.

HIS LORDSHIP'S

S P E E C H

I N T H E

C O M M O N - P L E A S,

To Justice *Hutton*, when he was called to be one of the Judges
of the COMMON-PLEAS.

Mr. Serjeant HUTTON,

THE King's most excellent Majesty being duly informed of your learning, integrity, discretion, experience, means, and reputation in your country, hath thought fit not to leave you these talents to be employed upon your self only, but to call you to serve himself and his people in the place of one of his justices of the court of common-pleas.

THIS court where you are to serve is the local center and heart of the laws of this realm: Here the subject hath his assurance by fines and recoveries; here he hath his fixed and invariable remedies by *praecipies* and writs of right; here justice opens not by a by-gate of privilege, but by the great gate of the King's original writs out of the chancery. Here issues process of out-lawry; if men will not answer law in this center of law, they shall be cast out. And therefore it is proper for you, by all means with your wisdom and fortitude, to maintain the laws of the realm: wherein nevertheless, I would not have you head-strong but heart-strong; and to weigh and remember with your self that the twelve judges of the realm are as the twelve lions under *Solomon's* throne: they must shew their stoutness in elevating and bearing up the throne, to represent unto you the lines and portraitures of a good judge.

THE

THE first is, That you should draw your learning out of your books, not out of your brain.

2. THAT you should mix well the freedom of your own opinion with the reverence of the opinion of your fellows.

3. THAT you should continue the studying of your books, and not to spend on upon the old stock.

4. THAT you should fear no man's face, and yet not turn stoutness into bravery.

5. THAT you should be truly impartial, and not so as men may see affection through fine carriage.

6. THAT you should be a light to jurors to open their eyes, but not a guide to lead them by the noses.

7. THAT you affect not the opinion of pregnancy and expedition by an impatient and catching hearing of the counsellors at the bar.

8. THAT your speech be with gravity, as one of the sages of the law; and not talkative, nor with impertinent flying out to shew learning.

9. THAT your hands, and the hands of your hands (I mean those about you) be clean, and uncorrupt from gifts, from meddling in titles, and from serving of turns, be they of great ones or small ones.

10. THAT you contain the jurisdiction of the court within the ancient mere-stones, without removing the mark.

11. LASTLY, That you carry such a hand over your ministers and clerks, as that they may rather be in awe of you than presume upon you.

THESE and the like points of the duty of a judge, I forbear to enlarge; for the longer I have lived with you, the shorter shall my speech be to you; knowing that you come so furnished and prepared with these good virtues, as whatsoever I shall say cannot be new unto you; and therefore I will say no more unto you at this time, but deliver you your patent.

HIS LORDSHIP'S

S P E E C H IN THE P A R L I A M E N T,

Being LORD CHANCELLOR, to the Speaker's excuse.

Mr. Serjeant RICHARDSON,

THE King hath heard and observed your grave and decent speech, tending to the excuse and disablement of your self for the place of Speaker. In answer whereof, his Majesty hath commanded me to say to you, that he doth in no sort admit of the same.

FIRST, Because if the party's own judgment should be admitted in case of elections, touching himself, it would follow, that the most confident and over-weaning

CHANCELLOR'S SPEECH TO

weaning persons would be received; and the most considerate men, and those that understand themselves best should be rejected.

SECONDLY, His Majesty doth so much rely upon the wisdoms and discretions of those of the house of commons, that have chosen you with an unanimous consent, that his Majesty thinks not good to swerve from their opinion in that wherein themselves are principally interested.

THIRDLY, You have disabled your self in so good and decent a fashion, as the manner of your speech hath destroyed the matter of it.

AND therefore the King doth allow of the election, and admit you for Speaker.

To the Speaker's Oration.

Mr. Speaker,

THE King hath heard and observed your eloquent discourse, containing much good matter and much good will: wherein you must expect from me such an answer only as is pertinent to the occasion, and compassed by due respect of time.

I MAY divide that which you have said into four parts.

THE first was a commendation, or laudative of monarchy.

THE second was indeed a large field, containing a thankful acknowledgment of his Majesty's benefits, attributes, and acts of government.

THE third was some passages touching the institution and use of parliaments.

THE fourth and last was certain petitions to his Majesty on the behalf of the house and your self.

FOR your commendation of monarchy, and preferring it before other estates, it needs no answer: The schools may dispute it; but time hath tried it, and we find it to be the best. Other states have curious frames soon put out of order; and they that are made fit to last, are not commonly fit to grow or spread: and contrariwise those that are made fit to spread and enlarge, are not fit to continue and endure. But monarchy is like a work of nature, well composed both to grow and to continue. From this I pass.

FOR the second part of your speech, wherein you did with no less truth than affection, acknowledge the great felicity which we enjoy by his Majesty's reign and government, his Majesty hath commanded me to say unto you, that praises and thanksgivings he knoweth to be the true oblations of hearts and loving affections: but that which you offer him he will join with you, in offering it up to God, who is the author of all good; who knoweth also the uprightness of his heart; who he hopeth will continue and encrease his blessings both upon himself and his posterity, and likewise upon his kingdoms and the generations of them.

BUT I for my part must say unto you, as the *Grecian* orator said long since in the like case: *Solus dignus harum rerum laudator tempus*; time is the only commender and encomiastick worthy of his Majesty and his government.

WHY time? For that in the revolution of so many years and ages as have passed over this kingdom; notwithstanding many noble and excellent effects were never produced until his Majesty's days, but have been reserved as proper and peculiar unto them.

AND because this is no part of a panegyrick, but meerly story, and that they be so many articles of honour fit to be recorded, I will only mention them, extracting part of them out of that you Mr. Speaker have said: they be in number eight.

FIRST,

FIRST, His Majesty is the first (as you noted it well) that hath laid *lapis angularis*, the corner-stone of these two mighty kingdoms of *England* and *Scotland*, and taken away the wall of separation: whereby his Majesty is become the Monarch of the most puissant and military nations of the world; and if one of the ancient wise men was not deceived, iron commands gold.

SECONDLY, The plantation and reduction to civility of *Ireland* (the second island of the ocean Atlantick) did by God's providence wait for his Majesty's times; being a work resembling indeed the works of the ancient heroes: No new piece of that kind in modern times.

THIRDLY, This kingdom now first in his Majesty's times hath gotten a lot or portion in the new world by the plantation of *Virginia* and the summer islands. And certainly it is with the kingdoms on earth as it is in the kingdom of heaven: Sometimes a grain of mustard-seed proves a great Tree. Who can tell?

FOURTHLY, His Majesty hath made that truth which was before titular; in that he hath verified the style of defender of the faith: wherein his Majesty's pen hath been so happy, as though the deaf adder will not hear, yet he is charmed that he doth not hiss. I mean in the graver sort of those that have answered his Majesty's writings.

FIFTHLY, It is most certain, that since the conquest, ye cannot assign twenty years, (which is the time that his Majesty's reign now draws fast upon) of inward and outward peace. Infomuch, as the time of *Queen Elizabeth*, of happy memory, and always magnified for a peaceable reign, was nevertheless interrupted the first twenty years with a rebellion in *England*; and both first and last twenty years with rebellions in *Ireland*. And yet I know, that his Majesty will make good both his words, as well that of *nemo me laessit impune*, as the other of *beati pacifici*.

SIXTHLY, That true and primitive office of Kings, which is to sit in the gate and to judge the people, was never performed in like perfection by any of the King's progenitors: whereby his Majesty hath shewed himself to be *lex loquens*, and to sit upon the throne not as a dumb statue, but as a speaking oracle.

SEVENTHLY, For his Majesty's mercy (as you noted it well) shew me a time wherein a King of this realm hath reigned almost twenty years (as I said) in his white robes without the blood of any peer of this kingdom: the axe turned once or twice towards a peer, but never struck.

LASTLY, The flourishing of arts and sciences re-created by his Majesty's countenance and bounty, was never in that height, especially that art of arts divinity: for that we may truly to God's great glory confess, that since the primitive times, there were never so many stars (for so the scripture calleth them) in that firmament.

THESE things, Mr. Speaker, I have partly chosen out of your heap, and are so far from being vulgar, as they are in effect singular and proper to his Majesty and his times. So that I have made good, as I take it, my first assertion; that the only worthy commender of his Majesty is Time: which hath so set off his Majesty's merits by the shadows of comparison, as it passeth the lustre or commendation of words.

How then shall I conclude? Shall I say, *O fortunatos nimium sua si boniorint?* No, for I see ye are happy in enjoying them, and happy again in knowing them. But I will conclude this part with that saying, turned to the right hand: *Si gratum dixeris, omnia dixeris*. Your gratitude contains in a word all that I can say to you touching this parliament.

TOUCHING the third point of your speech, concerning parliaments, I shall need to say little: for there was never that honour done to the institution of parliament, that his Majesty did it in his last speech, making it in effect the perfection of monarchy; for that although monarchy was the more ancient, and be independent, yet by the advice and assistance of parliament it is the stronger and the surer built.

AND therefore I shall say no more of this point; but as you, Mr. Speaker, did well note, that when the King sits in parliament, and his prelates, peers, and commons attend him, he is in the exaltation of his orb: so I wish things may be so carried, that he may be then in greatest serenity and benignity of aspect; shining upon his people both in glory and grace. Now you know well, that the shining of the sun fair upon the ground, whereby all things exhilarate and do fructify, is either hindered by clouds above, or mists below; perhaps by brambles and briars that grow upon the ground itself. All which I hope at this time will be dispelled and removed.

I COME now to the last part of your speech, concerning the petitions: but before I deliver his Majesty's answer respectively in particular, I am to speak unto you some few words in general; wherein, in effect, I shall but glean, his Majesty having so excellently and fully expressed himself.

FOR that that can be spoken pertinently must be either touching the subject or matter of parliament business; or of the manner and carriage of the same; or lastly of the time and the husbanding and marshalling of time.

FOR the matters to be handled in parliament, they are either of church, state, laws, or grievances.

FOR the first two, concerning church or state, ye have heard the King himself speak; and as the scripture saith, *who is he that in such things shall come after the King?* For the other two, I shall say somewhat, but very shortly.

FOR laws, they are things proper for your own element; and therefore therein ye are rather to lead than to be led. Only it is not amiss to put you in mind of two things: the one, that you do not multiply or accumulate laws more than you need. There is a wise and learned *Civilian* that applies the curse of the prophet, *Pluet super eos laqueos*, to multiplicity of laws: for they do but ensnare and entangle the people. I wish rather, that ye should either revive good laws that are fallen and discontinued, or provide against the slack execution of laws, which are already in force; or meet with the subtil evasions from laws which time and craft hath undermined, than to make *novas creaturas legum*, laws upon a new mould.

THE other point, touching laws, is, that ye busy not your selves too much in private bills, except it be in cases wherein the help and arm of ordinary justice is too short.

FOR grievances, his Majesty hath with great grace and benignity opened himself. Nevertheless the limitations, which may make up your grievances not to beat the air only, but to sort to a desired effect, are principally two. The one, (to use his Majesty's term) that ye do not hunt after grievances, such as may seem rather to be stirred here when ye are met, than to have sprung from the desires of the country: ye are to represent the people; ye are not to personate them.

THE other, that ye do not heap up grievances as if numbers should make a shew where the weight is small; or as if all things amiss (like *Plato's* common-wealth) should be remedied at once. It is certain, that the best governments, yea, and the best of men are like the best precious stones, wherein
every

every flaw or icicle or grain are seen and noted more than in those that are generally foul and corrupted.

THEREFORE contain your selves within that moderation as may appear to bend rather to the effectual ease of the people, than to a discursive envy, or scandal upon the state.

As for the manner of carriage of parliament business, ye must know, that ye deal with a King that hath been longer King than any of you have been parliament men; and a King that is no less sensible of forms than of matter; and is as far from induring diminution of Majesty, as from regarding flattery or vain-glory; and a King that understandeth as well the pulse of the hearts of people as his own orb. And therefore, both let your grievances have a decent and reverent form and style; and (to use the words of former parliaments) let them be *tanquam gemitus columbae*, without pique or harshness: and on the other side, in that ye do for the King, let it have a mark of unity, alacrity and affection, which will be of this force; that whatsoever ye do in substance, will be doubled in reputation abroad, as in a crystal glass.

FOR the time, if ever parliament was to be measured by the hour-glass, it is this; in regard of the instant occasion flying away irrecoverably. Therefore let your speeches in the house be the speeches of counsellors, and not of orators: let your committees tend to dispatch, not to dispute; and so marshal the times as the publick business, especially the proper business of the parliament be put first, and private bills be put last, as time shall give leave, or within the spaces of the publick.

FOR the four petitions, his Majesty is pleased to grant them all as liberally as the ancient and true custom of parliament doth warrant, and with the cautions that have ever gone with them; that is to say, That the privilege be not used for defrauding of creditors and defeating of ordinary justice: That liberty of speech turn not into licence, but be joined with that gravity and discretion, as may taste of duty and love to your sovereign, reverence to your own assembly, and respect to the matters ye handle: That your access be at such fit times, as may stand best with his Majesty's pleasure and occasions: That mistakings and misunderstandings be rather avoided and prevented (as much as may be) than salved or cleared.



CHARGES.

CHARGES.

The JUDICIAL CHARGE of Sir FRANCIS BACON, Kt.

The King's Sollicitor, upon the commission of Oyer and Determiner held for the verge of the court *.

Lex vitiorum emendatrix, virtutum commendatrix est.

YOU are to know and consider well, the duty and service to which you are called, and whereupon you are by your oath charged. It is the happy estate and condition of the subject of this realm of *England*, that he is not to be impeached in his life, lands, or goods, by flying rumours or wandring fames and reports, or secret and privy inquisitions; but by the oath and presentment of men of honest condition, in the face of justice. But this happy estate of the subject, will turn to hurt and inconvenience, if those that hold that part which you are now to perform, shall be negligent and remiss in doing their duty; for as of two evils it were better men's doings were looked into over-strictly and severely, than that there should be a notorious impunity of malefactors; as was well and wisely said of ancient time, *a man were better live where nothing is lawful, than where all things are lawful*. This therefore rests in your care and conscience, forasmuch as at you justice begins, and the law cannot pursue and chase offenders to their deserved fall, except you first put them up and discover them, whereby they may be brought to answer; for your verdict is not concluding to condemn, but it is necessary to charge, and without it the court cannot proceed to condemn.

CONSIDERING therefore that ye are the eye of justice, ye ought to be single without partial affection; watchful, not asleep, or false asleep in winking at offenders, and sharp-sighted to proceed with understanding and discretion: for in a word, if you shall not present unto the court all such offences, as shall appear unto you either by evidence given in, or otherwise (mark what I say) of your own knowledge, which have been committed within the verge, which is as it were the limits of your survey, but shall smother and conceal any offence willingly, then the guiltiness of others will cleave to your consciences, before God; and besides, you are answerable in some degree to the King and his law, for such your default and suppression; and therefore take good regard unto it, you are to serve the King and his people, you are to keep and observe your oath, you are to acquit your selves.

BUT there is yet more cause why you should take more especial regard to your presentments, than any other grand juries, within the counties of this kingdom at large: for as it is a nearer degree and approach unto the King, which is the fountain of justice and government, to be the King's servant, than to be the King's subject; so this commission ordained for the King's servants and household, ought in the execution of justice to be exemplary unto other places. *David saith (who was a King) The wicked man shall not abide in my house;*

* Several times incorrectly printed, without the proper title, now amended by the original.

house; as taking knowledge that it was impossible for Kings to extend their care, to banish wickedness over all their land or empire; but yet at least they ought to undertake to God for their house.

WE see further, that the law doth so esteem the dignity of the King's settled mansion-house, as it hath laid unto it a plot of twelve mile round, which we call the verge, to be subject to a special and exempted jurisdiction depending upon his person and great officers. This is as a half pace, or carpet spread about the King's chair of estate, which therefore ought to be cleared and voided more than other places of the kingdom; for if offences shall be shrouded under the King's wings, what hope is there of discipline and good justice in more remote parts? We see the sun, when it is at the brightest, there may be perhaps a bank of clouds in the north or the west, or remote regions, but near his body few or none; for where the King cometh, there should come peace and order, and an awe and reverence in men's hearts.

AND this jurisdiction was in ancient time executed, and since by statute ratified by the lord steward with great ceremony, in the nature of a peculiar King's bench for the verge; for it was thought a kind of eclipsing to the King's honour, that where the King was, any justice should be sought but immediately from his own officers. But in respect that office was oft void, this commission hath succeeded, which change I do not dislike, for though it hath less state, yet it hath more strength legally; therefore I say, you that are a jury of the verge, should lead and give a pattern unto others in the care and conscience of your presentments.

CONCERNING the particular points and articles whereof you shall enquire, I will help your memory and mine own with order; neither will I load you, or trouble my self with every branch of several offences, but stand upon those that are principal and most in use: the offences therefore that you are to present are of four natures.

1. THE first, such as concern God and his church.
2. THE second, such as concern the King and his state.
3. THE third, such as concern the King's people, and are capital.
4. THE fourth, such as concern the King's people, not capital.

THE service of almighty God, upon whose blessing the peace, safety, and good estate of King and kingdom doth depend, may be violated, and God dishonoured in three manners, by profanation, by contempt, and by division, or breach of unity.

FIRST, If any man hath depraved or abused in word or deed the blessed Sacrament, or disturbed the preacher or congregation in the time of divine service; or if any have maliciously stricken with weapon, or drawn weapon in any church or church-yard; or if any fair or market have been kept in any church-yard, these are profanations within the purview of several statutes, and those you are to present: for holy things, actions, times, and sacred places, are to be preserved in reverence and divine respect.

FOR contempts of our church and service, they are comprehended in that known name, which too many (if it pleased God) bear, recusancy; which offence hath many branches and dependencies: the wife-recusant, she tempts; the church-papist, he feeds and relieves; the corrupt schoolmaster, he soweth tares; the dissembler, he conformeth and doth not communicate. Therefore if any person, man or woman, wife or sole, above the age of sixteen years, not having some lawful excuse, have not repaired to church according to the several statutes; the one, for the weekly, the other, for the monthly repair, you are to present both the offence and the time how long. Again, such as maintain, relieve, keep in service of livery recusants, though themselves be

none, you are likewise to present; for these be like the roots of nettles, which sting not themselves, but bear and maintain the stinging leaves: so of any that keepeth a schoolmaster that comes not to church, or is not allowed by the bishop, for that infection may spread far: so such recusants as have been convicted and conform'd, and have not received the sacrament once a year, for that is the touch-stone of their true conversion: and of these offences of recusancy take you special regard. Twelve miles from court is no region for such subjects. In the name of God, why should not twelve miles about the King's chair be as free from papist-recusants, as twelve miles from the city of *Rome* (the Pope's chair) is from protestants? There be hypocrites and atheists, and so I fear there be amongst us; but no open contempt of their religion is endured. If there must be recusants, it were better they lurked in the country, than here in the bosom of the kingdom.

Breach of unity.

FOR matter of division and breach of unity, it is not without a mystery that Christ's coat had no seam, nor no more should the church if it were possible. Therefore if any minister refuse to use the book of common-prayer, or wilfully swerveth in divine service from that book; or if any person whatsoever do scandalize that book, and speak openly and maliciously in derogation of it; such men do but make a rent in the garment, and such are by you to be enquired of. But much more, such as are not only differing, but in a sort opposite unto it, by using a superstitious and corrupted form of divine service; I mean, such as say or hear mass.

THESE offences which I have recited to you, are against the service and worship of God: there remain two which likewise pertain to the dishonour of God; the one, is the abuse of his name by perjury; the other, is the adhering to God's declared enemies, evil and out-cast spirits, by conjuration and witchcraft.

Perjury.

FOR perjury, it is hard to say whether it be more odious to God, or pernicious to man; for an oath, saith the apostle, is the end of controversies: if therefore that boundary of suits be taken away or mis-set, where shall be the end? Therefore you are to enquire of wilful and corrupt perjury in any of the King's courts, yea of court-barons and the like, and that as well of the actors, as of the procurer and suborner.

Conjuration and witchcraft.

1 *Jac. cap. 1,*
2.

FOR witchcraft, by the former law it was not death, except it were actual and gross invocation of evil spirits, or making covenant with them, or taking away life by witchcraft: but now by an act in his Majesty's times, charms and forceries in certain cases of procuring of unlawful love or bodily hurt, and some others, are made felony the second offence; the first being imprisonment and pillory.

Supremacy placed with offences of state.

AND here I do conclude my first part concerning religion and ecclesiastical causes; wherein it may be thought that I do forget matters of supremacy, or of Jesuits, and seminaries, and the like, which are usually sort'd with causes of religion: but I must have leave to direct my self according to mine own persuasion, which is, that whatsoever hath been said or written on the other side, all the late statutes which inflict capital punishment upon extollers of the Pope's supremacy; deniers of the King's supremacy, Jesuits and seminaries, and other offenders of that nature, have for their principal scope, not the punishment of the error of conscience, but the repressing of the peril of the estate. This is the true spirit of these laws, and therefore I will place them under my second division, which is of offences that concern the King and his estate, to which now I come.

The King and the state.

The King's person.

THESE offences therefore respect either the safety of the King's person, or the safety of his estate and kingdom, which though they cannot be dis sever'd in deed, yet they may be distinguished in speech. First then, if any have conspired

conspired against the life of the King, which God have in his custody, or of the Queen's Majesty, or of the most noble Prince their eldest son; the very compassing and inward imagination thereof is high treason, if it can be proved by any fact that is overt: for in the case of so sudden, dark, and pernicious, and peremptory attempts, it were too late for the law to take a blow before it gives, and this high treason of all other is most heinous, of which you shall enquire, though I hope there be no cause.

THERE is another capital offence that hath an affinity with this, whereof ^{Privy council.} you here within the verge are most properly to enquire; the King's privy council are as the principal watch over the safety of the King, so as their safety is a portion of his: if therefore any of the King's servants within his cheque-roll (for to them only the law extends) have conspired the death of any the King's privy council, this is felony, and thereof you shall enquire.

AND since we are now in that branch of the King's person, I will speak also ^{Representation of his person.} of the King's person by representation, and the treasons which touch the same.

THE King's person and authority is represented in three things; in his seals, in his monies, and in his principal magistrates: if therefore any have counterfeited the King's great seal, privy seal, or seal manual; or counterfeited, clipped, or scaled his monies, or other monies current, this is high treason; so is it to kill certain great officers, or judges executing their office.

WE will pass now to those treasons which concern the safety of the King's ^{The estate.} estate, which are of three kinds answering to three perils which may happen to an estate; these perils are foreign invasion, open rebellion, and sedition, and privy practice, to alienate and estrange the hearts of the subjects, and to prepare them either to adhere to enemies, or to burst out into tumults and commotions of themselves.

THEREFORE if any person have solicited or procured any invasion from ^{Invasion and rebellion.} foreigners; or if any have combined to raise and stir the people to rebellion within the realm; these are high treasons, tending to the overthrow of the estate of this commonwealth, and to be enquired of.

THE third part of practice hath divers branches, but one principal root in ^{Alienation of hearts.} these our times, which is the vast and over-spreading ambition and usurpation of the see of Rome: for the Pope of Rome is, according to his late challenges and pretences, become a competitor and corival with the King, for the hearts and obediences of the King's subjects: He stands for it, he sends over his love-tokens and brokers (under colour of conscience) to steal and win away the hearts and allegiances of the people, and to make them as fuel ready to take fire upon any his commandments. This is that yoke which this kingdom hath happily cast off, even at such time when the popish religion was nevertheless continued, and that divers states, which are the Pope's vassals, do likewise begin to shake off.

IF therefore any person have maintained and extolled the usurped authority ^{Supremacy, treason, &c.} of the bishop of Rome within the King's dominions, by writing, preaching, or deed advisedly, directly and maliciously; or if any person have published or ^{Eliz. cap. 1.} put in ure any of the Pope's bulls or instruments of absolution; or if any per- ^{Jac. cap. 4.} son have withdrawn and reconciled any of the King's subjects from their obe- ^{5.} dience, or been withdrawn and reconciled; or if any subject have refused the second time to take the oath of supremacy lawfully tendred; or if any Jesuit or seminary come and abide within this realm; these are by several statutes ^{28 El. cap. 1.} made cases of high treason, the law accounting these things as preparatives, and the first wheels and secret motions of seditions and revolts from the King's obedience. Of these you are to enquire both of the actors and of their abet- ^{13 El. cap. 2.} tors, comforters, receivers, maintainers; and concealers, which in some cases are ^{23 El. cap. 1.} traitors,

traitors, as well as the principal, in some cases in *praemunire*, in some other, in imprisonment of treason, (which I will not stand to distinguish) and in some other, felony; as namely, that of the receiving and relieving of jesuits and priests, the bringing in and dispersing of *agnus Dei's*, crosses, pictures, or such trash, is likewise *praemunire*; and so is the denial to take the oath of supremacy the first time.

Military men. AND because in the disposition of a state to troubles and perturbations, military men are most tickle and dangerous; therefore if any of the King's subjects go over to serve in foreign parts, and do not first endure the touch, that is, take the oath of allegiance; or if he have born office in any army, and do not enter into bond with sureties as is prescribed, this is made felony; and such as you shall enquire.

Prophecies. LASTLY, because the vulgar people are sometimes led with vain and fond prophecies; if any such shall be published, to the end to move stirs or tumults, this is not felony, but punished by a year's imprisonment and loss of goods: and of this also shall you enquire.

YOU shall likewise understand that the escape of any prisoner committed for treason, is treason; whereof you are likewise to enquire.

The people capital. NOW come I to the third part of my division; that is, those offences which concern the King's people, and are capital; which nevertheless the law terms offences against the crown, in respect of the protection that the King hath of his people, and the interest he hath in them and their welfare; for touch them, touch the King. These offences are of three natures: the first concerneth the conservation of their lives; the second, of honour and honesty of their persons and families; and the third, of their substance.

Life. FIRST for life. I must say unto you in general, that life is grown too cheap in these times, it is set at the price of words, and every petty scorn and disgrace can have no other reparation; nay so many men's lives are taken away with impunity, that the very life of the law is almost taken away, which is the execution; and therefore though we cannot restore the life of those men that are slain, yet I pray let us restore the law to her life, by proceeding with due severity against the offenders; and most especially this plot of ground, (which as I said is the King's carpet) ought not to be stained with blood, crying in the ears of God and the King. It is true nevertheless, that the law doth make divers just differences of life taken away; but yet no such differences as the wanton humours and braveries of men have under a reverend name of honour and reputation invented.

THE highest degree is where such a one is killed, unto whom the offender did bear faith and obedience; as the servant to the master, the wife to the husband, the clerk to the prelate; and I shall ever add, (for so I conceive of the law) the child to the father or the mother; and this the law terms petty treason.

THE second is, Where a man is slain upon fore-thought malice, which the law terms murder; and it is an offence horrible and odious, and cannot be blanced, nor made fair, but foul.

1 Jac. cap. 8. THE third is, Where a man is killed upon a sudden heat or affray, whereunto the law gives some little favour, because a man in fury is not himself, *ira furor brevis*, wrath is a short madness; and the wisdom of law in his Majesty's time hath made a sub-division of the stab given, where the party stabbed is out of defence, and had not given the first blow, from other manslaughters.

THE fourth degree is, That of killing a man in the party's own defence, or by misadventure, which though they be not felonies, yet nevertheless the law doth not suffer them to go unpunished; because it doth discern some sparks of a bloody mind in the one, and of carelessness in the other.

AND

AND the fifth is, where the law doth admit a kind of justification, not by plea, for a man may not (that hath shed blood) affront the law with pleading not guilty, but when the case is found by verdict, being disclosed upon the evidence; as where a man in the King's highway and peace is assailed to be murdered or robbed; or when a man defending his house, which is his castle, against unlawful violence: or when a sheriff or minister of justice is resisted in the execution of his office; or when the patient dieth in the chirurgeon's hands, upon cutting or otherwise; for these cases the law doth privilege, because of the necessity, and because of the innocency of the intention.

THUS much for the death of man, of which cases you are to enquire; together with the accessories before and after the fact.

FOR the second kind, which concerns the honour and chastness of persons ^{Honesty of} and families; you are to enquire of the ravishment of women, of the taking ^{life.} of women out of the possession of their parents or guardians against their will, ^{1 Jac. cap. ii.} or marrying them, or abusing them; of double marriages, where there was not first seven years absence, and no notice that the party so absent was alive, and other felonies against the honesty of life.

FOR the third kind, which concerneth men's substance, you shall enquire ^{Substance.} of burglaries, robberies, cutting of purses, and taking of any thing from the person; and generally other stealths, as well such as are plain as those that are disguised, whereof I will by and by speak: But first I must require you to use diligence in presenting especially those purloinings and imbezlements, which are of plate, vessel, or whatsoever within the King's house. The King's house is an open place; it ought to be kept safe by law, and not by lock, and therefore needeth the more severity.

Now for coloured and disguised robberies; I will name two or three of ^{28 E. 1. Articuli super chartas, c. 2.} them: the purveyor that takes without warrant, is no better than a thief, and ^{31 El. c. 4.} it is felony. The servant that hath the keeping of his Majesty's goods, and ^{33 H. 6. c. 1.} going away with them, though he came to the possession of them lawfully, it ^{21 H. 8. c. 7.} is felony. Of these you shall likewise enquire, principals and accessories. The voluntary escape of a felon is also felony.

FOR the last part, which is of offences concerning the people not capital, ^{The people not capital.} they are many: but I will select only such as I think fittest to be remembered unto you, still dividing to give you the better light. They are of four natures.

1. THE first, is matter of force and outrage.
2. THE second, matter of fraud and deceit.
3. PUBLICK nuisances and grievances.
4. THE fourth, breach and inobservance of certain wholesome and politick laws for government.

FOR the first, you shall enquire of riots and unlawful assemblies, of forcible ^{Force;} entries, and detainers with force; and properly of all assaults of striking, drawing weapon or other violence within the King's house, and the precincts thereof: for the King's house, from whence example of peace should flow unto the farthest parts of the kingdom, as the ointment of Aaron's head to the skirts of his garment, ought to be sacred and inviolate from force and brawls, as well in respect of reverence to the place, as in respect of danger of greater tumult, and of ill example to the whole kingdom; and therefore in that place all should be full of peace, order, regard, forbearance, and silence.

BESIDES open force, there is a kind of force that cometh with an armed hand, but disguised, that is no less hateful and hurtful; and that is, abuse and oppression by authority. And therefore you shall enquire of all extortions

in officers and ministers; as sheriffs, bailiffs of hundreds, escheators, coroners, constables, ordinaries, and others, who by colour of office do poll the people.

FOR frauds and deceits, I do chiefly commend to your care the frauds and deceits in that which is the chief means of all just contract and permutation, which is, weights and measures; wherein, although God hath pronounced that a false weight is an abomination, yet the abuse is so common and so general, I mean of weights, (and I speak upon knowledge and late examination) that if one were to build a church, he should need but false weights, and not seek them far, of the piles of brasse to make the bells, and the weights of lead to make the battlements: and herein you are to make special enquiry, whether the clerk of the market within the verge, to-whom properly it appertains, hath done his duty.

Nusance.

FOR nusances and grievances, I will for the present only single out one, that ye present the decays of highways and bridges; for where the Majesty of a King's house draws recourse and access, it is both disgraceful to the King, and diseaseful to the people, if the ways near-about be not fair and good; wherein it is strange to see the chargeable pavements and causeways in the avenues and entrances of towns abroad beyond the seas; whereas *London*, the second city at the least of *Europe*, in glory, in greatness, and in wealth, cannot be discerned by the fairness of the ways, though a little perhaps by the broadness of them from a village.

Breach of statutes.

FOR the last part, (because I pass these things over briefly) I will make mention unto you of three laws.

1. THE one, concerning the King's pleasure.
2. THE second, concerning the people's food.
3. AND the third, concerning wares and manufactures.

King's pleasure.

YOU shall therefore enquire of the unlawful taking partridges and pheasants or fowl, the destruction of the eggs of the wild-fowl, the killing of hares or deer, and the selling of venison or hares: for that which is for exercise and sport and courtesy should not be turned to gluttony and sale victual.

Food.

YOU shall also enquire whether bakers and brewers keep their assize, and whether as well they as butchers, inn-holders and victuallers, do sell that which is wholesome, and at reasonable prices, and whether they do link and combine to raise prices.

Manufactures.

5 Eliz. cap. 4.

LASTLY, you shall enquire whether the good statute be observed, whereby a man may have that he thinketh he hath, and not be abused or mis-served in that he buys: I mean that statute that requireth that none use any manual occupation but such as have been seven years apprentice to it; which law being generally transgressed, makes the people buy in effect chaff for corn; for that which is mis-wrought will mis-wear.

THERE be many more things inquirable by you throughout all the former parts, which it were over-long in particular to recite. You may be supplied either out of your own experience, or out of such bills and informations as shall be brought unto you, or upon any question that you shall demand of the court, which will be ready to give you any farther direction as far as is fit: but these which I have gone through, are the principal points of your charge; which to present, you have taken the name of God to witness; and in the name of God perform it.

CHARGE

Delivered by

Sir *FRANCIS BACON*, Kt.

The KING's Attorney-General,

At the ARRAIGNMENT of the Lord *Sanquhar* in the King's-
Bench at *Westminster*.

The ARGUMENT.

The Lord Sanquhar a Scotch nobleman, having in private revenge suborned Robert Carlile, to murder John Turner, master of fence, thought by his greatness to have born it out; but the King respecting nothing so much as justice, would not suffer nobility to be a shelter for villany; but, according to law, on the 29th of June 1612, the said Lord Sanquhar, having been arraigned and condemned by the name of Robert Creighton Esq; was before Westminster-hall-gate executed, where he died very penitent. At whose arraignment my Lord Bacon (then Attorney-general to King James) made this speech following:

IN this cause of life and death, the Jury's part is in effect discharged; for after a frank and formal confession, their labour is at an end: so that what hath been said by Mr. Attorney, or shall be said by my self, is rather convenient than necessary.

MY Lord *Sanquhar*, your fault is great, and cannot be extenuated, and it need not be aggravated; and if it needed, you have made so full an anatomy of it out of your own feeling, as it cannot be matched by my self, or any man else, out of conceit; so as that part of aggravation I leave. Nay, more, this christian and penitent course of yours draws me thus far, that I will agree, in some sort extenuates it: for certainly, as even in extreme evils there are degrees; so this particular of your offence is such, as though it be foul spilling of blood, yet there are more foul: for if you had sought to take away a man's life for his vineyard, as *Achab* did; or for envy, as *Cain* did; or to possess his bed, as *David* did; surely the murder had been more odious.

YOUR temptation was revenge, which the more natural it is to man, the more have laws both divine and humane sought to repress it; *mibi vindicta*.

But

But in one thing you and I shall never agree, that generous spirits (you say) are hard to forgive: no, contrariwise, generous and magnanimous minds are readiest to forgive; and it is a weakness and impotency of mind to be unable to forgive; *Corpora magnanimo satis est prostrasse leoni.*

BUT howsoever murders may arise from several motives, less or more odious, yet the law both of God and man involves them in one degree, and therefore you may read that in *Joab's* case, which was a murder upon revenge, and matcheth with your case; he for a dear brother, and you for a dear part of your own body; yet there was a severe charge given, it should not be unpunished.

AND certainly the circumstance of time is heavy upon you: it is now five years since this unfortunate man *Turner*, be it upon accident, or be it upon despight, gave the provocation, which was the seed of your malice. All passions are suaged with time, love, hatred, grief; all fire it self burns out with time, if no new fuel be put to it. Therefore for you to have been in the gall of bitterness so long, and to have been in a restless chase of this blood so many years, is a strange example; and I must tell you plainly, that I conceive you have sucked those affections of dwelling in malice, rather out of *Italy*, and outlandish manners, where you have conversed, than out of any part of this island, *England* or *Scotland*.

BUT that which is fittest for me to spend time in (the matter being confessed) is to set forth and magnify to the hearers the justice of this day; first of God, and then of the King.

MY Lord, you have friends and entertainments in foreign parts; it had been an easy thing for you to set *Carlile*, or some other bloodhound on work, when your person had been beyond the seas; and so this news might have come to you in a packet, and you might have looked on how the storm would pass, but God bereaved you of this foresight, and closed you here under the hand of a King, that though abundant in clemency, yet is no less zealous of justice.

AGAIN, when you came in at *Lambeth*, you might have persisted in the denial of the procurement of the fact; *Carlile*, a resolute man, might perhaps have cleared you (for they that are resolute in mischief, are commonly obstinate in concealing the procurers) and so nothing should have been against you but presumption. But then also God, to take away all obstruction of justice, gave you the grace (which ought indeed to be more true comfort to you than any device whereby you might have escaped) to make a clear and plain confession.

OTHER impediments there were (not a few) which might have been an interruption to this day's justice, had not God in his providence removed them.

BUT now that I have given God the honour, let me give it likewise where it is next due, which is to the King our sovereign.

THIS murder was no sooner committed and brought to his Majesty's ears, but his just indignation wherewith he first was moved, cast it self into a great deal of care and providence to have justice done. First came forth his proclamation somewhat of a rare form, and devised, and in effect dictated by his Majesty himself; and by that he did prosecute the offenders, as it were with the breath and blast of his mouth. Then did his Majesty stretch forth his long arms (for Kings have long arms when they will extend them) one of them to the sea, where he took hold of *Grey* shipped for *Sweden*, who gave the first light of testimony; the other arm to *Scotland*, and took hold of *Carlile*, ere he was warm in his house, and brought him the length of his kingdom under such safe watch and custody, as he could have no means to escape,

no nor to mischief himself, no nor learn any lessons to stand mute; in which cases perhaps, this day's justice might have received a stop. So that I may conclude his Majesty hath shewed himself God's true lieutenant, and that he is no respecter of persons; but the *English, Scottish*, nobleman, fencer, are to him alike in respect of justice.

NAY, I must say farther, that his Majesty hath had, in this, a kind of prophetic spirit; for what time *Carlile* and *Grey*, and you, my lord your self, were fled no man knew whither, to the four winds, the King ever spake in a confident and undertaking manner, that wheresoever the offenders were in *Europe*, he would produce them forth to justice; of which noble word, God hath made him master.

LASTLY, I will conclude towards you, my lord, that though your offence hath been great, yet your confession hath been free, and your behaviour and speech full of discretion; and this shews, that though you could not resist the tempter, yet you bear a *Christian* and generous mind, answerable to the noble family of which you are descended. This I commend unto you, and take it to be an assured token of God's mercy and favour, in respect whereof all worldly things are but trash; and so it is fit for you, as your state now is, to account them. And this is all I will say for the present.

N.B. THE reader for his fuller information in this story of the Lord *Sanquhar* is desired to peruse the case in the ninth book of the Lord *Coke's* reports; at the end of which, the whole series of the murder and trial is exactly related.

THE
C H A R G E
O F

Sir *FRANCIS BACON*, Kt.

His MAJESTY's Attorney-General,

Touching

D U E L S.

Upon an Information in the STAR-CHAMBER against *Priest*
and *Wright*.

With the Decree of the STAR-CHAMBER in the same Cause.

MY LORDS,

I THOUGHT it fit for my place, and for these times, to bring to hearing before your lordships some cause touching private duels, to see if this court can do any good to tame and reclaim that evil which seems unbridled. And I could have wished that I had met with some greater persons, as a subject for your censure, both because it had been more worthy of this presence;

and also the better to have shewed the resolution my self hath to proceed without respect of persons in this business: but finding this cause on foot in my predecessor's time, and published and ready for hearing, I thought to lose no time in a mischief that groweth every day; and besides, it passeth not amiss sometimes in government, that the greater sort be admonished by an example made in the meaner, and the dog to be beaten before the lion. Nay, I should think, my lords, that men of birth and quality will leave the practice when it begins to be vilified, and come so low as to barber-surgeons and butchers, and such base mechanical persons.

AND for the greatness of this presence, in which I take much comfort, both as I consider it in itself, and much more in respect it is by his Majesty's direction, I will supply the meanness of the particular cause by handling of the general point: to the end, that by occasion of this present cause, both my purpose of prosecution against duels, and the opinion of the court, (without which I am nothing) for the censure of them may appear, and thereby offenders in that kind may read their own case, and know what they are to expect; which may serve for a warning until example may be made in some greater person: which I doubt the times will but too soon afford.

THEREFORE before I come to the particular, whereof your lordships are now to judge, I think it time best spent to speak somewhat:

FIRST, Of the nature and greatness of this mischief.

SECONDLY, Of the causes and remedies.

THIRDLY, Of the justice of the law of *England*, which some stick not to think defective in this matter.

FOURTHLY, Of the capacity of this court, where certainly the remedy of this mischief is best to be found.

AND fifthly, touching mine own purpose and resolution, wherein I shall humbly crave your lordships aid and assistance.

FOR the mischief itself, it may please your lordships to take into your consideration that when revenge is once extorted out of the magistrates hands, contrary to God's ordinance, *mibi vindicta, ego retribuam*, and every man shall bear the sword, not to defend, but to assail; and private men begin once to presume to give law to themselves, and to right their own wrongs, no man can foresee the dangers and inconveniences that may arise and multiply thereupon. It may cause sudden storms in court, to the disturbance of his Majesty, and unsafety of his person: It may grow from quarrels to bandying, and from bandying to trooping, and so to tumult and commotion; from particular persons to disension of families and alliances; yea, to national quarrels, according to the infinite variety of accidents, which fall not under foresight: so that the state by this means shall be like to a distempered and imperfect body, continually subject to inflammations and convulsions.

BESIDES, certainly, both in divinity and in policy, offences of presumption are the greatest. Other offences yield and consent to the law that it is good; not daring to make defence, or to justify themselves; but this offence expressly gives the law an affront, as if there were two laws, one a kind of gown-law, and the other a law of reputation, as they term it; so that *Paul's* and *Westminster*, the pulpit and the courts of justice, must give place to the law (as the King speaketh in his proclamation) of ordinary tables, and such reverend assemblies: The year-books and statute-books must give place to some *French* and *Italian* pamphlets, which handle the doctrine of *Duels*, which if they be in the right, *transsumamus ad illa*, let's receive them, and not keep the people in conflict and distraction between two laws.

AGAIN,

AGAIN, my lords, it is a miserable effect, when young men full of towardness and hope, such as the poets call *auroræ filii*, sons of the morning, in whom the expectation and comfort of their friends consisteth, shall be cast away and destroyed in such a vain manner; but much more it is to be deplored when so much noble and genteel blood shall be spilt upon such follies, as if it were adventured in the field in service of the King and realm, were able to make the fortune of a day, and to change the fortune of a kingdom. So as your lordships see what a desperate evil this is; it troubleth peace, it dis-furnisheth war, it bringeth calamity upon private men, peril upon the state, and contempt upon the law.

TOUCHING the causes of it; the first motive no doubt is a false and erroneous imagination of honour and credit; and therefore the King, in his last proclamation, doth most aptly and excellently call them bewitching duels. For, if one judge of it truly, it is no better than a forcery that enchanteth the spirits of young men, that bear great minds with a false shew, *species falsa*; and a kind of satanical illusion and apparition of honour against religion, against law, against moral virtue, and against the precedents and examples of the best times and valiantest nations; as I shall tell you by and by, when I shall shew you that the law of *England* is not alone in this point.

BUT then the seed of this mischief being such, it is nourished by vain discourses, and green and unripe conceits, which nevertheless have so prevailed, as though a man were staid and sober-minded, and a right believer touching the vanity and unlawfulness of these duels; yet the stream of vulgar opinion is such, as it imposeth a necessity upon men of value to conform themselves, or else there is no living or looking upon men's faces: so that we have not to do, in this case, so much with particular persons, as with unsound and depraved opinions, like the dominations and spirits of the air which the scripture speaketh of.

HEREUNTO may be added, that men have almost lost the true notion and understanding of fortitude and valour. For fortitude distinguisheth of the grounds of quarrels whether they be just; and not only so, but whether they be worthy; and setteth a better price upon men's lives than to bestow them idly: nay, it is weakness and dis-esteem of a man's self, to put a man's life upon such liedger performances; a man's life is not to be trifled away; it is to be offered up and sacrificed to honourable services, publick merits, good causes, and noble adventures. It is in expence of blood as it is in expence of money; it is no liberality to make a profusion of money upon every vain occasion, nor no more it is fortitude to make effusion of blood, except the cause be of worth. And thus much for the causes of this evil.

FOR the remedies I hope some great and noble person will put his hand to this plough, and I wish that my labours of this day may be but fore-runners to the work of a higher and better hand. But yet to deliver my opinion as may be proper for this time and place, there be four things that I have thought on, as the most effectual for the repressing of this depraved custom of particular combats.

THE first is, that there do appear and be declared a constant and settled resolution in the state to abolish it. For this is a thing, my lords, must go down at once or not at all; for then every particular man will think himself acquitted in his reputation, when he sees that the state takes it to heart, as an insult against the King's power and authority, and thereupon hath absolutely resolved to master it; like unto that which was set down in express

words

words in the edict of *Charles IX.* of *France* touching duels, that the King himself took upon him the honour of all that took themselves grieved or interested for not having performed the combat. So must the state do in this business; and in my conscience there is none that is but of a reasonable sober disposition, be he never so valiant, (except it be some furious person that is like a firework) but will be glad of it, when he shall see the law and rule of state disinterest him of a vain and unnecessary hazard.

SECONDLY, Care must be taken that this evil be no more cockered, nor the humour of it fed; wherein I humbly pray your lordships that I may speak my mind freely, and yet be understood aright. The proceedings of the great and noble commissioners martial, I honour and reverence much, and of them I speak not in any sort; but I say the compounding of quarrels, which is otherwise in use by private noblemen and gentlemen, it is so punctual, and hath such reference and respect unto the received conceits, what's before-hand, and what's behind-hand, and I cannot tell what, as without all question it doth, in a fashion, countenance and authorize this practice of duels, as if it had in it somewhat of right.

THIRDLY, I must acknowledge that I learned out of the King's last proclamation, the most prudent and best applied remedy for this offence (if it shall please his Majesty to use it) that the wit of man can devise. This offence, my lords, is grounded upon a false conceit of honour, and therefore it would be punished in the same kind, *in eo quis rectissime plectitur, in quo peccat.* The fountain of honour is the King and his aspect, and the access to his person continueth honour in life, and to be banished from his presence is one of the greatest eclipses of honour that can be; if his Majesty shall be pleased, that when this court shall censure any of these offences in persons of eminent quality, to add this out of his own power and discipline, that these persons shall be banished and excluded from his court for certain years, and the courts of his Queen and Prince, I think there is no man that hath any good blood in him will commit an act that shall cast him into that darkness, that he may not behold his sovereign's face.

LASTLY, And that which more properly concerneth this court: we see, my lords, the root of this offence is stubborn; for it despiseth death, which is the utmost of punishments; and it were a just, but a miserable severity, to execute the law without all remission or mercy, where the case proveth capital. And yet the late severity in *France* was more, where, by a kind of martial law, established by ordinance of the King and parliament, the party that had slain another was presently had to the gibbet, insomuch as gentlemen of great quality were hanged, their wounds bleeding, lest a natural death should prevent the example of justice. But, my lords, the course which we shall take is of far greater lenity, and yet of no less efficacy; which is to punish, in this court, all the middle acts and proceedings which tend to the duel, (which I will enumerate to you anon;) and so to hew and vex the root in the branches, which no doubt in the end will kill the root, and yet prevent the extremity of law.

Now for the law of *England*, I see it excepted to, though ignorantly, in two points:

THE one, That it should make no difference between an insidious and foul murder, and the killing of a man upon fair terms, as they now call it.

THE other, That the law hath not provided sufficient punishment, and reparations for contumely of words, as the lye, and the like.

BUT these are no better than childish novelties against the divine law, and
against

against all laws in effect, and against the examples of all the bravest and most virtuous nations of the world.

FOR first, for the law of God, there is never to be found any difference made in homicide, but between homicide voluntary and involuntary; which we term misadventure. And for the case of misadventure it self, there were cities of refuge; so that the offender was put to his flight, and that flight was subject to accident, whether the revenger of blood should overtake him before he had gotten sanctuary or no. It is true that our law hath made a more subtle distinction between the will inflamed and the will advised, between manslaughter in heat, and murder upon premeditated malice or cold blood, as the soldiers call it, an indulgence not unfit for a cholerick and warlike nation; for it is true, *ira furor brevis*; a man in fury is not himself. This privilege of passion the ancient *Roman* law restrained, but to a case: that was, if the husband took the adulterer in the manner; to that rage and provocation only it gave way, that an homicide was justifiable. But for a difference to be made in case of killing and destroying man, upon a forethought purpose, between foul and fair, and as it were between single murder and vyed murder, it is but a monstrous child of this latter age, and there is no shadow of it in any law divine or human. Only it is true, I find in the scripture that *Cain* inticed his brother into the field and slew him treacherously; but *Lamech* vaunted of his manhood, that he would kill a young man, and if it were to his hurt: so as I see no difference between an insidious murder, and a braving or presumptuous murder, but the difference between *Cain* and *Lamech*.

As for examples, in civil states, all memory doth consent, that *Græcia* and *Rome* were the most valiant and generous nations of the world; and that which is more to be noted, they were free estates, and not under a monarchy; whereby a man would think it a great deal the more reason that particular persons should have righted themselves; and yet they had not this practice of duels, nor any thing that bare shew thereof: and sure they would have had it, if there had been any virtue in it. Nay, as he saith, *fas est & ab hoste doceri*. It is memorable, that is reported, by a counsellor ambassador of the Emperor's, touching the censure of the *Turks*, of these duels; there was a combat of this kind performed by two persons of quality of the *Turks*, wherein one of them was slain, the other party was convented before the council of *Bathaws*; the manner of the reprehension was in these words: How durst you undertake to fight one with the other? Are there not Christians enough to kill? Did you not know that whether of you should be slain, the loss would be the Great Seignior's? So as we may see that the most warlike nations, whether generous or barbarous, have ever despised this wherein now men glory.

IT is true, my lords, that I find combats of two natures authorized, how justly I will not dispute, as to the later of them.

THE one, when upon the approaches of armies in the face one of the other, particular persons have made challenges for trial of valours in the field upon the publick quarrel.

THIS the *Romans* called *pugna per provocationem*. And this was never, but either between the generals themselves, who were absolute, or between particulars by licence of the generals; never upon private authority. So you see *David* asked leave when he fought with *Goliath*; and *Joab*, when the armies were met, gave leave, and said, Let the young men play before us. And of this kind was that famous example in the wars of *Naples*, between twelve *Spaniards*, and twelve *Italians*, where the *Italians* bare away the victory; besides other

infinite like examples worthy and laudable, sometimes by singles, sometimes by numbers.

THE second combat is a judicial trial of right, where the right is obscure, introduced by the *Goths* and the *Northern* nations, but more anciently entertained in *Spain*; and this yet remains in some cases as a divine lot of bat-tel, though controverted by divines, touching the lawfulness of it: so that a wise writer saith, *Taliter pugnantes videntur tentare Deum, quia hoc volunt ut Deus ostendat & faciat miraculum, ut justam causam habens victor efficiatur, quod saepe contra accidit.* But howsoever it be, this kind of fight taketh its warrant from law. Nay, the *French* themselves, whence this folly seemeth chiefly to have flown, never had it but only in practice and toleration, and never as authorized by law; and yet now of late they have been fain to purge their folly with extreme rigour, in so much as many gentlemen left between death and life in the duels (as I spake before,) were hastened to hanging with their wounds bleeding. For the state found it had been neglected so long, as nothing could be thought cruelty which tended to the putting of it down.

As for the second defect pretended in our law, that it hath provided no remedy for lyes and fillips, it may receive like answer. It would have been thought a madness amongst the ancient law-givers, to have set a punishment upon the lye given, which in effect is but a word of denial, a negative of another's saying. Any law-giver, if he had been asked the question, would have made *Solon's* answer: That he had not ordained any punishment for it, because he never imagined the world would have been so fantastical as to take it so highly. The civilians, they dispute whether an action of injury lie for it, and rather resolve the contrary. And *Francis* the first of *France*, who first set on and stamped this disgrace so deep, is taxed by the judgment of all wise writers for beginning the vanity of it; for it was he, that when he had himself given the lye and defy to the Emperor, to make it current in the world, said in a solemn assembly, That he was no honest man that would bear the lye: which was the fountain of this new learning.

As for words of reproach and contumely (whereof the lye was esteemed none) it is not credible (but that the orations themselves are extant) what extreme and exquisite reproaches were tossed up and down in the senate of *Rome* and the places of assembly, and the like in *Graecia*, and yet no man took himself fouled by them, but took them but for breath, and the style of an enemy, and either despised them or returned them, but no blood spilt about them.

So of every touch or light blow of the person, they are not in themselves considerable, save that they have got upon them the stamp of a disgrace, which maketh these light things pass for great matter. The law of *England*, and all laws, hold these degrees of injury to the person, slander, battery, maim, and death; and if there be extraordinary circumstances of despight and contumely, as in case of libels, and bastinadoes, and the like, this court taketh them in hand and punisheth them exemplarily. But for this apprehension of a disgrace, that a fillip to the person should be a mortal wound to the reputation, it were good that men did hearken unto the saying of *Consalvo*, the great and famous commander, that was wont to say, a gentleman's honour should be, *de tela crassiore*, of a good strong warp or web, that every little thing should not catch in it, when as now it seems they are but of cobweb-lawn or such light stuff, which certainly is weakness, and not true greatness of mind, but like a sick man's body, that is so tender that

it feels every thing. And so much in maintenance and demonstration of the wisdom and justice of the law of the land.

FOR the capacity of this court, I take this to be a ground infallible: that wheresoever an offence is capital, or matter of felony, though it be not acted, there the combination or practice tending to that offence is punishable in this court as a high misdemeanor. So practice to impositon, though it took no effect; way-laying to murder, though it took no effect, and the like; have been adjudged heinous misdemeanors punishable in this court. Nay, inceptions and preparations in inferior crimes (that are not capital) as suborning and preparing of witnesses that were never deposed, or deposed nothing material, have likewise been censured in this court, as appeareth by the decree in *Garnon's* case.

WHY then, the major proposition being such, the minor cannot be denied: for every appointment of the field is but combination and plotting of murder; let them gild it how they list, they shall never have fairer terms of me in place of justice. Then the conclusion followeth, that it is a case fit for the censure of this court. And of this there be precedents in the very point of challenge.

IT was the case of *Wharton*, plaintiff against *Ellekar* and *Acklam* defendants, where *Acklam* being a follower of *Ellekar's*, was censured for carrying a challenge from *Ellekar* to *Wharton*, though the challenge was not put in writing, but delivered only by word of message; and there are words in the decree that such challenges are to the subversion of government.

THESE things are well known, and therefore I needed not so much to have insisted upon them, but that in this case I would be thought not to innovate any thing of my own head, but to follow the former precedents of the court, though I mean to do it more thoroughly, because the time requires it more.

THEREFORE now to come to that which concerneth my part; I say, that by the favour of the King and the court, I will prosecute in this court in the cases following.

IF any man shall appoint the field, though the fight be not acted or performed.

IF any man shall send any challenge in writing, or any message of challenge.

IF any man carry or deliver any writing or message of challenge.

IF any man shall accept or return a challenge.

IF any man shall accept to be a second in a challenge of either side.

IF any man shall depart the realm, with intention and agreement to perform the fight beyond the seas.

IF any man shall revive a quarrel by any scandalous bruits or writings, contrary to a former proclamation published by his Majesty in that behalf.

NAY, I hear there be some counsel learned of duels, that tell young men when they are before-hand, and when they are otherwise, and thereby incense and incite them to the duel, and make an art of it; I hope I shall meet with some of them too; and I am sure, my lords, this course of preventing duels in nipping them in the bud, is fuller of clemency and providence than the suffering them to go on, and hanging men with their wounds bleeding, as they did in *France*.

To conclude, I have some petitions to make first to your lordship, my lord chancellor, that in case I be advertised of a purpose in any to go beyond

STAR-CHAMBER DECREE

yond the sea to fight, I may have granted his Majesty's writ of *ne exeat regnum* to stop him, for this giant bestrideth the sea, and I would take and snare him by the foot on this side; for the combination and plotting is on this side, though it should be acted beyond sea. And your lordship said notably the last time I made a motion in this business, that a man may be as well *fur de se*, as *felo de se*, if he steal out of the realm for a bad purpose; and for the satisfying of the words of the writ, no man will doubt but he doth *machinari contra coronam* (as the words of the writ be) that seeketh to murder a subject; for that is ever, *contra coronam & dignitatem*. I have also a suit to your lordships all in general, that for justice sake, and for true honour's sake, honour of religion, law, and the King our master, against this fond and false disguise or puppetry of honour, I may in my prosecution (which it is like enough may sometimes stir coals, which I esteem not for my particular, but as it may hinder the good service) I may (I say) be countenanced and assisted from your lordships. Lastly, I have a petition to the nobles and gentlemen of *England*, that they would learn to esteem themselves at a just price. *Non bos quaesitum munus in usus*, their blood is not to be spilt like water or a vile thing; therefore that they would rest persuaded there cannot be a form of honour, except it be upon a worthy matter. But for this, *ipso viderint*, I am resolved. And thus much for the general, now to the present case.

*In Camera stellata coram concilio ibidem, 26 die
Januarii anno undecimo Jacobi Regis.*

PRESENT

George Lord Arch-bishop of Canterbury.
Thomas Lord Ellesmere Lord Chancellor of England.
Henry Earl of Northampton Lord Privy Seal.
Charles Earl of Nottingham Lord High Admiral of England.
Thomas Earl of Suffolk Lord Chamberlain.
John Lord Bishop of London.
Edward Lord Zouch.
William Lord Knolles Treasurer of the Household.
Edward Lord Wotton Comptroller.
John Lord Stanhope, Vice-chamberlain.
Sir Edward Coke, Knight, Lord Chief Justice of England.
Sir Henry Hobart, Knight, Lord Chief Justice of the Common-pleas.
Sir Julius Caesar, Knight, Chancellor of the Exchequer.

*The DECREE of the STAR-CHAMBER
against DUELS.*

THIS day was heard and debated at large the several matters of informations here exhibited by Sir Francis Bacon, Knight, his Majesty's Attorney-General, the one against William Priest, gentleman, for writing and sending a letter of challenge, together with a stick, which should

should be the length of the weapon: and the other against *Richard Wright*, esquire, for carrying and delivering the said letter and stick unto the party challenged, and for other contemptuous and insolent behaviour used before the justices of the peace in *Surrey* at their sessions, before whom he was convicted. Upon the opening of which cause, his Highness's said attorney-general did first give his reason to the court, why in a case which he intended should be a leading case, for the repressing of so great a mischief in the commonwealth, and concerning an offence which reigneth chiefly amongst persons of honour and quality, he should begin with a cause which had passed between so mean persons as the defendants seemed to be; which he said was done, because he found this cause ready published: and in so growing an evil, he thought good to lose no time; whereunto he added, that it was not amiss sometimes to beat the dog before the lion; saying farther, that he thought it would be some motive for persons of birth and countenance to leave it, when they saw it was taken up by base and mechanical fellows; but concluded, that he resolved to proceed without respect of persons for the time to come, and for the present to supply the meanness of this particular case by insisting the longer upon the general point.

WHEREIN he did first expresse unto the court at large, the greatness and dangerous consequence of this presumptuous offence, which extorted revenge out of the magistrate's hand, and gave boldness to private men to be law-givers to themselves; the rather, because it is an offence that doth justify it self against the law, and plainly gives the law an affront; describing also the miserable effect which it draweth upon private families, by cutting off young men, otherwise of good hope, and chiefly the loss of the King and the commonwealth, by the casting away of much good blood, which being spent in the field upon occasion of service, were able to continue the renown which this kingdom hath obtained in all ages, of being esteemed victorious.

SECONDLY, his Majesty's said attorney-general did discourse touching the causes and remedies of this mischief that prevailed so in these times, shewing the ground thereof to be a false and erroneous imagination of honour and credit, according to the term which was given to those duels by a former proclamation of his Majesty's, which called them bewitching duels, for that it is no better than a kind of sorcery which enchanteth the spirits of young men, which bear great minds with a shew of honour, in that which is no honour indeed; being against religion, law, moral virtue, and against the precedents and examples of the best times, and valiantest nations of the world; which though they excelled for prowess and military virtue in a publick quarrel, yet knew not what these private duels meant; saying farther, that there was too much way and countenance given unto these duels, by the course that is held by noblemen and gentlemen in compounding of quarrels, who use to stand too punctually upon conceits of satisfactions and distinctions, what is before-hand, and what behind-hand, which do but feed the humour: adding likewise that it was no fortitude to shew valour in a quarrel, except there were a just and worthy ground of the quarrel; but that it was weakness to set a man's life at so mean a rate as to bestow it upon trifling occasions, which ought to be rather offered up and sacrificed to honourable services, publick merits, good causes, and noble adventures. And as concerning the remedies, he concluded; that the only way was, that the state would declare a constant and settled resolution to master and put down this presumption in private men, of whatsoever degree, of righting their

own wrongs, and this to do at once; for that then every particular man would think himself acquitted in his reputation, when that he shall see that the state takes his honour into their hands, and standeth between him and any interest or prejudice, which he might receive in his reputation for obeying: whereunto he added likewise, that the wisest and mildest way to suppress these duels, was rather to punish in this court all the acts of preparation, which did in any wise tend to the duels, (as this of challenges and the like,) and so to prevent the capital punishment, and to vex the root in the branches, than to suffer them to run on to the execution, and then to punish them capitally after the manner of *France*; where of late times gentlemen of great quality that had killed others in duels, were carried to the gibbet with their wounds bleeding, lest a natural death should keep them from the example of justice.

THIRDLY, His Majesty's said attorney-general did, by many reasons which he brought and alledged, free the law of *England* from certain vain and childish exceptions, which are taken by these duellists: the one, because the law makes no difference in punishment between an insidious and foul murder, and the killing a man upon challenge and fair terms, as they call it. The other, for that the law hath not provided sufficient punishment and reparation for contumely of words, as the lye, and the like; wherein his Majesty's said attorney-general did shew, by many weighty arguments and examples, that the law of *England* did consent with the law of God and the law of nations in both those points, and that this distinction in murder between foul and fair, and this grounding of mortal quarrels upon uncivil and reproachful words, or the like disgraces, was never authorised by any law or ancient examples; but it is a late vanity crept in from the practice of the *French*, who themselves since have been so weary of it, as they have been forced to put it down with all severity.

FOURTHLY, His Majesty's said attorney-general did prove unto the court by rules of law and precedents, that this court hath capacity to punish sending and accepting of challenges, though they were never acted nor executed; taking for a ground infallible that wheresoever an offence is capital or matter of felony, if it be acted and performed, there the conspiracy, combination, or practice tending to the same offence is punishable as a high misdemeanor, although they never were performed. And therefore, that practice to impose, though it took no effect, and the like, have been punished in this court, and cited the precedent in *Garnon's* case, wherein a crime of a much inferior nature, the suborning and preparing of witnesses, though they never were deposed, or deposed nothing material, was censured in this court: whereupon he concluded, that for as much as every appointment of the field is in law but a combination of plotting of a murder, howsoever men might gild it; that therefore it was a case fit for the censure of this court: and therein he vouched a precedent in the very point, that in a case between *Wharton* plaintiff, and *Ellekar* and *Acklam* defendants; *Acklam* being a follower of *Ellekar*, had carried a challenge unto *Wharton*; and although it were by word of mouth, and not by writing, yet it was severely censured by the court; the decree having words, that such challenges do tend to the subversion of government. And therefore his Majesty's attorney willed the standers-by to take notice that it was no innovation that he brought in, but a proceeding, according to former precedents of the court, although he purposed to follow it more thoroughly than had been done ever heretofore, because the times did more and more require it. Lastly, his Majesty's said attorney-general did declare and publish to the court in several articles, his purpose

pose and resolution in what cases he did intend to prosecute offences of that nature in this court; that is to say, that if any man shall appoint the field, although the fight be not acted or performed; if any man shall send any challenge in writing or message of challenge; if any man shall carry or deliver any writing or message of challenge; if any man shall accept or return a challenge; if any man shall accept to be a second in a challenge of either part; if any man shall depart the realm with intention and agreement to perform the fight beyond the seas; if any man shall revive a quarrel by any scandalous bruits or writings contrary to a former proclamation, published by his Majesty in that behalf; that in all these cases his Majesty's attorney-general, in discharge of his duty, by the favour and assistance of his Majesty and the court, would bring the offenders of what state or degree soever to the justice of this court, leaving the lords commissioners martial to the more exact remedies: Adding farther, that he heard there were certain counsel learned of duels, that tell young men when they are beforehand, and when they are otherwise, and did incense and incite them to the duel, and made an art of it; who likewise should not be forgotten. And so concluded with two petitions, the one in particular to the lord chancellor, that in case advertisement were given of a purpose in any to go beyond the seas to fight, there might be granted his Majesty's writ of *ne exeat regnum* against him; and the other to the lords in general, that he might be assisted and countenanced in this service.

AFTER which opening and declaration of the general cause, his Majesty's said attorney did proceed to set forth the proofs of this particular challenge and offence now in hand, and brought to the judgement and censure of this honourable court; whereupon it appeared to this honourable court by the confession of the said defendant *Priest* himself, that he having received some wrong and disgrace at the hands of one *Hutcheff*, did thereupon in revenge thereof write a letter to the said *Hutcheff*, containing a challenge to fight with him at single rapier, which letter the said *Priest* did deliver to the said defendant *Wright*, together with a stick containing the length of the rapier, wherewith the said *Priest* meant to perform the fight. Whereupon the said *Wright* did deliver the said letter to the said *Hutcheff*, and did read the same unto him; and after the reading thereof, did also deliver to the said *Hutcheff* the said stick, saying, that the same was the length of the weapon mentioned in the said letter. But the said *Hutcheff* (dutifully respecting the preservation of his Majesty's peace) did refuse the said challenge, whereby no farther mischief did ensue thereupon. This honourable court, and all the honourable presence this day sitting, upon grave and mature deliberation, pondering the quality of these offences, they generally approved the speech and observations of his Majesty's said attorney-general, and highly commended his great care and good service in bringing a cause of this nature to publick punishment and example, and in professing a constant purpose to go on in the like course with others; letting him know, that he might expect from the court all concurrence and assistance in so good a work. And thereupon the court did by their several opinions and sentences declare how much it imported the peace and prosperous estate of his Majesty and his kingdom to nip this practice and offence of duels in the head, which now did over-spread and grow universal, even among mean persons, and was not only entertained in practice and custom, but was framed into a kind of art and precepts; so that according to the saying of the scripture, *mischief is imagined like a law*. And the court with one consent did declare their opinions: That by the an-
cient

cient law of the land, all inceptions, preparations, and combinations to execute unlawful acts, though they never be performed, as they be not to be punished capitally, except it be in case of treason, and some other particular cases of statute law; so yet they are punishable as misdemeanors and contempts: And that this court was proper for offences of such nature, especially in this case, where the bravery and insolency of the times are such as the ordinary magistrates and justices that are trusted with the preservation of the peace are not able to master and repress those offences, which were by the court at large set forth, to be not only against the law of God, to whom, and his substitutes, all revenge belongeth, as part of his prerogative, but also against the oath and duty of every subject unto his Majesty, for that the subject doth swear unto him by the ancient law allegiance of life and member; whereby it is plainly inferred, that the subject hath no disposing power over himself of life and member to be spent or ventured according to his own passions and fancies, insomuch as the very practice of chivalry in jousts and tournaments, which are but images of martial actions, appear by ancient precedents not to be lawful without the King's licence obtained. The court also noted, that these private duels or combats were of another nature from the combats which have been allowed by the law as well of this land as of other nations for the tryal of rights or appeals. For that those combats receive direction and authority from the law; whereas these contrariwise spring only from the unbridled humours of private men. And as for the pretence of honour, the court much misliking the confusion of degrees which is grown of late, (every man assuming unto himself the term and attribute of honour) did utterly reject and condemn the opinion that the private duel, in any person whatsoever, had any grounds of honour; as well because nothing can be honourable that is not lawful, and that it is no magnanimity or greatness of mind, but a swelling and tumour of the mind, where there faileth a right and sound judgment; as also for that it was rather justly to be esteemed a weakness, and a conscience of small value in a man's self to be dejected so, with a word or trifling disgrace, as to think there is no re-cure of it, but by the hazard of life; whereas true honour in persons that know their own worth is not of any such brittle substance, but of a more strong composition. And finally, the court shewing a firm and settled resolution to proceed with all severity against these duels, gave warning to all young noblemen and gentlemen, that they should not expect the like connivance or toleration as formerly have been, but that justice should have a full passage without protection or interruption. Adding, that after a strait inhibition, whosoever should attempt a challenge or combat, in case where the other party was restrained to answer him, (as now all good subjects are) did by their own principles receive the dishonour and disgrace upon himself. And for the present cause, the court hath ordered, adjudged, and decreed, that the said *William Priest* and *Richard Wright* be committed to the prison of the *Fleet*, and the said *Priest* to pay five hundred pounds, and the said *Wright* five hundred marks, for their several fines to his Majesty's use. And to the end, that some more publick example may be made hereof amongst his Majesty's people, the court hath further ordered and decreed, that the said *Priest* and *Wright* shall at the next assizes, to be holden in the county of *Surrey*, publicly, in face of the court, the judges sitting, acknowledge their high contempt and offence against God, his Majesty, and his laws, and shew themselves penitent for the same. Moreover, the wisdom of this high and honourable court thought it meet and necessary that all sorts of his Majesty's subjects should understand

and

and take notice of that which hath been said and handled this day touching this matter, as well by his Highness's attorney-general, as by the lords judges, touching the law in such cases. And therefore the court hath enjoined master attorney to have special care to the penning of this decree, for the setting forth in the same summarily the matters and reasons, which have been opened and delivered by the court touching the same; and nevertheless also at some time convenient to publish the particulars of his speech and declaration, as very meet and worthy to be remembered and made known unto the world as these times are. And this decree, being in such sort carefully drawn and penned, the whole court thought it meet, and so have ordered and decreed that the same be not only read and published at the next assizes for *Surry*, at such time as the said *Priest* and *Wright* are to acknowledge their offences as afore said; but that the same be likewise published and made known in all shires of this kingdom. And to that end the justices of assize are required by this honourable court to cause this decree to be solemnly read and published in all the places and sittings of their several circuits, and in the greatest assembly; to the end, that all his Majesty's subjects may take knowledge and understand the opinion of this honourable court in this case, and in what measure his Majesty and this honourable court purposeth to punish such as shall fall into the like contempt and offences hereafter. Lastly, this honourable court much approving that which the right honourable Sir *Edw. Coke*, Kt. Lord Chief Justice of *England*, did now deliver touching the law in this case of duels, hath enjoined his lordship to report the same in print, as he hath formerly done divers other cases, that such as understand not the law in that behalf, and all others may better direct themselves and prevent the danger thereof hereafter.

T H E
C H A R G E
O F

Sir *FRANCIS BACON*, Kt. his Majesty's Attorney-General, against *William Talbot*, a counsellor at law, of *Ireland*, upon an information in the *Star-Chamber Ore tenus*, for a writing under his hand, whereby the said *William Talbot*, being demanded whether the doctrine of *Suarez*, touching deposing and killing of Kings excommunicated were true or no? he answered, that he referred himself unto that which the catholick *Roman* church should determine thereof. *Ultimo die termini Hilarii, undecimo Jacobi Regis.*

MY LORDS,
I BROUGHT before you the first sitting of this term the cause of duels; but now this last sitting I shall bring before you a cause concerning the greatest duel, which is in the Christian world, the duels and conflicts between the lawful authority of sovereign Kings, which is God's

ordinance for the comfort of human Society, and the swelling pride and usurpation of the see of *Rome*, in *temporalibus*, tending altogether to anarchy and confusion. Wherein if this pretence in the Pope of *Rome* by cartels, to make sovereign Princes as the banditti, and to proscribe their lives, and to expose their kingdoms to prey; if these pretences, I say, and all persons that submit themselves to that part of the Pope's power, be not by all possible severity repressed and punished, the state of Christian Kings will be no other than the ancient torment described by the poets in the hell of the heathen; a man sitting richly robed, solemnly attended, delicious fare, &c. with a sword hanging over his head, hanging by a small thread, ready every moment to be cut down by an accursing and accursed hand. Surely I thought they had been the prerogatives of God alone, and of his secret judgments. *Solvam cingula regum, I will loosen the girdles of Kings*; or again, *he poureth contempt upon princes*; or *I will give a King in my wrath, and take him away again in my displeasure*; and the like: But if these be the claims of a mortal man, certainly they are but the mysteries of that person which *exalts himself above all that is called God, supra omne quod dicitur Deus*. Note it well, not above God, (though that in a sense be true in respect of the authority they claim over the scriptures) but *above all that is called God*; that is, lawful Kings and Magistrates.

BUT my lords, in this duel I find this *Talbot* that is now before you but a coward; for he hath given ground, he hath gone backward and forward; but in such a fashion, and with such interchange of repenting and relapsing, as I cannot tell whether it doth extenuate or aggravate his offence. If he shall more publickly in the face of the court fall and settle upon a right mind, I shall be glad of it; and he that would be against the King's mercy, I would he might need the King's mercy: but nevertheless the court will proceed by rules of justice.

THE offence wherewith I charge this *Talbot*, prisoner at the bar, is this in brief and effect: That he hath maintained, and maintaineth under his hand a power in the pope for the deposing and murdering of Kings. In what sort he doth this, when I come to the proper and particular charge, I will deliver it in his own words without pressing or straining.

BUT before I come to the particular charge of this man, I cannot proceed so coldly; but I must express unto your lordships the extreme and imminent danger wherein our dear and dread Sovereign is, and in him we all; nay, and wherein all Princes of both religions (for it is a common cause) do stand at this day, by the spreading and enforcing of this furious and pernicious opinion of the pope's temporal power: which though the modest sort would blanch with the distinction of *in ordine ad spiritualia*, yet that is but an elusion; for he that maketh the distinction, will also make the case. This peril, though it be in itself notorious, yet because there is a kind of dulness, and almost a lethargy in this age, give me leave to set before you two glasses, such as certainly the like never met in one age; the glass of *France* and the glass of *England*. In that of *France* the tragedies acted and executed in two immediate Kings; in the glass of *England*, the same, or more horrible, attempted likewise in a Queen and King immediate, but ending in a happy deliverance. In *France*, *Henry III.* in the face of his army, before the walls of *Paris*, stabbed by a wretched Jacobine friar. *Henry IV.* (a prince that the *French* do surname the great) one that had been a saviour and redeemer of his country from infinite calamities, and a restorer of that monarchy to the ancient state and splendor, and a prince almost heroical, (except it be

in the point of revolt from religion) at a time when he was as it were to mount on horseback for the commanding of the greatest forces that of long time had been levied in *France*, this King likewise stillettoed by a rascal votary, which had been enchanted and conjured for that purpose.

In *England* Queen *Elizabeth*, of blessed memory, a Queen comparable and to be rank'd with the greatest Kings, oftentimes attempted by like votaries, *Sommerville*, *Parry*, *Savage*, and others, but still protected by the watchman that slumbereth not. Again our excellent sovereign King *James*, the sweetness and clemency of whose nature were enough to quench and mortify all malignity, and a King shielded and supported by posterity; yet this King in the chair of Majesty, (his vine and olive branches about him) attended by his nobles and third estate in parliament, ready, in the twinkling of an eye, (as if it had been a particular doomsday) to have been brought to ashes, dispersed to the four winds. I noted the last day, my lord chief justice, when he spake of this powder treason, he laboured for words; though they came from him with great efficacy, yet he truly confessed, and so must all men, that that treason is above the charge and report of any words whatsoever.

Now, my lords, I cannot let pass, but in these glasses which I spake of, besides the facts themselves and danger, to shew you two things; the one the ways of God Almighty, which turneth the sword of *Rome* upon the Kings that are the vassals of *Rome*, and over them gives it power; but protecteth those Kings which have not accepted the yoke of his tyranny from the effects of his malice: the other, that (as I said at first) this is a common cause of Princes; it involveth Kings of both religions; and therefore his Majesty did most worthily and prudently ring out the alarm-bell, to awaken all other Princes to think of it seriously, and in time. But this is a miserable case the while, that these *Roman* soldiers do either thrust the spear into the sides of God's anointed, or at least they crown them with thorns; that is, piercing and pricking cares and fears, that they can never be quiet or secure of their lives or states. And as this peril is common to Princes of both religions, so Princes of both religions have been likewise equally sensible of every injury that touch'd their temporals.

Thuanus reports in his story, that when the realm of *France* was interdicted by the violent proceedings of Pope *Julius* the second, the King *Lewis* the twelfth, otherwise noted for a moderate Prince, caused coins of gold to be stamped with his own image, and this superscription, *Perdam nomen Babylonis e terra*. And *Thuanus* saith, himself hath seen divers pieces thereof. So as this catholick King was so much incensed at that time, in respect of the Pope's usurpation, as he did fore-run *Luther*, in applying *Babylon* to *Rome*. *Charles* the fifth Emperor, who was accounted one of the Pope's best sons, yet proceeded in matter temporal towards Pope *Clement* with strange rigour; never regarding the pontificality, but kept him prisoner eighteen months in a pestilent prison; and was hardly dissuaded by his council from having sent him captive into *Spain*; and made sport with the threats of *Frosberg* the *German*, who wore a silk rope under his cassock, which he would shew in all companies; telling them that he carried it to strangle the Pope with his own hands. As for *Philip* the fair, it is the ordinary example, how he brought Pope *Boniface* the eighth to an ignominious end, dying mad and enraged; and how he styled his rescript to the Pope's bull, whereby he challenged his temporals, *sciat fatuitas vestra*, not your beatitude, but your stultitude; a style worthy to be continued in like cases; for certainly that claim is merely folly and fury. As for native examples
here,

here, it is too long a field to enter into them. Never Kings of any nation kept the partition-wall between temporal and spiritual better in times of greatest superstition: I report me to King *Edward I.* that set up so many crosses, and yet crossed that part of the pope's jurisdiction, no man more strongly. But these things have passed better pens and speeches: here I end them.

BUT now to come to the particular charge of this man, I must inform your lordships the occasion and nature of this offence: There hath been published lately to the world a work of *Suarez* a *Portuguese*, a professor in the university of *Coimbra*, a confident and daring writer, such an one as *Tully* describes in derision; *nihil tam verens, quam ne dubitare, aliqua de re, videretur*: one that fears nothing but this, lest he should seem to doubt of any thing. A fellow that thinks with his magistrality and goose-quill, to give laws and menages to crowns and scepters. In this man's writing this doctrine of deposing and murdering Kings, seems to come to a higher elevation than heretofore; and it is more arted and positived than in others. For in the passages which your lordships shall hear read anon; I find three assertions which run not in the vulgar track, but are such as wherewith mens ears (as I suppose) are not much acquainted; whereof the first is, That the pope hath a superiority over Kings, as subjects, to depose them; not only for spiritual crimes, as heresy and schism, but for faults of a temporal nature; forasmuch as a tyrannical government tendeth ever to the destruction of souls. So by this position, Kings of either religion are alike comprehended, and none exempted. The second, that after a sentence given by the pope, this writer hath defined of a series, or succession, or substitution of hangmen, or *Bourreaux*, to be sure, lest an executioner should fail. For he saith, That when a King is sentenced by the pope to deprivation or death, the executioner, who is first in place, is he to whom the pope shall commit the authority, which may be a foreign prince, it may be a particular subject, it may be, in general, to the first undertaker. But if there be no direction or assignation in the sentence special nor general, then, *de jure*, it appertains to the next successor: (a natural and pious opinion; for commonly they are sons, or brothers, or near of kin, all is one:) so as the successor be apparent, and also that he be a catholick. But if he be doubtful, or that he be no catholick, then it devolves to the commonalty of the kingdom; so as he will be sure to have it done by one minister or other. In the third he distinguisheth of two kinds of tyrants, a tyrant in title, and a tyrant in regiment; the tyrant in regiment cannot be resisted or killed without a sentence precedent by the pope; but a tyrant in title may be killed by any private man whatsoever. By which doctrine he hath put the judgment of Kings titles (which I will undertake are never so clean but that some vain quarrel or exception may be made unto them,) upon the fancy of every private man; and also couples the judgment and execution together, that he may judge him by a blow, without any other sentence.

YOUR lordships see what monstrous opinions these are, and how both these beasts, the beast with seven heads, and the beast with many heads, pope and people, are at once let in, and set upon the sacred persons of Kings.

NOW to go on with the narrative; there was an extract made of certain sentences and portions of this book (being of this nature that I have set forth) by a great prelate and counsellor upon a just occasion; and there being some hollownes and hesitation in these matters (wherein it is a thing hapi-

thus to doubt) discovered and perceived in *Talbot*; he was asked his opinion concerning these opinions, in the presence of his Majesty: and afterward they were delivered to him, that upon advice, and *sedato animo*, he might declare himself. Whereupon, under his hand, he subscribes thus;

May it please your honourable good lordships, concerning this doctrine of Suarez; I do perceive, by what I have read in his book, that the same doth concern matter of faith, the controversy growing upon exposition of scriptures and councils, wherein (being ignorant and not studied) I cannot take upon me to judge; but I do submit my opinion therein to the judgment of the catholick Roman church, as in all other points concerning faith, I do. And for matter concerning my loyalty, I do acknowledge my Sovereign Liege Lord King James, to be lawful and undoubted King of all the Kingdoms of England, Scotland, and Ireland; and I will bear true faith and allegiance to his Highness during my life.

WILLIAM TALBOT.

Now, my lords, upon these words I conceive *Talbot* to have committed a great offence, and such a one as if he had entered into a voluntary and malicious publication of the like writing, it would have been too great an offence for the capacity of this court. But because it grew from a question ask'd by a council of estate, and so rather seemeth, in a favourable construction, to proceed from a kind of submission to answer, than from any malicious or insolent will; it was fit, according to the clemency of these times, to proceed in this manner before your lordships: and yet let the hearers take these things right; for certainly, if a man be required by the lords of the council to deliver his opinion whether King *James* be King or no? and he deliver his opinion that he is not, this is high treason: but I do not say that these words amount to that; and therefore let me open them truly to your lordships, and therein open also (it may be) the eyes of the offender himself, how far they reach.

My lords, a man's allegiance must be independent and certain, not dependent and conditional. *Elizabeth Barton*, that was called the holy maid of *Kent*, affirmed, that if King *H. VIII.* did not take *Katharine of Spain* again to his wife within a twelvemonth, he should be no King: and this was judged treason. For though this act be contingent and future, yet the preparing of the treason is present.

And in like manner, if a man should voluntarily publish or maintain; that whensoever a bull or deprivation shall come forth against the King, that from thenceforth he is no longer King; this is of like nature. But with this I do not charge you neither; but this is the true latitude of your words, that if the doctrine touching the killing of Kings be matter of faith, that you submit your self to the judgment of the catholick Roman church: so as now (to do you right) your allegiance doth not depend simply upon a sentence of the pope's deprivation against the King; but upon another point also, if these doctrines be already, or shall be declared to be matter of faith. But, my lords, there is little won in this: there may be some difference to the guilt of the party, but there is little to the danger of the King. For the same pope of *Rome* may, with the same breath, declare both. So as still upon the matter, the King is made but tenant at will of his life and kingdoms; and the allegiance of his subjects is pinn'd upon the pope's acts. And certainly it is time to stop the current of this opinion of acknowledgment of the pope's power in *temporalibus*; or else it will sapp and supplant the seat of Kings.

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And let it not be mistaken, that Mr. *Talbot's* offence should be no more than the refusing the oath of allegiance. For it is one thing to be silent, and another thing to affirm. As for the point of matter of faith, or not of faith, to tell your lordships plain, it would astonish a man to see the gulf of this implied belief. Is nothing excepted from it? If a man should ask Mr. *Talbot*, whether he do condemn murder, or adultery, or rape, or the doctrine of *Mahomet* or of *Arius*, instead of *Suarez*? Must the answer be with this exception, that if the question concern matter of faith, (as no question it doth, for the moral law is matter of faith) that therein he will submit himself to what the church shall determine? And, no doubt, the murder of princes is more than simple murder. But to conclude, *Talbot*, I will do you this right, and I will not be reserved in this, but to declare that, that is true; that you came afterwards to a better mind; wherein, if you had been constant, the King, out of his great goodness, was resolved not to have proceeded with you in course of justice: But then again you started aside like a broken bow. So that by your variety and vacillation you lost the acceptable time of the first grace, which was not to have convented you.

NAY, I will go farther with you: your last submission I conceive to be satisfactory and complete; but then it was too late, the King's honour was upon it; it was published and a day appointed for hearing; yet what preparation that may be to the second grace of pardon, that I know not: but I know my lords, out of their accustom'd favour, will admit you not only to your defence concerning that that hath been charged; but to extenuate your fault by any submission that now God shall put into your mind to make.

THE
CHARGE
GIVEN BY

Sir *FRANCIS BACON*,

His MAJESTY'S Attorney-General,

Against Mr. *Oliver St. John*, for scandalizing and traducing in the publick sessions, letters sent from the lords of the council touching the benevolence.

MY lords, I shall inform you *ore tenus*, against this gentleman Mr. *I. S.* A gentleman, as it seems, of an ancient house and name. But for the present, I can think of him by no other name than the name of a great offender. The nature and quality of his offence, in sum, is this. This gentleman hath, upon advice, not suddenly by his pen, nor by the slip of his tongue; not privately, or in a corner, but publickly, as it were to the face of the King's ministers and justices, slandered and traduced the King our

Sovereign,

Sovereign, the law of the land, the parliament, and infinite particulars of his Majesty's worthy and loving subjects. Nay, the slander is of that nature, that it may seem to interest the people in grief and discontent against the state; whence might have ensued matter of murmur and sedition. So that it is not a simple slander, but a seditious slander, like to that the poet speaketh of,

—————*Calamosque armare veneno.*

A venomous dart that hath both iron and poison.

To open to your lordships the true state of this offence, I will set before you, first the occasion whereupon Mr. I. S. wrought: then the offence it self in his own words: and lastly, the points of his charge.

My lords, you may remember that there was the last parliament an expectation to have had the King supplied with treasure, although the event failed. Herein it is not fit for me to give opinion of an house of parliament; but I will give testimony of truth in all places. I served in the lower house, and I observed somewhat. This I do affirm, that I never could perceive but that there was in that house a general disposition to give, and to give largely. The clocks in the house perchance might differ; some went too fast, some went too slow; but the disposition to give was general: so that I think I may truly say, *solo tempore lapsus amor*:

THIS accident happening thus, besides expectation, it stirred up, and awaked in divers of his Majesty's worthy servants and subjects of the clergy, the nobility, the court, and others here near at hand, an affection loving and chearful; to present the King some with plate, some with money, as free-will offerings, (a thing that God Almighty loves a chearful giver: what an evil doth I know not.) And, my lords, let me speak it plainly unto you: God forbid any body should be so wretched as to think that the obligation of love and duty, from the subject to the King, should be joint and not severall. No, my lords, it is both. The subject petitioneth to the King in parliament. He petitioneth likewise out of parliament. The King on the other side gives graces to the subjects in parliament: he gives them likewise, and poureth them upon his people out of parliament; and so no doubt the subject may give to the King in parliament, and out of parliament. It is true the parliament is *intercurfus magnus*. The great intercourse and main current of graces, and donatives from the King to the people, from the people to the King; yet parliaments are held but at certain times: whereas the passages are always open for particulars; even as you see great rivers have their tides: but particular springs and fountains run continually.

To proceed therefore: As the occasion (which was the failing of supply by parliament) did awake the love and benevolence of those that were at hand to give; so it was apprehended and thought fit by my lords of the council to make a proof whether the occasion and example both, would not awake those in the country of the better sort to follow. Whereupon, their lordships devised and directed letters unto the sheriffs and justices, which declared what was done here above, and wished that the country might be moved, especially men of value.

Now, my lords, I beseech you give me favour and attention to set forth and observe unto you five points: (I will number them, because other men may note them; and I will but touch them, because they shall not be drowned or lost in discourse,) which I hold worthy the observation, for the honour of the state and confusion of slanders; whereby it will appear most evidently
what

what care was taken, that that which was then done might not have the effect, no nor the shew, no nor so much as the shadow of a tax; and that it was so far from breeding or bringing in any ill precedent or example, as contrariwise it is a corrective that doth correct and allay the harshness and danger of former examples.

THE first is, that what was done was done immediately after such a parliament, as made general profession to give, and was interrupted by accident; so as you may truly and justly esteem it, *tanquam posthuma proles parliamenti*, as an after-child of the parliament, and in pursuit (in some small measure) of the firm intent of a parliament past. You may take it also if you will, as an advance or provisional help until a future parliament, or as a gratification simply without any relation to a parliament; you can no ways take it amiss.

THE second is, that it wrought upon example as a thing not devised or projected, or required; no nor so much as recommended until many that were never moved nor dealt with, *ex mero motu*, had freely and frankly sent in their presents. So that the letters were rather like letters of news, what was done at London, than otherwise; and we know *exempla ducunt, non trahunt*; examples they do but lead, they do not draw nor drive.

THE third is, that it was not done by commission under the great seal, a thing warranted by a multitude of precedents, both ancient, and of late time, as you shall hear anon, and no doubt warranted by law: so that the commissions be of that style and tenour, as that as they be to move and not to levy: but this was done by letters of the council, and no higher hand or form.

THE fourth is, that these letters had no manner of shew of any binding act of state: for they contain not any special frame or direction how the business should be managed; but were written as upon trust, leaving the matter wholly to the industry and confidence of those in the country: so that it was an *absque compoto*; such a form of letter as no man could fitly be called to account upon.

THE fifth and last point is, that the whole carriage of the business had no circumstance compulsory. There was no proportion or rate set down not so much as by way of a wish; there was no menace of any that should deny; no reproof of any that did deny; no certifying of the names of any that had denied. Indeed, if men could not content themselves to deny, but that they must censure and inveigh, nor to excuse themselves but they must accuse the state, that is another case. But I say, for denying, no man was apprehended, no nor noted. So that I verily think, that there is none so subtil a disputer in the controversy of *liberum arbitrium*, that can with all his distinctions fasten or carp upon the act, but that there was free-will in it.

I CONCLUDE therefore, my lords, that this was a true and pure benevolence; not an imposition called a benevolence, which the statute speaks of; as you shall hear by one of my fellows. There is a great difference I tell you (though *Pilate* would not see it) between *Rex Judaeorum*, and *se dicens Regem Judaeorum*. And there is a great difference between a benevolence and an exaction called a benevolence, which the Duke of Buckingham speaks of in his oration to the city; and defineth it to be not what the subject of his good will would give, but what the King of his good will would take. But this, I say, was a benevolence wherein every man had a prince's prerogative, a negative voice; and this word (*excuse moy*) was a plea peremptory. And therefore I do wonder how Mr. *I. S.* could foul or trouble so

clear

clear a fountain; certainly it was but his own bitterness and unsound humours.

Now to the particular charge amongst other countries, these letters of the lords came to the justices of *D—shire*, who signified the contents thereof, and gave directions and appointments for meetings concerning the business, to several towns and places within that county: and amongst the rest, notice was given unto the town of *A*. The mayor of *A* conceiving that this Mr. *I. S.* (being a principal person, and a dweller in that town) was a man likely to give both money and good example, dealt with him to know his mind: He intending (as it seems) to play prizes, would give no answer to the mayor in private, but would take time. The next day then being an appointment of the justices to meet, he takes occasion, or pretends occasion to be absent, because he would bring his papers upon the stage: and thereupon takes pen in hand, and instead of excusing himself, sits down and contriveth a seditious and libellous accusation against the King and state, which your lordships shall now hear, and sends it to the mayor: and withal, because the feather of his quill might fly abroad, he gives authority to the mayor to impart it to the justices, if he so thought good. And now, my lords, because I will not mistake or mis-repeat, you shall hear the seditious libel in the proper terms and words thereof.

Here the papers were read.

My lords, I know this paper offends your ears much, and the ears of any good subject; and sorry I am that the times should produce offences of this nature: but since they do, I would be more sorry they should be passed without severe punishment: *Non tradite factum*, (as the verse says, altered a little) *aut si tradatis, facti quoque tradite poenam*. If any man have a mind to discourse of the fact, let him likewise discourse of the punishment of the fact.

In this writing, my lords, there appears a monster with four heads, of the progeny of him that is the father of lyes, and takes his name from slander.

THE first is a wicked and seditious slander; or, (if I shall use the Scripture phrase) a blaspheming of the King himself; setting him forth for a Prince perjured in the great and solemn oath of his coronation, which is as it were the knot of the diadem; a Prince that should be a violator and infringer of the liberties, laws, and customs of the kingdom; a mark for an *Henry the Fourth*; a match for a *Richard the Second*.

THE second is a slander and falsification, and wresting of the law of the land gross and palpable: it is truly said by a *Civilian*, *Tortura legum pessima*, the torture of laws is worse than the torture of men.

THE third is a slander and false charge of the parliament, that they had denied to give to the King; a point of notorious untruth.

AND the last is a slander and taunting of an infinite number of the King's loving subjects, that have given towards this benevolence and free contribution; charging them as accessory and co-adjutors to the King's perjury. Nay, you leave us not there, but you take upon you a pontifical habit, and couple your slander with a curse; but thanks be to God, we have learned sufficiently out of the Scripture, that as the bird flies away, so the causeless curse shall not come.

For the first of these, which concerns the King, I have taken to my self the opening and aggravation thereof; the other three I have distributed to my fellows.

My lords, I cannot but enter into this part with some wonder and astonishment, how it should come into the heart of a subject of *England* to vapour forth such a wicked and venomous slander against the King, whose goodness and grace is comparable (if not incomparable) unto any of the King's progenitors. This therefore gives me a just and necessary occasion to do two things: The one, to make some representation of his Majesty; such as truly he is found to be in his government, which Mr. *I. S.* chargeth with violation of laws and liberties: The other, to search and open the depth of Mr. *I. S.* his offence. Both which I will do briefly; because the one, I cannot express sufficiently; and the other, I will not press too far.

My lords, I mean to make no panegyrick or laudative; the King delights not in it, neither am I fit for it: but if it were but a counsellor or nobleman, whose name had suffered, and were to receive some kind of reparation in this high court, I would do him that duty as not to pass his merits and just attributes (especially such as are limited with the present case) in silence: for it is fit to burn incense where evil odours have been cast and raised. Is it so that King *James* shall be said to be a violator of the liberties, laws, and customs of his kingdoms? Or is he not rather a noble and constant protector and conservator of them all? I conceive this consisteth in maintaining religion, and the true church; in maintaining the laws of the kingdom, which is the subject's birth-right; in temperate use of the prerogative; in due and free administration of justice and conservation of the peace of the land.

For religion, we must ever acknowledge in the first place, that we have a King that is the principal conservator of true religion through the Christian world. He hath maintained it not only with scepter and sword, but likewise by his pen; wherein also he is potent.

He hath awaked and re-authorized the whole party of the reformed religion throughout *Europe*; which through the insolency and divers artifices and enchantments of the adverse part was grown a little dull and dejected: He hath summoned the fraternity of Kings to enfranchise themselves from the usurpation of the See of *Rome*: He hath made himself a mark of contradiction for it.

NEITHER can I omit, when I speak of religion, to remember that excellent act of his Majesty; which though it were done in a foreign country, yet the church of God is one, and the contagion of these things will soon pass seas and lands: I mean, in his constant and holy proceeding against the heretick *Vorstius*, whom (being ready to enter into the chair, and there to have authorized one of the most pestilent and heathenish heresies that ever was begun) his Majesty by his constant opposition dismounted and pulled down. And I am persuaded there sits in this court one whom God doth the rather bless for being his Majesty's instrument in that service.

I CANNOT remember religion and the church, but I must think of the seed-plots of the same, which are the universities. His Majesty, as for learning amongst Kings, he is incomparable in his person; so likewise hath he been in his government a benign or benevolent planet towards learning: By whose influence those nurseries and gardens of learning (the universities) were never more in flower nor fruit.

For the maintaining of the laws, which is the hedge and fence about the liberty of the subject, I may truly affirm it was never in better repair. He doth concur with the votes of the nobles; *Nolumus leges Angliae mutare*. He is an enemy of innovation. Neither doth the universality of his own knowledge carry him to neglect or pass over the very forms of the laws of the

the land. Neither was there ever King, I am persuaded, that did consult so oft with his judges, as my lords that sit here know well. The judges are a kind of council of the King's by oath and ancient institution; but he useth them so indeed: he confers regularly with them upon their returns from their visitations and circuits: he gives them liberty, both to inform him, and to debate matters with him; and in the fall and conclusion commonly relies on their opinions.

As for the use of the prerogative, it runs within the ancient chanel and banks: some things that were conceived to be in some proclamations, commissions, and patents, as overflows, have been by his wisdom and care reduced; whereby, no doubt, the main chanel of his prerogative is so much the stronger. For evermore overflows do hurt the chanel.

As for administration of justice between party and party, I pray observe these points. There is no news of great seal or signet that flies abroad for countenance or delay of causes; protections rarely granted, and only upon great ground, or by consent. My lords here of the council and the King himself meddled not (as hath been used in former times) with matters of *meum* and *tuum*, except they have apparent mixture with matters of estate, but leave them to the King's courts of law or equity. And for mercy and grace (without which there is no standing before justice) we see the King now hath reigned twelve years in his white robe, without almost any asperion of the crimson dye of blood. There sits my Lord *Hobart* that served attorney seven years. I served with him. We were so happy, as there passed not through our hands any one arraignment for treason; and but one for any capital offence, which was that of the Lord *Sanguar*; the noblest piece of justice (one of them) that ever came forth in any King's time.

As for penal laws, which lie as snares upon the subjects, and which were as a *nemo scit* to King *Henry VII*; it yields a revenue that will scarce pay for the parchment of the King's records at *Westminster*.

AND lastly for peace, we see manifestly his Majesty bears some resemblance of that great name, a Prince of peace: he hath preserved his subjects during his reign in peace, both within and without. For the peace with states abroad, we have it *usque ad satietatem*: and for peace in the lawyers phrase, which count trespasses and forces and riots to be *contra pacem*; let me give your lordships this token or taste, that this court where they should appear had never less to do. And certainly there is no better sign of *omnia bene*, than when this court is in a still.

BUT, my lords, this is a sea of matter; and therefore I must give it over, and conclude, that there was never King reigned in this nation that did better keep covenant in preserving the liberties and procuring the good of his people: so that I must need say for the subjects of *England*,

O fortunatos nimium sua si bona norint;

As no doubt they do both know and acknowledge it; whatsoever a few turbulent discourses may through the lenity of the time take boldness to speak.

AND as for this particular, touching the benevolence, wherein Mr. *I. S.* doth assign this breach of covenant, I leave it to others to tell you what the King may do, or what other Kings have done; but I have told what our King and my lords have done: which I say, and say again, is so far from introducing a new precedent, as it doth rather correct and mollify and qualify former precedents.

Now

Now, Mr. *I. S.* let me tell you your fault in few words: for that I am persuaded you see it already, though I woo no man's repentance; but I shall as much as in me is, cherish it where I find it. Your offence hath three parts knit together:

YOUR slander,
YOUR menace, and
YOUR comparison.

FOR your slander, it is no less than that the King is perjured in his coronation oath. No greater offence than perjury; no greater oath than that of a coronation. I leave it; it is too great to aggravate.

YOUR menace, that if there were a *Bullingbroke*, or I cannot tell what, there were matter for him, is a very seditious passage. You know well, that howsoever *Henry* the Fourth's act by a secret providence of God prevailed, yet it was but an usurpation; and if it were possible for such a one to be this day, (wherewith it seems your dreams are troubled) I do not doubt his end would be upon the block; and that he would sooner have the ravens sit upon his head at *London-Bridge*, than the crown at *Westminster*. And it is not your interlacing of your God forbid, that will salve these seditious speeches: neither could it be a fore-warning, because the matter was past and not revocable, but a very stirring up and incensing of the people. If I should say to you, (for example) if these times were like some former times, of King *Henry VIII.* or some other times, which God forbid, Mr. *I. S.* it would cost you your life; I am sure you would not think this to be a gentle warning, but rather that I incensed the court against you.

AND for your comparison with *Richard II.* I see you follow the example of them that brought him upon the stage, and into print in *Queen Elizabeth's* time, a most prudent and admirable Queen. But let me intreat you, that when you will speak of *Queen Elizabeth* or King *James*; you would compare them to King *Henry VII.* or King *Edward I.* or some other parallels to which they are alike. And this I would wish both you and all to take heed of, how you speak seditious matter in parables, or by tropes or examples. There is a thing in an indictment called an innuendo; you must beware how you beckon or make signs upon the King in a dangerous sense; but I will contain my self and press this no farther. I may hold you for turbulent or presumptuous; but I hope you are not disloyal: you are graciously and mercifully dealt with. And therefore having now opened to my lords, and (as I think) to your own heart and conscience, the principal part of your offence, (which concerns the King) I leave the rest, which concerns the law, parliament, and the subjects that have given, to Mr. Serjeant and Mr. Solicitor.

THE

THE
CHARGE
OF
O W E N

Indicted of High Treason in the KING'S BENCH;

BY

Sir *FRANCIS BACON*, Kt.

His MAJESTY's Attorney-General.

THE treason wherewith this man standeth charged, is for the kind and nature of it ancient, as ancient as there is any law of *England*; but in the particular, late and upstart: and again, in the manner and boldness of the present case, new and unheard of till this man. Of what mind he is now, I know not; but I take him as he was, and as he standeth charged. For high treason is not written in ice; that when the body relenteth, the impression should go away.

In this cause the evidence it self will spend little time: time therefore will be best spent in opening fully the nature of this treason, with the circumstances thereof; because the example is more than the man. I think good therefore by way of inducement and declaration in this cause to open unto the court, jury and hearers, five things.

THE first is the clemency of the King; because it is news, and a kind of rarity to have a proceeding in this place upon treason: and perhaps it may be marvelled by some, why after so long an intermission it should light upon this fellow, being a person but contemptible, and a kind of venomous fly, and a hang-by of the seminaries.

THE second is, the nature of this treason; as concerning the fact, which of all kinds of compassing the King's death I hold to be the most perilous, and as much differing from other conspiracies as the lifting up of a thousand hands against the King (like the giant *Briareus*) differs from lifting up one or a few hands.

THE third point that I will speak unto is the doctrine or opinion, which is the ground of this treason; wherein I will not argue or speak like a divine or scholar, but as a man bred in a civil life: and to speak plainly, I hold the opinion to be such that deserveth rather detestation than contestation.

THE fourth point is the degree of this man's offence, which is more presumptuous than I have known any other to have fallen into in this kind, and hath a greater overflow of malice and treason.

AND fifthly, I will remove somewhat that may seem to qualify and extenuate this man's offence; in that he hath not affirmed simply that it is lawful to kill the King, but conditionally; that if the King be excommunicate, it is lawful to kill him, which maketh little difference either in law or peril.

FOR the King's clemency, I have said it of late upon a good occasion; and I still speak it with comfort: I have now served his Majesty's solicitor and attorney eight years and better; yet this is the first time that ever I gave in evidence against a traitor at this bar or any other. There hath not wanted matter in that party of the subjects whence this kind of offence floweth to irritate the King: he hath been irritated by the powder of treason, which might have turned judgment into fury. He hath been irritated by wicked and monstrous libels; irritated by a general insolency and presumption in the Papists throughout the land; and yet I see his Majesty keepeth *Caesar's* rule: *Nil malo, quam eos esse similes sui, & me mei*. He leaveth them to be like themselves; and he remaineth like himself, and striveth to overcome evil with goodness. A strange thing, bloody opinions, bloody doctrines, bloody examples, and yet the government still unstained with blood. As for this *Owen* that is brought in question, though his person be in his condition contemptible; yet we see by miserable examples, that these wretches which are but the scum of the earth, have been able to stir earthquakes by murdering of princes: and if it were in case of contagion, (as this is a contagion of the heart and soul) a rascal may bring in a plague into the city as well as a great man: so it is not the person, but the matter that is to be considered.

FOR the treason itself, which is the second point, my desire is to open it in the depth thereof, if it were possible; but it is bottomless: and so the civil law saith, *conjuraciones omnium proditorum odiosissimae & perniciosissimae*. Against hostile invasions and the adherence of subjects to enemies, Kings can arm. Rebellions must go over the bodies of many good subjects before they can hurt the King: but conspiracies against the persons of Kings are like thunder-bolts that strike upon the sudden, hardly to be avoided. *Major metus a singulis* (saith he) *quam ab universis*. There is no preparation against them: and that preparation, which may be of guard or custody, is a perpetual misery. And therefore they that have written of the privileges of ambassadors and of the amplitude of safe-conducts have defined, that if an ambassador or a man that cometh in upon the highest safe-conducts do practise matter of sedition in a state, yet by the law of nations he ought to be remanded; but if he conspire against the life of a prince by violence or poison, he is to be justified: *Quia odium est omni privilegio majus*. Nay, even amongst enemies, and in the most deadly wars, yet nevertheless conspiracy and assassination of princes hath been accounted villanous and execrable.

THE manners of conspiring and compassing the King's death are many: but it is most apparent, that amongst all the rest this surmounteth. First, because it is grounded upon pretended religion; which is a trumpet that inflameth the heart and powers of a man with daring and resolution more than any thing else. Secondly, it is the hardest to be avoided: for when a particular conspiracy is plotted or attempted against a King by some one or some few conspirators, it meets with a number of impediments. Commonly he that hath the head to devise it, hath not the heart to undertake it: and the person that is used, sometimes faileth in courage; sometimes faileth in opportunity; sometimes is touched with remorse. But to publish and maintain, that it may be lawful for any man living to attempt the life of a King, this doctrine is a venomous sop; or as a legion of malign spirits; or an universal temptation doth enter at once into the hearts of all that are any way prepared, or of any predisposition to be traitors: so that whatsoever faileth in any one, is supplied in many. If one man faint, another will dare: if one man hath not the opportunity, another hath: if one man relent, another will be desperate. And thirdly,

thirdly, particular conspiracies have their periods of time, within which, if they be not taken, they vanish; but this is endless, and importeth perpetuity of springing conspiracies. And so much concerning the nature of the fact.

FOR the third point, which is the doctrine; that upon an excommunication of the Pope, with sentence of deposing, a King by any son of *Adam* may be slaughtered; and that it is justice and no murder; and that their subjects are absolved of their allegiance, and the Kings themselves exposed to spoil and prey. I said before, that I would not argue the subtilty of the question: it is rather to be spoken to by way of accusation of the opinion as impious, than by way of dispute of it as doubtful. Nay, I say it deserveth rather some holy war or league amongst all Christian princes of either religion for the extirpating and razing of the opinion, and the authors thereof, from the face of the earth, than the style of pen or speech. Therefore in this kind I will speak to it a few words, and not otherwise. Nay, I protest, if I were a Papist I should say as much: nay, I should speak it perhaps with more indignation and feeling. For this horrible opinion is our advantage, and it is their reproach, and will be their ruin.

THIS monster of opinion is to be accused of three most evident and most miserable slanders.

FIRST, Of the slander it bringeth to the Christian faith, being a plain plantation of irreligion and atheism.

SECONDLY, The subversion which it introduceth into all policy and government.

THIRDLY, The great calamity it bringeth upon Papists themselves; of which the more moderate sort as men mis-led are to be pitied.

FOR the first, if a man doth visit the foul and polluted opinions, customs, or practices of Heathenism, Mahometism, and Heresy, he shall find they do not attain to this height. Take the examples of damnable memory amongst the Heathen. The proscriptions in *Rome* of *Sylla*, and afterwards of the *Triumvirs*, what were they? They were but of a finite number of persons, and those not many that were exposed unto any man's sword. But what is that to the proscribing of a King, and all that shall take his part? And what was the reward of a soldier that amongst them killed one of the proscribed? A small piece of money. But what is now the reward of one that shall kill a King? The kingdom of heaven. The custom among the Heathen that was most scandalized was, that sometimes the priest sacrificed men; but yet you shall not read of any priesthood that sacrificed Kings.

THE Mahometans make it a part of their religion to propagate their sect by the sword; but yet still by honourable wars, never by villanies and secret murders. Nay, I find that the *Saracen* prince, of whom the name of the assassins is derived, which had divers votaries at commandment, which he sent and employed to the killing of divers princes in the east, (by one of whom *Amurath* the first was slain, and *Edward* the first of *England* was wounded) was put down and rooted out by a common consent of the Mahometan princes.

THE Anabaptists (it is true) come nearest. For they profess the pulling down of magistrates; and they can chaunt the psalm, *To bind their Kings in chains, and their nobles in fetters of iron*. This is the glory of the saints, much like the temporal authority that the Pope challengeth over princes. But this is the difference, that that is a furious and fanatical fury, and this is a sad and solemn mischief: he imagineth mischief as a law; a law like mischief.

As for the defence which they do make, it doth aggravate the sin, and turneth it from a cruelty towards man to a blasphemy towards God. For to say that all this is *in ordine ad spirituale*, and to a good end, and for the salvation of souls, it is directly to make God author of evil, and to draw him into the likeness of the prince of darkness; and to say with those that Saint Paul speaketh of, *Let us do evil that good may come thereof*. Of whom the apostle saith definitively, *that their damnation is just*.

For the destroying of government universally, it is most evident, that it is not the case of protestant princes only, but of catholick princes likewise; as the King hath excellently set forth. Nay, it is not the case of princes only, but of all subjects and private persons. For touching princes, let history be perused, what hath been the causes of excommunication; and namely, this tumour of it, (the deposing of Kings;) it hath not been for heresy and schism alone, but for collation and investitures of bishopricks and benefices, intruding upon ecclesiastical possessions, violating of any ecclesiastical person or liberty. Nay, generally they maintain it, that it may be for any sin: so that the difference wherein their doctors vary, that some hold that the Pope hath his temporal power immediately, and others but *in ordine ad spirituale*, is but a delusion and an abuse. For all cometh to one. What is there that may not be made spiritual by consequence; especially when he that giveth the sentence may make the case? and accordingly hath the miserable experience followed. For this murdering of Kings hath been put in practice, as well against papist Kings as protestant: Save that it hath pleased God so to guide it by his admirable providence; as the attempts upon papist princes have been executed, and the attempts upon protestant princes have failed, except that of the Prince of Orange: And not that neither, until such time as he had joined too fast with the Duke of Anjou and the papists.——

The rest is wanting.

THE
CHARGE
OF

Sir *FRANCIS BACON*, the KING's Attorney-General, against Mr. *Lumsden*, Sir *John Wentworth*, and Sir *John Holles*, for scandal and traducing of the King's justice in the proceedings against *Weston*, in the STAR-CHAMBER, 10 Novemb. 1615.

THE offence wherewith I shall charge the three offenders at the bar, is a misdemeanor of a high nature, tending to the defacing and scandal of justice in a great cause capital. The particular charge is this:

THE

THE King amongst many his princely virtues is known to excel in that proper virtue of the imperial throne, which is justice. It is a royal virtue which doth employ the other three cardinal virtues in her service. Wisdom to discover, and discern nocent or innocent: fortitude to prosecute and execute: temperance, so to carry justice as it be not passionate in the pursuit, nor confused in involving persons upon light suspicion, nor precipitate in time. For this his Majesty's virtue of justice God hath of late raised an occasion, and erected as it were a stage or theatre much to his honour for him, to shew it, and act it in the pursuit of the untimely death of Sir *Thomas Overbury*, and therein cleansing the land from blood. For, my lords, if blood spilt pure doth cry to heaven in God's ears, much more blood defiled with poison.

THIS great work of his Majesty's justice, the more excellent it is, your lordships will soon conclude the greater is the offence of any that have sought to affront it or traduce it. And therefore, before I descend unto the charge of these offenders, I will set before your lordships the weight of that which they have sought to impeach; speaking somewhat of the general crime of imprisonment, and then of the particular circumstances of this fact upon *Overbury*; and thirdly and chiefly, of the King's great and worthy care and carriage in this business.

THIS offence of imprisonment is most truly figured in that device or description, which was made of the nature of one of the *Roman* tyrants, that he was *lutum sanguine maceratum*, mire mingled or cemented with blood: for as it is one of the highest offences in guiltiness, so it is the basest of all others in the mind of the offenders. Treasons, *magnum aliquid spectant*: They aim at great things; but this is vile and base. I tell your lordships what I have noted, that in all God's books, (both of the old and new testament) I find examples of all other offences and offenders in the world, but not any one of an imprisonment or an imprisoner. I find mention of fear of casual imprisonment: when the wild vine was shred into the pot, they came complaining in a fearful manner; *Master mors in olla*. And I find mention of poisons of beasts and serpents; *the poison of asps is under their lips*. But I find no example in the book of God of imprisonment. I have sometime thought of the words in the psalm, *let their table be made a snare*. Which certainly is most true of imprisonment; for the table, the daily bread, for which we pray, is turned to a deadly snare: but I think rather that that was meant of the treachery of friends that were participant of the same table.

BUT let us go on. It is an offence, my lords, that hath the two spurs of offending; *spes perficiendi*, and *spes celandi*: It is easily committed, and easily concealed.

It is an offence that is *tanquam sagitta nocte volans*; it is the arrow that flies by night. It discerns not whom it hits: for many times the poison is laid for one, and the other takes it; as in *Sander's* case, where the poisoned apple was laid for the mother, and was taken up by the child, and killed the child: and so in that notorious case, whereupon the statute of 22 *Hen. VIII. cap. 9.* was made, where the intent being to poison but one or two, poison was put into a little vessel of barm that stood in the kitchen of the bishop of *Rocheſter's* house; of which barm pottage or gruel was made, wherewith seventeen of the bishop's family were poisoned: nay, divers of the poor that came to the bishop's gate, and had the broken pottage in alms, were likewise poisoned. And therefore if any man will comfort himself or think with himself, here is great talk of imprisonment, I hope I am safe; for I have no

enemies; nor I have nothing that any body should long for. Why? That is all one; for he may sit at table by one for whom poison is prepared, and have a drench of his cup, or of his pottage. And so, as the poet saith, *concidit infelix alieno vulnere*; he may die another man's death. And therefore it was most gravely, and judiciously, and properly provided by that statute, that impoisonment should be high treason; because whatsoever offence tendeth to the utter subversion and dissolution of human society, is in the nature of high treason.

LASTLY, It is an offence that I may truly say of it, *non est nostri generis, nec sanguinis*. It is (thanks be to God) rare in the isle of Britain: it is neither of our country, nor of our church; you may find it in Rome or Italy. There is a region, or perhaps a religion for it: and if it should come amongst us, certainly it were better living in a wilderness, than in a court.

FOR the particular fact upon Overbury. First, for the person of Sir Thomas Overbury: I knew the gentleman. It is true, his mind was great, but it moved not in any good order; yet certainly it did commonly fly at good things; and the greatest fault that I ever heard by him, was, that he made his friend his idol. But I leave him as Sir Thomas Overbury.

BUT take him as he was the King's prisoner in the Tower; and then see how the case stands. In that place the state is as it were respondent to make good the body of a prisoner. And if any thing happen to him there, it may (though not in this case, yet in some others) make an aspersiō and reflection upon the state it self. For the person is utterly out of his own defence; his own care and providence can serve him nothing. He is in custody and preservation of law; and we have a maxim in our law, (as my lords the judges know) that when a state is in preservation of law, nothing can destroy it, or hurt it. And God forbid but the like should be for the persons of those that are in custody of law; and therefore this was a circumstance of great aggravation.

LASTLY, To have a man chased to death in such manner (as it appears now by matter of record; for other privacy of the cause I know not) by poison after poison, first roseaker, then arsenick, then mercury sublimate, then sublimate again; it is a thing would astonish man's nature to hear it. The poets feign, that the Furies had whips, that they were corded with poisonous snakes; and a man would think that this were the very case, to have a man tied to a post, and to scourge him to death with snakes: for so may truly be termed diversity of poisons.

Now I will come to that which is the principal; that is, his Majesty's princely, yea, and as I may truly term it, sacred proceeding in this cause. Wherein I will first speak of the temper of his justice, and then of the strength thereof.

FIRST, It pleased my Lord Chief Justice to let me know, (that which I heard with great comfort) which was the charge that his Majesty gave to himself first, and afterwards to the commissioners in this case, worthy certainly to be written in letters of gold, wherein his Majesty did forerank and make it his prime direction, that it should be carried without touch, to any that was innocent: nay more, not only without impeachment, but without aspersiō: which was a most noble and princely caution from his Majesty; for men's reputations are tender things, and ought to be like Christ's coat, without seam. And it was the more to be respected in this case, because it met with two great persons; a nobleman that his Majesty had favoured and advanced, and his lady being of a great and honourable house: though I think it be true, that

that the writers say, that there is no pomegranate so fair or so sound, but may have a perished kernel. Nay, I see plainly, that in those excellent papers of his Majesty's own hand writing, being as so many beams of justice issuing from that virtue which doth shine in him; I say, I see it was so evenly carried without prejudice, (whether it were a true accusation of the one part, or a practice of a false accusation on the other) as shewed plainly that his Majesty's judgment was *tanquam tabula rasa*, as a clean pair of tables; and his ear *tanquam janua aperta*, as a gate not side open but wide open to truth, as it should be by little and little discovered. Nay, I see plainly, that at the first (till farther light did break forth) his Majesty was little moved with the first tale, which he vouchsafeth not so much as the name of a tale; but calleth it a rumour, which is an heedless tale.

As for the strength or resolution of his Majesty's justice, I must tell your lordships plainly; I do not marvel to see Kings thunder out justice in cases of treason, when they are touched themselves; and that they are *vindices doloris proprii*: but that a King should *pro amore justitiæ* only, contrary to the tide of his own affection, for the preservation of his people, take such care of a cause of justice, that is rare and worthy to be celebrated far and near. For, I think, I may truly affirm, that there was never in this kingdom, nor in any other kingdom, the blood of a private gentleman vindicated, *cum tanto motu regni*, or to say better, *cum tanto plausu regni*. If it had concerned the King or Prince, there could not have been greater nor better commissioners to examine it. The term hath been almost turned into a *justitium*, or vacancy; the people themselves being more willing to be lookers on in this business, than to follow their own. There hath been no care of discovery omitted, no moment of time lost. And therefore I will conclude this part with the saying of Solomon, *gloria Dei celare rem, & gloria Regis scrutari rem*. And his Majesty's honour is much the greater for that he hath shewed to the world in this business as it hath relation to my Lord of Somerset, (whose case in no sort I do prejudge, being ignorant of the secrets of the cause, but taking him as the law takes him hitherto, for a suspect,) I say, the King hath to his great honour shewed, that were any man in such a case of blood, as the signet upon his right hand, (as the Scripture says) yet would he pull him off.

Now will I come to the particular charge of these gentlemen whose qualities and persons I respect and love; for they are all my particular friends: But now I can only do this duty of a friend to them, to make them know their fault to the full.

AND therefore, first, I will by way of narrative declare to your lordships the fact, with the occasion of it; then you shall have their confessions read, upon which you are to proceed, together with some collateral testimonies by way of aggravation: and lastly, I will note and observe to your lordships, the material points which I do insist upon for their charge, and so leave them to their answer. And this I will do very briefly, for the case is not perplexed.

THAT wretched man *Weston*, who was the actor or mechanical party in this impositions, at the first day being indicted by a very substantial jury of selected citizens, to the number of nineteen, who found *billa vera*, yet nevertheless at the first stood mute: but after some days intermission, it pleased God to cast out the dumb devil, and that he did put himself upon his trial; and was by a jury also of great value, upon his confession, and other testimonies, found guilty: so as thirty-one sufficient jurors have passed upon him.

Where-

Whereupon judgment and execution was awarded against him. After this, being in preparation for another world, he sent for Sir *Thomas Overbury's* father, and falling down upon his knees, with great remorse and compunction, asked him forgiveness. Afterwards, again, of his own motion, desired to have his like prayer of forgiveness recommended to his mother, who was absent. And at both times, out of the abundance of his heart, confessed that he was to die justly, and that he was worthy of death. And after again at his execution (which is a kind of sealing-time of confessions) even at the point of death, (although there were tempters about him, as you shall hear by and by) yet he did again confirm publickly, that his examinations were true, and that he had been justly and honourably dealt with. Here is the narrative, which induceth the charge. The charge it self, is this.

M. L. WHOSE offence stands alone single (the offence of the other two being in consort; and yet all three meeting in their end and center, which was to interrupt or deface this excellent piece of justice:) *M. L.* I say, mean while, between *Weston's* standing mute and his trial, takes upon him to make a most false, odious, and libellous relation, containing as many untruths, as lines, and sets it down in writing with his own hand, and delivers it to Mr. *Henry Gibb*, of the bed-chamber, to be put into the King's hand; in which writing he doth falsify and pervert all that was done the first day at the arraignment of *Weston*; turning the pike and point of his imputations, principally upon my Lord Chief Justice of *England*; whose name (thus occurring) I cannot pass by, and yet I cannot skill to flatter. But this I will say of him, and I would say as much to ages, if I should write a story; that never man's person and his place were better met in a business, than my Lord *Coke* and my Lord Chief Justice, in the cause of *Overbury*.

Now, my lords, in this offence of *M. L.* for the particulars of these slanderous articles, I will observe them unto you when the writings and examinations are read; for I do not love to set the gloss before the text. But in general I note to your lordships, first, the person of *M. L.* I know he is a *Scots* gentleman, and thereby more ignorant of our laws and forms: But I cannot tell whether this doth extenuate his fault in respect of ignorance, or aggravate it much, in respect of presumption; that he would meddle in that that he understood not: but I doubt it came not out of his quiver; some other man's cunning wrought upon this man's boldness. Secondly, I may note unto you, the greatness of the cause, wherein he being a private mean gentleman, did presume to deal. *M. L.* could not but know to what great and grave commissioners the King had committed this cause; and that his Majesty in his wisdom would expect return of all things from them to whose trust he had committed this business. For it is the part of commissioners, as well to report the business, as to manage the business; and then his Majesty might have been sure to have had all things well weighed, and truly informed: and therefore it should have been far from *M. L.* to have presumed to have put forth his hand to so high and tender a business, which was not to be touched but by employed hands. Thirdly, I note to your lordships, that this infusion of a slander into a King's ear, is of all forms of libels and slanders, the worst. It is true, that Kings may keep secret their informations, and then no man ought to enquire after them, while they are shrined in their breast. But where a King is pleased that a man shall answer for his false information; there, I say, the false information to a King exceeds in offence the false information of any other kind; being a kind (since
we

we are in matter of poison) of impositions of a King's ear. And thus much for the offence of *M. L.*

FOR the offence of *S. W.* and *H. I.* which I said was in consort, it was shortly this. At the time and place of the execution of *Weston*, to supplant his Christian resolution, and to scandalize the justice already past, and perhaps to cut off the thread of that which is to come; these gentlemen, with others, came mounted on horseback, and in a ruffling and facing manner, put themselves forward to re-examine *Weston* upon questions: and what questions? Directly cross to that that had been tried and judged; for what was the point tried? That *Weston* had poisoned *Overbury*. What was *S. W.*'s question; whether *Weston* did poison *Overbury* or no? A contradictory directly: *Weston* answered only, that he did him wrong; and turning to the sheriff, said, You promised me I should not be troubled at this time. Nevertheless, he pressed him to answer; saying he desired to know it, that he might pray with him. I know not that *S. W.* is an ecclesiastick, that he should cut any man from the communion of prayer. And yet for all this vexing of the spirit of a poor man, now in the gates of death; *Weston* nevertheless stood constant, and said, I die not unworthily; my Lord Chief Justice hath my mind under my hand, and he is an honourable and just judge. This is *S. W.* his offence.

FOR *H. I.* he was not so much a questionist; but wrought upon the others questions, and like a kind of confessor, wished him to discharge his conscience, and to satisfy the world. What world? I marvel! it was sure the world at *Tyburn*. For the world at *Guild-Hall*, and the world at *London*, was satisfied before; *teste* the bells that rung. But men have got a fashion now-a-days, that two or three busy-bodies will take upon them the name of the world, and broach their own conceits, as if it were a general opinion. Well, what more? When they could not work upon *Weston*, then *H. I.* in an indignation turned about his horse (when the other was turning over the ladder) and said, he was sorry for such a conclusion: that was to have the state honoured or justified; but others took and reported his words in another degree: but that I leave, seeing it is not confessed.

H. I. his offence had another appendix, before this in time; which was that at the day of the verdict given up by the jury, he also would needs give his verdict, saying openly, that if he were of the jury, he would doubt what to do. Marry (he saith) he cannot tell well whether he spake this before the jury had given up the verdict, or after; wherein there is little gained. For whether *H. I.* were a pre-juror or a post-juror, the one was as to pre-judge the jury, the other as to taint them.

OF the offence of these two gentlemen in general, your lordships must give me leave to say, that it is an offence greater and more dangerous than is conceived. I know well that as we have no *Spanish* inquisitions, nor justice in a corner; so we have no gagging of men's mouths at their death; but that they may speak freely at the last hour; but then it must come from the free motion of the party, not by temptation of questions. The questions that are to be asked, ought to tend to farther revealing of their own or others guiltiness; but to use a question in the nature of a false interrogatory, to falsify that which is *res judicata*, is intolerable. For that were to erect a court or commission of review at *Tyburn*, against the *King's-Bench* at *Westminster*. And besides, it is a thing vain and idle: for if they answer according to the judgment past, it adds no credit; or if it be contrary, it

derogateth nothing: But yet it subjecteth the majesty of justice, to popular and vulgar talk and opinion.

My lords, these are great and dangerous offences; for if we do not maintain justice, justice will not maintain us.

BUT now your lordships shall hear the examinations themselves, upon which I shall have occasion to note some particular things, &c.

T H E

* Given May 24. 1616. C H A R G E*,

By way of EVIDENCE,

B Y

Sir FRANCIS BACON,

HIS MAJESTY'S ATTORNEY-GENERAL,

† The Lord Chancellor
Egerton, Lord
Ellesmere, and
Earl of Bridgewater.
Before the Lord-High-Steward † and the Peers; against *Frances* Countess of *Somerset*, concerning the poisoning of *Sir Thomas Overbury*.

IT may please your grace, my Lord High Steward of *England*, and you my lords the peers:

I AM very glad to hear this unfortunate lady doth take this course, to confess fully and freely, and thereby to give glory to God and to justice. It is (as I may term it) the nobleness of an offender to confess; and therefore those meaner persons upon whom justice passed before, confessed not, she doth. I know your lordships cannot behold her without compassion: many things may move you, her youth, her person, her sex, her noble family; yea, her provocations (if I should enter into the cause it self) and furies about her; but chiefly her penitency and confession. But justice is the work of this day; the mercy-seat was in the inner part of the temple; the throne is publick. But since this lady hath by her confession prevented my evidence, and your verdict, and that this day's labour is eased; there resteth in the legal proceeding, but for me to pray that her confession may be recorded, and judgment thereupon.

BUT because your lordships the peers are met, and that this day and tomorrow are the days that crown all the former justice; and that in these great cases it hath been ever the manner to respect honour and satisfaction, as well as the ordinary parts and forms of justice; the occasion it self admonisheth me to give your lordships and the hearers this contentment, as to make

make declaration of the proceedings of this excellent work of the King's justice, from the beginning to the end.

It may please your grace, my Lord High Steward of *England*: this is now the second time, within the space of thirteen years reign of our happy sovereign, that this high tribunal seat (ordained for the trial of peers) hath been opened and erected, and that with a rare event, supplied and exercised by one and the same person, which is a great honour unto you, my Lord Steward.

In all this mean time the King hath reigned in his white robe, not sprinkled with any one drop of the blood of any of his nobles of this kingdom. Nay, such have been the depths of his mercy, as even those noblemens bloods (against whom the proceeding was at *Winchester*) *Cobham* and *Grey*, were attainted and corrupted, but not spilt or taken away; but that they remained rather spectacles of justice in their continual imprisonment, than monuments of justice in the memory of their suffering.

It is true that the objects of his justice then and now were very differing: for then it was the revenge of an offence against his own person and crown, and upon persons that were male-contents, and contraries to the state and government; but now it is the revenge of the blood and death of a particular subject, and the cry of a prisoner: it is upon persons that were highly in his favour; whereby his Majesty, to his great honour, hath shewed to the world, as if it were written in a sun-beam, that he is truly the lieutenant of him with whom there is no respect of persons; that his affections royal, are above his affections private; that his favours and nearness about him are not like popish sanctuaries, to privilege malefactors; and that his being the best master in the world doth not lett him from being the best King in the world. His people, on the other side, may say to themselves, I will lie down in peace, for God, the King, and the Law, protect me against great and small. It may be a discipline also to great men, especially such as are swollen in their fortunes from small beginnings, that the King is as well able to level mountains, as to fill valleys, if such be their desert.

BUT to come to the present case: The great frame of justice (my lords) in this present action, hath a vault, and hath a stage; a vault, wherein these works of darkness were contrived; and a stage, with steps, by which it was brought to light.

For the former of these, I will not lead your lordships into it, because I will engrieve nothing against a penitent; neither will I open any thing against him that is absent. The one I will give to the laws of humanity, and the other to the laws of justice: for I shall always serve my master with a good and sincere conscience, and I know, that he accepteth best. Therefore I will reserve that till to-morrow, and hold myself to that which I called the stage or theatre, whereunto indeed it may be fitly compared: for that things were first contained within the invisible judgments of God, as within a curtain, and after came forth, and were acted most worthily by the King, and right well by his ministers.

SIR *Thomas Overbury* was murdered by poison, *September 15. 1613.* This foul and cruel murder did for a time cry secretly in the ears of God; but God gave no answer to it, otherwise than by that voice, (which sometime he useth;) which is *vox populi*, the speech of the people: for there went then a murmur that *Overbury* was poisoned; and yet the same submissive and low voice of God (the speech of the vulgar people) was not without a counter-tenor or counter-blast of the devil, who is the common author both of murder and slander; for it was given out that *Overbury* was dead

dead of a foul disease; and his body (which they had made *corpus Judæicum* with their poisons, so as it had no whole part) must be said to be leprosed with vice, and so his name poisoned as well as his body. For as to dissoluteness, I have not heard the gentleman noted with it; his faults were of insolency, turbulency, and the like of that kind.

MEAN time there was some industry used (of which I will not now speak) to lull asleep those that were the revengers of the blood, the father and the brother of the murdered. And in these terms things stood by the space of two years, during which time God did so blind the two great procurers, and dazzle them with their greatness, and blind and nail fast the actors and instruments with security upon their protection, as neither the one looked about them, nor the other stirred or fled, or were conveyed away, but remained here still, as under a privy arrest of God's judgments; inasmuch as *Franklin*, that should have been sent over to the *Palgrave* with good store of money, was by God's providence, and the accident of a marriage of his, diverted and stayed.

BUT about the beginning of the progress the last summer, God's judgments began to come out of their depths. And as the revealing of murder is commonly such as a man said, *a Domino hoc factum est; it is God's work, and it is marvellous in our eyes*: so in this particular it was most admirable; for it came forth first by a complement, a matter of courtesy. My Lord of *Shrewsbury*, that is now with God, recommended to a counsellor of state, (of special trust by his place) the late lieutenant * *Helwisse*, only for acquaintance, as an honest and worthy gentleman, and desired him, to know him, and to be acquainted with him. That counsellor answered him civilly, that my lord did him a favour, and that he should embrace it willingly; but he must let his lordship know, that there did lie a heavy imputation upon that gentleman, *Helwisse*; for that Sir *Thomas Overbury*, his prisoner, was thought to have come to a violent and an untimely death. When this speech was reported back by my Lord of *Shrewsbury* to *Helwisse*, *percussit illico animum*, he was stricken with it: and being a politick man, and of likelihood doubting that the matter would break forth at one time or other, and that others might have the start of him, and thinking to make his own case by his own tale, resolved with himself upon this occasion, to discover unto my Lord of *Shrewsbury*, and that counsellor, that there was an attempt (whereunto he was privy) to have poisoned *Overbury*, by the hands of his under-keeper, *Weston*; but that he check'd it, and put it by, and dissuaded it. But then he left it thus, that it was but as an attempt, or an untimely birth, never executed; and as if his own fault had been no more, but that he was honest in forbidding, but fearful of revealing and impeaching, or accusing great persons: And so with this fine point thought to save himself.

BUT that counsellor of estate wisely considering that by the lieutenant's own tale it could not be simply a permission or weakness; for that *Weston* was never displaced by the lieutenant, notwithstanding that attempt; and coupling the sequel by the beginning, thought it matter fit to be brought before his Majesty, by whose appointment *Helwisse* set down the like declaration in writing.

UPON this ground the King playeth *Solomon's* part, *gloria Dei celare rem*,

* Called in Sir *H. Wotton's* Reliq. p. 413. *Elvis*. In Sir *A. Welden's* Court of K. *James*, p. 107. *Elwaies*. In *Aulic*, Coquin. p. 141. *Ellwaies*. In Sir *W. Dugdale's* Baron. of England, Tom. 2. p. 425. *Elwaies*. In *Baker, Telvis*, p. 434.

Et gloria Regis investigare rem, and sets down certain papers of his own hand, which I might term to be *claves justitiae*, keys of justice; and may serve both for a precedent for Princes to imitate, and for a direction for judges to follow. And his Majesty carried the balance with a constant and steady hand, evenly and without prejudice, whether it were a true accusation of the one part, or a practice and factious scandal of the other: Which writing, because I am not able to express according to the worth thereof, I will desire your lordships anon to hear read.

THIS excellent foundation of justice being laid by his Majesty's own hand, it was referred unto some counsellors to examine farther; who gained some degrees of light from *Weston*, but yet left it imperfect.

AFTER it was referred to Sir *Edward Coke*, Chief Justice of the King's Bench, as a person best practised in legal examinations; who took a great deal of indefatigable pains in it without intermission, having (as I have heard him say) taken at least three hundred examinations in this business.

BUT these things were not done in a corner, I need not speak of them. It is true that my Lord Chief Justice, in the dawning and opening of the light, finding the matter touched upon these great persons, very discreetly became suitor to the King, to have greater persons than his own rank joined with him; whereupon your lordships, my Lord High Steward of *England*, my Lord Steward of the King's House, and my Lord *Zouch*, were joined with him.

NEITHER wanted there (this while) practice to suppress testimony, to deface writings, to weaken the King's resolution, to slander the justice, and the like. Nay, when it came to the first solemn act of justice, which was the arraignment of *Weston*, he had his lesson to stand mute, which had arrested the whole wheel of justice: but this dumb devil, by the means of some discreet divines, and the potent charm of justice together, was cast out; neither did this poisonous adder stop his ear to these charms, but relented, and yielded to his trial.

THEN followed the other proceedings of justice against the other offenders, *Turner*, *Helwisse*, *Franklin*.

BUT all these being but the organs and instruments of this fact, (the actors, and not the authors) justice could not have been crowned without this last act against these great persons; else *Weston's* censure or prediction might have been verified, when he said, he hoped the small flies should not be caught, and the greater escape. Wherein the King, being in great straits between the defacing of his honour, and of his creature, hath (according as he useth to do) chosen the better part, reserving always mercy to himself.

THE time also of justice hath had its true motions. The time until this lady's deliverance was due unto honour, Christianity, and humanity, in respect of her great belly. The time since was due to another kind of deliverance too; which was, that some causes of estate which were in the womb, might likewise be brought forth, not for matter of justice, but for reason of state. Likewise this last procrastination of days had the like weighty grounds and causes.

BUT (my lords) where I speak of a stage, I doubt I hold you upon the stage too long. But before I pray judgment, I pray your lordships to hear the King's papers read, that you may see how well the King was inspired, and how nobly he carried it, that innocency might not have so much as aspersion.

Frances, Countess of *Somerset*, hath been indicted and arraigned, as accessary before the fact, for the murder and impoisonment of Sir *Thomas Overbury*, and hath pleaded guilty, and confesseth the indictment: I pray judgment against the prisoner.

T H E
C H A R G E
O F

Sir *FRANCIS BACON*,

His MAJESTY'S ATTORNEY-GENERAL,

By way of evidence before the Lord High Steward and the Peers, against *Robert* Earl of *Somerset*, concerning the poisoning of *Overbury*.

IT may please your grace, my Lord High Steward of *England*, and you my Lords the peers; you have here before you *Robert* Earl of *Somerset*, to be tried for his life, concerning the procuring and consenting to the impoisonment of Sir *Thomas Overbury*, then the King's prisoner in the tower of *London*, as an accessory before the fact.

I KNOW your lordships cannot behold this nobleman, but you must remember his great favour with the King, and the great place that he hath had and born, and must be sensible that he is yet of your number and body, a peer as you are; so as you cannot cut him off from your body but with grief; and therefore that you will expect from us, that give in the King's evidence, sound and sufficient matter of proof to satisfy your honours and consciences.

AND for the manner of the evidence also, the King our master (who among his other virtues excelleth in that virtue of the imperial throne, which is justice) hath given us commandment that we should not expatiate, nor make invectives, but materially pursue the evidence, as it conduceth to the point in question; a matter that, tho' we are glad of so good a warrant, yet we should have done of ourselves: for far be it from us, by any strains of wit or art to seek to play prizes, or to blazon our names in blood, or to carry the day otherwise than upon just grounds. We shall carry the lanthorn of justice (which is the evidence) before your eyes upright, and be able to save it from being put out by any winds of evasions, or vain defences, that is our part; not doubting at all, but that this evidence in itself will carry that force as it shall little need advantages or aggravations.

MY lords, the course which I shall hold in delivering that which I shall say (for I love order) is this:

FIRST, I will speak somewhat of the nature and greatness of the offence which is now to be tried; and that the King, however he might use this gentleman heretofore, as the signet upon his finger, (to use the scripture-phraze) yet in this case could not but put him off, and deliver him into the hands of justice.

SECONDLY, I will use some few words touching the nature of the proofs, which in such a case are competent.

THIRDLY, I will state the proofs.

AND lastly, I will produce the proofs, either out of the examinations and matters in writing, or witnesses *viva voce*.

FOR

FOR the offence itself, it is of crimes (next unto high treason) the greatest; it is the foulest of felonies. And take this offence with the circumstances, it hath three degrees or stages; that it is murder; that it is murder by impoisonment; that it is murder committed upon the King's prisoner in the tower: I might say, that it is murder under the colour of friendship; but that is a circumstance moral; I leave that to the evidence itself.

FOR murder, my lords, the first record of justice which was in the world was a judgment upon murder in the person of *Adam's* first-born, *Cain*: and though it were not punished by death, but with banishment and mark of ignominy, in respect of the primogeniture, or of the population of the world, or other points of God's secret will, yet it was adjudged, and was, as I said, the first record of justice. So it appeareth likewise in scripture, that the murder of *Abner* by *Joab*, though it were by *David* respited in respect of great services past, or reason of state, yet it was not forgotten. But of this I will say no more. It was ever admitted, and so ranked in God's own tables, that murder is of offences between man and man (next to treason and disobedience of authority, which some divines have referred to the first table, because of the lieutenancy of God in princes and fathers) the greatest.

FOR impoisonment, I am sorry it should be heard of in this kingdom: it is not *nostri generis nec sanguinis*: it is an *Italian* crime, fit for the court of *Rome*, where that person that intoxicateth the Kings of the earth with his cup of poison in heretical doctrine, is many times really and materially intoxicated and impoisoned himself.

BUT it hath three circumstances, which make it grievous beyond other murders: whereof the first is, that it takes a man in full peace, in God's and the King's peace: he thinks no harm, but is comforting nature with refection and food; so that (as the scripture saith) *his table is made a snare*.

THE second is, that it is easily committed, and easily concealed; and on the other side, hardly prevented, and hardly discovered: for murder by violence, princes have guards, and private men have houses, attendants, and arms: neither can such murders be committed but *cum sonitu*, and with some overt and apparent act that may discover and trace the offender. But for poison, the said cup itself of princes will scarce serve, in regard of many poisons that neither discolour nor distaste; and so passeth without noise or observation.

AND the last is, because it containeth not only the destruction of the maliced man, but of any other; *Quis modo tutus erit?* For many times the poison is prepared for one, and is taken by another: so that men die other mens deaths; *concidit infelix alieno vulnere*: and it is as the psalm calleth it, *sagitta nocte volans*; the arrow that flies by night, it hath no aim or certainty.

Now for the third degree of this particular offence, which is, that it was committed upon the King's prisoner, who was out of his own defence, and merely in the King's protection, and for whom the King and state was a kind of respondent; it is a thing that aggravates the fault much. For certainly, my Lord of *Somerſet*, let me tell you this, that Sir *Thomas Overbury* is the first man that was murdered in the tower of *London*, since the murder of the two young princes.

FOR the nature of the proofs, your lordships must consider, that impoisonment, of offences is the most secret; so secret, as if in all cases of impoisonment you should require testimony, you were as good proclaim impunity: I will put book examples.

Who could have impeached *Livia*, by testimony, of the im poisoning of the figs upon the tree, which her husband was wont, for his pleasure, to gather with his own hands?

Who would have impeached *Parifatis* for the poisoning of one side of the knife that she carved with, and keeping the other side clean; so that herself did eat of the same piece of meat that the lady did that she did im poison? The cases are infinite, (and indeed not fit to be spoken of) of the secrecy of im poisonments; but wise triers must take upon them, in these secret cases, *Solomon's* spirit, that where there could be no witnesses, collected the act by the affection.

BUT yet we are not to come to one case: for that which your lordships are to try, is not the act of im poisoning, (for that is done to your hand;) all the world by law is concluded to say, that *Overbury* was im poisoned by *Weston*.

BUT the question before you is of the procurement only, and of the abetting (as the law termeth it) as accessary before the fact: which abetting is no more but to do or use any act or means, which may aid or conduce unto the im poisoning.

So that it is not the buying or making of the poison, or the preparing, or confecting, or commixing of it, or the giving or sending or laying the poison, that are the only acts that do amount unto abetment. But if there be any other act or means done or used to give the opportunity of im poisoning, or to facilitate the execution of it, or to stop or divert any impediments that might hinder it, and this be with an intention to accomplish and atchieve the im poisoning; all these are abetments, and accessaries before the fact. I will put you a familiar example. Allow there be a conspiracy to murder a man as he journeys by the ways, and it be one man's part to draw him forth to that journey by invitation, or by colour of some business; and another takes upon him to dissuade some friend of his, whom he had a purpose to take in his company, that he be not too strong to make his defence; and another hath the part to go along with him, and to hold him in talk till the first blow be given: All these, my lords, without scruple are abettors to this murder, though none of them give the blow, nor assist to give the blow.

My lords, he is not the hunter alone that lets slip the dog upon the deer, but he that lodges the deer, or raises him, or puts him out, or he that sets a toil that he cannot escape, or the like.

BUT this, my lords, little needeth in this present case, where there is such a chain of acts of im poisoning as hath been seldom seen, and could hardly have been expected, but that greatness of fortune maketh commonly grossness in offending.

To descend to the proofs themselves, I shall keep this course.

FIRST, I will make a narrative or declaration of the fact itself.

SECONDLY, I will break and distribute the proofs as they concern the prisoner.

AND thirdly, according to that distribution, I will produce them, and read them, or use them.

So that there is nothing that I shall say, but your lordship, my Lord of *Somerset*, shall have three thoughts or cogitations to answer it: First, when I open it, you may take your aim. Secondly, when I distribute it, you may prepare your answers without confusion. And lastly, when I produce the witnesses or examinations themselves, you may again ruminare and re-advise how to make your defence. And this I do the rather, because your me-

mory or understanding may not be oppressed or overladen with length of evidence, or with confusion of order. Nay more, when your lordship shall make your answers in your time, I will put you in mind (when cause shall be) of your omissions.

FIRST, therefore, for the simple narrative of the fact. Sir *Tho. Overbury* for a time was known to have had great interest and great friendship with my Lord of *Somerſet*, both in his meaner fortunes, and after: inſomuch as he was a kind of oracle of direction unto him; and if you will believe his own vaunts, (being of an insolent thraſonical diſpoſition) he took upon him, that the fortune, reputation, and understanding of this gentleman (who is well known to have had a better teacher) proceeded from his company and counſel.

AND this friendship reſted not only in converſation and buſineſs of court, but likewiſe in communication of ſecrets of eſtate. For my Lord of *Somerſet*, at that time exerciſing (by his Maſteſty's ſpecial favour and truſt) the office of the ſecretary provisionally, did not forbear to acquaint *Overbury* with the King's paquets of diſpatches from all parts, *Spain*, *France*, the *Low Countries*, &c. And this not by glimpses, or now and then rounding in the ear for a favour, but in a ſettled manner: paquets were ſent, ſometimes opened by my lord, ſometimes unbroken unto *Overbury*, who peruſed them, copied, regiſtered them, made tables of them as he thought good: ſo that I will undertake, the time was when *Overbury* knew more of the ſecrets of ſtate than the council-table did. Nay, they were grown to ſuch an inwardneſs, as they made a play of all the world beſides themſelves: ſo as they had ciphers and jargons for the King, the Queen, and all the great men; things ſeldom uſed, but either by princes and their embaſſadors and miniſters, or by ſuch as work and practice againſt, or at leaſt upon princes.

BUT underſtand me, my lord, I ſhall not charge you this day with any diſloyalty; only I ſay this for a foundation, that there was a great communication of ſecrets between you and *Overbury*, and that it had relation to matters of eſtate, and the greateſt cauſes of this kingdom.

BUT, my lords, as it is a principle in nature, that the beſt things are in their corruption the worſt, and the ſweeteſt wine makes the ſharpeſt vinegar; ſo ſell it out with them, that this exceſs (as I may term it) of friendship ended in mortal hatred on my Lord of *Somerſet*'s part.

FOR it fell out, ſome twelve months before *Overbury*'s impriſonment in the tower, that my Lord of *Somerſet* was entered into an unlawful love towards his unfortunate lady, then Counteſs of *Effex*: which went ſo far, as it was then ſecretly projected (chiefly between my Lord Privy Seal and my Lord of *Somerſet*) to effect a nullity in the marriage with my Lord of *Effex*, and ſo to proceed to a marriage with *Somerſet*.

THIS marriage and purpoſe did *Overbury* mainly oppugn, under pretence to do the true part of a friend, (for that he counted her an unworthy woman;) but the truth was, that *Overbury*, who (to ſpeak plainly) had little that was ſolid for religion or moral virtue, but was a man poſſeſſed with ambition and vain-glory, was loth to have any partners in the favour of my Lord of *Somerſet*, and eſpecially not the houſe of the *Howards*, againſt whom he had always profeſſed hatred and oppoſition: So all was but miſerable bargains of ambition.

AND, my lords, that this is no ſiniſter conſtruction, will well appear unto you, when you ſhall hear that *Overbury* makes his brags to my Lord of *Somerſet*, that he had won him the love of the lady by his letters and induſtry: ſo far was he from caſes of conſcience in this matter. And certainly, my lords,

howsoever the tragical misery of that poor gentleman *Overbury* ought somewhat to obliterate his faults: yet because we are not now upon point of civility, but to discover the face of truth to the face of justice; and that it is material to the true understanding of the state of this cause; *Overbury* was naught and corrupt, the ballads must be amended for that point.

BUT to proceed; when *Overbury* saw that he was like to be dispossessed of my lord here, whom he had possessed so long, and by whose greatness he had promised himself to do wonders; and being a man of an unbounded and impetuous spirit, he began not only to dissuade, but to deter him from that love and marriage; and finding him fixed, thought to try stronger remedies, supposing that he had my lord's head under his girdle, in respect of communication of secrets of estate, or (as he calls them himself in his letters,) secrets of all natures; and therefore dealt violently with him, to make him desist, with menaces of discovery of secrets, and the like.

HEREUPON grew two streams of hatred upon *Overbury*; the one, from the lady, in respect that he crossed her love, and abused her name, which are furies to women; the other, of a deeper and more mineral nature, from my Lord of *Somerset* himself; who was afraid of *Overbury*'s nature, and that if he did break from him and fly out, he would mine into him and trouble his whole fortunes.

I MIGHT add a third stream from the Earl of *Northampton*'s ambition, who desires to be first in favour with my Lord of *Somerset*; and knowing *Overbury*'s malice to himself and his house, thought that man must be removed and cut off. So it was amongst them resolved and decreed that *Overbury* must die.

HEREUPON they had variety of devices. To send him beyond sea, upon occasion of employment, that was too weak; and they were so far from giving way to it, as they crossed it. There rested but two ways, quarrel or assault, and poison. For that of assault, after some proposition and attempt, they passed from it; it was a thing too open, and subject to more variety of chances. That of poison likewise was a hazardous thing, and subject to many preventions and cautions; especially to such a jealous and working brain as *Overbury* had, except he were first fast in their hands.

THEREFORE the way was first to get him into a trap, and lay him up, and then they could not miss the mark. Therefore in execution of this plot, it was devised, that *Overbury* should be designed to some honourable employment in foreign parts, and should under-hand by the Lord of *Somerset* be encouraged to refuse it; and so upon that contempt he should be laid prisoner in the tower, and then they would look he should be close enough, and death should be his bail. Yet were they not at their end. For they considered, that if there was not a fit lieutenant of the tower for their purpose, and likewise a fit under-keeper of *Overbury*: First, they should meet with many impediments in the giving and exhibiting the poison. Secondly, they should be exposed to note and observation that might discover them. And thirdly, *Overbury* in the mean time might write clamorous and furious letters to other his friends, and so all might be disappointed. And therefore the next link of the chain was to displace the then lieutenant *Waade*, and to place *Helwisse* a principal abettor in the imprisonment: again, to displace *Cary*, that was the under-keeper in *Waade*'s time, and to place *Weston*, who was the principal actor in the imprisonment: and this was done in such a while (that it may appear to be done, as it were with one breath;) as there were but fifteen days between the commitment of *Overbury*, the displacing of *Waade*, the placing of

of *Helwisse*, the displacing of *Cary* the under-keeper, the placing of *Weston*, and the first poison given two days after.

THEN when they had this poor gentleman in the tower close prisoner, where he could not escape nor stir, where he could not feed but by their hands, where he could not speak nor write but through their trunks; then was the time to execute the last act of this tragedy.

THEN must *Franklin* be purveyor of the poisons, and procure five, six, seven several potions, to be sure to hit his complexion. Then must *Mrs. Turner* be the say-mistress of the poisons to try upon poor beasts, what's present, and what works at distance of time. Then must *Weston* be the tormenter, and chafe him with poison after poison; poison in salts, poison in meats, poison in sweetmeats, poison in medicines and vomits, until at last his body was almost come, by use of poisons, to the state that *Mithridates's* body was by the use of treacle and preservatives, that the force of the poisons were blunted upon him: *Weston* confessing, when he was chid for not dispatching him, that he had given him enough to poison twenty men. Lastly, because all this asked time, courses were taken by *Somerfet*, both to divert all means of *Overbury's* delivery, and to entertain *Overbury* by continual letters, partly of hopes and projects for his delivery, and partly of other fables and negotiations; somewhat like some kind of persons, (which I will not name) which keep men in talk of fortune-telling, when they have a felonious meaning.

AND this is the true narrative of this act of im poisoning, which I have summarily recited.

Now for the distribution of the proofs, there are four heads of proofs to prove you guilty (my Lord of *Somerfet*) of this im poisoning; whereof two are precedent to the imprisonment, the third is present, and the fourth is following or subsequent. For it is in proofs as it is in lights; there is a direct light, and there is a reflexion of light, or back-light.

THE first head or proof thereof is, That there was a root of bitterness, a mortal malice or hatred, mixed with deep and bottomless fears, that you had towards Sir *Thomas Overbury*.

THE second is, That you were the principal actor, and had your hand in all those acts, which did conduce to the im poisoning, and which gave opportunity and means to effect it; and without which the im poisoning could never have been, and which could serve or tend to no other end but to the im poisoning.

THE third is, That your hand was in the very im poisoning itself, which is more than needs to be proved; that you did direct poison; that you did deliver poison; that you did continually hearken to the success of the im poisoning; and that you spurred it on, and called for dispatch when you thought it lingred.

AND lastly, That you did all the things after the im poisoning, which may detect a guilty conscience for the smothering of it, and avoiding punishment for it, which can be but of three kinds: That you suppressed, as much as in you was, testimony: That you did deface, and destroy, and clip and misdate all writings that might give light to the im poisoning; and that you did fly to the altar of guiltiness, which is a pardon, and a pardon of murder, and a pardon for your self, and not for your lady.

IN this, my lord, I convert my speech to you, because I would have you attend the points of your charge; and so of your defence the better. And two of these heads I have taken to my self, and left the other two to the King's two serjeants.

FOR the first main part, which is the mortal hatred coupled with fear, that was in my Lord of *Somerſet* towards *Overbury*, although he did palliate it with a great deal of hypocrify and diffimulation even to the end; I ſhall prove it (my lord ſteward, and you my lords and peers) manifeſtly by matter both of oath and writing. The root of this hatred was that that hath coſt many a man's life; that is, fear of diſcovering ſecrets: Secrets (I ſay) of a high and dangerous nature; wherein the courſe that I will hold ſhall be this:

FIRST, I will ſhew that ſuch a breach and malice was between my lord and *Overbury*, and that it burſt forth into violent menaces and threats on both ſides.

SECONDLY, That theſe ſecrets were not light, but of a high nature; for I will give you the elevation of the pole. They were ſuch as my Lord of *Somerſet* for his part had made a vow, that *Overbury* ſhould neither live in court nor country. That he had likewiſe opened himſelf and his own fears ſo far, that if *Overbury* ever came forth of the tower, either *Overbury* or himſelf muſt die for it. And of *Overbury's* part, he had threatned my lord, that whether he did live or die, my lord's ſhame ſhould never die, but he would leave him the moſt odious man of the world. And farther, that my lord was like enough to repent it, in the place where *Overbury* wrote, which was the tower of *London*. He was a true prophet in that: ſo here is the height of the ſecrets.

THIRDLY, I will ſhew you, that all the king's buſineſs was by my lord put into *Overbury's* hands; ſo as there is work enough for ſecrets, whatſoever they were: And like princes confederates, they had their ciphers and jargons.

AND laſtly, I will ſhew you that it is but a toy to ſay that the malice was only in reſpect he ſpake diſhonourably of the lady; or for doubt of breaking the marriage: for that *Overbury* was a co-adjutor to that love, and the Lord of *Somerſet* was as deep in ſpeaking ill of the lady as *Overbury*. And again, it was too late for that matter, for the bargain of the match was then made and paſt. And if it had been no more but to remove *Overbury* from diſturb- ing of the match, it had been an eaſy matter to have banded over *Overbury* beyond ſeas, for which they had a fair way; but that would not ſerve their turn.

AND laſtly, *periculum periculo vincitur*, to go ſo far as an impoiſonment, muſt have a deeper malice than ſlaſhes: for the cauſe muſt bear a proportion to the effect.

FOR the next general head of proofs, which conſiſts in acts preparatory to the middle acts, they are in eight ſeveral points of the compaſs, as I may term it.

FIRST, That there were devices and projects to diſpatch *Overbury*, or to overthrow him, plotted between the Counteſs of *Somerſet*, the Earl of *Somerſet*, and the Earl of *Northampton*, before they fell upon the impoiſonment: for always before men fix upon a courſe of miſchief, there be ſome rejections; but die he muſt one way or other.

SECONDLY, That my Lord of *Somerſet* was a principal praſtiſer (I muſt ſpeak it) in a moſt perfidious manner, to ſet a train or trap for *Overbury* to get him into the Tower; without which they never durſt have attempted the impoiſonment.

THIRDLY, That the placing of the lieutenant *Helwiſſe* one of the impoiſoners, and the diſplacing of *Waade*, was by the means of my Lord of *Somerſet*.

FOURTHLY,

FOURTHLY, That the placing of *Weston* the under-keeper, who was the principal imposer, and the displacing of *Cary*, and the doing of all this within fifteen days after *Overbury's* commitment, was by the means and countenance of my Lord of *Somerſet*. And these two were the active instruments of the imprisonment: and this was a business that the lady's power could not reach unto.

FIFTHLY, That because there must be a time for the tragedy to be acted, and chiefly because they would not have the poisons work upon the sudden; and for that the strength of *Overbury's* nature, or the very custom of receiving poison into his body, did overcome the poisons that they wrought not so fast; therefore *Overbury* must be held in the tower. And as my Lord of *Somerſet* got him into the trap, so he kept him in, and abused him with continual hopes of liberty; and diverted all the true and effectual means of his liberty, and made light of his sickness and extremities.

SIXTHLY, That not only the plot of getting *Overbury* into the tower, and the devices to hold him and keep him there; but the strange manner of his close keeping (being in but for a contempt) was by the device and means of my Lord of *Somerſet*, who denied his father to see him, denied his servants that offered to be shut up close prisoners with him; and in effect handled it so, that he was close prisoner to all his friends, and open and exposed to all his enemies.

SEVENTHLY, That the advertisement which my lady received from time to time from the lieutenant or *Weston*, touching *Overbury's* state of body or health, were ever sent up to the court, though it were in progress, and that from my lady: such a thirst and listening this lord had to hear that he was dispatched.

LASTLY, There was a continual negotiation to set *Overbury's* head on work, that he should make some recognition to clear the honour of the lady; and that he should become a good instrument towards her and her friends: all which was but entertainment; for your lordships shall plainly see divers of my Lord of *Northampton's* letters (whose hand was deep in this business) written (I must say it) in dark words and clauses; that there was one thing pretended and another intended; that there was a real charge, and there was somewhat not real; a main drift and a dissimulation. Nay farther, there be some passages which the peers in their wisdom will discern to point directly at the imprisonment.

AFTER this inducement followed the evidence itself.

MISCELLANIES.

CERTAIN OBSERVATIONS UPON A LIBEL,

Published this present YEAR, 1592.

INTITULED
A DECLARATION of the TRUE CAUSES
of the GREAT TROUBLES,

Prefupposed to be intended againſt the REALM of
ENGLAND.

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

ACCORDING

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

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

trary to the state; (wherein they are as wise as he, that thinketh to kindle a fire by blowing the dead ashes:) when, I say, a man looketh into the cause and ground of this plentiful field of libels, he will cease to marvel, considering the concurrence which is in the nature of the seed; as in the travail of tilling and dressing, yea, and in the fitness of the season for the bringing up of those infectious weeds.

BUT, to verify the saying of our Saviour, *non est discipulus super magistrum*; as they have sought to deprave her Majesty's government in her self, so have they not forgotten to do the same in her principal servants and counsellors; thinking belike, that as the immediate invectives against her Majesty do best satisfy the malice of the foreigner, so the slander and calumny of her principal counsellors, agreed best with the humours of some malecontents within the realm; imagining also, that it was like they would be more scattered here, and freelier dispersed; and also should be less odious to those foreigners which were not merely partial and passionate; who have for the most part in detestation the traitorous libellings of subjects directly against their natural prince.

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

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

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

1. OF the scope or drift of the libeller.
2. OF the present estate of this realm of *England*, whether it may be truly avouched to be prosperous or afflicted.
3. OF the proceedings against the pretended catholicks, whether they have been violent, or moderate, and necessary.
4. OF the disturbance of the quiet of Christendom, and to what causes it may be justly imputed.
5. OF the cunning of the libeller, in palliation of his malicious invective against her Majesty and the state, with pretence of taxing only the actions of the lord *Burleigh*.
6. CERTAIN true general notes upon the actions of the lord *Burleigh*.
7. OF divers particular untruths and abuses dispersed through the libel.
8. OF the height of impudence that these men are grown unto, in publishing and avouching untruths; with a particular recital of some of them for an assay.

1. Of the scope or drift of the libeller.

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

refined for any man to walk invisible: or to make all the world his instruments; and therefore, no not in this point assuredly: the libeller spake as he thought; but this he foresaw, that the imputation of cunning doth breed suspicion, and the imputation of greatness and sway doth breed envy; and therefore finding where he was most wrong, and by whose policy and experience their plots were most crossed, the mark he shot at was to see whether he could heave at his lordship's authority, by making him suspected to the Queen, or generally odious to the realm; knowing well enough for the one point, that there are not only jealousies, but certain revolutions in princes minds: so that it is a rare virtue in the rarest princes, to continue constant to the end in their favours and employments. And knowing for the other point, that envy ever accompanieth greatness, though never so well deserved: and that his lordship hath always marched a round and a real course in service; and as he hath not moved envy by pomp and ostentation; so hath he never extinguished it by any popular or insinuating carriage of himself: and this no doubt was his second drift.

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

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

2. Of the present estate of this realm of *England*, whether it may be truly avouched to be prosperous or afflicted.

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

If then it be true, that *nemo est miser, aut felix, nisi comparatus*; whether we shall (keeping our selves within the compass of our own island) look into the memories of times past, or at this present time, take a view of other states abroad in *Europe*; we shall find that we need not give place to the happiness either of ancestors or neighbours. For if a man weigh well all the parts of state and religion, laws, administration of justice, policy of government, manners, civility, learning and liberal sciences, industry and manual arts, arms and provisions of wars for sea and land, treasure, traffic, improvement of the soil, population, honour and reputation, it will appear that

that taking one part with another, the state of this nation was never more flourishing.

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

Now for her Majesty, we will first speak of the blessing of continuance, as ^{ance.} that which wanted in the happiest of these Kings; and is not only a great favour of God unto the prince, but also a singular benefit unto the people; for that sentence of the scripture, *misera natio cum multi sunt principes ejus*, is interpreted not only to extend to divisions and distractions in government, but also to frequent changes in succession: considering, that the change of a prince bringeth in many charges, which are harsh and unpleasant to a great part of the subjects. It appeareth then, that of the line of five hundred and fourscore years, and more, containing the number of twenty two Kings, God hath already prolonged her Majesty's reign to exceed sixteen of the said two and twenty; and by the end of this present year, (which God prosper) she shall attain to be equal with two more: during which time there have deceased four Emperors, as many *French* Kings; twice so many Bishops of *Rome*.

Rome. Yea, every state in Christendom, except *Spain*, have received sundry successions. And for the King of *Spain*, he is waxed so infirm, and thereby so retired, as the report of his death serveth for every year's news: whereas her Majesty (thanks be given to God) being nothing decayed in vigour of health and strength, was never more able to supply and sustain the weight of her affairs, and is as far as standeth with the dignity of her Majesty's royal state, continually to be seen, to the great comfort and hearty ease of her people.

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

3. Peace. THE third blessing is that which all the politick and fortunate Kings before recited have wanted; that is peace: for there was never foreigner since her Majesty's reign, by invasion or incursion of moment, that took any footing within the realm of *England*. One rebellion there hath been only, but such an one as was repressed within the space of seven weeks, and did not waste the realm so much as by the destruction or depopulation of one poor town. And for wars abroad, taking in those of *Leith*, those of *New-haven*, the second expedition into *Scotland*, the wars of *Spain*, which I reckon from the year 86, or 87 (before which time neither had the King of *Spain* withdrawn his ambassadors here residing; neither had her Majesty received into protection the United Provinces of the *Low-Countries*) and the aid of *France*: They have not occupied in time a third part of her Majesty's reign; nor consumed past two of any noble house; whereof *France* took one, and *Flanders* another; and very few besides of quality or appearance. They have scarce mowed down the overcharge of the people within the realm. It is therefore true, that the Kings aforesaid, and others her Majesty's progenitors, have been victorious in their wars, and have made many famous and memorable voyages and expeditions into sundry parts; and that her Majesty, contrariwise from the beginning, put on a firm resolution to content herself within those limits of her dominions which she received, and to entertain peace with her neighbour princes; which resolution she hath ever since (notwithstanding she hath had rare opportunities, just claims and pretences, and great

and

and mighty means) fought to continue. But if this be objected to be the less honourable fortune; I answer, that ever amongst the heathen who held not the expence of blood so precious as Christians ought to do, the peaceable government of *Augustus Caesar* was ever as highly esteemed as the victories of *Julius* his uncle; and that the name of *pater patriae* was ever as honourable as that of *propagator imperii*. And this I add further, that during this inward peace of so many years in the actions of war before mentioned, which her Majesty, either in her own defence or in just and honourable aids hath undertaken; the service hath been such as hath carried no note of a people, whose militia were degenerated through long peace; but hath every way answered the ancient reputation of the *English* arms.

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

4. Plenty and wealth.

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

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

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

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

THERE was never the like quantity of waste and unprofitable ground, inclosed, reclaimed and improved.

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

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

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

THERE was never so many excellent artificers, nor so many new handicrafts used and exercised; nor new commodities made within the realm, sugar, paper, glass, copper, divers silks, and the like.

THERE was never such complete and honourable provision of horse, armour, weapons, ordinance of the war.

THE fifth blessing hath been the great population and multitude of families increased within her Majesty's days: for which point I refer my self to the proclamations of restraint of building in *London*, the inhibition of in-

5. Increase of people.

mates of sundry cities, the restraint of cottages by act of parliament; and sundry other tokens of record of the surcharge of people.

6. Reformati-
on in religi-
on.

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

The special
benefits esta-
blished a-
mong us by
the purity of
religion.

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

Fineness of
money.

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

The might
of the navy.

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

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

Comparison
of the state of
England with
the states a-
broad.
Afflicted in
France.

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

Low-Coun-
tries.

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

ping than otherwise ; yet they cannot but mourn for their distraction from the rest of their body.

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

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

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

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

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

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

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

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

So as hitherto I do not see but that we are as much bound to the mercies of

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

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

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

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

Concerning
the contro-
versy of our
church.

TOUCHING the divisions in our church, the libeller affirmeth that the protestantical Calvinism (for so it pleaseth him with very good grace to term the religion with us established) is grown contemptible, and detected of idolatry and heresy, and many other superstitious abuses, by a purified sort of professors of the same gospel. And this contention is yet grown to be more intricate, by reason of a third kind of gospellers called *Brownists*: who being directed by the great fervour of the unholy ghost, do expressly affirm, that the protestantical church of *England* is not gathered in the name of Christ, but of antichrist; and that if the prince or magistrate under her do refuse or de-

fer

fer to reform the church, the people may, without her consent, take the reformation into their own hands: and hereto he addeth the fanatical pageant of *Hacket*. And this is the effect of this accusation in this point.

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

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

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

gerous, or else they have been as blisters in some small ignoble part of the body, which have soon after fallen and gone away. For such also was the phrenetical and fanatical (for I mean not to determine it) attempt of *Hacket*, who must needs have been thought a very dangerous heretic, that could never get but two disciples; and those, as it should seem, perished in their brain; and a dangerous commotioner, that in so great and populous a city as *London* is, could draw but those same two fellows, whom the people rather laugh'd at as a may-game, than took any heed of what they did or said: so as it was very true that an honest poor woman said when she saw *Hacket* out of a window pass to his execution; said she to her self, it was foretold that in the latter days there should come those that have deceived many; but in faith thou hast deceived but a few.

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

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

Concerning
the foreign e-
nemies of this
state.

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

AND whether we have given just cause of quarrel or offence, it shall be afterwards touched in the fourth article, touching the true causes of the disturbance of the quiet of Christendom; as far as it is fit to justify the actions of so high a prince upon the occasion of such a libel as this. But now concerning the power and forces of any enemy, I do find that *England* hath sometimes apprehended with jealousy, the confederation between *France* and *Scotland*; the one being upon the same continent that we are, and breeding

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

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

So as we ſhall not need much confederacies and ſuccours, (which he ſaith we want for the breaking of the *Spaniſh* invaſion :) no, though the *Spaniard* ſhould

should nestle in *Britain*, and supplant the *French*, and get some port-towns into their hands there, (which is yet far off;) yet shall he never be so commodiously seated to annoy us, as if he had kept the *Low-Countries*: and we shall rather fear him as a wrangling neighbour, that may trespass now and then upon some straggling ships of ours, than as an invader. And as for our confederacies, God hath given us both means and minds to tender and relieve the states of others: And therefore our confederacies are rather of honour than such as we depend upon. And yet nevertheless the apostata's and huguenots of *France* on the one part, (for so he termeth the whole nobility in a manner of *France*, among the which a great part is of his own religion; which maintain the clear and unblemished title of their lawful and natural King against the seditious populace;) and the beer-brewers and basket-makers of *Holland* and *Zealand* (as he also terms them) on the other, have almost bandied away between them all the duke of *Parma's* forces: and I suppose the very mines of the *Indies* will go low, or ever the one be ruined, or the other recovered. Neither again desire we better confederacies and leagues than *Spain* itself hath provided for us: *Non enim verbis foedera confirmantur, sed iisdem utilitatibus*. We know to how many states the King of *Spain* is odious and suspected; and for our selves we have incensed none by our injuries, nor made any jealous of our ambition: these are in rules of policy the firmest contracts.

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

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

IT pleaseth God sometimes, to the end to make men depend upon him the more, to hide from them the clear sight of future events; and to make them think that full of uncertainties which proveth certain and clear: and sometimes on the other side, to cross men's expectations, and to make them full of difficulty and perplexity in that which they ought to be easy and assured. Neither is it any new thing for the titles of succession in monarchies to be at times less or more declared. King *Sebastian* of *Portugal*, before his journey into *Africk*, declared no successor. The cardinal, though he were of extreme age, and were much importuned by the King of *Spain*, and knew directly six or seven competitors to that crown, yet he rather established I know not what interims, than decided the titles, or designed any certain successor. The dukedom of *Ferrara* is at this day, after the death of the prince that now liveth, uncertain in the point of succession: the kingdom of *Scotland* hath declared no successor. Nay, it is very rare in hereditary monarchies, by any act of state, or any recognition or oath of the people in the collateral line, to establish a successor. The duke of *Orleans* succeeded

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

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

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

BUT nevertheless, to follow this man in his own steps: First, concerning the nobility; it is true, that there have been in ages past, noblemen (as I take it) both of greater possessions and of greater command and sway than any are at this day. One reason why the possessions are less, I conceive to be, because certain sumptuous veins and humours of expence (as apparel, gaming, maintaining of a kind of followers, and the like) do reign more than they did in times past. Another reason is, because noblemen now-a-days do deal better with their younger sons than they were accustomed to do heretofore, whereby the principal house receiveth many abatements. Touching the command, which is not indeed so great as it hath been, I take it rather to be a commendation of the time, than otherwise: For men were wont factiously to depend upon noblemen, whereof ensued many partialities and divisions, besides much interruption of justice, while the great ones did seek to bear out those that did depend upon them. So as the Kings of this realm, finding long since that kind of commandment in noblemen unsafe unto their crown, and inconvenient unto their people, thought meet to restrain the same by provision of laws; whereupon grew the statute of retainers; so as men now depend upon the prince and the laws, and upon no other: a matter which hath also a congruity with the nature of the time, as may be seen in other countries; namely, in *Spain*, where their grandees are nothing so

Concerning
the state of
the nobility.

potent and so absolute as they have been in times past. But otherwise, it may be truly affirmed, that the rights and preheminencies of the nobility were never more duly and exactly preserved unto them, than they have been in her Majesty's time; the precedence of knights given to the younger sons of barons; no *subpoena's* awarded against the nobility out of the chancery, but letters; no answer upon oath, but upon honour: besides a number of other privileges in parliament, court and country. So likewise for the countenance of her Majesty and the state, in lieutenantancies, commissions, offices, and the like, there was never a more honourable and graceful regard had of the nobility; neither was there ever a more faithful remembrancer and exacter of all these particular preheminencies unto them; nor a more diligent searcher and register of their pedigrees, alliances, and all memorials of honour than that man, whom he chargeth to have overthrown the nobility; because a few of them by immoderate expence are decayed, according to the humour of the time, which he hath not been able to resist, no not in his own house. And as for attainders, there have been in thirty five years but five of any of the nobility, whereof but two came to execution; and one of them was accompanied with restitution of blood in the children: yea all of them, except *Westmoreland*, were such, as whether it were by favour of law or government, their heirs have, or are like to have, a great part of their possessions: And so much for the nobility.

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

1. THE consumption of people in the wars.

2. THE interruption of traffick.

3. THE corruption of justice.

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

For the stopping of traffick, as I referred my self to the muster-books for the first, so I refer my self to the custom-books, upon this, which will not lye,

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the common
subject.

lye, and do make demonstration of no abatement at all in these last years, but rather of rising and increase. We know of many in *London* and other places that are within a small time greatly come up and made rich by merchandizing: and a man may speak within his compass, and affirm, that our prizes by sea have countervailed any prizes upon us.

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

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

upon the defence and preservation of the subject, not upon excessive buildings, nor upon immoderate donatives, nor upon triumphs and pleasures; or any the like veins of dissipation of treasure, which have been familiar to many Kings: so have they been yielded with great good will and chearfulness, as may appear by other kinds of benevolence, presented to her likewise in parliament; which her Majesty nevertheless hath not put in ure. They have been taxed also and assessed with a very light and gentle hand; and they have been spared as much as may be, as may appear in that her Majesty now twice to spare the subject, hath sold off her own lands. But he that shall look into other countries and consider the taxes, and talliages, and impositions, and assizes, and the like, that are every where in use, will find that the *English* man is the most master of his own valuation, and the least bitten in his purse of any nation of *Europe*. Nay even at this instant in the kingdom of *Spain*, notwithstanding the pioneers do still work in the *Indian* mines, the Jesuits most play the pioneers and mine into the *Spaniards* purses; and under the colour of a ghostly exhortation, contrive the greatest exaction that ever was in any realm.

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

3. OF the proceedings against the pretended catholicks, whether they have been violent, or moderate and necessary.

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

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

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

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

AND therefore her Majesty revived not the laws made in 28. and 35. of her father's reign, whereby the oath of supremacy might have been offered at the King's pleasure to any subject, though he kept his conscience never so modestly to himself; and the refusal to take the same oath, without farther circumstance, was made treason: but contrariwise, her Majesty not liking to make windows into mens hearts and secret thoughts, except the abundance of them did overflow into overt and express acts and affirmations, tempered her law so, as it restraineth only manifest disobedience in impugning and impeaching advisedly and ambitiously her Majesty's supreme power, and maintaining and extolling a foreign jurisdiction. And as for the oath, it was altered by her Majesty into a more grateful form; the harshness of the name,
and

and appellation of supreme head was removed ; and the penalty of the refusal thereof turned into a disablement to take any promotion, or to exercise any charge ; and yet that with a liberty of being re-vested therein, if any man shall accept thereof during his life.

BUT after many years toleration of a multitude of factious papists, when *Pius Quintus* had excommunicated her Majesty, and the bill of excommunication was published in *London*, whereby her Majesty was in a sort proscribed, and all her subjects drawn upon pain of damnation from her obedience ; and that thereupon, as upon a principal motive or preparative, followed the rebellion in the north ; yet notwithstanding, because many of those evil humours were by that rebellion partly purged, and that she feared at that time no foreign invasion, and much less the attempts of any within the realm ; not backed by some foreign succours from without, she contented her self to make a law against that special case of bringing in, or publishing of bulls or the like instruments ; whereunto was added, a prohibition, not upon pain of treason, but of an inferior degree of punishment, against bringing in of *Agnus Dei's*, hallowed beads, and such other merchandize of *Rome*, as are well known not to be any essential part of the *Roman* religion, but only to be used in practice as love-tokens, to enchant and bewitch the people's affections from their allegiance to their natural sovereign. In all other points her Majesty continued her former lenity.

BUT when about the twentieth year of her reign she had discovered in the King of *Spain* an intention to invade her dominions, and that a principal point of the plot was to prepare a party within the realm that might adhere to the foreigner ; and that the seminaries began to blossom and to send forth daily priests and professed men, who should by vow taken at shrift, reconcile her subjects from her obedience ; yea, and bind many of them to attempt against her Majesty's sacred person ; and that by the poison they spread, the humours of most papists were altered, and that they were no more papists in custom, but papists in treasonable faction : then were there new laws made for the punishment of such as should submit themselves to reconcilements or renunciations of obedience. For it is to be understood, that this manner of reconciliation in confession, is of the same nature and operation that the bull it self was of, with this only difference, that whereas the bull assailed the subjects from their obedience at once, the other doth it one by one. And therefore it is both more secret, and more insinuating into the conscience, being joined with no less matter than an absolution from mortal sin. And because it was a treason carried in the clouds, and in wonderful secrecy, and came seldom to light ; and that there was no presumption thereof so great as the recusants to come to divine service, because it was set down by their decrees, that to come to church before reconciliation, was to live in schism ; but to come to church after reconciliation, was absolutely heretical and damnable : Therefore there were added new laws, containing a punishment pecuniary against the recusants, not to enforce consciences, but to enfeeble those of whom it rested indifferent and ambiguous, whether they were reconciled or no ? For there is no doubt, but if the law of recusancy (which is challenged to be so extreme and rigorous) were thus qualified, that any recusant that shall voluntarily come in and take his oath, that he or she were never reconciled, should immediately be discharged of the penalty and forfeiture of the law ; they would be so far from liking well of that mitigation, as they would cry out it was made to entrap them. And when notwithstanding all this provision, this poison was dispersed so secretly, as that there were no means to

stay it, but to restrain the merchants that brought it in. Then was there lastly added a law, whereby such seditious priests of the new erection were exiled; and those that were at that time within the land shipped over, and so commanded to keep hence upon pain of treason.

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

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

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

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

THE states then which answered to these two, were *Macedon* and *Athens*. Consider therefore the resemblance between the two *Philips* of *Macedon* and *Spain*: he of *Macedon* aspired to the monarchy of *Greece*, as he of *Spain* doth of *Europe*; but more apparently than the first, because that design was discovered in his father *Charles V.* and so left him by descent; whereas *Philip* of *Macedon* was the first of the Kings of that nation which fixed so great conceits in his breast. The course which this King of *Macedon* held was not so much by great armies and invasions (though these wanted not when the case required) but by practice, by sowing of factions in states, and by obliging sundry particular persons of greatness. The state of opposition against his ambitious proceedings was only the state of *Athens*, as now is the state of *England* against *Spain*. For *Lacedaemon* and *Thebes* were both low as *France* is now; and the rest of the states of *Greece* were in power and territories far inferior. The people of *Athens* were exceedingly affected to peace, and weary

weary of expence. But the point which I chiefly make the comparison, was that of the orators, which were as counsellors to a popular state; such as were sharpest sighted, and looked deepest into the projects and spreading of the *Macedonians* (doubting still that the fire, after it licked up the neighbour states, and made it self opportunity to pass, would at last take hold of the dominions of *Athens* with so great advantages as they should not be able to remedy it) were ever charged both by the declarations of the King of *Macedon*, and by the imputation of such *Athenians* as were corrupted to be of his faction, as the kindlers of troubles, and disturbers of the peace and leagues: but as that party was in *Athens* too mighty, so as it discountenanced the true counsels of the orators, and so bred the ruin of that state, and accomplished the ends of that *Philip*: So it is to be hoped that in a monarchy where there are commonly better intelligences and resolutions than in a popular state, those plots as they are detected already, so they will be resisted and made frustrate.

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

1. TOUCHING the proceeding of *Spain* and *England* towards their neighbour states.

2. TOUCHING the proceeding of *Spain* and *England* between themselves.

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

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

IN answer whereof, it is worthy the consideration how it pleased God in that King to cross one passion by another; and namely, that passion which might have proved dangerous unto all *Europe*, (which was ambition) by another which was only hurtful to himself and to his own, which was wrath and indignation towards his subjects of the *Netherlands*. For after that he was settled in his kingdom, and freed from some fear of the *Turk*, revolving his father's design in aspiring to the monarchy of *Europe*, casting his eye principally upon the two potent kingdoms of *France* and *England*; and remembring how his father had once promised unto himself the conquest of the one;
and

and how himself by marriage had lately had some possession of the other; and seeing that diversity of religion was entered into both these realms; and that *France* was fallen unto princes weak, and in minority; and *England* unto the government of a lady, in whom he did not expect that policy of government, magnanimity and felicity, which since he hath proved; concluded (as the *Spaniards* are great waiters upon time, and ground their plots deep) upon two points; the one to profess an extraordinary patronage and defence of the *Roman* religion, making account thereby to have factions in both kingdoms: in *England* a faction directly against the state; in *France* a faction that did consent indeed in religion with the King, and therefore at first shew should seem improper to make a party for a foreigner. But he foresaw well enough that the King of *France* should be forced (to the end to retain peace and obedience) to yield in some things to those of the religion, which would undoubtedly alienate the fiery and more violent sort of papists; which preparation in the people added to the ambition of the family of *Guise* (which he nourished for an instrument) would in the end make a party for him against the state, as since it proved, and might well have done long before, as may well appear by the mention of league and associations, which is above twenty five years old in *France*.

THE other point he concluded upon was, that his *Low-Countries* was the aptest place both for ports and shipping, in respect of *England*, and for situation in respect of *France*, having goodly frontier towns upon that realm, and joining also upon *Germany*, whereby they might receive in at pleasure any forces of *Almains*, to annoy and offend either kingdom. The impediment was the inclination of the people, which receiving a wonderful commodity of trades out of both realms, especially of *England*; and having been in ancient league and confederacy with our nation, and having been also homagers unto *France*, he knew would be in no wise disposed to either war: whereupon he resolved to reduce them to a martial government, like unto that which he had established in *Naples* and *Milan*; upon which suppression of their liberties ensued the defection of those provinces. And about the same time the reformed religion found entrance in the same countries; so as the King enflamed with the resistance he found in the first part of his plots, and also because he might not dispense with his other principle in yielding to any toleration of religion; and withal expecting a shorter work of it than he found, became passionately bent to reconquer those countries, wherein he hath consumed infinite treasure and forces. And this is the true cause, if a man will look into it, that hath made the King of *Spain* so good a neighbour; namely, that he was so entangled with the wars of the *Low-Countries* as he could not intend any other enterprize. Besides, in enterprizing upon *Italy*, he doubted first the displeasure of the see of *Rome*, with whom he meant to run a course of strait conjunction; also he doubted it might invite the *Turk* to return. And for *Germany* he had a fresh example of his father, who when he had annexed unto the dominions which he now possesseth, the empire of *Almaign*, nevertheless sunk in that enterprize; whereby he perceived that the nation was of too strong a composition for him to deal withal: though not long since, by practice, he could have been contented to snatch up in the East the country of *Embden*. For *Portugal*, first, the Kings thereof were good sons to the see of *Rome*; next, he had no colour of quarrel or pretence; thirdly, they were officious unto him: yet if you will believe the *Genoese*, (who otherwise writeth much to the honour and advantage of the Kings of *Spain*;) it seemeth he had a good mind to make himself a way into that

that kingdom, seeing that for that purpose (as he reporteth) he did artificially nourish the young King *Sebastian* in the voyage of *Afric*, expecting that overthrow which followed.

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

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

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

AFTER, when certain noblemen of *Scotland* of the same faction of *Guise* had, during the minority of the King, possessed themselves of his person, to the end to abuse his authority many ways; and namely, to make a breach between *Scotland* and *England*: her Majesty's forces were again in the year 1582, by the King's best and truest servants, fought and required: and with

the forces of her Majesty prevailed so far, as to be possessed of the castle of *Edinburgh*, the principal part of that kingdom; which nevertheless her Majesty incontinently with all honour and sincerity restored, after she had put the King into good and faithful hands: and so ever since, in all the occasions of intestine troubles, whereunto that nation hath been ever subject, she hath performed unto the King all possible good offices, and such as he doth with all good affection acknowledge.

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

HER Majesty, at her coming to the crown, found her realm entangled with the wars of *France* and *Scotland* her nearest neighbours; which wars were grounded only upon the *Spaniards* quarrel; but in the pursuit of them had
lost

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

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

IN the message of Viscount *Mountacute*, it was also contained, that he should crave the King's counsel and assistance, according to amity and good intelligence, upon a discovery of certain pernicious plots of the house of *Guise*, to annoy this realm by the way of *Scotland*: whereunto the King's answer was so dark and so cold, that nothing could be made of it, till he had made an exposition of it himself, by effects in the express restraint of munition to be carried out of the *Low-Countries*, unto the siege of *Leith*; because our nation was to have supply thereof from thence. So as in all the negotiations that passed with that King, still her Majesty received no satisfaction, but more and more suspicious and bad tokens of evil affection.

SOON

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

which liberties and privileges are of that nature, as they may justly esteem themselves but conditional subjects to the King of *Spain*, more justly than *Aragon*: and may make her Majesty as justly esteem the ancient confederacies and treaties with *Burgundy* to be of force rather with the people and nation, than with the line of the duke; because it was never an absolute monarchy. So as to sum up her Majesty's proceedings in this great action, they have but this, that they have sought first to restore them to *Spain*, then to keep them from strangers, and never to purchase them to her self.

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

NOT contented thus to have comforted and assisted her Majesty's rebels in *England*, he procured a rebellion in *Ireland*; arming and sending thither in the year 1579 an arch-rebel of that country, *James-Fitz-Morice*, which before was fled. And truly to speak, the whole course of molestation, which her Majesty hath received in that realm by the rising and keeping on of the *Irish*, hath been nourished and fomented from *Spain*; but afterwards most apparently in the year 1580 he invaded the same *Ireland* with *Spanish* forces, under an *Italian* colonel, by name *San Josepho*, being but the fore-runners of a greater power; which by treaty between him and the pope should have followed; but that by the speedy defeat of those former, they were discouraged to pursue the action: which invasion was proved to be done by the King's own orders, both by the letters of secretary *Escovedo*, and of *Guerres* to the King; and also by divers other letters, wherein the particular conferences

were set down concerning this enterprize between cardinal *Riario* the pope's legate, and the King's deputy in *Spain* touching the general, the number of men, the contribution of money, and the manner of the prosecuting of the action, and by the confession of some of the chiefeft of those that were taken prisoners at the fort; which act being an act of apparent hostility, added unto all the injuries aforesaid, and accompanied with a continual receipt, comfort, and countenance, by audiences, pensions, and employments, which he gave to traytors and fugitives, both *English* and *Irish*; as *Westmoreland*, *Paget*, *Englefield*, *Baltinglass*, and numbers of others; did sufficiently justify and warrant that pursuit of revenge, which (either in the spoil of *Cartbagena* and *San Domingo* in the *Indies*, by Mr. *Drake*, or in the undertaking the protection of the *Low-Countries* when the earl of *Leicester* was sent over) afterwards followed. For before that time her Majesty, though she stood upon her guard in respect of the just cause of jealousy, which the sundry injuries of that King gave her; yet had entred into no offensive action against him. For both the voluntary forces which Don *Antonio* had collected in this realm, were by expresse commandment restrained, and offer was made of restitution to the *Spanish* ambassador of such treasure as had been brought into this realm, upon proof that it had been taken by wrong; and the duke of *Anjou* was (as much as could stand with the near treaty of a marriage which then was very forward between her Majesty and the said duke) diverted from the enterprize of *Flanders*.

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

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

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

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

THIRDLY,

THIRDLY, that the *Engliff* rovers might peaceably go to his *Indies*, and there take away his treasure and his *Indies* also.

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

1. THAT the King of *France* be not impeached in reducing his rebels to obedience.

2. THAT the *Netherlands* be suffered to enjoy their ancient liberties and privileges, and so forces of strangers to be withdrawn, both *Engliff* and *Spaniff*.

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

5. OF the cunning of the libeller, in palliation of his malicious invectives against her Majesty and the state, with pretence of taxing only the actions of the lord *Burleigh*.

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

6. CERTAIN true general notes upon the actions of the Lord *Burleigh*.

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

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

7. OF divers particular untruths and abuses dispersed through the libel.

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

PAG. 9. he saith, that his lordship could neither by the greatness of his beads, creeping to the cross, nor exterior shew of devotion before the high altar, find his entrance into high dignity in *Queen Mary's* time. All which is a mere fiction at pleasure; for *Queen Mary* bare that respect unto him in regard of his constant standing for her title, that she desired to continue his service; the refusal thereof growing from his own part: he enjoyed nevertheless all other liberties and favours of the time; save only that it was put into the *Queen's* head that it was dangerous to permit him to go beyond the sea, because he had a great wit of action, and had served in so principal

a place; which nevertheless after, with Cardinal *Pool*, he was suffered to do.

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

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

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

PAG. 43. he saith, that his lordship, whom he calleth the arch-politick, hath fraudulently provided, that when any priest is arraigned, the indictment is enforced with many odious matters: wherein he sheweth great ignorance if it be not malice; for the law permitteth not the ancient forms of indictments to be altered; like as in an action of trespass, although a man take away another's goods in the peaceablest manner in the world, yet the writ hath *quare vi & armis*; and if a man enter upon another's ground and do no more, the plaintiff mentioneth *quod herbam suam ibidem crescentem, cum equis, bobus, porcis, & bidentibus, depastus sit, conculcavit & consumpsit*. Neither is this any absurdity, for in the practice of all law the formularies have been few and certain; and not varied according to every particular case. And in indictments also of treason, it is not so far fetched as in that of trespass; for the law ever presumeth in treason an intention of subverting the state, and impeaching the Majesty royal.

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

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

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

PAG. 55. and again p. 70. he saith, his lordship (meaning the Lord *Burleigh*) intendeth to match his grandchild Mr. *William Cecil* with the Lady *Arabella*. Which being a mere imagination, without any circumstance at all to induce it, more than that they are both unmarried, and that their years agree well, needeth no answer. It is true that his lordship being no stoicalunnatural man, but loving towards his children; for *charitas reipublicae incipit a familia*; hath been glad to match them into honourable and good blood: and yet not so, but that a private gentleman of *Northamptonshire* that lived altogether in the country, was able to bestow his daughters higher than his lordship hath done. But yet it is not seen by any thing past, that his lordship ever thought or affected to match his children in the blood royal. His lordship's wisdom, which hath been so long of gathering, teaching him to leave to his posterity rather surety than danger. And I marvel where be the combinations which have been with great men; and the popular and plausible courtes, which ever accompany such designs, as the libeller speaketh of:
and

and therefore this match is but like unto that which the same fellow concluded between the same Lady *Arabella* and the Earl of *Leicester's* son, when he was but a twelvemonth old.

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

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

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

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

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

WE retain in our calendars no other holidays but such as have their memorials in the scriptures: and therefore in the honour of the blessed Virgin, we only receive the feasts of the annunciation and the purification; omitting the other of the conception and the nativity; which nativity was used to be celebrated upon the eighth of *September*, the vigil whereof happen'd to be the nativity of our Queen; which though we keep not holy, yet we use therein certain civil customs of joy and gratulation, as ringing of bells, bonfires, and such like; and likewise make a memorial of the same day in our calendar: whereupon they have published, that we have expunged the nativity of the blessed Virgin, and put instead thereof the nativity of our
Queen

Queen: And farther, that we sing certain hymns unto her, used to be sung unto our lady.

It happened that upon some blood-shed in the church of *Paul's*, according to the canon law, yet with us in force, the said church was interdicted, and so the gates shut up for some few days; whereupon they published, that because the same church is a place where people use to meet to walk and confer, the Queen's Majesty, after the manner of the ancient tyrants, had forbidden all assemblies and meetings of people together; and for that reason, upon extreme jealousy, did cause *Paul's* gates to be shut up.

THE gate of *London* called *Ludgate*, being in decay, was pulled down and built a-new; and on the one side was set up the image of King *Lud* and his two sons; who, according to the name, was thought to be the first founder of that gate; and on the other side, the image of her Majesty, in whose time it was re-edified: whereupon they published that her Majesty, after all the images of the saints were long beaten down, had now at last set up her own image upon the principal gate of *London* to be adored, and that all men were forced to do reverence to it as they passed by, and a watch there placed for that purpose.

Mr. *Jewel* the Bishop of *Salisbury*, who according to his life died most godly and patiently, at the point of death used the versicle of the hymn *Te Deum*, *O Lord in thee have I trusted, let me never be confounded*; whereupon suppressing the rest, they published, that the principal champion of the hereticks in his very last words cried he was confounded.

IN the act of recognition of *primo*, whereby the right of the crown is acknowledged by parliament to be in her Majesty, (the like whereof was used in Queen *Mary's* time) the words of limitation are, in the Queen's Majesty, and the natural heirs of her body, and her lawful successors. Upon which word (natural) they do maliciously, and indeed villainously gloss, that it was the intention of the parliament, in a cloud to convey the crown to any issue of her Majesty's that were illegitimate; whereas the word (heir) doth with us so necessarily and pregnantly import lawfulness, as it had been *indecorum*, and uncivil speaking of the issues of a prince to have expressed it.

They set forth in the year a book with tables and pictures of the persecutions against catholicks, wherein they have not only stories of fifty years old to supply their pages, but also taken all the persecutions of the primitive church, under the heathen, and translated them to the practice of *England*; as that of worrying priests under the skins of bears, by dogs, and the like.

I CONCLUDE then, that I know not what to make of this excess in avouching untruths, save this, that they may truly chaunt in their quires; *linguam nostram magnificabimus, labia nostra nobis sunt*: And that they who have long ago forsaken the truth of God, which is the touchstone, must now hold by the whetstone; and that their ancient pillar of lying wonders being decayed, they must now hold by lying slanders, and make their libels successors to their legend.

A TRUE
REPORT
Of the detestable
TREASON,
INTENDED

By Doctor *RODERIGO LOPEZ*,

A Phyfician attending upon the Perfon of the

QUEEN'S MAJESTY,

Whom he, for a fum of money promifed to be paid him by the King of *Spain*, did undertake to have deftroyed by poifon; with certain Circumftances both of the plotting and detecting the faid Treafon: Penned during the Queen's Life.

THE King of *Spain* having found by the enterprize of 88, the difficulty of an invafion of *England*; and having alfo fince that time embraced the matters of *France* (being a defign of a more eafy nature, and better prepared to his hand) hath of neceffity for a time layed afide the profecution of his attempts againft this realm by open forces, as knowing his means unable to wield both actions at once, as well that of *England* as that of *France*: And therefore, cafting at the faireft, hath (in a manner) bent his whole ftrength upon *France*, making, in the mean time, only a defensive war upon the *Low-Countries*. But finding again, that the fupports and aids which her Majefty hath continued to the *French* King, are a principal impediment and retardation to his prevailing there according to his ends, he hath now of late, by all means, projected to trouble the waters here, and to cut us out fome work at home; that by practice, without diverting and employing any great forces, he might nevertheless divert our fuccours from *France*.

ACCORDING to which purpofe, he firft proved to move fome innovation in *Scotland*, not fo much in hope to alienate the King from the amity of her Majefty, as practifing to make a party there againft the King himfelf, whereby he fhould be compelled to ufe her Majefty's forces for his affiftance. Then he foli-cited a fubject within this realm (being a perfon of great nobility) to rife in arms and levy war againft her Majefty; which practice was by the fame nobleman loyally and prudently revealed. And laftly, (rather, as it is to be thought, by the infligation of our traitorous fugitives in foreign parts, and the corrupter fort of his counfellors and minifters, than of his own na-

ture

ture and inclination) either of himself, or his said counsellors and ministers using his name, have descended to a course against all honour, all society and humanity, odious to God and man, detested by the heathens themselves, which is to take away the life of her Majesty (which God have in his precious custody) by violence or poison. A matter which might be proved to be not only against all Christianity and religion, but against nature, the law of nations, the honour of arms, the civil law, the rules of morality and policy; finally, to be the most condemned, barbarous, and ferine act that can be imagined; yea, (supposing the quarrels and hostility between the princes to be never so declared and so mortal) yet were it not that it would be a very reproach unto the age, that the matter should be once disputed or called in question, it could never be defended. And therefore I leave it to the censure which *Titus Livius* giveth in the like case upon *Perseus* the last King of the *Macedons*, afterwards overthrown, taken with his children, and led in triumph by the *Romans*: *Quem non justum bellum gerere regio animo, sed per omnia clandestina grassari scelera, latrociniorum ac veneficiorum, cernebant.*

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

BUT howsoever that be, amongst the number of these execrable undertakers, there was none so much built and relied upon by the great ones of the other side, as was this physician *Lopez*; nor (indeed) none so dangerous; whether you consider the aptness of the instrument, or the subtlety and secrecy of those that practised with him, or the shift and evasion which he had provided for a colour of his doings, if they should happen to come into question. For first, whereas others were to find and encounter infinite difficulties, in the very obtaining of an opportunity to execute this horrible act;
and

and besides, cannot but see present and most assured death before their eyes, and therefore must be (as it were) damnable votaries if they undertake it: this man, in regard of his faculty, and of his private access to her Majesty, had both means to perpetrate, and means to conceal, whereby he might reap the fruit of his wicked treason without evident peril. And for his complices that practised with him, being *Portuguese*, and of the retinue of King *Antonio*, the King of *Spain*'s mortal enemy, they were men thereby freed and discharged from suspicion, and might send letters and receive letters out of *Spain* without jealousy; as those which were thought to entertain intelligences there for the good of their master. And for the evasion and mask that *Lopez* had prepared for this treason, if it had not been fetched and sifted to the bottom, it was, that he did intend but to cozen the King of *Spain*, without ill meaning; somewhat in the nature of that stratagem which *Parry*, a most cunning and artificial traitor, had provided for himself.

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

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

THIS man had insinuated himself greatly (in regard he was of the same nation) with the King *Antonio*, whose causes he pretended to sollicite at the court; especially while he supposed there was any appearance of his fortune; of whom also he had obtained (as one that reserved all his doings to gain) an assignation of 50000 crowns to be levied in *Portugal*. But being a person wholly of a corrupt and mercenary nature, and finding his hopes cold from that part; he cast his eyes upon a more able paymaster, and secretly made offer long since of his service to the King of *Spain*; and accordingly gave sundry intelligences of that which passed here, and imported most for the King of *Spain* to know, having no small means, in regard of his continual attendance at court, nearness, and access, to learn many particulars of great weight: Which intelligences he maintained with *Bernardine Mendoza*, *Antonio Vega*, *Roderigo Marquez*, and divers others.

IN the conveyance of which his intelligences, and in the making known of his disposition to do the King of *Spain* service, he had (amongst others) one *Manuel Andrada* a *Portuguese*, revolted from *Don Antonio* to the King of *Spain*; one that was discovered to have practised the death of the said *Don Antonio*, and to have betrayed him to *Bernardine Mendoza*. This man coming hither, was, for the same, his practice appearing by letters intercepted, apprehended and committed to prison. Before which time also, there had been by good diligence intercepted other letters, whereby the said *Andrada* advertised *Mendoza*, that he had won *Dr. Lopez* to the King's service: but *Lopez* having understanding thereof, and finding means to have secret conference with *Andrada* before his examination, persuaded with him to take the matter upon himself, as if he had invented that advertisement touching *Lopez*, only to procure himself credit with *Mendoza*; and to make him conceive well of his industry and service. And to move him hereunto, *Lopez* set before *Andrada*, that if he did excuse him, he should have credit to work his delivery; whereas, if he did impeach him, he was not like to find any other means of favour. By which subtle persuasion *Andrada*, when he came to be examined, answered according to the direction and lessening which *Lopez* had given him. And having thus acquitted himself of this suspicion, became a suitor for *Andrada's* delivery, craftily suggesting, that he was to do some notable service to *Don Antonio*; in which his suit he accordingly prevailed. When *Lopez* had thus got *Andrada* out of prison, he was suffered to go out of the realm into *Spain*; in pretence (as was said) to do some service to *Don Antonio*; but in truth, to continue *Lopez's* negotiation and intelligences with the King of *Spain*; which he handled so well, as at his return hither, for the comforting of the said *Lopez*, he brought to him from the King, besides thanks and words of encouragement, and an *Abrazo* (which is the complement of favour) a very good jewel garnished with sundry stones of good value. This jewel, when *Lopez* had accepted, he cunningly cast with himself, that if he should offer it to her Majesty first, he was assured she would not take it: next, that thereby he should lay her asleep, and make her secure of him for greater matters, according to the saying, *fraus sibi fidem in parvis praestruit ut in magnis opprimat*; which accordingly he did, with protestations of his fidelity: and her Majesty, as a princess of magnanimity, nor apt to fear or suspicion, returned it to him with gracious words.

AFTER *Lopez* had thus abused her Majesty, and had these trials of the fidelity of *Andrada*; they fell in conference (the matter being first moved by *Andrada*, as he that came freshly out of *Spain*) touching the empoisoning of the Queen: Which *Lopez* (who saw that matter of intelligence without some such particular service, would draw no great reward from the King of *Spain*; such as a man that was not needy, but wealthy as he was, could find any taste in) assented unto. And to that purpose procured again this *Andrada* to be sent over, as well to advertise and assure this matter to the King of *Spain* and his ministers (namely to the Count *de Fuentes*, assistant to the general of the King of *Spain's* forces in the *Low Countries*;) as also to capitulate and contract with him about the certainty of his reward. *Andrada* having received those instructions, and being furnished with money by *Lopez's* procurement from *Don Antonio*, about whose service his employment was believed to be, went over to *Calais*, where he remained, to be near unto *England* and *Flanders*, having a boy that ordinarily passed to and fro between him and *Lopez*: by whom he did also (the better to colour his employment)

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

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

WHEREUPON he cast with himself, that it was not safe to use the mediation of *Manuel Louis*, who had been made privy to the matter as some base carrier of letters; which letters also should be written in a cipher, not of alphabet, but of words; such as might, if they were opened, import no vehement suspicion. And therefore *Manuel Louis* was sent back with a short answer, and *Lopez* purveyed himself of a base fellow, a *Portuguese* called *Gomez d'Avila*, dwelling hard by *Lopez's* house, to convey his letters. After this messenger provided, it was agreed between *Lopez* and *Ferrera*, that letters should be sent to the Count *de Fuentes* and Secretary *Juarra*, written and signed by

by *Ferrera*, (for *Lopez* cautelously did forbear to write himself) but directed and (indeed) dictated word by word by *Lopez* himself. The contents thereof were, that *Lopez* was ready to execute that service to the King, which before had been treated, but required for his recompence the sum of 50000 crowns, and assurance for the same.

THESE letters were written obscurely (as was touched) in terms of merchandize; to which obscurity, when *Ferrera* excepted, *Lopez* answered, they knew his meaning by that which had passed before. *Ferrera* wrote also to *Manuel Louis*, but charged this *Gomez* to deliver the same letters unto him in the presence of *Juarra*; as also the letter to *Juarra* in the presence of *Manuel Louis*. And these letters were delivered to *Gomez d'Avila* to be carried to *Brussels*, and a passport procured, and his charges defrayed by *Lopez*. And *Ferrera*, the more to approve his industry, writ letters two several times, the one conveyed by *Emanuel Pallacios*, with the privy of *Lopez*, to *Christophero Moro*, a principal counsellor of the King of *Spain*, in *Spain*; signifying that *Lopez* was won to the King of *Spain*, and that he was ready to receive his commandment; and received a letter from the same *Christophero Moro*, in answer to one of these, which he shewed unto *Lopez*. In the mean time *Lopez*, though a man (in semblance) of a heavy wit, yet indeed subtle of himself, as one trained in practice; and besides, as wily as fear and covetousness could make him, thought to provide for himself (as was partly touched before) as many starting holes and evasions as he could devise, if any of these matters should come to light. And first he took his time to cast forth some general words afar off to her Majesty, as asking her the question, whether a deceiver might not be deceived? Whereof her Majesty (not imagining these words tended to such end as to warrant him colourably in this wretched conspiracy, but otherwise of her own natural disposition bent to integrity and sincerity,) uttered dislike and disallowance. Next, he thought he had wrought a great mystery in demanding the precise sum of 50000 crowns, agreeing just with the sum of assignation or donation from *Don Antonio*; idly, and in that grossly imagining, that if afterwards he should accept the same sum, he might excuse it, as made good by the King of *Spain*, in regard he desired to follow and favour *Don Antonio*: whereupon the King of *Spain* was in honour tied not to see him a loser. Thirdly, in his conferences with *Ferrera*, when he was opposed upon the particular manner how he would poison her Majesty, he purposely named unto him a syrup, knowing that her Majesty never used syrup; and therefore thinking that would prove an high point for his justification, if things should come in any question.

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

Now before the return of *Gomez d'Avila* into *England*, this *Stephen Ferrera* was discovered to have intelligence with the enemy; but so, as the particular of his traffick and overtures appeared not: only it seemed there was great account made of that he managed, and thereupon he was committed to prison. Soon after arrived *Gomez d'Avila*, and brought letters only from *Manuel Louis*, by the name of *Francisco de Thores*; because (as it seemeth) the great persons on the other side had a contrary disposition to *Lopez*, and liked not to write by so base a messenger, but continued their course to trust and employ *Manuel Louis* himself, who in likelihood was retained till they might receive a full conclusion from *Spain*; which was not till about two months

months after. This *Gomez* was apprehended at his landing, and about him were found the letters aforesaid written in jargon, or verbal cipher, but yet somewhat suspicious, in these words: This bearer will tell you the price in which your pearls are esteemed, and in what resolution we rest about a little musk and amber, which I am determined to buy. Which words the said *Manuel Louis* afterwards voluntarily confessed to be deciphered in this sort; That by the allowance of the pearls, he meant, that the Count *de Fuentes*, and the Secretary, did gladly accept the offer of *Lopez* to poison the Queen, signified by *Ferrera's* letter; and for the provision of amber and musk, it was meant, that the Count looked shortly for a resolution from the King of *Spain*, concerning a matter of importance, which was for burning of the Queen's ships; and another point, tending to the satisfaction of their vindictive humour.

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

BUT in conclusion, this matter being with all assiduity and policy more and more pierced and mined into; first, there was won from *Manuel Louis* his letters from the Count *de Fuentes* and secretary *Juarra* to *Ferrera*, in both which mention is made of the Queen's death; in that of the count's, under the term of a commission; and in that of the secretary's, under the term of the great service, whereof should arise an universal benefit to the whole world. Also the letters of credit written by *Gonzalo Gomez*, one to *Pedro de Carrera*, and the other to *Juan Pallacio*, to take up a sum of money by *Manuel Louis*, by the foresaid false name of *Fr. de Thores*; letters so large, and in a manner without limitation, as any sum by virtue thereof might be taken up: which letters were delivered to *Louis* by the Count *de Fuentes's* own hands, with directions to shew them to *Lopez* for his assurance; a matter of God's secret working in staying the same, for thereupon rested only the execution of the fact of *Lopez*. Upon so narrow a point consisted the safety of her Majesty's life, already sold by avarice to malice and ambition, but extraordinarily preserved by that watchman which never slumbereth. This same *Manuel Louis*, and *Stephen Ferrera* also, whereof the one managed the matter abroad, and the other resided here to give correspondence, never meeting after *Manuel* had returned, severally examined without torture or threatening, did in the end voluntarily and clearly confess the matters above-mentioned, and in their confessions fully consent and concur, not only in substance, but in all points, particularities, and circumstances; which confessions appear expressed in their own natural language, testified and subscribed with their own hands, and in open assembly, at the arraignment of *Lopez* in the *Guild-hall*, were by them confirmed and avouched to *Lopez's* face; and therewithal are extant undefaced, the original letters from Count *de Fuentes*, Secretary *Juarra*, and the rest.

AND

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

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

THUS may appear, both how justly this *Lopez* is condemned for the highest treason that can be imagined; and how, by God's marvellous goodness, her Majesty hath been preserved. And surely if a man do truly consider, it is hard to say, whether God hath done greater things by her Majesty or for her: if you observe on the other side, how God hath ordained her government to break and cross the unjust ambition of the two mighty potentates, the King of *Spain* and the Bishop of *Rome*, never so straitly between themselves combined: and on the other side, how mightily God hath protected her, both against foreign invasion and inward troubles, and singularly against the many secret conspiracies that have been made against her life; thereby declaring to the world that he will indeed preserve that instrument which he hath magnified. But the corruptions of these times are wonderful, when that wars, which are the highest trials of right between princes (that acknowledge no superior jurisdiction) and ought to be prosecuted with all honour, shall be stained and infamed with such foul and inhuman practices. Wherein if so great a King hath been named, the rule of the civil law (which is a rule of common reason) must be remembered; *frustra legis auxilium implorat, qui in legem committit*. He that hath sought to violate Majesty royal, in the highest degree, cannot claim the preheminance thereof to be exempted from just imputation.

DECLARATION

OF THE

PRACTICES and TREASONS attempted and committed by ROBERT late Earl of *Effex* and his Complices, against her Majesty and her Kingdoms; and of the Proceedings as well at the Arraignments and Convictions of the said Earl, and his Adherents, as after: Together with the very Confessions, and other Parts of the Evidences themselves, word for word, taken out of the Originals. Imprinted Anno 1601*.

THOUGH publick justice passed upon capital offenders, according to the laws, and in course of an honourable and ordinary trial (where the case would have born and required the severity of martial law to have been speedily used) do in itself carry a sufficient satisfaction towards all men, specially in a merciful government, such as her Majesty's is approved to be: yet because there do pass abroad in the hands of many men divers false and corrupt collections and relations of the proceedings at the arraignment of the late earls of *Effex* and *Southampton*; and again, because it is requisite that the world do understand as well the precedent practices and inducements to the treasons, as the open and actual treasons themselves; (though in a case of life it was not thought convenient to insist at the trial upon matter of inference or presumption, but chiefly upon matter of plain and direct proofs;) therefore it hath been thought fit to publish to the world a brief declaration of the practices and treasons attempted and committed by *Robert* late earl of *Effex* and his complices against her Majesty and her kingdoms, and of the proceedings at the convictions of the said late earl and his adherents upon the same treasons: and not so only, but therewithal, for the better warranting and verifying of the narration, to set down in the end the very confessions and testimonies themselves word for word, taken out of the originals, whereby it will be most manifest that nothing is obscured or disguised, though it do appear by divers most wicked and seditious libels thrown abroad, that the dregs of

* Our Author has abundantly vouched this DECLARATION, &c. to be penned by himself in the following passage of his Apology:

It is very true also, about that time, her Majesty taking a liking of my pen, upon that which I had formerly done concerning the proceeding at *York-House*, and likewise upon some other DECLARATIONS, which in former times by her appointment I put in writing, commanded me to pen that book, which was published for the better satisfaction of the world; which I did, but so, as never secretary had more particular and express directions and instructions in every point how to guide my hand in it: and not only so, but after that I had made a first draught thereof, and propounded it to certain principal counsellors by her Majesty's appointment, it was perused, weighed, censured, altered, and made almost a new writing, according to their Lordships better consideration; wherein their lordships and my self both were as religious and curious of truth, as desirous of satisfaction: and my self indeed gave only words and form of style in pursuing their direction. And after it had passed their allowance, it was again exactly perused by the Queen herself, and some alterations made again by her appointment: nay, and after it was set to print, the Queen, who, as your lordship knoweth, as she was excellent in great matters, so she was exquisite in small; and noted that I could not forget my ancient respect to my lord of *Effex*, in terming him ever, my lord of *Effex*, my lord of *Effex*, almost in every page of the book; which she thought not fit, but would have it made *Effex*, or the late Earl of *Effex*; whereupon, of force, it was printed *de novo*, and the first copies suppressed by her peremptory commandment.

of these treasons which the late earl of *Essex* himself, a little before his death, did term a leprosy, that had infected far and near, do yet remain in the hearts and tongues of some misaffected persons.

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

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

FOR first of all, the world can now expound why it was that he did aspire, and had almost attained unto a greatness, like unto the ancient greatness of the *praefectus praetorio* under the Emperors of *Rome*, to have all men of war to make their sole and particular dependence upon him; that with such jealousy and watchfulness he sought to discountenance any one that might be a competitor to him in any part of that greatness: that with great violence and bitterness he sought to suppress and keep down all the worthiest martial men, which did not appropriate their respects and acknowledgments only towards himself. All which did manifestly detect and distinguish, that it was not the reputation of a famous leader in the wars which he sought (as it was construed a great while,) but only power and greatness to serve his own ends, considering he never loved virtue nor valour in another, but where he thought he should be proprietary and commander of it, as referred to himself.

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

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

FOR being a man by nature of an high imagination, and a great promiser to himself as well as to others, he was confident that if he were once the first person in a kingdom, and a sea between the Queen's seat and his, and *Wales* the

the nearest land from *Ireland*, and that he had got the flower of the *English* forces into his hands (which he thought so to intermix with his own followers, as the whole body should move by his spirit;) and if he might have also absolutely into his own hands *potestatem vitae & necis, & arbitrium belli & pacis*, over the rebels of *Ireland*, whereby he might entice and make them his own, first by pardons and conditions, and after by hopes to bring them in place where they should serve for hope of better booties than cows, he should be able to make that place of lieutenantancy of *Ireland*, as a rise or step to ascend to his desired greatness in *England*.

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

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

THEN after he once found that there was no man but himself (who had other matters in his head) so far in love with that charge, as to make any competition or opposition to his pursuit, whereby he saw it would fall upon him, and especially after himself was resolved upon; he began to make propositions to her Majesty by way of taxation of the former course held in managing the actions of *Ireland*, especially upon three points; the first, that the proportions of forces which had been there maintained and continued by supplies, were not sufficient to bring the prosecutions there to period. The second, that the axe had not been put to the root of the tree, in regard there had not been made a main prosecution upon the arch-traitor *Tyrone* in his own strength, within the province of *Ulster*. The third, that the prosecutions before time had been intermixed and interrupted with too many temporizing treaties, whereby the rebel did ever gather strength and reputation to renew the war with advantage. All which goodly and well-founding discourses, together with the great vaunts, that he would make the earth tremble before him, tended but to this, that the Queen should encrease the list of her army, and all proportions of treasure and other furniture, to the end, his commandment might be the greater. For that he never intended any such prosecution, may appear by this, that even at the time before his going into *Ireland*, he did open himself so far in speech to *Blount*, his inwardest counsellor, That he did assure himself that many of the rebels in *Ireland* would be advised by him: so far was he from intending any prosecution towards those in whom he took himself to have interest. But his ends were two; the one to get great forces into his hands; the other, to oblige the heads of the rebellion unto him, and to make them of his party. These two ends had in themselves a repugnancy; for the one imported prosecution, and the other treaty: but he that meant to be too strong to be called to account for any thing, and meant besides, when he was once in *Ireland*, to engage himself in other journeys that should hinder the prosecution in the *North*, took things in order as they made for him; and so first did nothing as was said, but trumpet a final and utter prosecution against *Tyrone* in the *North*, to the end to have his forces augmented. BUT

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

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

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

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

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

BUT yet still doubting he might receive from her Majesty some quick and express commandment to proceed: to be sure he pursued his former device of wrapping himself in other actions, and so set himself on work anew in the county of *Opbaley*, being resolved, as is manifest, to dally out the season, and never to have gone that journey at all: that setting forward which he made

in the very end of *August* being but a mere play and a mockery, and for the purposes which now shall be declared.

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

The confession of *Thomas Lee*.

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

In the confession of *Blunt* at the bar, he did there declare that he had *Effex* his particular warrant to send *Lee*, and afterwards was desired by *Effex* to take it upon himself, and that they both had pardons.

BUT when that *Tyrone* was by these means (besides what others, God knows) prepared to demand a parley, now was the time for *Effex* to acquit himself of all the Queen's commandments, and his own promises and undertakings for the *Northern* journey; and not so alone, but to have the glory at the disadvantage of the year, being but 2500 strong of foot, and 300 of horse, after the fresh disaster of Sir *Conyers Clifford*, in the height of the rebels pride, to set forth to assail, and then that the very terror and reputation of my Lord of *Effex* person was such, as did daunt him and make him stoop to seek a parley; and this was the end he shot at in that *September* journey, being a mere abuse and bravery, and but inducements only to the treaty, which was the only matter he intended. For *Effex* drawing now towards the catastrophe, or last part of that tragedy, for which he came upon the stage in *Ireland*, his treasons grew to a farther ripeness. For knowing how unfit it was for him to communicate with any *English*, even of those whom he trusted most, and meant to use in other treasons; that he had an intention to grow to an agreement with *Tyrone*, to have succours from him for the usurping upon the state here, (not because it was more dangerous than the rest of his treasons, but because it was more odious, and in a kind monstrous, that

he

he should conspire with such a rebel, against whom he was sent; and therefore might adventure to alienate mens affections from him;) he drave it to this, that there might be, and so there was, under colour of treaty, an interview and private conference between *Tyrone* and himself only, no third person admitted. A strange course, considering with whom he dealt, and especially considering what message *Knowd* had brought, which should have made him rather call witnesses to him, than avoid witnesses. But he being only true to his own ends, easily dispensed with all such considerations. Nay, there was such careful order taken, that no person should overhear one word that passed between them two; as because the place appointed and used for the parley was such, as there was the depth of a brook between them, which made them speak with some loudness; there were certain horsemen appointed by order from *Essex*, to keep all men off a great distance from the place.

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

BUT although there were no proceeding against *Essex* upon these treasons, and that it were a needless thing to load more treasons upon him then, whose burden was so great after: yet for truth's sake, it is fit the world know what is testified touching the speeches, letters, and reports of *Tyrone*, immediately following this conference, and observe also what ensued likewise in the designs of *Essex* himself.

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

THESE generalities coming immediately from the report of *Tyrone* himself, are drawn to more particularity in a conference had between the Lord *Fitz-Morrice* Baron of *Liksnaw* in *Munster*, and one *Thomas Wood*, a person well reputed of, immediately after *Essex* coming into *England*. In which conference *Fitz-Morrice* declared unto *Wood*, that *Tyrone* had written to the traitorous titular Earl of *Desmond* to inform him, that the condition of that contract between *Tyrone* and *Essex* was, That *Essex* should be King of *England*; and that *Tyrone* should hold of him the honour and state of Viceroy of *Ireland*; and that the proportion of soldiers which *Tyrone* should bring or send to *Essex*, were 8000 *Irish*. With which concurrerth fully the testimony of the said *James Knowd*, who being in credit with *Owney Mac Roory*, chief of the *Omoores* in *Lemster*, was used as a secretary for him, in the writing of a letter to *Tyrone*, immediately after *Essex* coming into *England*. The effect of which letter was, To understand some light of the secret agreement between the Earl of *Essex* and *Tyrone*, that he the said *Owney* might frame his course accordingly. Which letter, with farther instructions to the same effect, was in the presence of *Knowd* delivered to *Turlagh Macdauy*, a man

The relation of Sir Will. Warren certified under his hand, from the council of Ireland to the Lords of the council here. The report of Ri. Bremingham to the council of estate in Ireland.

The confession of Tho. Wood.

The confession of James Knowd.

DECLARATION OF THE TREASONS

of trust with *Owney*, who brought an answer from *Tyrone*: the contents whereof were, That the Earl of *Effex* had agreed to take his part, and that they should aid him towards the conquest of *England*.

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

The Declaration of *Da. Hetherington*, *Ja. Knowl*, and others.

The confession of *Thos. Lee*.

AND certain it is also, that immediately upon the parley, *Tyrone* grew into a strange and unwonted pride, and appointed his progresses and visitations to receive congratulations and homages from his confederates, and behaved himself in all things as one that had some new spirit of hope and courage put into him.

The Earl of *Southampton* and *Sir Christopher Blunt*. The substance of that which is confessed by *Southampton* and *Blunt*, touching *Effex* purpose to have transported into *England* the army of *Ireland*, and the changing of that design into the other design of surprising the Queen and the Court.

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

BUT

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

The speech of Sir Christopher Blunt at his arraignment, and the occasion of the falling in to the aforesaid confessions.

AND the same matter so by him confessed, was likewise confessed with the same circumstances of time and place by *Southampton*, being severally examined thereupon.

So as now the world may see how long since my Lord put off his vizard, and disclosed the secrets of his heart to two of his most confident friends, falling upon that unnatural and detestable treason, whereupon all his former actions in his government in *Ireland*, (and God knows how long before) were but introductions.

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

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

BUT the pretext of his coming over was, by the efficacy of his own presence and persuasion, to have moved and drawn her Majesty to accept of such conditions of peace as he had treated of with *Tyrone* in his private conference; which was indeed somewhat needful, the principal article of them being, That there should be a general restitution of rebels in *Ireland* to all their lands and possessions, that they could pretend any right to, before their going out into rebellion; without reservation of such lands as were by act of parliament passed to the crown, and so planted with *English* both in the time of *Q. Mary*, and since; and without difference either of time of their going forth, or na-

ture of their offence, or other circumstance, tending in effect to this; that all the Queen's good subjects, in most of the provinces, should have been dis-
planted, and the country abandoned to the rebels.

WHEN this man was come over, his heart thus fraught with treasons, and presented himself to her Majesty; it pleased God, in his singular providence over her Majesty, to guide and hem in her proceeding towards him in a narrow way of safety between two perils. For neither did her Majesty leave him at liberty, whereby he might have commodity to execute his purpose; nor restrain him in any such nature, as might signify or betoken matter of despair of his return to court and favour. And so the means of present mischief being taken away, and the humours not stirred, this matter fell asleep, and the thread of his purposes was cut off. For coming over about the end of *September*, and not denied access and conference with her Majesty, and then being commanded to his chamber at court for some days, and from thence to the Lord Keeper's house, it was conceived that these were no ill signs. At my Lord Keeper's house he remained till some few days before *Easter*, and then was removed to his own house, under the custody of Sir *Richard Barkley*, and in that sort continued till the end of *Trinity* term following.

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

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

All

All his to make her Majesty secure, and to lull the world asleep, that he was not a man to be held any ways dangerous.

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

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

The declaration of Sir Hen. Nevil.

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

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

The confession of Blunt and Davis.

THEN having passed the whole *Michaelmas* term in making himself plausible, and in drawing concourse about him, and in affecting and alluring men by kind provocations and usage, wherein (because his liberty was qualified) he neither forgot exercise of mind nor body, neither sermon nor tennis-court, to give the occasion and freedom of access and concourse unto him, and much other practice and device: about the end of that term, towards *Christmas*, he grew

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

grew to a more framed resolution of the time and manner, when and how he would put his purpose in execution. And first about the end of *Michaelmas* term, it passed as a kind of cipher and watch word amongst his friends and followers, That my Lord would stand upon his guard; which might receive construction, in a good sense, as well guard of circumspection; as guard of force: but to the more private and trusty persons he was content it should be expounded that he would be cooped up no more, nor hazard any more restraints or commandments.

The confession of Blunt.

BUT the next care was how to bring such persons, as he thought fit for his purpose, into town together, without vent of suspicion, to be ready at the time, when he should put his design in execution; which he had concluded should be some time in *Hilary* term; wherein he found many devices to draw them up, some for suits in law, and some for suits in court, and some for assurance of land: and one friend to draw up another, it not being perceived that all moved from one head. And it may be truly noted, that in the catalogue of those persons that were the eighth of *February* in the action of open rebellion, a man may find almost out of every county of *England* some, which could not be by chance or constellation: and in the particularity of examinations (too long to be rehearsed) it was easy to trace in what sort many of them were brought up to town, and held in town upon several pretences. But in *Candlemas* term, when the time drew near, then was he content consultation should be had by certain choice persons, upon the whole matter and course which he should hold. And because he thought himself and his own house more observed, it was thought fit that the meeting and conference should be at *Drury-House*, where Sir *Charles Davers* lodged. There met at this council the Earl of *Southampton*, with whom in former times he had been at some emulations and differences in court. But after, *Southampton* having married his kinswoman, and plunged himself wholly into his fortune, and being his continual associate in *Ireland*, he accounted of him as most assured unto him, and had long ago in *Ireland* acquainted him with his purpose, as was declared before. Sir *Charles Davers*, one exceedingly devoted to the Earl of *Southampton*, upon affection begun first upon the deserving of the same Earl towards him, when he was in trouble about the murder of one *Long*. Sir *Ferdinando Gorge*, one that the Earl of *Effex* had of purpose sent for up from his government at *Plymouth* by his letter, with particular assignation to be here before the second of *February*. Sir *John Davis*, one that had been his servant, and raised by him, and that bare office in the *Tower*, being surveyor of the ordnance, and one that he greatly trusted: and *John Littleton*, one they respected for his wit and valour.

The confessions of Sir Ch. Davers, 1. 2. Sir J. Davis 2. Sir Ferdin. Gorge 2. Sir Christoph. Blunt 2. Southampton at the bar.

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

THE list contained the number of sixscore persons, noblemen, and knights, and principal gentlemen, and was (for the more credit's sake) of the Earl of *Effex* own hand-writing.

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

FOR

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

BUT the later, which was the ancient plot, (as was well known to *Southampton*) was in the end, by the general opinion of them all, insisted and rested upon.

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

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

THERE passed a speech also in this conspiracy of possessing the city of *London*, which *Essex* himself, in his own particular and secret inclination, had ever a special mind unto: not as a departure or going from his purpose of possessing the court, but as an inducement and preparative to perform it upon a surer ground: An opinion bred in him, (as may be imagined) partly by the great overweaning he had of the love of the citizens: but chiefly, in all likelihood, by a fear, that altho' he should have prevailed in getting her Majesty's person into his hands for a time, with his two or three hundred gentlemen, yet the very beams and graces of her Majesty's magnanimity and prudent carriage in such disaster, working with the natural instinct of loyalty, which of course (when fury is over) doth ever revive in the hearts of subjects of any good blood or mind (such as his troop for the more part was com-

pounded of, though by him seduced and bewitched) would quickly break the knot, and cause some disunion and separation amongst them, whereby he might have been left destitute, except he should build upon some more popular number, according to the nature of all usurping rebels, which do ever trust more in the common people, than in persons of fort or quality. And this may well appear by his own plot in *Ireland*, which was to have come with the choice of the army, from which he was diverted, as before is shewed. So as his own courses inclined ever to rest upon the main strength of the multitude, and not upon surprizes or the combinations of a few.

BUT to return: These were the resolutions taken at that consultation, held by these five at *Drury-house*, some five or six days before the rebellion, to be reported to *Effex*, who ever kept in himself the binding and directing voice: which he did to prevent all differences that might grow by dissent or contradiction. And besides he had other Persons, (which were *Cuffe* and *Blunt*) of more inwardness and confidence with him than these, (*Southampton* only excepted) which managed that consultation. And, for the day of the enterprize, which is that must rise out of the knowledge of all the opportunities and difficulties, it was referred to *Effex* his own choice and appointment: it being nevertheless resolved, that it should be some time before the end of *Candlemas Term*.

Sir Henry Newell's declaration.

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

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

BUT chiefly it was thought good, that the assembling of their companies together, should be upon some plausible pretext; both to make divers of their company, that understood not the depth of the practices, the more willing to follow them; and to engage themselves, and to gather them together the better without peril of detecting or interrupting: and again, to take the court the more unprovided, without any alarm given. So as now there wanted nothing but the assignation of the day: which nevertheless was resolved indefinitely to be before the end of the term, as was said before, for the putting in execution of this most dangerous and execrable treason.

The confession of *Blunt* 3.

But God, who had in his divine providence long ago cursed this action with the curse that the Psalm speaketh of, *That it should be like the untimely fruit of a woman, brought forth before it came to perfection*, so disposed above, that her Majesty understanding by a general charm and muttering of the great and universal resort to *Effex-house*, contrary to her princely admonition, and somewhat differing from his former manner (as there could not be so great fire without some smoke) upon the seventh of *February*, the afternoon before this rebellion, sent to *Effex-house* Mr. Secretary *Herbert*, to require him to come before the Lords of her Majesty's council, then sitting in

in council at *Salisbury-court*, being the Lord Treasurer's house: where it was only intended, that he should have received some reprehension, for exceeding the limitations of his liberty, granted to him in a qualified manner, without any intention towards him of restraint, which he, under colour of not being well, excused to do: but his own guilty conscience applying it, that his trains were discovered, doubting peril in any farther delay, determined to hasten his enterprize, and to set it on foot the next day.

BUT then again, having some advertisement in the evening, that the guards were doubled at court, and laying that to the message he had received over-night; and so concluding that alarm was taken at court, he thought it to be in vain to think of the enterprize of the court, by way of surprize: but that now his only way was, to come thither in strength, and to that end first to attempt the city: wherein he did but fall back to his own former opinion, which he had in no sort neglected, but had formerly made some overtures to prepare the city to take his part; relying himself (besides his general conceit, that himself was the darling and minion of the people, and specially of the city) more particularly upon assurance given of *Thomas Smith*, then sheriff of *London*, a man well beloved amongst the citizens, and one that had some particular command of some of the trained forces of the city, to join with him. Having therefore concluded upon this determination, now was the time to execute in fact all that he had before in purpose digested.

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

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

Confession of
Sir Ferdinan-
do Gorge.

BUT this pretext, being the best he had, was taken: and then did messages and warnings fly thick up and down to every particular nobleman and gentleman, both that evening and the next morning, to draw them together in the forenoon to *Essex-house*, dispersing the foresaid fable, That he should have been murdered; save that it was sometime on the water, sometime in his bed, varying according to the nature of a lye. He sent likewise the same night certain of his instruments, as namely, one *William Temple* his secretary, into the city to disperse the same tale, having increased it some few days before by an addition, That he should have been likewise murdered by some Jesuits to the number of four: and to fortify this pretext, and to make the more buz of the danger he stood in, he caused that night a watch to be kept all night long, towards the street, in his house. The next morn-
ing,

The confes-
sion of the Earl
of Rutland.

ing, which was *Sunday*, they came unto him of all hands, according to his messages and warnings: Of the Nobility, the Earls of *Rutland*, *Southampton*, and the Lord *Sands*, and Sir *Henry Parker*, commonly called the *Lord Mountegle*; besides divers Knights and principal Gentlemen and their followers, to the number of some three hundred. And also it being *Sunday*, and the hour when he had used to have a sermon at his house, it gave cause to some, and colour to others to come upon that occasion. As they came, my Lord saluted and embraced, and to the generality of them, gave to understand, in as plausible terms as he could, That his life had been sought, and that he meant to go to the court and declare his griefs to the Queen, because his enemies were mighty, and used her Majesty's name and commandment, and desired their help to take his part: But unto the more special persons he spake high and in other terms, telling them, That he was sure of the city, and would put himself into that strength, that her Majesty should not be able to stand against him, and that he would take revenge of his enemies.

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

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

The declara-
tion of the
Lord Keeper,
the Earl of
Worcester, the
Lord Chief
Justice, under
their hands.
The oath of
the Lord
Chief Justice
viva voce.
The declara-
tion of the
Earl of *Wor-*
cester, *viva*
voce.

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

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

To which the Earl of *Southampton* took occasion to object the assault made upon him, by the Lord *Gray*: which my Lord Chief Justice returned upon

upon him, and said, that in that case justice had been done, and the party was in prison for it.

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

UPON this there arose a great clamour among the multitude: Away, my Lord, they abuse you, they betray you, they undo you, you lose time. Whereupon my Lord Keeper put on his hat, and said with a louder voice than before, My Lord, let us speak with you privately, and understand your griefs; and I do command you all upon your allegiance, to lay down your weapons and to depart. Upon which words the Earl of *Essex* and all the rest, as disdainful commandment, put on their hats; and *Essex* somewhat abruptly went from him into the house, and the counsellors followed him, thinking he would have private conference with them as was required.

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

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

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

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

FOR after he had once by *Ludgate* entered into the city, he never had so much as the heart or assurance to speak any set or confident speech to the people, (but repeated only over and over his tale as he passed by, that he should have been murdered,) nor to do any act of foresight or courage; but he that had vowed he would never be cooped up more, cooped himself first within the walls of the city, and after within the walls of an house, as arrested by God's justice as an example of disloyalty. For passing through *Cheapside*, and so towards *Smith's* house, and finding though some came about him, yet none

The confes-
sion of the Earl
of Rutland.
The Lord
Sandys.

joined or armed with him, he provoked them by speeches as he passed to arm, telling them, they did him hurt and no good, to come about him with no weapons.

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

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

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

The confes-
sion of the Earl
of Rutland.
Essex's con-
fession at the
bar.

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

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

BUT the Earl of *Essex*, with his company that was left, thinking to recover his house, made on by land towards *Ludgate*; where being resisted by a company of pikemen and other forces, gathered together by the wife and diligent care of the Bishop of *London*, and commanded by Sir *John Luson*, and yet attempting to clear the passage, he was with no great difficulty repulsed. At which encounter Sir *Christopher Blunt* was sore wounded, and young

young *Tracy* slain on his part; and one *Watts* on the Queen's part, and some others. Upon which repulse he went back and fled towards the water-side, and took boat at *Queenhithe*, and so was received into *Essex's* house at the water-gate, which he fortified and barricado'd; but instantly the Lord Lieutenant so disposed his companies, as all passage and issue forth was cut off from him both by land and by water, and all succours that he might hope for were discouraged: and leaving the Earl of *Cumberland*, the Earl of *Lincoln*, the Lord *Thomas Howard*, the Lord *Gray*, the Lord *Burgbley*, and the Lord *Compton*, Sir *Walter Raleigh*, Sir *Thomas Gerard*, with divers others, before the house to landward, my Lord Lieutenant himself thought good, taking with him the Lord of *Effingham*, Lord *Cobham*, Sir *John Stanhope*, Sir *Robert Sidney*, M. *Poult Grevill*, with divers others, to assail the garden and banqueting-house on the water-side, and presently forced the garden, and won to the walls of the house, and was ready to have assailed the house; but out of a christian and honourable consideration, understanding that there were in the house the Countess of *Essex*, and the Lady *Rich*, with their gentlewomen, let the Earl of *Essex* know by Sir *Robert Sidney*, that he was content to suffer the ladies and gentlewomen to come forth. Whereupon *Essex* returning the Lord Lieutenant thanks for the compassion and care he had of the ladies, desired only to have an hour's respite to make way for their going out, and an hour after to barricado the place again: which because it could make no alteration to the hindrance of the service, the Lord Lieutenant thought good to grant. But *Essex* having had some talk within of a sally, and despairing of the success, and thinking better to yield himself, sent word, that upon some conditions he would yield.

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

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

THE

The effect of the evidence given, at the several arraignments of the late Earls of *Essex* and *Southampton*, before the Lord Steward; and of Sir *Christopher Blunt*, and Sir *Charles Davers*, and others, before great and honourable commissioners of *Oyer* and *Terminer*: and of the answers and defences which the said offenders made for themselves; and the replies made upon such their defences: With some other circumstances of the proceedings, as well at the same arraignments as after.

Some question was made by the Earl of *Essex*, whether he might challenge any of the Peers. But answer was made by the Judges, that the law had that reputation of the Peers, that it trusted them both without oath and challenge.

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

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

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

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

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

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

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

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

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

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

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

THE defence of the late Earl of *Southampton* to his part in the plot, and consultation at *Drury-house*, was: That it was a matter debated, but not resolved nor concluded; and that the action which was executed, was not the action which was consulted upon. And for the open action in the city, he concurred with *Essex*, with protestation of the clearness of his mind for any hurt to the Queen's person: and that it was but his affection to my Lord of *Essex* that had drawn him into the cause. This was the substance and best of both their defences. Unto which the reply was:

Defence. *TO the point that the late Earl of Essex was not at the consultation at Drury-house :*

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

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

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

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

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

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

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

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

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

Defence. *TO the point that he heard it reported Mr. Secretary should say, that the Infanta's title to the crown (after her Majesty) was as good as any other.*

Reply. UPON this his allegation, Mr. Secretary standing out of sight in a private place, only to hear, (being much moved with so false and foul an accusation) came suddenly forth, and made humble request to the Lord Steward, that

that he might have the favour to answer for himself. Which being granted him, in respect of the place he carrieth, (after a bitter contestation on his part with the Earl, and a serious protestation of his alienation of heart from the *Spanish* nation in any such condition) he still urged the Earl to name the reporter, that all the circumstances might be known. But the Earl still warily avoiding it, Mr. Secretary replied, that seeing he would alledge no author, it ought to be reputed his own fiction. Whereupon the Earl of *Essex* said, though his own conscience was a sufficient testimony to himself that he had not invented any untruth, yet he would affirm thus much for the world's farther satisfaction in that behalf; that the Earl of *Southampton* also had heard so much reported of Mr. Secretary; but said still that he (for his part) would name no body. Whereupon Mr. Secretary adjured the Earl of *Southampton*, by all former friendship, (which had been indeed very great between them) that he would declare the person; which he did presently, and said it was Mr. Comptroller. At which speech Mr. Secretary strait took hold and said, that he was glad to hear him named of all others; for howsoever some malicious person might peradventure have been content, to give credit to so injurious a conceit of him, (especially such as were against the peace wherein he was employed, and for which the Earl of *Essex* had ever hated him, being ever desirous to keep an army on his own dependency) yet he did think no man of any understanding would believe that he could be so senseless, as to pick out the Earl of *Essex* his uncle to lay open to him his affection to that nation, in a matter of so odious and pernicious consequence; and so did very humbly crave it at the hands of the Lord Steward, and all the Peers, that Mr. Comptroller might be sent for, to make good his accusation.

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

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

Reply. FIRST, the judges delivered their opinions for matter in law upon two points: the one, that in case where a subject attempteth to put himself in such strength as the King shall not be able to resist him, and to force and compel the King to govern otherwise than according to his own royal authority and direction, it is manifest rebellion. The other, that in every rebellion the law intendeth as a consequent, the compassing the death and deprivation of the King, as foreseeing that the rebel will never suffer that King to live or reign, which might punish or take revenge of his treason and rebellion. And it was enforced by the Queen's counsel, that this is not only the wisdom of the laws of the realm which so defineth of it, but it is also the censure of foreign laws, the conclusion of common reason, which is the ground of all laws, and the demonstrative assertion of experience, which is the warranty

ranty of all reason. For first the civil law maketh this judgment, that treason is nothing else but *crimen laesae majestatis*, or *diminutae majestatis*, making every offence which abridgeth or hurteth the power and authority of the prince, as an insult or invading of the crown, and extorting the imperial sceptre. And for common reason, it is not possible that a subject should once come to that height as to give law to his sovereign, but what with insolency of the change, and what with terror of his own guiltiness, he will never permit the King, if he can choose, to recover authority; nor for doubt of that to continue alive. And lastly for experience, it is confirmed by all stories and examples, that the subject never obtained a superiority and command over the King, but there followed soon after, the deposing and putting of the King to death, as appeareth in our own chronicles in two notable particulars of two unfortunate Kings: the one of *Edward* the second, who when he kept himself close, for danger, was summoned by proclamation to come and take upon him the government of the realm: but as soon as he presented himself was made prisoner, and soon after forced to resign, and in the end tragically murdered in *Berkley* castle. And the other of King *Richard* the second, who though the Duke of *Hertford*, after King *Henry* the fourth, presented himself before him with three humble reverences, yet in the end was deposed and put to death.

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

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

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

The names of the Peers that passed upon the trial of the two Earls.

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

The

The names of the Judges that assisted the Court.

Lord Chief Justice.
 Lord Chief Justice of the
Common-Pleas.
 Lord Chief Baron.
 Justice *Gawdy.*

Justice *Fenner.*
 Justice *Walmesly.*
 Baron *Clerke.*
 Justice *Kingmill.*

Some particularities of that which passed after the arraignment of the late Earls, and at the time of the suffering of the Earl of *Essex.*

BUT the Earl of *Essex* finding that the consultation at *Drury-house*, and the secret plots of his premeditated and prepened treasons were come to light contrary to his expectation, was touched even at his parting from the bar with a kind of remorse; especially because he had carried the manner of his answer, rather in a spirit of ostentation and glory, than with humility and penitence: and brake out in the hall, while the lords were in conference, into these words; That seeing things were thus carried, he would ere it be long say more than yet was known. Which good motion of his mind being after his coming back to the tower, first cherished by *M. D. of Norwich*, but after wrought on by the religious and effectual persuasions and exhortations of *Mr. Abdy Ashton* his chaplain, the man whom he made suit by name to have with him for his soul's health, as one that of late time he had been most used unto, and found most comfort of, comparing it, when he made the request, to the case of a patient, that in his extremity would be desirous to have that physician that was best acquainted with his body: He sent word the next day to desire to speak with some of the principal counsellors, with whom he desired also that particularly *Mr. Secretary* might come for one. Upon which his request, first the Lord Admiral and *Mr. Secretary*, and afterwards at two several times the Lord Keeper of the great seal, the Lord High Treasurer, the Lord High Admiral, and *Mr. Secretary* repaired unto him: before whom, after he had asked the Lord Keeper forgiveness for restraining him in his house, and *Mr. Secretary* for having wronged him at the bar, concerning the matter of the *Infanta*, with signification of his earnest desire to be reconciled to them, which was accepted with all Christian charity and humanity; he proceeded to accuse heavily most of his confederates for carrying malicious minds to the state, and vehemently charged *Cuffe* his man to his own face, to have been a principal instigator of him in his treasons, and then disclosed how far *Sir Henry Nevill* her Majesty's late ambassador was privy to all the conspiracy; of whose name till then there had been not so much as any suspicion. And farther, at the Lords first coming to him, (not sticking to confess that he knew her Majesty could not be safe while he lived) did very earnestly desire this favour of the Queen, that he might die as privately as might be.

AND the morning before his execution, there being sent unto him for his better preparation, Master Doctor *Mountford*, and Master Doctor *Barlow*, to join with Master *Abdy Ashton* his chaplain, he did in many words thank God that he had given him a deeper insight into his offence, being sorry he had

The testimony of the three divines under their hands.

so stood upon his justification at his arraignment: since which time, he said he was become a new man, and heartily thanked God also that his course was by God's providence prevented. For, if his project had taken effect, God knoweth (said he) what harm it had wrought in the realm.

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

The effect of that which passed at the arraignments of Sir *Christopher Blunt*, Sir *Charles Davers*, Sir *John Davis*, Sir *Gilly Merick*, and *Henry Cuffe*.

THE fifth of *March*, by a very honourable commission of *Oyer and Determiner*, directed to the Lord High Admiral, the Lord Chamberlain, Mr. Secretary, the Lord Chief Justice of *England*, Mr. Chancellor of the exchequer, Mr. Secretary *Herbert*, with divers of the judges, the commissioners sitting in the court of the *Queen's-Bench*, there were arraigned and tried by a jury both of aldermen of *London*, and other gentlemen of good credit and sort, Sir *Christopher Blunt*, Sir *Charles Davers*, Sir *John Davis*, Sir *Gilly Merick* and *Henry Cuffe*. The three first whereof, before they pleaded, asked this question of the judges: Whether they might not confess the indictment in part, and plead not guilty to it in the other part. But being resolved by the judges, that their pleading must be general; they pleaded not guilty, as did likewise the other two, without any such question asked. The reason of that question was, as they confessed, in respect of the clause laid in the indictment; That they intended and compassed the death and destruction of the *Queen's Majesty*: unto whose person (although they confessed at the bar, as they had done in their examinations, that their meaning was to come to her in such strength, as they should not be resisted, and to require of her divers conditions and alterations of government, such as in their confessions are expressed;) nevertheless they protested, they intended no personal harm to herself. Whereupon (as at the arraignment of the two Earls) so then again the judges delivered the rule of the law; that the wisdom and foresight of the laws of this land maketh this judgment, That the subject that rebelleth or riseth in forcible manner to over-rule the royal will and power of the King, intendeth to deprive the King both of crown and life: and that the law judgeth not of the fact by the intent, but of the intent by the fact. And the *Queen's counsel* did again inforce that point, setting forth that it was no mystery or quiddity of the common law, but it was a conclusion infallible of reason and experience: for

for that the crown was not a ceremony or garland, but consisted of pre-eminence and power.

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

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

THE evidence given in against them three, was principally their own confessions, charging every one himself, and the other, and the rest of the evidence used at the arraignment of the late Earls, and mentioned before: save that because it was perceived, that that part of the charge would take no labour nor time, being plain matter and confessed, and because some touch had been given in the proclamation of the treasons of *Ireland*: And chiefly because Sir *Christopher Blunt* was marshal of the army in *Ireland*, and most inward with my Lord in all his proceedings there; and not so only, but farther in the confession of *Thomas Lee*, it was precisely contained, that he knew the Earl of *Essex* and *Tyrone*, and *Blunt* the marshal, to be all one, and to run one course: it was thought fit to open some part of the treasons of *Ireland*, such as were then known. Which very happily gave the occasion

sion for *Blunt*, to make that discovery of the purpose to have invaded the realm with the army of *Ireland*: which he then offered, and afterwards uttered, and in the end sealed with his blood, as is hereafter set down.

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

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

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

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

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

AGAINST Sir *Gilly Merick*, the evidence that was given, charged him chiefly with the matter of the open rebellion, that he was as captain or commander over the house, and took upon him charge to keep it, and make it good as a place of retreat for those which issued into the city, and fortifying and barricading the same house, and making provision of muskets, powder, pellets and other munition and weapons for the holding and defending of it, and as a busy, forward and noted actor in that defence and resistance, which was made against the Queen's forces brought against it by her Majesty's lieutenant.

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

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

NEITHER was it casual, but a play bespoken by *Merick*.

AND

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

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

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

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

The confession of *Thomas Lee*, taken the 14th of February, 1600, before Sir *John Peyton* Lieutenant of the Tower, *Roger Wilbrabam* Master of the requests, Sir *Anthony Saintleger* Master of the rolls in Ireland, and *Thomas Fleming* her Majesty's Solicitor General.

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

THIS examine saith, he knew that *Essex*, *Tyrone*, and the Marshal Sir *Christopher Blunt*, were all one, and held all one course.

Thomas Lee.

Exam. per *Job. Peyton*, *Roger Wilbrabam*, *Anthony Saintleger*, *Thomas Fleming*.

The declaration of Sir *William Warren*, 3 Octobris, 1599.

THE said Sir *William* came to *Armagh* the last Friday, being the twenty-eighth of September: from thence he sent a messenger in the night to *Tyrone* to *Dungannon*, signifying his coming to *Armagh*, as afore said, and that the next morning he would meet *Tyrone* at the fort of *Blackwater*: where accordingly the said *Tyrone* met with him; and after other speeches by farther discourse the said *Tyrone* told the said Sir *William*, and delivered it with an oath, that within these two months he should see the greatest alteration, and the strangest, that he the said Sir *William* could

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

imagine, or ever saw in his life: and said that he hoped before it were long, that he the said *Tyrone* should have a good share in *England*: Which speeches of the alteration *Tyrone* reiterated two or three several times.

William Warren.

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

The declaration of *Thomas Wood* 20 *Januarii*, 1599, taken before the Lord *Buckhurst* Lord High Treasurer, the Earl of *Nottingham* Lord High Admiral, Sir *Robert Cecil* principal Secretary, and Sir *J. Fortescue* Chancellor of the Exchequer.

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

* The titular Earl that is in rebellion.

Thomas Wood.

Confessed in the presence of *Thomas Buckhurst*, *Nottingham*, *Robert Cecil*, *John Fortescue*.

The confession of *James Knowl*, taken the sixteenth of *February*, 1600, before Sir *Anthony Saintleger* Master of the rolls in *Ireland*, and *Roger Wilbrabam* Master of the requests.

OWNEY *mac Rory* having secret intelligence of the friendship between the Earl of *Essex* and *Tyrone*, wrote to *Tyrone*, desiring him to certify him thereof, whereby he might frame his course accordingly, and not do any thing contrary to their agreement: which letter myself did write by *Owney's* appointment (for then I was in credit with him;) in which letter he also desired *Tyrone* to send him some munition. The letter, with instructions to that effect, was in my presence delivered to one *Turlagh mac Davy o Kelly*, a man of secrecy, sufficiency, and trust with *Owney*; and he carried it to *Tyrone*: Before whose return *Owney* grew suspicious of me, because I sometimes belonged to Mr. *Bowen*, and therefore they would not trust me, so as I could not see the answer: but yet I heard by many of their secret council, that the effect thereof was, That the Earl of *Essex* should be King of *England*, and *Tyrone* of *Ireland*.

AFTERWARDS I met with *Turlagh mac Davy*, the messenger aforesaid, and asked him whether he brought an answer of the letter from *Tyrone*. He said he did, and delivered it to *Owney*. And then I asked him what he thought of the wars. He told me he had good hope the last year, and had

had none this year: his reason was (as he said) that the Earl of *Effex* was to take their party and they should aid him towards the conquest of *England*; and now they were hindered thereof by means of his apprehension.

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

I SAW a letter which the Earl of *Effex* writ to *Owney*, to this effect; that if *Owney* came to him, he would speak with him about that, which if he would follow, should be happy for him and his country.

James Knowd.

Exam. per *Anthony Saintleger*, *Roger Wilbrabam*.

The declaration of *David Hethbrington*, an ancient captain and servitor in *Ireland*, 6 *January* 1599, taken before the Lord *Buckburst* Lord High Treasurer, the Earl of *Nottingham* Lord High Admiral, Sir *Robert Cecil* principal Secretary, and Sir *John Fortescue* Chancellor of the Exchequer.

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

David Hethbrington.

Confessed in the presence of *Tho. Buckburst*, *Nottingham*,
Ro. Cecil, *Jo. Fortescue*.

The first confession of Sir *Ferdinando Gorge*, Knight, the 16th of *February*, 1600, taken before Sir *Thomas Egerton* Lord Keeper of the great seal, the Lord *Buckburst* Lord High Treasurer, the Earl of *Nottingham* Lord High Admiral, and Sir *Robert Cecil* principal Secretary.

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

THAT

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

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

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

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

THAT at the going out of *Effex*-house gate, many cried out, To the court, to the court. But my Lord of *Effex* turned him about towards *London*.

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

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

Ferd. Gorge.

Exam. per *Tb. Egerton*, *C. S. Tho. Buckburst*,
Nottingham, *Ro. Cecil*.

The second confession of Sir *Ferdinando Gorge* the 18th of *February*, 1600, all written of his own hand; and acknowledged in the presence of Sir *Thomas Egerton* Lord Keeper of the great seal, the Lord *Buckburst* Lord High Treasurer, the Earl of *Nottingham* Lord High Admiral, and Sir *Robert Cecil* principal Secretary.

ON *Tuesday* before the insurrection (as I remember) I was sent unto by my Lord of *Effex*, praying me to meet my Lord of *Southampton*, Sir *Charles Davers*, Sir *John Davis*, and other his friends at *Drury*-house; where I should see a schedule of his friends names, and projects to be disputed upon. Whether

ther I came accordingly, and found the foresaid Earl, Sir *Charles Davers*, Sir *John Davis*, and one Master *Littleton*. The names were shewed and numbered to be sixscore; earls, barons, knights, and gentlemen. The projects were these, whether to attempt the court, or the tower, or to stir his friends in *London* first, or whether both the court and tower at an instant? I disliked that counsel. My reasons were that I alledged to them, first, to attempt both with those numbers, was not to be thought on, because that was not sufficient; and therefore advised them to think of something else. Then they would needs resolve to attempt the court, and withal desired mine opinion. But I prayed them first to set down the manner how it might be done. Then Sir *John Davis* took ink and paper, and assigned to divers principal men their several places; some to keep the gate, some to be in the hall, some to be in the presence, some in the lobby, some in the guard-chamber, others to come in with my Lord himself, who should have had the passage given him to the privy-chamber, where he was to have presented himself to her Majesty.

Ferd. Gorge.

Knownledged in the presence of *Tho. Egerton*, C. S.
Tho. Buckhurst, Nottingham, *Ro. Cecil*.

The confession of Sir *John Davis*, taken the 18th of *February* 1600, before the Earl of *Nottingham* Lord High Admiral, Sir *Robert Cecil* principal Secretary, and *John Herbert* second Secretary of state.

SIR *John Davis* being demanded, how long before my Lord of *Essex* tumult he knew of such his purpose?

HE answers, that he knew not directly of any meaning my Lord had, until the *Sunday* seven-night before, or thereabout.

BEING demanded what he knew? Then he answered, that my Lord consulted to possess himself of the court, at such convenient time when he might find least opposition. For executing of which enterprizes, and of other affairs, he appointed my Lord of *Southampton*, Sir *Charles Davers*, Sir *Ferdinando Gorge*, and himself, to meet at *Drury-house*, and there to consider of the same, and such other projects as his Lordship delivered them: And principally, for surprizing of the court, and for the taking of the tower of *London*. About which business they had two meetings, which were five or six days before the insurrection.

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

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

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

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

BEING demanded what party my Lord had in *London*? He saith, that the Sheriff *Smith* was his hope, as he thinketh.

BEING demanded whether my Lord promised liberty of catholick religion? He saith, that Sir *Christopher Blunt* did give hope of it.

John Davis.

Exam. per *Nottingham*, *Ro. Cecil*, *J. Herbert*.

The confession of Sir *Charles Davers*, taken the 18th of *February*, anno 1600, before Sir *Thomas Egerton* Lord Keeper of the great seal, the Lord *Buckhurst* Lord High Treasurer, the Earl of *Nottingham* the Lord High Admiral, Lord *Hunsdon* Lord Chamberlain, and Sir *Robert Cecil* principal Secretary.

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

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

THE points which the Earl of *Essex* projected under his hand were these.

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

TO the possessing of the court, these circumstances were considered.

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

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

BEING

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

THESE were the resolutions set down by the Earl of *Essex* of his own hand, after divers consultations.

He saith, *Cuspe* was ever of opinion, that the Earl of *Essex* should come in this sort to the court.

Charles Davers.

Exam. per *Th. Egerton*, C. S. *Tho. Buckburst*,
Nottingham, *G. Hunjdon*, *Ro. Cecil*.

The second confession of Sir *Charles Davers*, taken the same day, and set down upon farther calling himself to remembrance, under his own hand, before Sir *Tho. Egerton* Lord Keeper of the great seal, Lord *Buckburst* Lord High Treasurer, the Earl of *Nottingham* Lord High Admiral, Sir *Robert Cecil* principal Secretary.

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

AND for those which were not to come into the court before-hand, where and in what sort they might assemble themselves, with least suspicion to come in with my Lord?

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

Charles Davers.

Knownledged in the presence of *Tho. Egerton*, C. S.
T. Buckburst, *Nottingham*, *Robert Cecil*.

The first confession of Sir *Christopher Blunt* examined the 18th of *February*, 1600, before *Jo. Herbert* second Secretary of estate, and in the presence of *Nic. Kempe* counsellor at law, *William Waimarke*, *William Martin*, *Robert Andrews*, citizens, *John Trevor* surveyor of the navy, and *Thomas Thorney* his surgeon.

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

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

BUT

CONFESSIONS AND OTHER EVIDENCES.

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

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

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

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

Christopher Blunt.

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

*Jo. Herbert, Nic. Kempe, Wil. Waimarke, Wil. Martin,
Rob. Andrews, Jo. Trevor, Th. Thorney.*

The second confession of Sir *Christopher Blunt* the same day viz. the 18th of *February*; taken before Mr. *John Herbert* second Secretary of estate, and subscribed by him in the presence of *Nicolas Kempe* Counsellor at law, *Thomas Thorney* his surgeon, and *William Martin, Robert Andrews*, and *Randolph Bull*, citizens.

This weakness was in respect of his hurt received in charging her Majesty's forces at *Ludgate*.

SIR *Christopher Blunt* (after the signing of this confession) being told, that he did not deal plainly, excused himself by his former weakness, (putting us in mind that he said once before, that when he was able to speak, he would tell all truth) doth now confess; that four or five days before the Earl of *Essex* did rise, he did set down certain articles to be considered on, which he saw not, until afterward he was made acquainted with them, when they had amongst themselves disputed: which were these.

ONE of them was, whether the tower of *London* should be taken?

ANOTHER, whether they should not possess the court, and so secure my Lord, and other men to come to the Queen?

FOR the first concerning the tower, he did not like it; concluding, that he that had the power of the Queen, should have that.

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

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

Christopher Blunt.

Exam. per *Jo. Herbert.*

Subscribed in presence of *Nic. Kempe, Tho. Thorney, Rob. Andrews, W. Martin, Randolph Bull.*

The DECLARATION of the Lord Keeper, the Earl of *Worcester*, and the Lord Chief Justice of *England*.

UPON Sunday, being the eighth of *February* last past, about ten of the clock in the forenoon, the Lord Keeper of the Great Seal, the Earl of *Worcester*, Sir *William Knolles* Comptroller of her Majesty's household, and the Lord Chief Justice of *England*, being commanded by direction from the Queen's Majesty, did repair to the late Earl of *Effex* his house, and finding the gate shut against them, after a little stay they were let in at the wicket: And as soon as they were within the gate, the wicket was shut upon them, and all their servants kept out.

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

HEREUPON the Earl of *Effex* with a very loud voice declared, that his life was sought, and that he should have been murdered in his bed; that he had been perfidiously dealt with; that his hand had been counterfeited, and letters written in his name; and that therefore they were assembled there together to defend their lives; with much other speech to like effect. Hereupon the Lord Chief Justice said unto the Earl, that if they had any such matter of grief, or if any such matter were attempted or purposed against him, he willed the Earl to declare it, assuring him that it should be truly related to her Majesty, and that it should be indifferently heard, and justice should be done whomsoever it concerned.

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

UPON this there was a great clamour raised amongst the multitude, crying, away, my Lord, they abuse you, they betray you, they undo you, you lose time.

Whereupon the Lord Keeper put on his hat, and said with a loud voice, My lord, let us speak with you privately, and understand your griefs; and I command you all upon your allegiance, to lay down your weapons, and to depart, which you ought all to do, being thus commanded, if you be good subjects, and owe that duty to the Queen's Majesty which you profess. Whereupon they all brake out into an exceeding loud shout and cry, crying, all, all, all.

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

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

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

Thomas Egerton, C. S. Edward Worcester, John Popham.

The examination of *Roger Earl of Rutland*, the 12th of *February*, 1600. taken before Sir *Thomas Egerton* Lord Keeper of the great seal, the Lord *Buckhurst* Lord High Treasurer, the Earl of *Nottingham* Lord High Admiral, Sir *Robert Cecil* principal Secretary, and Sir *Jo. Popham* Lord Chief Justice of *England*.

HE saith, that at his coming to *Essex*-house on *Sunday* morning last, he found there with the Earl of *Essex*, the Lord *Sandys*, and the Lord *Chandos*, and divers knights and gentlemen. And the Earl of *Essex* told this examinee, that his life was practised to be taken away by the Lord *Cobham*, and Sir *Walter Raleigh*, when he was sent for to the counsel. And the Earl said, that now he meant by the help of his friends to defend himself: And saith, that the detaining of the Lord Keeper and the other lords sent to the Earl from the Queen, was a stratagem of war: And saith, that the Earl of *Essex* told him that *London* stood for him, and that Sheriff *Smith* had given him intelligence, that he would make as many men to assist him as he could.

And

And farther the Earl of *Effex* said, that he meant to possess himself of the city, the better to enable himself to revenge him on his enemies, the Lord *Cobham*, Sir *Robert Cecil*, and Sir *Walter Raleigh*. And this examine confesseth, that he resolved to live and die with the Earl of *Effex*; and that the Earl of *Effex* did intend to make his forces so strong, that her Majesty should not be able to resist him in the revenge of his enemies. And saith, that the Earl of *Effex* was most inward with the Earl of *Southampton*, Sir *Christopher Blunt*, and others; who have of long time shewed themselves discontented, and have advised the Earl of *Effex* to take other courses, and to stand upon his guard: And saith, that when the Earl of *Effex* was talking with the Lord Keeper, and other the lords sent from her Majesty, divers said, My Lord, they mean to abuse you, and you lose time. And when the Earl came to Sheriff *Smith's*, he desired him to send for the lord mayor that he might speak with him. And as the Earl went in the streets of *London*, this examine said to divers of the citizens, that if they would needs come, that it was better for their safety to come with weapons in their hands: And saith, that the Earl of *Effex* (at the end of the street where Sheriff *Smith* dwelt) cried out to the citizens, that they did him harm, for that they came naked; and willed them to get them weapons: And the Earl of *Effex* also cried out to the citizens, that the crown of *England* was offered to be sold to the *Infanta*: And saith, that the Earl burned divers papers that were in a little casket, whereof one was, as the Earl said, an history of his troubles: And saith, that when they were assaulted in *Effex* house, after their return, they first resolved to have made a sally out. And the Earl said, that he was determined to die; and yet in the end they changed their opinion and yielded: And saith, that the Earl of *Southampton*, Sir *Christopher Blunt*, and Sir *John Davis*, advised the Earl of *Effex*, that the Lord Keeper and his company should be detained: And this examine saith, that he heard divers there present cry out, kill them, kill them: And saith, that he thinketh the Earl of *Effex* intended, that after he had possessed himself of the city, he would intreat the Lord Keeper and his company to accompany him to the court. He saith, he heard Sir *Christopher Blunt* say openly, in the presence of the Earl of *Effex* and others, how fearful, and in what several humours they should find them at the court, when they came thither.

Rutland.

Exam. per *Th. Egerton*, C. S. *T. Buckhurst*,
Nottingham, *Ro. Cecil*, *Jo. Popham*.

The confession of *William Lord Sandys*, of the parish of *Sherborne-Cowdry* in the county of *Southampton*, taken this 16th of *February*, 1600. before Sir *John Popham* Lord Chief Justice, *Roger Wilbrabam* Master of the requests, and *Edw. Coke* her Majesty's Attorney-general.

HE saith, that he never understood that the Earl did mean to stand upon his strength till *Sunday* in the morning, being the eighth of this instant *February*: And saith, that in the morning of that day this examine was sent for by the Earl of *Effex* about six or seven of the clock; and the Earl sent for him by his servant *Warburton*, who was married to a widow in *Hampshire*. And at his coming to the Earl there were six or seven gentlemen with him,

him, but remembereth not what they were; and next after, of a nobleman, came my Lord *Chandos*, and after him came the Earl of *Southampton*, and presently after the Earl of *Rutland*, and after him Master *Parker*, commonly called the Lord *Montegle*: And faith, that at his coming to the Earl of *Essex*, he complained that it was practised by Sir *Walter Raleigh* to have murdered him as he should have gone to the Lord Treasurer's house with Master Secretary *Herbert*. And faith, that he was present in the court-yard of *Essex*-house, when the Lord Keeper, the Earl of *Worcester*, Sir *William Knolles*, and the Lord Chief Justice, came from the Queen's Majesty to the Earl of *Essex*. And the Lord Chief Justice required the Earl of *Essex* to have some private conference with him; and that if any private wrongs were offered unto him, that they would make true report thereof to her Majesty, who, no doubt, would reform the same: And faith, that this examine went with the Earl, and the rest of his company, to *London* to Sheriff *Smith's*, but went not into the house with him, but stayed in the street a while; and being sent for by the Earl of *Essex*, went into the house, and from thence came with him till he came to *Ludgate*; which place being guarded, and resistance being made, and perceived by the Earl of *Essex*, he said unto his company, charge; and thereupon Sir *Christopher Blunt*, and others of his company gave the charge, and being repulsed, and this examine hurt in the leg, the Earl retired with this examine and others to his house called *Essex*-house. And on his retire, the Earl said to this examine, that if Sheriff *Smith* did not his part, that his part was as far forth as the Earl's own, which moved him to think that he trusted to the city. And when the Earl was, after his retire, in *Essex*-house, he took an iron casket, and broke it open, and burnt divers papers in it; whereof there was a book, as he taketh it, and said, as he was burning of them, that they should tell no tales to hurt his friends: And faith, that the Earl said, that he had a black bag about his neck that should tell no tales.

William Sandys.

Exam. per *Jo. Popham*, *Roger Wilbrabam*, *Edw. Coke*.

The examination of the Lord *Cromwell*, taken the 7th of *March*, 1600, by Sir *J. Popham* Lord Chief Justice, *Christ. Yelverton* her Majesty's serjeant, and *Fr. Bacon* of her Majesty's learned counsel.

* **A**T the Sheriff's house this examine pressed in with the rest, and found the Earls shifting themselves in an inner chamber, where he heard my Lord of *Essex* certify the company, that he had been advertised out of *Ireland* (which he would not now hide from them) that the realm should be delivered over to the hands of the *Infanta* of *Spain*, and that he was wished to look to it. Farther, that he was to seek redress for injuries; and that he had left at his house for pledges, the Lord Keeper, the Earl of *Worcester*, Sir *William Knolles*, and the Lord Chief Justice.

Edw. Cromwell.

Exam. per *Jo. Popham*, *Chr. Yelverton*, *Fr. Bacon*.

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

Sir *Christopher Blunt* knight, at the time of his arraignment, did openly at the bar desire to speak with the Lord Admiral and Mr. Secretary; before whom he made this confession following; which the Earl of *Southampton* confirmed afterwards, and he himself likewise at his death.

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

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

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

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

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

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

The examination of the Earl of *Southampton* after his arraignment; taken before the Earl of *Nottingham* Lord High Admiral, Sir *Robert Cecil* principal Secretary, and Mr. *John Herbert* second Secretary of estate.

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

To which project I answered, that I held it altogether unfit, as well in respect of his conscience to God, and his love to his country, as his duty to

his Sovereign, of which he (of all men) ought to have greatest regard, seeing her Majesty's favours to him had been so extraordinary: Wherefore I could never give any consent unto it. Sir *Christopher Blunt* joined with me in this opinion.

Exam. per *Nottingham*, *Ro. Cecil*, *J. Herbert*.

The Speech of Sir *Christopher Blunt*, at the time of his death, as near as it could be remembered, *March 18, 1600.*

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

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

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

As he thus spake, the Sheriff began to interrupt him, and told him the hour was past. But my Lord *Gray*, and Sir *Walter Raleigh* captain of the guard, called to the Sheriff, and required him not to interrupt him, but to suffer him quietly to finish his prayers and confessions. Sir *Christopher Blunt* said, Is Sir *Walter Raleigh* there? Those on the scaffold answered, Yea. To whom Sir *Christopher Blunt* spake on this manner:

SIR *Walter Raleigh*, I thank God that you are present: I had an infinite desire to speak with you, to ask you forgiveness ere I died, both for the wrong done you, and for my particular ill intent towards you: I beseech you forgive me. Sir *Walter Raleigh* answered, that he most willingly forgave him, and besought God to forgive him, and to give him his divine comfort: protesting before the Lord, that whatsoever Sir *Christopher Blunt* meant towards him, for his part he never had any ill intent towards him: And farther said to Sir *Christopher Blunt*, I pray you without offence let me put you in mind that you have been esteemed, not only a principal provoker and persuader of the Earl of *Essex* in all his undutiful courses, but especially an adviser in that which hath been confessed of his purpose to transport a great part of her Majesty's army out of *Ireland* into *England*, to land at *Milford*, and thence to turn it against her sacred person. You shall do well to tell the truth, and to satisfy the world. To which he answered thus:

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

WHEN

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

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

AND although it be true, that (as we all protested in our examinations and arraignments) we never resolved of doing hurt to her Majesty's person, (for in none of our consultations was there set down any such purpose;) yet, I know, and must confess, if we had failed of our ends, we should (rather than have been disappointed) even have drawn blood from herself. From henceforward, he dealt no more with me herein, until he was discharged of his keeper at *Essex-house*. And then, he again asked mine advice, and disputed the matter with me; but resolved not. I went then into the country, and before he sent for me (which was some ten days before his rebellion) I never heard more of the matter. And then he wrote unto me to come up, upon pretence of making some assurances of land, and the like. I will leave the rest unto my confessions, given to that honourable Lord Admiral, and worthy Mr. Secretary, (to whom I beseech you Sir *Walter Raleigh* commend me;) I can requite their favourable and charitable dealing with me, with nought else but my prayers for them. And I beseech God of his mercy, to save and preserve the Queen, who hath given comfort to my soul, in that I hear she hath forgiven me all, but the sentence of the law, which I most worthily deserved, and do most willingly embrace; and hope that God will have mercy and compassion on me, who have offended him as many ways as ever sinful wretch did. I have led a life so far from his precepts, as no sinner more. God forgive it me, and forgive me my wicked thoughts, my licentious life, and this right arm of mine, (which I fear me) hath drawn blood in this last action. And I beseech you all bear witness, that I die a Catholick, yet so, as I hope to be saved only by the death and passion of Christ, and by his merits, not ascribing any thing to mine own works. And I trust you are all good people, and your prayers may profit me. Farewell my worthy Lord *Gray* and my Lord *Compton*, and to you all, God send you both to live long in honour. I will desire to say a few prayers, and embrace my death most willingly. With that he turned from the rail towards the executioner; and the minister offering to speak with him, he came again to the rail, and besought that his conscience might not be troubled, for he was resolved; which he desired for God's sake. Whereupon commandment was given, that the minister should not interrupt him any farther. After which he prepared himself to the block, and so died very manfully and resolutely.

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

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

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

Testified by *Tho. Egerton*, C. S. *Tho. Buckburst*,
Nottingham, *Ro. Cecil*.

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

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

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

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

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

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

Thomas Montford, *William Barlow*, *Abdy Ashton* his chaplain.

THE
A P O L O G Y
O F

Sir *FRANCIS BACON*,

In certain Imputations concerning the late
EARL of *ESSEX*.

To the Right Honourable his very good Lord the EARL of
DEVONSHIRE, Lord Lieutenant of IRELAND.

IT may please your good Lordship, I cannot be ignorant, and ought to be sensible of the wrong which I sustain in common speech, as if I had been false or unthankful to that noble, but unfortunate Earl, the Earl of *Essex*: and for satisfying the vulgar sort, I do not so much regard it; though I love a good name, but yet as an handmaid, and attendant of honesty and virtue. For I am of his opinion that said pleasantly, that it was a shame to him that was a suitor to the mistress, to make love to the waiting-woman; and therefore to woo or court common fame otherwise than it followeth on honest courses, I, for my part, find not my self fit or disposed. But on the other side, there is no worldly thing that concerneth my self which I hold more dear than the good opinion of certain persons; among which there is none I would more willingly give satisfaction unto, than to your Lordship. First, because you loved my Lord of *Essex*, and therefore will not be partial towards me, which is part of that I desire: next, because it hath ever pleased you to shew your self to me an honourable friend, and so no baseness in me to seek to satisfy you: And lastly, because I know your Lordship is excellently grounded in the true rules and habits of duties and moralities, which must be they which shall decide this matter; wherein, my Lord, my defence needeth to be but simple and brief: namely, that whatsoever I did concerning that action and proceeding, was done in my duty and service to the Queen and the state; in which I would not shew my self false-hearted, nor faint-hearted, for any man's sake living. For every honest man that hath his heart well planted, will forsake his King rather than forsake God, and forsake his friend rather than forsake his King; and yet will forsake any earthly commodity, yea, and his own life in some cases, rather than forsake his friend. I hope the world hath not forgotten these degrees, else the heathen saying, *amicus usque ad aras*, shall judge them.

AND if any man shall say, I did officiously intrude my self into that business, because I had no ordinary place; the like may be said of all the business in effect that passed the hands of the learned counsel, either of state or re-

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

It is well known, how I did many years since dedicate my travels and studies to the use and (as I may term it) service of my Lord of *Essex*, which I protest before God I did not, making election of him as the likeliest mean of mine own advancement, but out of the humour of a man that ever, from the time I had any use of reason, (whether it were reading upon good books, or upon the example of a good father, or by nature) I loved my country more than was answerable to my fortune; and I held at that time my Lord to be the fittest instrument to do good to the state, and therefore I applied my self to him in a manner which I think happeneth rarely among men: for I did not only labour carefully and industriously in that he set me about, whether it were matter of advice or otherwise, but neglecting the Queen's service, mine own fortune, and in a sort my vocation, I did nothing but advise and ruminate with my self to the best of my understanding, propositions and memorials of any thing that might concern his Lordship's honour, fortune, or service. And when not long after I entered into this course, my brother Mr. *Anthony Bacon* came from beyond the seas, being a gentleman whose ability the world taketh knowledge of for matters of state, especially foreign, I did likewise knit his service to be at my Lord's disposing. And on the other side, I must and will ever acknowledge my Lord's love, trust and favour towards me; and last of all his liberality, having incoffed me of land which I sold for eighteen hundred pounds to Master *Reynold Nicholas*, which, I think, was more worth; and that at such a time, and with so kind and noble circum-

stances, as the manner was as much as the matter; which, though it be but an idle digression, yet because I am not willing to be short in commemoration of his benefits, I will presume to trouble your Lordship with relating to you the manner of it. After the Queen had denied me the Solicitor's place, for the which his Lordship had been a long and earnest suitor on my behalf, it pleased him to come to me from *Richmond* to *Twickenham Park*, and brake with me, and said: Mr. Bacon, the Queen hath denied me the place for you, and hath placed another; I know you are the least part of your own matter, but you fare ill because you have chosen me for your mean and dependence: you have spent your time and thoughts in my matters; I die (these were his very words) if I do not somewhat towards your fortune, you shall not deny to accept a piece of land which I will bestow upon you. My answer, I remember, was, that for my fortune it was no great matter; but that his Lordship's offer made me call to mind what was wont to be said, when I was *France*, of the Duke of *Guise*, that he was the greatest usurer in *France*, because he had turned all his estate into obligations; meaning that he had left himself nothing, but only had bound numbers of persons to him. Now, my Lord, said I, I would not have you imitate his course, nor turn your state thus by great gifts into obligations, for you will find many bad debtors. He bad me take no care for that, and pressed it: whereupon I said, My Lord, I see I must be your homager, and hold land of your gift; but do you know the manner of doing homage in law? Always it is with a saving of his faith to the King and his other Lords; and therefore, my Lord, said I, I can be no more yours than I was, and it must be with the ancient savings; and if I grow to be a rich man, you will give me leave to give it back again to some of your unrewarded followers. But to return; sure I am (though I can arrogate nothing to my self but that I was a faithful remembrancer to his Lordship) that while I had most credit with him his fortune went on best: And yet in two main points we always directly and contradictorily differed, which I will mention to your Lordship, because it giveth light to all that followed. The one was, I ever set this down, that the only course to be held with the Queen, was by obsequiousness and observance; and I remember I would usually engage confidently, that if he would take that course constantly, and with choice of good particulars to express it, the Queen would be brought in time to *Abasuerus's* question, to ask, What should be done to the man that the King would honour? Meaning, that her goodness was without limit, where there was a true concurrence, which I knew in her nature to be true. My Lord, on the other side, had a settled opinion, that the Queen could be brought to nothing but by a kind of necessity and authority; and I well remember, when by violent courses at any time he had got his will, he would ask me, Now, Sir, whose principles be true? And I would again say to him; My Lord, these courses be like to hot waters, they will help at a pang; but if you use them you shall spoil the stomach, and you shall be fain still to make them stronger and stronger, and yet in the end they will lessen their operation; with much other variety, wherewith I used to touch that string. Another point was, that I always vehemently dissuaded him from seeking greatness by a military dependence, or by a popular dependence, as that which would breed in the Queen jealousy, in himself presumption, and in the state perturbation: and I did usually compare them to *Icarus's* two wings, which were joined on with wax, and would make him venture to soar too high, and then fall him at the height. And I would farther say unto him; My Lord, stand upon two feet, and fly not upon two wings:

wings: the two feet are the two kinds of justice, commutative and distributive: use your greatness for advancing of merit and virtue, and relieving wrongs and burdens; you shall need no other art or finesse: but he would tell me, that opinion came not from my mind, but from my robe. But it is very true, that I that never meant to intral my self to my Lord of *Essex*, nor any other man, more than stood with the publick good, did (though I could little prevail) divert him by all means possible from courses of the wars and popularity: for I saw plainly the Queen must either live or die; if she lived, then the times would be as in the declination of an old prince; if she died, the times would be as in the beginning of a new; and that if his Lordship did rise too fast in these courses, the times might be dangerous for him, and he for them. Nay, I remember, I was thus plain with him upon his voyage to the islands, when I saw every spring put forth such actions of charge and provocation, that I said to him, My Lord, when I came first unto you, I took you for a physician that desired to cure the diseases of the state, but now I doubt you will be like those physicians which can be content to keep their patients low, because they would always be in request. Which plainness he nevertheless took very well, as he had an excellent ear, and was *patientissimus veri*, and assured me the case of the realm required it: and I think this speech of mine, and the like renewed afterwards, pricked him to write that apology which is in many mens hands.

But this difference in two points so main and material, bred in process of time a discontinuance of privateness (as it is the manner of men seldom to communicate where they think their courses not approved) between his Lordship and my self; so as I was not called nor advised with for some year and a half before his Lordship's going into *Ireland*, as in former time: yet nevertheless, touching his going into *Ireland*, it pleased him expressly, and in a set manner, to desire mine opinion and counsel. At which time I did not only dissuade, but protest against his going, telling him with as much vehemency and asseveration as I could, that absence in that kind would exulcerate the Queen's mind, whereby it would not be possible for him to carry himself so, as to give her sufficient contentment; nor for her to carry herself so, as to give him sufficient countenance; which would be ill for her, ill for him, and ill for the state. And because I would omit no argument, I remember I stood also upon the difficulty of the action; setting before him out of histories, that the *Irish* was such an enemy as the ancient *Gauls*, or *Britons*, or *Germans* were; and that we saw how the *Romans*, who had such discipline to govern their soldiers, and such donatives to encourage them, and the whole world in a manner to levy them; yet when they came to deal with enemies, which placed their felicity only in liberty, and the sharpness of their sword, and had the natural elemental advantages of woods, and bogs, and hardness of bodies, they ever found they had their hands full of them; and therefore concluded, that going over with such expectation as he did, and through the churlishness of the enterprize not like to answer it, would mightily diminish his reputation; and many other reasons I used, so as I am sure I never in any thing in my life-time dealt with him in like earnestness by speech, by writing, and by all the means I could devise. For I did as plainly see his overthrow chained, as it were by destiny, to that journey, as it is possible for any man to ground a judgment upon future contingents. But, my Lord, howsoever his ear was open, yet his heart and resolution was shut against that advice, whereby his ruin might have been prevented. After my Lord's going, I saw then how true a prophet I was,

was, in regard of the evident alteration which naturally succeeded in the Queen's mind; and thereupon I was still in watch to find the best occasion that in the weakness of my power I could either take or minister, to pull him out of the fire if it had been possible: and not long after, methought I saw some overture thereof, which I apprehended readily; a particularity which I think to be known to very few, and the which I do the rather relate unto your Lordship, because I hear it should be talk'd, that while my Lord was in *Ireland* I revealed some matters against him, or I cannot tell what; which if it were not a mere slander as the rest is, but had any, though never so little, colour, was surely upon this occasion. The Queen, one day at *Nonesuch*, a little (as I remember) before *Cuffe's* coming over, where I attended her, shewed a passionate distaste of my Lord's proceedings in *Ireland*, as if they were unfortunate, without judgment, contemptuous, and not without some private end of his own, and all that might be; and was pleased, as she spake of it to many that she trusted least, so to fall into the like speech with me. Whereupon I, who was still awake, and true to my grounds which I thought surest for my Lord's good, said to this effect: Madam, I know not the particulars of estate, and I know this, that princes actions must have no abrupt periods or conclusions; but otherwise I would think, that if you had my Lord of *Essex* here with a white staff in his hand, as my Lord of *Leicester* had, and continued him still about you for society to your self, and for an honour and ornament to your attendance and court in the eyes of your people, and in the eyes of foreign ambassadors, then were he in his right element; for to discontent him as you do, and yet to put arms and power into his hands, may be a kind of temptation to make him prove cumbersome and unruly. And therefore if you would *imponere bonam clausulam*, and send for him, and satisfy him with honour here near you, if your affairs, which (as I have said) I am not acquainted with, will permit it, I think were the best way. Which course, your Lordship knoweth, if it had been taken, then all had been well, and no contempt in my Lord's coming over, nor continuance of these jealousies, which that employment of *Ireland* bred, and my Lord here in his former greatness. Well, the next news that I heard was, that my Lord was come over, and that he was committed to his chamber for leaving *Ireland* without the Queen's licence; this was at *Nonesuch*, where (as my duty was) I came to his Lordship, and talked with him privately about a quarter of an hour, and he asked mine opinion of the course that was taken with him: I told him, my Lord, *Nubecula est, cito transibit*; it is but a mist. But shall I tell your Lordship, it is as mists are, if it go upwards, it may perhaps cause a shower; if downwards, it will clear up. And therefore, good my Lord, carry it so, as you take away by all means all umbrages and distastes from the Queen; and especially if I were worthy to advise you, (as I have been by your self thought, and now your question imports the continuance of that opinion) observe three points: First, make not this cessation or peace, which is concluded with *Tyrone*, as a service wherein you glory, but as a shuffling up of a prosecution which was not very fortunate. Next, represent not to the Queen any necessity of estate, whereby, as by a coercion or wrench, she should think herself inforced to send you back into *Ireland*, but leave it to her. Thirdly, seek access *importunè, opportunè*, seriously, sportingly, every way. I remember my Lord was willing to hear me, but spake very few words, and shook his head sometimes, as if he thought I was in the wrong; but sure I am, he did just contrary in every one of these three points. After this, during the while since my Lord was committed

to my lord-keeper's, I came divers times to the Queen, as I had used to do, about causes of her revenue and law business, as is well known; by reason of which access, according to the ordinary charities of court, it was given out, that I was one of them that incensed the Queen against my Lord of *Essex*. These speeches I cannot tell, nor I will not think, that they grew any way from her Majesty's own speeches, whose memory I will ever honour; if they did, she is with God, and *miserum est ab illis laedi, de quibus non possis quaeri*. But I must give this testimony to my Lord *Cecil*, that one time in his house at the *Savoy*, he dealt with me directly, and said to me, Cousin, I hear it, but I believe it not, that you should do some ill office to my Lord of *Essex*; for my part I am merely passive, and not active in this action; and I follow the Queen, and that heavily, and I lead her not; my Lord of *Essex* is one that in nature I could consent with as well as with any one living; the Queen indeed is my Sovereign, and I am her creature, I may not lose her, and the same course I would wish you to take; whereupon I satisfied him how far I was from any such mind. And as sometimes it cometh to pass, that mens inclinations are opened more in a toy, than in a serious matter: A little before that time, being about the middle of *Michaelmas* term, her Majesty had a purpose to dine at my lodge at *Twickenham Park*, at which time I had (though I profess not to be a poet) prepared a sonnet directly tending and alluding to draw on her Majesty's reconciliation to my Lord; which I remember also I shewed to a great person, and one of my Lord's nearest friends, who commended it: this, though it be (as I said) but a toy, yet it shewed plainly in what spirit I proceeded; and that I was ready not only to do my Lord good offices, but to publish and declare my self for him: and never was I so ambitious of any thing in my life-time, as I was to have carried some token or favour from her Majesty to my Lord; using all the art I had, both to procure her Majesty to send, and my self to be the messenger. For as to the former I feared not to alledge to her, that this proceeding toward my Lord, was a thing towards the people very unplaussible; and therefore wished her Majesty, however she did, yet to discharge herself of it, and lay it upon others; and therefore that she should intermix her proceeding with some immediate graces from herself, that the world might take knowledge of her princely nature and goodness, lest it should alienate the hearts of her people from her, which I did stand upon; knowing well that if she once relented to send or visit, those demonstrations would prove matter of substance for my Lord's good. And to draw that employment upon my self, I advised her Majesty, that whensoever God should move her to turn the light of her favours towards my Lord, to make signification to him thereof; that her Majesty, if she did it not in person, would at the least use some such mean as might not intitle themselves to any part of the thanks, as persons that were thought mighty with her to work her, or to bring her about; but to use some such as could not be thought but a mere conduit of her own goodness. But I could never prevail with her, though I am persuaded she saw plainly whereat I levelled; and she plainly had me in jealousy, that I was not hers intirely, but still had inward and deep respects towards my Lord, more than stood at that time with her will and pleasure. About the same time I remember an answer of mine in a matter which had some affinity with my Lord's cause, which though it grew from me, went after about in others names. For her Majesty being mightily incensed with that book which was dedicated to my Lord of *Essex*, being a story of the first year of King *Henry IV.*

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thinking it a seditious pelude to put into the people's head boldness and faction, said, she had an opinion, that there was treason in it, and asked me if I could not find any places in it that might be drawn within case of treason: whereto I answered; for treason surely I found none, but for felony very many. And when her Majesty hastily asked me wherein, I told her, the author had committed very apparent theft: for he had taken most of the sentences of *Cornelius Tacitus*, and translated them into *English*, and put them into his text. And another time, when the Queen would not be persuaded that it was his writing whose name was to it, but that it had some more mischievous author; and said with great indignation, that she would have him rack'd to produce his author: I replied; Nay, Madam, he is a doctor, never rack his person, but rack his style; let him have pen, ink, and paper, and help of books, and be enjoined to continue the story where it breaketh off, and I will undertake by collating the styles, to judge whether he were the author or no. But for the main matter, sure I am, when the Queen at any time asked mine opinion of my Lord's case, I ever in one tenour said unto her; that they were faults which the law might term contempts; because they were the transgression of her particular directions and instructions: but then what defence might be made of them, in regard of the great interest the person had in her Majesty's favour; in regard of the greatness of his place, and the ampleness of his commission; in regard of the nature of the business, being action of war, which in common cases cannot be tyed to strictness of instructions; in regard of the distance of the place, having also a sea between, that his demands and her commands must be subject to wind and weather; in regard of a council of state in *Ireland*, which he had at his back to avow his actions upon; and lastly, in regard of a good intention, that he would alledge for himself; which I told her in some religions was held to be a sufficient dispensation for God's commandments, much more for princes: In all these regards, I besought her Majesty to be advised again and again, how she brought the cause into any publick question. Nay, I went farther; for I told her, my Lord was an eloquent and well-spoken man; and besides his eloquence of nature or art, he had an eloquence of accident which passed them both, which was the pity and benevolence of his hearers; and therefore, that when he should come to his answer for himself, I doubted his words would have so unequal passage above theirs that should charge him, as would not be for her Majesty's honour; and therefore wished the conclusion might be, that they might wrap it up privately between themselves; and that she would restore my Lord to his former attendance, with some addition of honour to take away discontent. But this I will never deny; that I did shew no approbation generally of his being sent back again into *Ireland*, both because it would have carried a repugnancy with my former discourse, and because I was in mine own heart fully persuaded, that it was not good, either for the Queen, or for the state, or for himself: and yet I did not dissuade it neither, but left it ever as *locus lubricus*. For this particularity, I do well remember, that after your Lordship was named for the place in *Ireland*, and not long before your going, it pleased her Majesty at *Whitehall* to speak to me of that nomination: at which time I said to her; Surely, Madam, if you mean not to employ my Lord of *Effex* thither again, your Majesty cannot make a better choice; and was going on to shew some reason, and her Majesty interrupted me with great passion: *Effex!* said she; whensoever I send *Effex* back again into *Ireland*, I will marry you, claim it of me. Whereunto I said; Well, Madam, I will release that contract, if his
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going be for the good of your state. Immediately after the Queen had thought of a course (which was also executed) to have somewhat published in the *Star-Chamber*, for the satisfaction of the world, touching my Lord of *Essex* his restraint, and my Lord not to be called to it; but occasion to be taken by reason of some libels then dispersed: which when her Majesty propounded unto me, I was utterly against it; and told her plainly, that the people would say, that my Lord was wounded upon his back, and that justice had her balance taken from her, which ever consisted of an accusation and defence; with many other quick and significant terms to that purpose: insomuch, that I remember, I said, that my Lord *in foro famae* was too hard for her; and therefore wished her, as I had done before, to wrap it up privately. And certainly I offended her at that time, which was rare with me: for I call to mind, that both the *Christmas*, *Lent*, and *Easter* term following, though I came divers times to see her upon law business, yet methought her face and manner was not so clear and open to me as it was at the first. And she did directly charge me, that I was absent that day at the *Star-Chamber*, which was very true; but I alledged some indisposition of body to excuse it: and during all the time aforesaid, there was *altum silentium* from her to me, touching my Lord of *Essex*'s causes.

BUT towards the end of *Easter* term, her Majesty brake with me, and told me, that she had found my words true; for that the proceeding in the *Star-Chamber* had done no good, but rather kindled factious bruits (as she termed them) than quenched them; and therefore, that she was determined now for the satisfaction of the world, to proceed against my Lord in the *Star-Chamber* by an information *ore tenus*, and to have my Lord brought to his answer: howbeit, she said, she would assure me, that whatsoever she did should be towards my Lord *ad castigationem*, & *non ad destructionem*; as indeed she had often repeated the same phrase before: whereunto I said, (to the end utterly to divert her) Madam, if you will have me speak to you in this argument, I must speak to you as Fryar Bacon's head spake, that said first, *time is*; and then *time was*; and *time will never be*: for certainly, said I, it is now far too late; the matter is cold, and hath taken too much wind. Whereat she seemed again offended, and rose from me; and that resolution for a while continued: and after, in the beginning of *Midsummer* term, I attending her, and finding her settled in that resolution, (which I heard of also otherwise) she falling upon the like speech; it is true, that seeing no other remedy, I said to her slightly, Why, Madam, if you will needs have a proceeding, you were best have it in some such sort as *Ovid* spake of his mistress; *est aliquid luce patente minus*; to make a council-table matter of it, and there an end: which speech again she seemed to take in ill part; but yet I think it did good at that time, and helped to divert that course of proceeding by information in the *Star-Chamber*. Nevertheless, afterwards it pleas'd her to make a more solemn matter of the proceeding; and some few days after, when order was given that the matter should be heard at *York-house*, before an assembly of counsellors, peers, and judges, and some audience of men of quality to be admitted: and then did some principal counsellors send for us of the learned council, and notify her Majesty's pleasure unto us; save that it was said to me openly by one of them, that her Majesty was not yet resolved whether she would have me forborn in the business or no. And hereupon might arise that other sinister and untrue speech that I hear is raised of me, how I was a suitor to be used against my Lord of *Essex* at that time: for it is very true, that I that knew well what had passed between the Queen

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and me, and what occasion I had given her both of distaste and distrust, in crossing her disposition, by standing stedfastly for my Lord of *Essex*, and suspecting it also to be a stratagem arising from some particular emulation, I writ to her two or three words of complement, signifying to her Majesty, that if she would be pleased to spare me in my Lord of *Essex*'s cause, out of the consideration she took of my obligation towards him, I should reckon it for one of her greatest favours: but otherwise desiring her Majesty to think that I knew the degrees of duties; and that no particular obligation whatsoever to any subject could supplant or weaken that entireness of duty that I did owe and bear to her and her service; and this was the goodly suit I made, being a respect no man that had his wits could have omitted: but nevertheless I had a farther reach in it; for I judged that day's work would be a full period of any bitterness or harshness between the Queen and my Lord: and therefore, if I declared myself fully according to her mind at that time, which could not do my Lord any manner of prejudice, I should keep my credit with her ever after, whereby to do my Lord service. Hereupon the next news that I heard, was, that we were all sent for again; and that her Majesty's pleasure was, we all should have parts in the business: and the Lords falling into distribution of our parts, it was allotted to me, that I should set forth some undutiful carriage of my Lord, in giving occasion and countenance to a seditious pamphlet, as it was term'd, which was dedicated unto him, which was the book before mentioned of King *Henry IV.* Whereupon I replied to that allotment, and said to their Lordships, that it was an old matter, and had no manner of coherence with the rest of the charge, being matters of *Ireland*: and therefore, that I having been wronged by bruises before, this would expose me to them more; and it would be said I gave in evidence mine own tales. It was answered again with good shew, that because it was considered how I stood tied to my Lord of *Essex*, therefore that part was thought fittest for me, which did him least hurt: for that whereas all the rest was matter of charge and accusation, this only was but matter of caveat and admonition. Wherewith, though I was in mine own mind little satisfied; because I knew well a man were better to be charged with some faults, than admonished of some others: yet the conclusion binding upon the Queen's pleasure directly, *volens nolens*, I could not avoid that part that was laid upon me; which part, if in the delivery I did handle not tenderly, (though no man before me did in so clear terms free my Lord from all disloyalty as I did;) that your Lordship knoweth must be ascribed to the superior duty I did owe to the Queen's fame and honour in a publick proceeding, and partly to the intention I had to uphold myself in credit and strength with the Queen, the better to be able to do my Lord good offices afterwards: for as soon as this day was past, I lost no time; but the very next day following, (as I remember) I attended her Majesty, fully resolved to try and put in ure my utmost endeavour (so far as I in my weakness could give furtherance) to bring my Lord again speedily into court and favour; and knowing (as I supposed at least) how the Queen was to be used, I thought that to make her conceive that the matter went well then, was the way to make her leave off there: and I remember well, I said to her, you have now Madam obtained victory over two things, which the greatest princes in the world cannot at their wills subdue; the one is over fame; the other is over a great mind: for surely the world is now (I hope) reasonably well satisfied; and for my Lord, he did shew that humiliation towards your Majesty, as I am persuaded he was never in his life-time more fit for your Majesty's favour than he is

now: therefore if your Majesty will not mar it by lingering, but give over at the best, and now you have made so good a full point, receive him again with tenderneſs, I ſhall then think, that all that is paſt is for the beſt. Whereat I remember ſhe took exceeding great contentment, and did often iterate and put me in mind, that ſhe had ever ſaid, that her proceedings ſhould be *ad reparationem*, and not *ad ruinam*; as who ſaith, that now was the time I ſhould well perceive, that that ſaying of hers ſhould prove true. And farther ſhe willed me to ſet down in writing all that paſſed that day. I obeyed her commandment, and within ſome few dayſafter brought her again the narration, which I did read unto her in two ſeveral afternoons: and when I came to that part that ſet forth my Lord's own answer, (which was my principal care) I do well bear in mind, that ſhe was extraordinarily moved with it, in kindneſs and relenting towards my Lord; and told me afterwards, (ſpeaking how well I had expreſſed my Lord's part) that ſhe perceived old love would not eaſily be forgotten: whereunto I answered ſuddenly, that I hoped ſhe meant that by herſelf. But in concluſion I did adviſe her, that now ſhe had taken a representation of the matter to herſelf, that ſhe would let it go no farther: for Madam, ſaid I, the fire blazeth well already, what ſhould you tumble it? And beſides, it may pleaſe you to keep a convenience with yourſelf in this caſe: for ſince your expreſs direction was, there ſhould be no register nor clerk to take this ſentence, nor no record or memorial made up of the proceeding, why ſhould you now do that popularly, which you would not admit to be done judicially? Whereupon ſhe did agree, that that writing ſhould be ſuppreſſed; and I think there were not five perſons that ever ſaw it. But from this time forth, during the whole latter end of that ſummer, while the court was at *Nonſuch* and *Oatlands*, I made it my task and ſcope to take and give occaſions for my Lord's redintegration in his fortunes: which my intention I did alſo ſignify to my Lord as ſoon as ever he was at his liberty; whereby I might without peril of the Queen's indignation write to him: and having received from his Lordſhip a courteous and loving acception of my good will and endeavours, I did apply it in all my acceſſes to the Queen, which were very many at that time; and purpoſely ſought and wrought upon other variable pretences, but only and chiefly for that purpoſe. And on the other ſide, I did not forbear to give my Lord from time to time faithful advertiſement what I found, and what I wiſhed. And I drew for him by his appointment ſome letters to her Maſteſty; which though I knew well his Lordſhip's gift and ſtile was far better than mine own, yet, becauſe he required it, alledging, that by his long reſtaint he was grown almoſt a ſtranger to the Queen's preſent conceits, I was ready to perform it: and ſure I am, that for the ſpace of ſix weeks or two months, it prospered ſo well, as I expected continually his reſtoring to his attendance. And I was never better welcome to the Queen, nor more made of than when I ſpoke full-eſt and boldeſt for him: in which kind the particulars were exceeding many; whereof, for an example, I will remember to your Lordſhip one or two. As at one time I call to mind, her Maſteſty was ſpeaking of a fellow that undertook to cure, or at leaſt to eaſe my brother of his gout, and asked me how it went forward: and I told her Maſteſty, that at the firſt he received good by it; but after in the courſe of his cure he found himſelf at a ſtay, or rather worſe: the Queen ſaid again, I will tell you *Bacon* the error of it: the manner of theſe phyſicians, and eſpecially theſe empericks, is to continue one kind of medicine; which at the firſt is proper, being to draw out the ill humour; but after they have not the

the discretion to change their medicine, but apply still drawing medicines, when they should rather intend to cure and corroborate the part. Good Lord, Madam, (said I) how wisely and aptly can you speak and discern of physick ministred to the body, and consider not that there is the like occasion of physick ministred to the mind: as now in the case of my Lord of *Effex*, your princely word ever was, that you intended ever to reform his mind, and not ruin his fortune: I know well you cannot but think that you have drawn the humour sufficiently; and therefore it were more than time, and it were but for doubt of mortifying or exulcerating, that you did apply and minister strength and comfort unto him: for these same gradations of yours are fitter to corrupt than correct any mind of greatness. And another time I remember she told me for news, that my Lord had written unto her some very dutiful letters, and that she had been moved by them; and when she took it to be the abundance of his heart, she found it to be but a preparative to a suit for the renewing of his farm of sweet wines. Whereunto I replied, O Madam, how doth your Majesty construe these things, as if these two could not stand well together, which indeed nature hath planted in all creatures! For there are but two sympathies, the one towards perfection, the other towards preservation; that to perfection, as the iron tendeth to the loadstone; that to preservation, as the vine will creep towards a stake or prop that stands by it; not for any love to the stake, but to uphold itself. And therefore, Madam, you must extinguish my Lord's desire to do you service, is as to his perfection, that which he thinks himself to be born for; whereas his desire to obtain this thing of you, is but for a sustentation. And not to trouble your Lordship with many other particulars like unto these, it was at the self-same time that I did draw, with my Lord's privity, and by his appointment, two letters, the one written as from my brother, the other as an answer returned from my Lord, both to be by me in secret manner shewed to the Queen, which it pleased my Lord very strangely to mention at the bar; the scope of which were but to represent and picture forth unto her Majesty my Lord's mind to be such, as I knew her Majesty would fainest have had it; which letters whosoever shall see, (for they cannot now be retracted or altered, being by reason of my brother's, or his Lordship's servants delivery, long since come into divers hands) let him judge, especially if he knew the Queen, and do remember those times, whether they were not the labours of one that fought to bring the Queen about for my Lord of *Effex* his good. The troth is, that the issue of all his dealing grew to this, that the Queen by some slackness of my Lord's, as I imagine, liked him worse and worse, and grew more incensed towards him. Then she remembering belike the continual, and incessant, and confident speeches and courses that I had held on my Lord's side became utterly alienated from me, and for the space of (at least) three months, which was between *Michaelmas* and *New-year's-tide* following, would not so much as look on me, but turned away from me with expresse and purpose-like discountenance wheresoever she saw me; and at such time as I desired to speak with her about law-busines, ever sent me forth very slight refusals, inso-much as it is most true, that immediately after *New-year's-tide* I desired to speak with her, and being admitted to her, I dealt with her plainly; and said, Madam, I see you withdraw your favour from me, and now I have lost many friends for your sake, I shall lose you too; you have put me like one of those that the *French* men call *enfants perdus*, that serve on foot before horsemen, so have you put me into matters of envy without place, or without strength; and I know at chess a pawn before the King is ever much plaid upon; a great
many

many love me not, because they think I have been against my Lord of *Effex*; and you love me not, because you know I have been for him; yet will I never repent me, that I have dealt in simplicity of heart towards you both, without respect of cautions to myself; and therefore *vivus videntque pereo*: If I do break my neck, I shall do it in a manner as Master *Dorington* did it, which walked on the battlements of the church many days, and took a view and survey where he should fall. And so, Madam, said I, I am not so simple but that I take a prospect of mine overthrow, only I thought I would tell you so much, that you may know that it was faith, and not folly that brought me into it, and so I will pray for you. Upon which speeches of mine uttered with some passion, it is true her Majesty was exceedingly moved; and accumulated a number of kind and gracious words upon me, and willed me to rest upon this, *gratia mea sufficit*, and a number of other sensible and tender words and demonstrations, such as more could not be; but as touching my Lord of *Effex*, *ne verbum quidem*. Whereupon I departed, resting then determined to meddle no more in the matter; as that, that I saw would overthrow me, and not be able to do him any good. And thus I made mine own peace with mine own confidence at that time; and this was the last time I saw her Majesty before the eighth of *February*, which was the day of my Lord of *Effex* his misfortune; after which time, for that I performed at the bar in my publick service, your Lordship knoweth by the rules of duty, that I was to do it honestly, and without prevarication; but for any putting myself into it, I protest before God, I never moved either the Queen, or any person living, concerning my being used in the service, either of evidence or examination; but it was merely laid upon me with the rest of my fellows. And for the time which passed, I mean between the arraignment and my Lord's suffering, I well remember I was but once with the Queen, at what time, though I durst not deal directly for my Lord as things then stood; yet generally I did both commend her Majesty's mercy, terming it to her as an excellent balm that did continually distil from her sovereign hands, and made an excellent odour in the senses of her people; and not only so, but I took hardiness to extenuate, not the fact, (for that I durst not;) but the danger, telling her that if some base or cruel-minded persons had entered into such an action, it might have caused much blood and combustion: but it appeared well, they were such as knew not how to play the malefactors, and some other words which I now omit. And as for the rest of the carriage of myself in that service, I have many honourable witnesses that can tell that the next day after my Lord's arraignment, by my diligence and information touching the quality and nature of the offenders, six of nine were stayed, which otherwise had been attainted, I bringing their Lordships letter for their stay, after the jury was sworn to pass upon them; so near it went: and how careful I was, and made it my part, that whosoever was in trouble about that matter, as soon as ever his case was sufficiently known and defined of, might not continue in restraint, but be set at liberty; and many other parts, which I am well assured of stood with the duty of an honest man. But indeed I will not deny for the case of Sir *Thomas Smith* of *London*, the Queen demanding my opinion of it, I told her, I thought it was as hard as many of the rest; but what was the reason? Because at that time I had seen only his accusation, and had never been present at any examination of his; and the matter so standing, I had been very untrue to my service, if I had not delivered that opinion. But afterwards, upon a re-examination of some that charged him, who weakened their own testimony; and especially hearing himself *viva voce*, I went instantly

stantly to the Queen, out of the soundness of my conscience, not regarding what opinion I had formerly delivered, and told her Majesty, I was satisfied and resolved in my conscience, that for the reputation of the action, the plot was to countenance the action farther by him in respect of his place, than they had indeed any interest or intelligence with him. It is very true also, about that time her Majesty taking a liking of my pen, upon that which I formerly had done concerning the proceeding at *York-house*, and likewise upon some other declarations, which in former times by her appointment I put in writing, commanded me to pen that book, which was published for the better satisfaction of the world; which I did, but so, as never secretary had more particular and express directions and instructions in every point how to guide my hand in it; and not only so, but after that I had made a first draught thereof, and propounded it to certain principal counsellors by her Majesty's appointment, it was perused, weighed, censured, altered, and made almost anew, waiting according to their Lordships better consideration; wherein their Lordships and myself both were as religious and curious of truth, as desirous of satisfaction: and myself indeed gave only words and form of stile in pursuing their direction. And after it had passed their allowance, it was again exactly perused by the Queen herself, and some alterations made again by her appointment: nay, and after it was set to print, the Queen, who as your Lordship knoweth, as she was excellent in great matters, so she was exquisite in small; and noted that I could not forget my ancient respect to my Lord of *Essex*, in terming him ever my Lord of *Essex*, my Lord of *Essex*, almost in every page of the book, which she thought not fit, but would have it made *Essex*, or the late Earl of *Essex*; whereupon of force it was printed *de novo*, and the first copies suppressed by her peremptory commandment. And this, my good Lord, to my farthest remembrance, is all that passed wherein I had part; which I have set down as near as I could in the very words and speeches that were used, not because they are worthy the repetition, I mean those of mine own; but to the end your Lordship may lively and plainly discern between the face of truth, and a smooth tale: And the rather also, because in things that passed a good while since, the very words and phrases did sometimes bring to my remembrance the matters, wherein I report me to your honourable judgment, whether you do not see the traces of an honest man: and had I been as well believed either by the Queen or by my Lord, as I was well heard by them both, both my Lord had been fortunate, and so had myself in his fortune.

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

At your Lordship's honourable

commandments very humbly,

F. B.

OF THE PLANTATION IN IRELAND.
 CERTAIN
 CONSIDERATIONS
 TOUCHING THE
 PLANTATION
 IN
 IRELAND.

Presented to His MAJESTY, 1606.

IT seemeth God hath reserved to your Majesty's times two works, which amongst the works of Kings have the supreme pre-eminence; the union, and the plantation of kingdoms. For although it be a great fortune for a King to deliver or recover his kingdom from long continued calamities; yet in the judgment of those that have distinguished of the degrees of sovereign honour, to be a founder of estates or kingdoms, excelleth all the rest. For as in arts and sciences, to be the first inventor is more than to illustrate or amplify: and as in the works of God, the creation is greater than the preservation; and as in the works of nature, the birth and nativity is more than the continuance; so in kingdoms, the first foundation or plantation is of more noble dignity and merit than all that followeth. Of which foundations there being but two kinds; the first that maketh one of more; and the second, that maketh one of none; the latter resembling the creation of the world, which was *de nihilo ad quid*; and the former, the edification of the church, which was *de multiplici ad simplex, vel ad unum*: it hath pleased the divine providence, in singular favour to your Majesty, to put both these kinds of foundations or regenerations into your hand; the one, in the union of the island of *Britain*; the other, in the plantation of great and noble parts of the island of *Ireland*: which enterprizes being once happily accomplished; then that which was uttered by one of the best orators, in one of the worst verses, *O fortunatam natam me consule Romam*; may be far more truly and properly applied to your Majesty's acts; *natam te rege Britanniam; natam Hiberniam*: For he spake improperly of deliverance and preservation, but in these acts of yours it may be verified more naturally. For indeed unions and plantations are the very nativities or birth-days of kingdoms: wherein likewise your Majesty hath yet a fortune extraordinary, and differing from former examples in the same kind. For most part of unions and plantations of kingdoms have been founded in the effusion of blood; but your Majesty shall build *in solo puro, & in area pura*, that shall need no sacrifices expiatory for blood; and therefore, no doubt, under a higher and more assured blessing. Wherefore, as I adventured, when I was less known and less particularly bound to your Majesty, than since, by your undeserved favour I have been, to write somewhat touching the union, which your Majesty was pleased to accept, and which

which since I have to my power seconded by my travels, not only in discourse, but in action: so I am thereby encouraged to do the like, touching this matter of plantation; hoping that your Majesty will, through the weakness of my ability, discern the strength of my affection, and the honest and fervent desire I have to see your Majesty's person, name and times, blessed and exalted above those of your royal progenitors. And I was the rather invited this to do by the remembrance, that when the Lord Chief Justice deceased, *Popham*, served in the place wherein I now serve, and afterwards in the attorney's place, he laboured greatly in the last project, touching the plantation of *Munster*: which nevertheless, as it seemeth, hath given more light by the errors thereof, what to avoid, than by the direction of the same what to follow.

FIRST therefore, I will speak somewhat of the excellency of the work; and then, of the means to compass and effect it. For the excellency of the work, I will divide it into four noble and worthy consequences that will follow thereupon. The first of the four, is honour; whereof I have spoken enough already, were it not that the harp of *Ireland* puts me in mind of that glorious emblem or allegory, wherein the wisdom of antiquity did figure and shadow out the works of this nature. For the poets feigned, that *Orpheus* by the virtue and sweetness of his harp did call and assemble the beasts and birds, of their nature wild and savage, to stand about him, as in a theatre; forgetting their affections, of fierceness, of lust, and of prey; and listening to the tunes and harmonies of the harp; and soon after called likewise the stones and woods to remove, and stand in order about him: which fable was anciently interpreted of the reducing and plantation of kingdoms; when people of barbarous manners are brought to give over and discontinue their customs of revenge and blood, and of dissolute life, and of theft, and of rapine; and to give ear to the wisdom of laws and governments; whereupon immediately followeth the calling of stones for building and habitation; and of trees for the seats of houses, orchards, and enclosures, and the like.

THIS work therefore, of all other, most memorable and honourable, your Majesty hath now in hand; especially, if your Majesty join the harp of *David*, in casting out the evil spirit of superstition, with the harp of *Orpheus*, in casting out desolation and barbarism.

THE second consequence of this enterprize, is the avoiding of an inconvenience, which commonly attendeth upon happy times, and is an evil effect of a good cause. The revolution of this present age seemeth to incline to peace, almost generally in these parts; and your Majesty's most christian and virtuous affections do promise the same more especially to these your kingdoms. An effect of peace in fruitful kingdoms (where the stock of people receiving no consumption nor diminution by war, doth continually multiply and increase) must in the end be a surcharge or overflow of people more than the territories can well maintain; which many times insinuating a general necessity and want of means into all estates, doth turn external peace into internal troubles and seditions. Now what an excellent diversion of this inconvenience is ministred (by God's providence) to your Majesty in this plantation of *Ireland*? Wherein so many families may receive sustentations and fortunes; and the discharge of them also out of *England* and *Scotland* may prevent many seeds of future perturbations: so that it is, as if a man were troubled for the avoidance of water from the place where he hath built his house, and afterwards should advise with himself to cast those waters, and to turn them into fair pools or streams, for pleasure, provision, or use. So shall

shall your Majesty in this work have a double commodity in the avoidance of people here, and in making use of them there.

THE third consequence is the great safety that is like to grow to your Majesty's estate in general by this act; in discomfiting all hostile attempts of foreigners, which the weakness of that kingdom hath heretofore invited: wherein I shall not need to fetch reasons afar off, either for the general or particular. For the general, because nothing is more evident than that, which one of the *Romans* said of *Peloponnesus*: *Testudo intra tegumen tuta est*; the tortoise is safe within her shell: but if she put forth any part of her body, then it endangereth not only the part which is so put forth, but all the rest. And so we in armour, if any part be left naked, it puts in hazard the whole person. And in the natural body of man, if there be any weak or affected part, it is enough to draw rheums or malign humours unto it, to the interruption of the health of the whole body.

AND for the particular, the example is too fresh, that the indisposition of that kingdom hath been a continual attractive of troubles and infestations upon this estate; and though your Majesty's greatness doth in some sort discharge this fear, yet with your encrease of power it cannot be, but envy is likewise encreased.

THE fourth and last consequence is the great profit and strength which is like to redound to your crown, by the working upon this unpolish'd part thereof: whereof your Majesty (being in the strength of your years) are like, by the good pleasure of almighty God, to receive more than the first fruits; and your posterity a growing and springing vein of riches and power. For this island being another *Britain*, as *Britain* was said to be another world, is endowed with so many dowries of nature, (considering the fruitfulness of the soil, the ports, the rivers, the fishings, the quarries, the woods, and other materials; and especially the race and generation of men, valiant, hard, and active) as it is not easy, no not upon the continent, to find such confluence of commodities, if the hand of man did join with the hand of nature. So then for the excellency of the work, in the point of honour, policy, safety, and utility, here I cease.

FOR the means to effect this work, I know your Majesty shall not want the information of persons expert and industrious, which have served you there, and know the region: nor the advice of a grave and prudent council of estate here; which know the pulses of the hearts of people, and the ways and passages of conducting great actions: besides that, which is above all, which is that fountain of wisdom and universality which is in yourself: yet notwithstanding in a thing of so publick a nature, it is not amiss for your Majesty to hear variety of opinion: For as *Demosthenes* saith well; the good fortune of a prince or state, doth sometimes put a good motion into a fool's mouth. I do think therefore the means of accomplishing this work consisteth of two principal parts. The first, the invitation and encouragement of undertakers: the second, the order and policy of the project itself. For as in all engines of the hand, there is somewhat that giveth the motion and force, and the rest serveth to guide and govern the same: so is it in these enterprizes or engines of estate. As for the former of these, there is no doubt, but next unto the providence and finger of God, which writeth these virtuous and excellent desires in the tables of your Majesty's heart; your authority and your affection is *primus motor* in this cause: and therefore the more strongly and fully your Majesty shall declare yourself in it, the more shall you quicken and animate the whole proceeding. For this is an action, which as the worthiness of it doth bear it, so the nature of it requireth it to be

be carried in some height of reputation, and fit, in mine opinion, for pulpits and parliaments, and all places to ring and resound of it. For that which may seem vanity in some things, (I mean matter of fame) is of great efficacy in this case.

BUT now let me descend to the inferior spheres, and speak what co-operation in the subjects or undertakers may be raised and kindled, and by what means. Therefore to take plain grounds, which are the surest, all men are drawn into actions by three things, pleasure, honour, and profit. But before I pursue these three motives, it is fit in this place to interlace a word or two of the quality of the undertakers; wherein my opinion simply is, that if your Majesty shall make these portions of land, which are to be planted, as rewards or as suits, or as fortunes for those that are in want, and are likeliest to seek after them; that they will not be able to go through with the charge of good and substantial plantations, but will *deficere in opere medio*; and then this work will succeed, as *Tacitus* saith, *acribus initiis, sine incurioso*. So that this must rather be an adventure for such as are full, than a setting up of those that are low of means: for those men are fit indeed to perform these undertakings, which were fit to purchase dry reversions after lives or years, or such as were fit to put out money upon long returns.

I do not say, but that I think the undertakers themselves will be glad to have some captains, or men of service intermixed among them for their safety; but I speak of the generality of undertakers, which I wish were men of estate and plenty.

Now therefore it followeth well to speak of the aforesaid three motives; for it will appear the more, how necessary it is to allure by all means undertakers; since those men will be least fit which are like to be most in appetite of themselves, and those most fit which are like least to desire it.

FIRST therefore, for pleasure in this region or tract of soil, there are no warm winters, nor orange-trees, nor strange beasts, or birds, or other points of curiosity or pleasure, as there are in the *Indies* and the like: so as there can be found no foundation made upon matter of pleasure, otherwise than that the very general desire of novelty and experiment in some stirring natures may work somewhat; and therefore it is the other two points of honour and profit, whereupon we are wholly to rest.

FOR honour or countenance, if I shall mention to your Majesty, whether in wisdom you shall think convenient, the better to express your affection to the enterprize, and for a pledge thereof, to add the earldom of *Ulster* to the prince's titles, I shall but learn it out of the practice of King *Edward I.* who first used the like course, as a mean the better to restrain the country of *Wales*: and I take it, the prince of *Spain* hath the addition of a province in the kingdom of *Naples*; and other precedents I think there are, and it is like to put more life and encouragement into the undertakers.

ALSO considering the large territories which are to be planted, it is not unlike your Majesty will think of raising some nobility there; which if it be done merely upon new titles of dignity, having no manner of reference to the old; and if it be done also without putting too many portions into one hand; and lastly, if it be done without any great franchises or commands, I do not see any peril can ensue thereof: as on the other side, it is like it may draw some persons of great estate and means into the action, to the great furtherance and supply of the charges thereof.

AND lastly for knighthood, to such persons as have not attained it; or otherwise knighthood, with some new difference and precedence, it may

no doubt work with many. And if any man think that these things which I propound, are *aliquid nimis*, for the proportion of this action, I confess plainly, that if your Majesty will have it really and effectually performed, my opinion is, you cannot bestow too much sun-shine upon it. For *lunae radiis non maturefcit botrus*. Thus much for honour.

FOR profit, it will consist in three parts:

FIRST, The easy rates that your Majesty shall be pleased to give the undertakers of the land, they shall receive.

SECONDLY, The liberties which you may be pleased to confer upon them. When I speak of liberties, I mean not liberties of jurisdiction; as counties palatine, or the like, (which it seemeth hath been the error of the ancient donations and plantations in that country;) but I mean only liberties tending to commodity; as liberty to transport any of the commodities growing upon the countries new planted; liberty to import from hence all things appertaining to their necessary use, custom-free; liberty to take timber or other materials in your Majesty's woods there, and the like.

THE third is, ease of charge; that the whole mass of charge doth not rest upon the private purse of the undertakers.

FOR the two former of these, I will pass them over; because in that project, which with good diligence and providence hath been presented to your Majesty by your ministers of that kingdom, they are in my opinion well handled.

FOR the third, I will never despair, but that the parliament of *England*, if it may perceive, that this action is not a flash, but a solid and settled pursuit, will give aid to a work so religious, so politick, and so profitable. And the distribution of charge (if it be observed) falleth naturally into three kinds of charge, and every of those charges respectively ought to have its proper fountain and issue. For as there proceedeth from your Majesty's royal bounty and munificence, the gift of the land, and the other materials; together with the endowment of liberties; and as the charge which is private, as building of houses, stocking of grounds, victual, and the like, is to rest upon the particular undertakers: so whatsoever is publick, as building of churches, walling of towns, town-houses, bridges, causeways, or highways, and the like, ought not so properly to lie upon particular persons, but to come from the publick estate of this kingdom; to which this work is like to return so great an addition of glory, strength, and commodity.

FOR the project itself, I shall need to speak the less, in regard it is so considerately digested already for the county of *Tyrone*: and therefore my labour shall be but in those things wherein I shall either add to, or dissent from that which is set down; which will include five points or articles. First, they mention a commission for this plantation, which of all things is most necessary, both to direct and appease controversies, and the like.

TO this I add two propositions: the one, that which perhaps is meant, though not expressed, that the commissioners should for certain times reside and abide in some habitable town of *Ireland*, near in distance to the country where the plantation shall be; to the end, both that they may be more at hand, for the execution of the parts of their commission; and withal, it is like by drawing a concourse of people and tradesmen to such towns, it will be some help and commodity to the undertakers for things they shall stand in need of: And likewise, it will be a more safe place of receipt and store, wherein to unlade and depolite such provisions as are after to be employed.

THE second is, that your Majesty would make a correspondency between the commission there, and a council of plantation here; wherein I warrant myself, by the precedent of the like council of plantation for *Virginia*; an enterprize in my opinion differing as much from this, as *Amadis de Gaul* differs from *Caesar's* commentaries. But when I speak of a council of plantation, I mean some persons chosen by way of reference, upon whom the labour may rest, to prepare and report things to the council of estate here that concern that business. For although your Majesty have a grave and sufficient council in *Ireland*; from whom, and upon whom, the commissioners are to have assistance and dependence; yet that supplies not the purpose whereof I speak. For considering, that upon the advertisements, as well of the commissioners, as of the council of *Ireland* itself, there will be many occasions to crave directions from your Majesty, and your privy council here, which are busied with a world of affairs; it cannot but give a greater expedition, and some better perfection unto such directions and resolutions, if the matters may be considered of aforehand, by such, as may have a continual care of that cause. And it will be likewise a comfort and satisfaction to some principal undertakers, if they may be admitted of that council.

SECONDLY, There is a clause wherein the undertakers are restrained, that they shall execute the plantation in person; from which I must dissent, if I will consent with the grounds I have already taken. For it is not probable that men of great means and plentiful estates will indure the travel, diseasements, and adventures of going thither in person; but rather, I suppose, many will undertake portions as an advancement for their younger children or kinsfolks; or for the sweetness of the expectation of a great bargain in the end, when it is overcome. And therefore, it is like they will employ sons, kinsfolks, servants, or tenants, and yet be glad to have the estate in themselves. And it may be some again will join their purses together, and make as it were a partnership or joint-adventure, and yet man forth some one person by consent, for the executing of the plantation.

THIRDLY, There is a main point, wherein I fear the project made hath too much of the line and compass, and will not be so natural and easy to execute, nor yet so politic and convenient: and that is, that the buildings should be *sparsum* upon every portion; and the castle or principal house should draw the tenements and farms about it as it were into villages, hamlets, or endships; and that there should be only four corporate towns for the artificers and tradesmen.

My opinion is, that the building be altogether in towns, to be compounded as well of husbandries as of arts. My reasons are,

FIRST, When men come into a country vast, and void of all things necessary for the use of man's life, if they set up together in a place, one of them will the better supply the wants of the other: work-folks of all sorts will be the more continually on work without loss of time; when, if work fail in one place, they may have it fast by; the ways will be made more passable for carriages to those seats or towns, than they can be to a number of dispersed solitary places; and infinite other helps and easements scarcely to be comprehended in cogitation will ensue in vicinity and society of people; whereas if they build scattered, (as is projected) every man must have a *cornu-copia* in himself, for all things he must use, which cannot but breed much difficulty, and no less waste.

SECONDLY, It will draw out of the inhabited country of *Ireland* provisions and victuals, and many necessities, because they shall be sure of utterance; whereas

whereas in the dispersed habitations, every man must reckon only upon that that he brings with him, as they do in provisions of ships.

THIRDLY, the charge of *Barones*, as they call them, to be made about every castle or house, may be spared, when the habitations shall be congregated only into towns.

AND lastly, it will be a means to secure the country against future perils, in case of any revolt and defection; for by a slight fortification of no great charge, the danger of any attempts of *kierns* and sword-men may be prevented; the omission of which point, in the last plantation of *Munster*, made the work of years to be but the spoil of days: and if any man think it will draw people too far off, from the grounds they are to labour, it is to be understood, that the number of the towns be encreased accordingly; and likewise, the situation of them be as in the center, in respect of the portions assigned to them: for in the champaign countries of *England*, where the habitation useth to be in towns, and not dispersed, it is no new thing to go two miles off to plow part of their grounds; and two miles compass will take up a good deal of country.

THE fourth point, is a point wherein I shall differ from the project rather in quantity and proportion than in matter. There is allowed to the undertaker, within the five years of restraint, to alien a third part in fee farm, and to demise another third for forty years, which I fear will mangle the portions, and will be but a shift to make money of two parts; whereas I am of opinion, the more the first undertaker is forced to keep in his own hands, the more the work is like to prosper. For first, the person liable to the state here to perform the plantation, is the immediate undertaker. Secondly, the more his profit dependeth upon the annual and springing commodity, the more sweetness he will find in putting forward manurance and husbanding of the grounds, and therefore is like to take more care of it. Thirdly, since the natives are excluded, I do not see that any persons are like to be drawn over of that condition, as are like to give fines, and undertake the charge of building: for I am persuaded that the people transported will consist of gentlemen and their servants, and of labourers and hinds, and not of yeomen of any wealth; and therefore the charge of building, as well of the tenements and farms, as of the capital houses themselves, is like to rest upon the principal undertakers, which will be recompensed in the end to the full, and with much advantage, if they make no long estates or leases.

AND therefore this article to receive some qualification.

FIFTHLY, I should think it requisite that men of experience in that kingdom should enter into some particular consideration, of the charges and provisions of all kinds that will be incident to the plantation; to the end, that thereupon some advice may be taken for the furnishing and accommodating them most conveniently, aiding private industry and charge with publick care and order.

THUS I have expressed to your Majesty those simple and weak cogitations, which I have had in myself touching this cause, wherein I most humbly desire your pardon, and gracious acceptance of my good affection and intention. For I hold it for a rule, that there belongeth to great Monarchs, from faithful servants, not only the tribute of duty, but the oblations of cheerfulness of heart. And so I pray the Almighty to bless this great action, with your Majesty's care; and your care with happy success.

A D V I C E

T O T H E

K I N G,

T O U C H I N G

Mr. SUTTON'S ESTATE.

May it please your MAJESTY,

I Find it a positive precept of the old law, that there should be no sacrifice, without salt: the moral whereof (besides the ceremony) may be, that God is not pleased with the body of a good intention, except it be seasoned with that spiritual wisdom and judgment, as it be not easily subject to be corrupted and perverted: for salt, in the scripture, is a figure both of wisdom and lasting. This cometh into my mind upon this act of Mr. Sutton, which seemeth to me as a sacrifice without salt; having the materials of a good intention, but not powdered with any such ordinances and institutions as may preserve the same from turning corrupt, or at least from becoming unfavoury, and of little use. For though the choice of the feoffees be of the best, yet neither can they always live; and the very nature of the work itself, in the vast and unfit proportions thereof, being apt to provoke a mis-employment; it is no diligence of theirs, (except there be a digression from that model) that can excuse it from running the same way that gifts of like condition have heretofore done. For to design the *Charterhouse*, a building fit for a prince's habitation, for an hospital, is all one as if one should give in alms a rich embroidered cloak to a beggar. And certainly a man may see, *tanquam quae oculis cernuntur*, that if such an edifice with six thousand pounds revenue, be erected into one hospital, it will in small time degenerate, to be made a preferment of some great person to be master, and he to take all the sweet, and the poor to be stinted, and take but the crumbs; as it comes to pass in divers hospitals of this realm, which have but the names of hospitals, and are only wealthy benefices in respect of the mastership; but the poor, which is the *propter quid*, little relieved. And the like hath been the fortune of much of the alms of the *Roman* religion in their great foundations, which being begun in vain-glory and ostentation, have had their judgment upon them, to end in corruption and abuse. This meditation hath made me presume to write these few lines to your Majesty; being no better than good wishes, which your Majesty's great wisdom may make something or nothing of.

WHEREIN I desire to be thus understood, that if this foundation (such as it is) be perfect and good in law, then I am too well acquainted with your Majesty's disposition, to advise any course of power or profit that is not grounded upon a right: nay farther, if the defects be such as a court of equity may remedy and cure, then I wish that as St. Peter's shadow did cure diseases, so the very shadow of a good intention may cure defects of that nature. But

if there be a right, and birth-right planted in the heir, and not remediable by courts of equity, and that right be submitted to your Majesty, whereby it is both in your power and grace what to do; then I do wish that this rude mass and chaos of a good deed were directed rather to a solid merit, and durable charity, than to a blaze of glory, that will but crackle a little in talk, and quickly extinguish.

AND this may be done, observing the species of Mr. Sutton's intent, though varying in *individuo*: for it appears that he had in notion a triple good, an hospital, and a school, and maintaining of a preacher; which individuals refer to these three general heads; relief of power, advancement of learning, and propagation of religion. Now then if I shall set before your Majesty, in every of these three kinds, what it is that is most wanting in your kingdom; and what is like to be the most fruitful and effectual use of such a beneficence, and least like to be perverted; that I think shall be no ill scope of my labour, how meanly soever performed; for out of variety represented, election may be best grounded.

CONCERNING the relief of the poor; I hold some number of hospitals, with competent endowments, will do far more good than one hospital of an exorbitant greatness: for though the one course will be the more seen, yet the other will be the more felt. For if your Majesty erect many, besides the observing the ordinary maxim, *bonum, quo communius, eo melius*, choice may be made of those towns and places where there is most need, and so the remedy may be distributed as the disease is dispersed. Again, greatness of relief accumulated in one place, doth rather invite a swarm and surcharge of poor, than relieve those that are naturally bred in that place; like to ill-tempered medicines, that draw more humour to the part than they evacuate from it. But chiefly I rely upon the reason that I touched in the beginning, that in these great hospitals the revenues will draw the use, and not the use the revenues; and so through the mass of the wealth, they will swiftly tumble down to a mis-employment. And if any man say, that in the two hospitals in *London*, there is a precedent of greatness concurring with good employment; let him consider that those hospitals have annual governors, that they are under the superior care and policy of such a state as the city of *London*; and chiefly, that their revenues consist not upon certainties, but upon casualties and free gifts; which gifts would be with-held, if they appeared once to be perverted; so as it keepeth them in a continual good behaviour and awe to employ them aright; none of which points do match with the present case.

THE next consideration may be, whether this intended hospital, as it hath a more ample endowment than other hospitals have, should not likewise work upon a better subject than other poor; as that it should be converted to the relief of maimed soldiers, decayed merchants, householders aged, and destitute churchmen, and the like; whose condition being of a better sort than loose people and beggars, deserveth both a more liberal stipend and allowance, and some proper place of relief, not intermingled or coupled with the basest sort of poor; which project, though specious, yet, in my judgment, will not answer the designment in the event in these our times. For certainly few men in any vocation, which have been somebody, and bear a mind somewhat according to the conscience and remembrance of that they have been, will ever descend to that condition, as to profess to live upon alms and to become a corporation of declared beggars; but rather will chuse to live obscurely, and as it were to hide themselves with some private friends; so that the end of such an institution will be, that it will make the place a receptacle

cle of the worst, idlest, and most dissolute persons of every profession, and to become a cell of loiterers, and cast serving-men, and drunkards, with scandal rather than fruit to the commonwealth. And of this kind I can find but one example with us, which is the alms-knights of *Windsor*; which particular would give a man small encouragement to follow that precedent.

THEREFORE the best effect of hospitals is, to make the kingdom, if it were possible, capable of that law, that there be no beggar in *Israel*: for it is that kind of people that is a burthen, an eye-sore, a scandal, and a seed of peril and tumult in the state. But chiefly it were to be wished, that such a beneficence towards the relief of the poor were so bestowed, as not only the mere and naked poor should be sustained, but also, that the honest person which hath hard means to live, upon whom the poor are now charged, should be in some sort eased: for that were a work generally acceptable to the kingdom, if the publick hand of alms might spare the private hand of tax: and therefore, of all other employments of that kind, I commend most houses of relief and correction, which are mixt hospitals, where the impotent person is relieved, and the sturdy beggar buckled to work; and the unable person also not maintained to be idle (which is ever joined with drunkenness and impurity,) but is sorted with such work as he can manage and perform; and where the uses are not distinguished, as in other hospitals; whereof some are for aged and impotent, and some for children, and some for correction of vagabonds; but are general and promiscuous: so that they may take off poor of every sort from the country as the country breeds them: and thus the poor themselves shall find the provision, and other people the sweetness of the abatement of the tax. Now if it be objected, that houses of correction in all places have not done the good expected, (as it cannot be denied, but in most places they have done much good;) it must be remembered that there is a great difference between that which is done by the distracted government of justices of peace, and that which may be done by a settled ordinance, subject to a regular visitation, as this may be. And besides, the want hath been commonly in houses of correction of a competent and certain stock, for the materials of the labour, which in this case may be likewise supplied.

CONCERNING the advancement of learning, I do subscribe to the opinion of one of the wisest and greatest men of your kingdom: That for grammar schools there are already too many, and therefore no providence to add where there is excess: for the great number of schools which are in your Highness realm, doth cause a want, and doth cause likewise an overflow; both of them inconvenient, and one of them dangerous. For by means thereof they find want in the country and towns, both of servants for husbandry, and apprentices for trade: and on the other side, there being more scholars bred, than the state can prefer and employ; and the active part of that life not bearing a proportion to the preparative, it must needs fall out, that many persons will be bred unfit for other vocations, and unprofitable for that in which they are brought up; which fills the realm full of indigent, idle, and wanton people, which are but *materia rerum novarum*.

THEREFORE, in this point, I wish Mr. *Sutton's* intention were exalted a degree; that that which he meant for teachers of children, your Majesty should make for teachers of men; wherein it hath been my ancient opinion and observation, that in the universities of this realm, (which I take to be of the best endowed universities of *Europe*) there is nothing more wanting towards the flourishing state of learning, than the honourable and plentiful salaries of readers in arts and professions. In which point, as your Majesty's

Majesty's bounty already hath made a beginning, so this occasion is offered of God to make a proceeding. Surely, readers in the chair are as the parents in sciences, and deserve to enjoy a condition not inferior to their children that embrace the practical part; else no man will sit longer in the chair, than till he can walk to a better preferment: and it will come to pass as *Virgil* saith,

Ut patrum invalidi referant jejunia nati.

For if the principal readers, through the meanness of their entertainment, be but men of superficial learning, and that they shall take their place but in passage, it will make the mass of sciences want the chief and solid dimension, which is depth; and to become but pretty and compendious habits of practice. Therefore I could wish that in both the universities, the lectures as well of the three professions, divinity, law, and physick; as of the three heads of science, philosophy, arts of speech, and the mathematics; were raised in their pensions unto 100 *l. per annum* a-piece; which though it be not near so great as they are in some other places, where the greatness of the reward doth whistle for the ablest men out of all foreign parts to supply the chair; yet it may be a portion to content a worthy and able man; if he be likewise contemplative in nature, as those spirits are that are fittest for lectures. Thus may learning in your kingdom be advanced to a farther height; learning (I say) which under your Majesty, the most learned of Kings, may claim some degree of elevation.

CONCERNING propagation of religion, I shall in few words set before your Majesty three propositions; none of them devices of mine own, otherwise than that I ever approved them; two of which have been in agitation of speech, and the third acted.

THE first is a college for controversies, whereby we shall not still proceed single, but shall, as it were, double our files; which certainly will be found in the encounter.

THE second is, a receipt (I like not the word seminary, in respect of the vain vows, and implicate obedience, and other things tending to the perturbation of states, involved in that term) for converts to the reformed religion, either of youth or otherwise; for I doubt not but there are in *Spain*, *Italy*, and other countries of the papists, many whose hearts are touched with a sense of those corruptions, and an acknowledgment of a better way; which grace is many times smothered and choaked, through a worldly consideration of necessity and want; men not knowing where to have succour and refuge. This likewise, I hold a work of great piety, and a work of great consequence; that we also may be wise in our generation; and that the watchful and silent night may be used as well for sowing of good seed, as of tares.

THE third is, the imitation of a memorable and religious act of *Queen Elizabeth*; who finding a part of *Lancashire* to be extremely backward in religion, and the benefices swallowed up in impropriations, did by decree in the duchy, erect four stipends of 100 *l. per annum* a-piece for preachers well chosen to help the harvest; which have done a great deal of good in the parts where they have laboured. Neither do there want other corners in the realm, that would require for a time the like extraordinary help.

THUS have I briefly delivered unto your Majesty, mine opinion, touching the employment of this charity; whereby that mass of wealth which was in the owner, little better than a stack or heap of muck, may be spread over your kingdom to many fruitful purposes; your Majesty planting and watering, and God giving the encrease.

THEOLOGICAL WORKS.

A CONFESSION OF FAITH.

Written by the

RIGHT HONOURABLE
FRANCIS BACON,
BARON of *VERULAM*, &c.

I Believe that nothing is without beginning but God; no nature, no matter, no spirit, but one, only, and the same God. That God, as he is eternally almighty, only wise, only good in his nature; so he is eternally Father, Son, and Spirit in persons.

I BELIEVE that God is so holy, pure, and jealous, as it is impossible for him to be pleased in any creature, though the work of his own hands; so that neither angel, man, nor world, could stand, or can stand, one moment in his eyes, without beholding the same in the face of a Mediator; and therefore, that before him, with whom all things are present, the Lamb of God was slain before all worlds; without which eternal counsel of his, it was impossible for him to have descended to any work of creation; but he should have enjoyed the blessed and individual society of three persons in Godhead for ever.

BUT that out of his eternal and infinite goodness and love, purposing to become a Creator, and to communicate to his creatures, he ordained in his eternal counsel, that one person of the Godhead should be united to one nature, and to one particular of his creatures; that so, in the person of the Mediator, the true ladder might be fixed; whereby God might descend to his creatures, and his creatures might ascend to God: so that God, by the reconciliation of the Mediator, turning his countenance towards his creatures,

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(though not in equal light and degree) made way unto the dispensation of his most holy and secret will; whereby some of his creatures might stand, and keep their state: others might possibly fall and be restored; and others might fall and not be restored to their estate, but yet remain in being, though under wrath and corruption: all with respect to the Mediator; which is the great mystery and perfect center of all God's ways with his creatures; and unto which all his other works and wonders do but serve and refer.

THAT he chose (according to his good pleasure) man to be that creature, to whose nature the person of the eternal Son of God should be united; and amongst the generations of men, elected a small flock, in whom (by the participation of himself) he purposed to express the riches of his glory, all the ministration of angels, damnation of devils and reprobates, and universal administration of all creatures, and dispensation of all times; having no other end, but as the ways and ambages of God, to be further glorified in his saints, who are one with their head the Mediator, who is one with God.

THAT by the virtue of this his eternal counsel, he condescended of his own good pleasure, and according to the times and seasons to himself known, to become a Creator; and by his eternal Word created all things; and by his eternal Spirit doth comfort and preserve them.

THAT he made all things in their first estate good, and removed from himself the beginning of all evil and vanity into the liberty of the creature; but reserved in himself the beginning of all restitution to the liberty of his grace; using nevertheless, and turning the falling and defection of the creature (which to his prescience was eternally known) to make way to his eternal counsel, touching a Mediator, and the work he purposed to accomplish in him.

THAT God created spirits, whereof some kept their standing, and others fell: he created heaven and earth, and all their armies and generations; and gave unto them constant and everlasting laws, which we call nature; which is nothing but the laws of the creation; which laws nevertheless have had three changes or times, and are to have a fourth or last. The first, when the matter of heaven and earth was created without form: the second, the interim of perfection of every day's work: the third, by the curse, which notwithstanding was no new creation: and the last, at the end of the world, the manner whereof is not yet fully revealed; so as the laws of nature, which now remain and govern inviolably till the end of the world, began to be in force when God first rested from his works, and ceased to create; but received a revocation, in part, by the curse; since which time they change not.

THAT notwithstanding God hath rested and ceased from creating since the first sabbath, yet nevertheless, he doth accomplish and fulfil his divine will in all things, great and small, singular and general, as fully and exactly by providence as he could by miracle and new creation, though his working be not immediate and direct, but by compais; not violating nature, which is his own law upon the creature.

THAT at the first, the soul of man was not produced by heaven or earth, but was breathed immediately from God: so that the ways and proceedings of God with spirits are not included in nature; that is, in the laws of heaven and earth; but are reserved to the law of his secret will and grace: wherein God worketh still, and resteth not from the work of redemption, as he resteth from the work of creation; but continueth working till the end of the world: what time that work also shall be accomplished, and an eternal sabbath

bath shall ensue. Likewise, that whensoever God doth transcend the law of nature by miracles, (which may ever seem as new creations) he never cometh to that point or pass, but in regard of the work of redemption, which is the greater, and whereto all God's signs and miracles do refer.

THAT God created man in his own image, in a reasonable soul, in innocency, in free-will, and in sovereignty: that he gave him a law and commandment, which was in his power to keep, but he kept it not: that man made a total defection from God, presuming to imagine, that the commandments and prohibitions of God were not the rules of good and evil; but that good and evil had their own principles and beginnings, and lusted after the knowledge of those imagined beginnings; to the end, to depend no more upon God's will revealed, but upon himself and his own light, as a God; than the which there could not be a sin more opposite to the whole law of God: that yet nevertheless this great sin was not originally moved by the malice of man, but was insinuated by the suggestion and instigation of the devil, who was the first defected creature, and fell of malice, and not by temptation.

THAT upon the fall of man, death and vanity enter'd by the justice of God; and the image of God in man was defac'd; and heaven and earth which were made for man's use, were subdued to corruption by his fall; but then that instantly, and without intermission of time, after the word of God's law, became through the fall of man, frustrate as to obedience, there succeeded the greater word of the promise, that the righteousness of God might be wrought by faith.

THAT as well the law of God as the word of his promise, endure the same for ever: but that they have been revealed in several manners, according to the dispensation of times. For the law was first imprinted in that remnant of light of nature, which was left after the fall, being sufficient to accuse: then it was more manifestly expressed in the written law; and was yet more opened by the prophets: and lastly, expounded in the true perfection by the Son of God the great Prophet and perfect interpreter; as also fulfiller of the law. That likewise the word of the promise was manifested and revealed: first, by immediate revelation and inspiration; after by figures, which were of two natures: the one, the rites and ceremonies of the law; the other, the continual history of the old world, and church of the *Jews*; which though it be literally true, yet is it pregnant of a perpetual allegory and shadow of the work of the redemption to follow. The same promise or evangile was more clearly revealed and declared by the prophets, and then by the Son himself; and lastly by the Holy Ghost, which illuminateth the church to the end of the world.

THAT in the fulness of time, according to the promise and oath, of a chosen lineage, descended the blessed seed of the woman, Jesus Christ, the only begotten Son of God and Saviour of the world; who was conceived by the power and over-shadowing of the Holy Ghost, and took flesh of the virgin *Mary*: that the Word did not only take flesh, or was join'd to flesh, but was made flesh, though without confusion of substance or nature: so as the eternal Son of God, and the ever blessed Son of *Mary* was one person: so one, as the blessed virgin may be truly and catholically called, *Deipara*, the mother of God: so one, as there is no unity in universal nature, not that of the soul and body of man so perfect; for the three heavenly unities (whereof that is the second) exceed all natural unities: that is to say, the unity of the three persons in Godhead; the unity of God and man in Christ; and the unity of
Christ

A CONFESSION OF FAITH.

Christ and the church; the Holy Ghost being the worker of both these latter unities: for by the Holy Ghost was Christ incarnate and quickned in flesh, and by the Holy Ghost is man regenerate and quickened in spirit.

THAT Jesus, the Lord, became in the flesh a sacrificer, and a sacrifice for sin; a satisfaction and price to the justice of God; a meriter of glory and the kingdom; a pattern of all righteousness; a preacher of the word which himself was; a finisher of the ceremony; a corner-stone to remove the separation between *Jew* and *Gentile*; an intercessor for the church; a Lord of nature in his miracles; a conqueror of death and the power of darkness in his resurrection; and that he fulfilled the whole counsel of God; performing all his sacred offices, and anointing on earth; accomplished the whole work of the redemption and restitution of man to a state superior to the angels; (whereas the state of man by creation was inferior,) and reconciled and established all things according to the eternal will of the Father.

THAT in time Jesus the Lord was born in the days of *Herod*, and suffered under the government of *Pontius Pilate*, being deputy of the *Romans*, and under the high priesthood of *Caiaphas*, and was betrayed by *Judas* one of the twelve Apostles, and was crucified at *Hierusalem*; and after a true and natural death, and his body laid in the sepulchre, the third day he raised himself from the bonds of death, and arose and shewed himself to many chosen witnesses, by the space of divers days; and at the end of those days, in the sight of many, ascended into heaven; where he continueth his intercession; and shall from thence at the day appointed come in the greatest glory to judge the World.

THAT the sufferings and merits of Christ, as they are sufficient to do away the sins of the whole world, so they are only effectual to those which are regenerate by the Holy Ghost; who breatheth where he will of free grace; which grace, as a seed incorruptible, quickeneth the spirit of man, and conceiveth him anew a son of God and member of Christ: so that Christ, having man's flesh, and man having Christ's spirit, there is an open passage and mutual imputation, whereby sin and wrath was conveyed to Christ from man; and merit and life is conveyed to man from Christ: which seed of the Holy Ghost first figureth in us the image of Christ slain or crucified through a lively faith; and then reneweth in us the image of God in holiness and charity; though both imperfectly, and in degrees far differing even in God's elect; as well in regard of the fire of the Spirit, as of the illumination thereof; which is more or less in a large proportion: as namely, in the church before Christ; which yet nevertheless was partaker of one and the same salvation with us; and of one and the same means of salvation with us.

THAT the work of the Spirit, though it be not tied to any means in heaven or earth, yet it is ordinarily dispensed by the preaching of the word; and administration of the sacraments; the covenants of the fathers upon the children, prayer, reading; the censures of the church; the society of the godly; the cross and afflictions; God's benefits; his judgments upon others; miracles; the contemplation of his creatures: All which (though some be more principal) God useth as the means of vocation and conversion of his elect; not derogating from his power to call immediately by his grace, and at all hours and moments of the day (that is, of man's life) according to his good pleasure.

THAT the word of God, whereby his will is revealed, continued in revelation and tradition until *Moses*; and that the scriptures were from *Moses's* time to the times of the apostles and evangelists; in whose age, after the coming

coming of the Holy Ghost, the teacher of all truth, the book of the scriptures was shut and closed, so as not to receive any new addition; and that the church hath no power over the scriptures to teach or command any thing contrary to the written word, but is as the ark, wherein the tables of the first testament were kept and preserved: that is to say, the church hath only the custody and delivery over of the scriptures committed unto the same; together with the interpretation of them, but such only as is conceived from themselves.

THAT there is an universal or catholick church of God, dispersed over the face of the earth, which is Christ's spouse, and Christ's body; being gathered of the fathers of the old world, of the church of the *Jews*, of the spirits of the faithful dissolved, and the spirits of the faithful militant, and of the names yet to be born, which are already written in the book of life. That there is also a visible church, distinguished by the outward works of God's covenant, and the receiving of the holy doctrine, with the use of the mysteries of God, and the invocation and sanctification of his holy name. That there is also an holy succession in the prophets of the new testament and fathers of the church, from the time of the apostles and disciples, which saw our Saviour in the flesh unto the consummation of the work of the ministry; which persons are called from God by gift, or inward anointing; and the vocation of God followed by an outward calling and ordination of the church.

I BELIEVE, that the souls of such as die in the Lord, are blessed, and rest from their labours, and enjoy the sight of God; yet so, as they are in expectation of a farther revelation of their glory in the last day. At which time all flesh of man shall arise and be changed, and shall appear and receive from Jesus Christ his eternal judgment; and the glory of the saints shall then be full; and the kingdom shall be given up to God the Father: From which time all things shall continue for ever in that being and state, which then they shall receive. So as there are three times, (if times they may be called) or parts of eternity: The first, the time before beginnings, when the Godhead was only, without the being of any creature: the second, the time of the mystery, which continueth from the creation to the dissolution of the world: and the third, the time of the revelation of the sons of God; which time is the last, and is everlasting without change.

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IT is but ignorance, if any man find it strange, that the state of religion (especially in the days of peace) should be exercised and troubled with controversies: for as it is the condition of the church militant to be ever under trials, so it cometh to pass, that when the fiery trial of persecution ceaseth, there succeedeth another trial, which (as it were) by contrary blasts of doctrine, doth sift and winnow men's faith, and proveth whether they know God aright; even as that other of afflictions discovereth whether they love him better than the world. Accordingly was it foretold by Christ, saying, *That in the later times it should be said, loe here, loe there is Christ:* which is to be understood, not as if the very person of Christ should be assumed and counterfeited, but his authority and pre-eminence (which is to be the truth it self) should be challenged and pretended. Thus have we read and seen to be fulfilled that which followeth, *Ecce in deserto, ecce in penetralibus:* while some have sought the truth in the conventicles and conciliables of hereticks and sectaries; others in the external face and representation of the church, and both sorts have been seduced. Were it then that the controversies of the church of *England* were such, as they did divide the unity of the spirit, and not only such as do unswathe her of her bands, (the bands of peace) yet could it be no occasion for any pretended catholick to judge us, or for any irreligious person to despise us; or if it be, it shall but happen to us all as it hath used to do; to them to be hardened, and to us to endure the good pleasure of God. But now that our contentions are such, as we need not so much that general canon and sentence of Christ pronounced against hereticks; *Erratis, nescientes scripturas, & potestatem Dei;* you do err, not knowing the scripture, and the power of God: as we need the admonition of St. *James*, *Let every man be swift to hear, slow to speak, slow to wrath;* and that the wound is no way dangerous, except we poison it with our remedies: as the former sort of men have less reason to make themselves musick in our discord, so I have good hope that nothing shall displease our selves, which shall be sincerely and modestly propounded for the appeasing of these dissensions. For if any shall be offended at this voice, *vos estis fratres;* ye are brethren, why strive ye? he shall give a great presumption against himself, that he is the party that doth his brethren wrong.

THE controversies themselves I will not enter into, as judging, that the disease requireth rather rest than any other cure. Thus much we all know and confess, that they be not of the highest nature, for they are not touch-

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ing the high mysteries of faith, such as detained the churches for many years after their first peace, what time the hereticks moved curious questions, and made strange anatomies of the natures and person of Christ; and the catholick fathers were compelled to follow them with all subtlety of decisions and determinations to exclude them from their evasions, and to take them in their labyrinths; so as it is rightly said, *illis temporibus, ingeniosa res fuit, esse Christianum*; in those days it was an ingenious and subtle thing to be a Christian.

NEITHER are they concerning the great parts of the worship of God, of which it is true, that *non servatur unitas in credendo, nisi eadem adsit in colendo*; there will be kept no unity in believing, except it be entertained in worshipping; such as were the controversies of the east and west churches touching images, and such as are many of those between the church of Rome and us; as about the adoration of the Sacrament, and the like; but we contend about ceremonies, and things indifferent, about the external policy and government of the church: in which kind, if we would but remember that the ancient and true bonds of unity are one faith, one baptism, and not one ceremony, one policy; if we would observe the league amongst Christians that is penned by our Saviour, *be that is not against us is with us*; if we could but comprehend that saying, *differentiae rituum commendant unitatem doctrinae*; the diversities of ceremonies do set forth the unity of doctrine; and that *babet religio quae sunt aeternitatis, habet quae sunt temporis*; religion hath some things which belong to eternity, and some things which pertain to time: and if we did but know the virtue of silence, and slowness to speak, commended by St. James, our controversies of themselves would close up and grow together: but most especially, if we would leave the overweening and turbulent humours of these times, and revive the blessed proceeding of the Apostles and Fathers of the primitive church, which was in the like and greater cases not to enter into assertions and positions, but to deliver counsels and advices, we should need no other remedy at all; *si eadem consulis, (frater) quae affirmas, consulenti debetur reverentia, cum non debeatur fides affirmanti*; brother, if that which you set down as an assertion, you would deliver by way of advice, there were reverence due to your counsel, whereas faith is not due to your affirmation. St. Paul was content to speak thus, *Ego, non Dominus*, I, and not the Lord: *Et, secundum consilium meum*; according to my counsel. But now men do too lightly say, *non ego, sed Dominus*; not I, but the Lord: yea, and bind it with an heavy denunciation of his judgments to terrify the simple, which have not sufficiently understood out of Solomon, *That the causeless curse shall not come*.

THEREFORE seeing the accidents are they which breed the peril, and not the things themselves in their own nature, it is meet the remedies be applied unto them, by opening what it is on either part, that keepeth the wound green, and formalizeth both sides to a farther opposition, and worketh an indisposition in mens minds to be reunited, where no occasion is pretended. But I find in reason, that peace is best built upon a repetition of wrongs; and in example, that the speeches which have been made by the wisest men, *de concordia ordinum*, have not abstained from reducing to memory the extremities used on both parts; so as it is true which is said, *Qui pacem tractat non repetitis conditionibus dissidii, is magis animos hominum dulcedine pacis fallit, quam aequitate componit*.

AND first of all, it is more than time that there were an end and surcease made of this immodest and deformed manner of writing lately entertained, whereby

whereby matter of religion is handled in the style of the stage. Indeed, bitter and earnest writing must not hastily be condemned; for men cannot contend coldly, and without affection, about things which they hold dear and precious. A politick man may write from his brain, without touch and sense of his heart; as in a speculation that appertaineth not unto him; but a feeling Christian will express in his words a character of hate or love. The later of which, as I could wish rather embraced, being more proper for these times, yet is the former warranted also by great examples.

BUT to leave all reverent and religious compassion towards evils, or indignation towards faults, and to turn religion into a comedy or satire; to search and rip up wounds with a laughing countenance, to intermix scripture and scurrility sometime in one sentence, is a thing far from the reverence of a Christian, and scant becoming the honest regard of a sober man. *Non est major confusio quam serii & joci.* There is no greater confusion, than the confounding of jest and earnest. The Majesty of religion, and the contempt and deformity of things ridiculous, are things as distant as things may be. Two principal causes have I ever known of atheism, curious controversies, and prophane scoffing: now that these two are joined in one, no doubt that sect will make no small progression.

AND here I do much esteem the wisdom and religion of that Bishop which replied to the first pamphlet of this kind, who remembered that a fool was to be answered, but not by becoming like unto him; and considered the matter which he handled, and not the person with whom he dealt.

Job speaking of the majesty and gravity of a judge in himself, saith, *If I did smile, they believed it not*: as if he should have said, if I diverted, or glanced upon conceit of mirth, yet mens minds were so possessed with a reverence of the action in hand, as they could not receive it. Much more ought not this to be amongst Bishops and Divines disputing about holy things. And therefore as much do I mislike the invention of him who (as it seemeth) pleased himself in it as in no mean policy, that these men are to be dealt withal at their own weapons, and pledged in their own cup. This seemed to him as profound a device, as when the Cardinal *Sanseverino* counselled *Julius* the second to encounter the council of *Pisa* with the council of *Lateran*; or as lawful a challenge as Mr. *Jewel* made to confute the pretended Catholics by the Fathers; but those things will not excuse the imitation of evil in another. It should be contrariwise with us, as *Caesar* said, *Nil malo, quam eos similes esse sui, & me mei.* But now, *Dum de bonis contendimus, de malis consentimus*: while we differ about good things, we agree in evil.

SURELY, if I were asked of these men, who were the more to be blamed? I should percase remember the proverb, that the second blow maketh the fray; and the saying of an obscure fellow; *qui replicat, multiplicat*; he that replieth, multiplieth. But I would determine the question with this sentence; *alter principium malo dedit, alter modum abstulit*: by the one means we have a beginning, and by the other we shall have none end.

AND truly, as I do marvel that some of those preachers which call for reformation (whom I am far from wronging so far, as to join them with these scoffers) do not publish some declaration, whereby they may satisfy the world, that they dislike their cause should be thus solicited; so I hope assuredly, that my lords of the clergy have none intelligence with this interlibelling, but do altogether disallow that their credit should be thus defended. For though I observe in one of them many glosses, whereby the man would insinuate himself into their favours, yet I find it to be ordinary, that many pres-
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sing and fawning persons do misconjecture of the humours of men in authority, and many times, *Veneri immolant suum*, they seek to gratify them with that which they most dislike: for I have great reason to satisfy myself touching the judgment of my lords the bishops in this matter, by that which was written by one of them, which I mentioned before with honour. Nevertheless I note, there is not an indifferent hand carried towards these pamphlets as they deserve; for the one sort flieth in the dark, and the other is uttered openly; wherein I might advise that side out of a wise writer who hath set it down, that, *punitis ingenii gliscit autoritas*.

AND indeed we see it ever falleth out, that the forbidden writing is always thought to be certain sparks of a truth that fly up into the faces of those that seek to choak it and tread it out; whereas a book authorized is thought to be but *temporis voces*, the language of the time. But in plain truth I do find (to mine understanding) these pamphlets as meet to be suppressed as the other. First, because as the former sort doth deface the government of the church in the persons of the Bishops and Prelates, so the other doth lead into contempt the exercises of religion in the persons of sundry preachers; so as it disgraceth an higher matter, though in the meaner person.

NEXT, I find certain indiscreet and dangerous amplifications, as if the civil government itself of this state had near lost the force of her sinews, and were ready to enter into some convulsion, all things being full of faction and disorder, which is as unjustly acknowledged, as untruly affirmed: I know his meaning is to enforce this irreverent and violent impugning of the government of Bishops, to be a suspected forerunner of a more general contempt. And I grant there is a sympathy between the estates, but no such matter in the civil policy, as deserveth so dishonourable a taxation.

To conclude this point: As it were to be wished that these writings had been abortive, and never seen the sun; so the next is, since they be common abroad, that they be censured (by all that have understanding and conscience) as the intemperate extravagancies of some light persons. Yea farther, that men beware, except they mean to adventure to deprive themselves of all sense of religion, and to pave their own hearts, and make them as the high way, how they may be conversant in them; and much more how they delight in that vein, but rather to turn their laughing into blushing, and to be ashamed as of a short madness, that they have in matters of religion taken their disport and solace. But this perchance is of these faults which will be soonest acknowledged; though I perceive, nevertheless, that there want not some who seek to blanch and excuse it.

BUT to descend to a sincere view and consideration of the accidents and circumstances of these controversies, wherein either part deserveth blame or imputation, I find generally, in causes of church matters, that men do offend in some or all of these five points.

THE first is, the giving occasion unto the controversies; and also the inconsiderate and ungrounded taking of occasion.

THE next is, the extending and multiplying the controversies to a more general opposition or contradiction than appeareth at the first propounding of them, when mens judgments are least partial.

THE third is, the passionate and unbrotherly practices and proceedings of both parts, towards the persons each of others, for their discredit and suppression.

THE fourth is, the courses holden and entertained on either side, for the drawing of their partizans to a more strait union within themselves, which ever importeth a farther distraction of the entire body.

THE last is, the undue and inconvenient propounding, publishing, and debating of the controversies. In which point the most palpable error hath been already spoken of, as that, which through the strangeness and freshness of the abuse, first offereth itself to the conceits of all men.

Now concerning the occasion of the controversies, it cannot be denied, but that the imperfections in the conversation and government of those which have chief place in the church, have ever been principal causes and motives of schisms and divisions. For while the Bishops and Governors of the church continue full of knowledge and good works; whilst they feed the flock indeed; whilst they deal with the secular states in all liberty and resolution according to the majesty of their calling, and the precious care of souls imposed upon them, so long the church is situated as it were upon an hill; no man maketh question of it, or seeketh to depart from it; but when these virtues in the fathers and leaders of the church have lost their light, and that they wax worldly, lovers of themselves, and pleasers of men, then men begin to grope for the church as in the dark, they are in doubt whether they be the successors of the Apostles, or of the *Pharisees*: yea, howsoever they sit in *Moses* chair, yet they can never speak, *tanquam auctoritatem habentes*, as having authority, because they have lost their reputation in the consciences of men, by declining their steps from the way which they trace out to others; so as men had need continually have founding in their ears this same, *nolite exire, go not out*; so ready are they to depart from the church upon every voice. And therefore it is truly noted by one that writeth as a natural man, that the hypocrisy of the fryers did, for a great time, maintain and bear out the irreligion of Bishops and Prelates.

FOR this is the double policy of the spiritual enemy, either by counterfeit holiness of life to establish and authorize errors; or by corruption of manners, to discredit and draw in question truth and things lawful. This concerneth my lords the bishops, unto whom I am witness to myself, that I stand affected as I ought: No contradiction hath supplanted in me the reverence that I owe to their calling; neither hath any detraction or calumny imbas'd mine opinion of their persons. I know some of them whose names are most pierced with these accusations, to be men of great virtues; although the indisposition of the times, and the want of correspondence, many ways is enough to frustrate the best endeavours in the edifying of the church. And for the rest, generally, I can condemn none. I am no judge of them that belong to so high a matter; neither have I two witnesses. And I know it is truly said of fame, that

— *Pariter facta, atque infecta canebat.*

THEIR taxations arise not all from one coast; they have many and different enemies ready to invent slander, more ready to amplify it, and most ready to believe it. And *Magnes mendacii credulitas*; credulity is the adamant of lyes. But if any be, against whom the supreme Bishop hath not a few things, but many things; if any have lost his first love; if any be neither hot nor cold; if any have stumbled too fondly at the threshold, in such sort that he cannot sit well, that entered ill; it is time they return whence they are fallen, and confirm the things that remain.

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GREAT is the weight of this fault; *Et eorum causa abhorrebant homines a sacrificio Domini*: and for their cause did men abhor the adoration of God. But howsoever it be, those which have sought to defame them and cast contempt upon them, are not to be excused.

It is the precept of *Solomon* that the rulers be not reproached; no, not in our thought: but that we draw our very conceit into a modest interpretation of their doings. The holy angel would give no sentence of blasphemy against the common slanderer, but said, *Increpet te Dominus*; the Lord rebuke thee. The Apostle *St. Paul*, though against him that did pollute sacred justice with tyrannous violence, he did justly denounce the judgment of God, saying; *percutiet te Dominus*: the Lord will strike thee; yet in saying, *paries dealbate*, he thought he had gone too far, and retracted it: whereupon a learned father said, *ipsum quamvis inane nomen, & umbram sacerdotis expavit*.

THE ancient councils and synods (as is noted by the ecclesiastical story) when they deprived any Bishop, never recorded the offence; but buried it in perpetual silence: only *Cham* purchased his curse by revealing his father's disgrace; and yet a much greater fault is it to ascend from their person to their calling, and draw that in question. Many good fathers spake rigorously and severely of the unworthiness of Bishops; as if presently it did forfeit, and cease their office. One saith, *sacerdotes nominamur, & non sumus*: we are called priests, but priests we are not. Another saith, *nisi bonum opus amplectaris, episcopus esse non potes*: except thou undertake the good work, thou canst not be a Bishop; yet they meant nothing less than to move doubt of their calling or ordination.

THE second occasion of controversies, is the nature and humour of some Men. The church never wanteth a kind of persons which love the salutation of *Rabbi, Master*; not in ceremony or complement, but in an inward authority which they seek over mens minds, in drawing them to depend upon their opinions, and to seek knowledge at their lips. These men are the true successors of *Diotrephes*, the lover of pre-eminence, and not Lord Bishops. Such spirits do light upon another sort of natures, which do adhere to these men; *quorum gloria in obsequio*; stiff followers, and such as pretend zeal marvelously for those whom they have chosen for their masters. This later sort, for the most part, are men of young years, and superficial understanding, carried away with partial respects of persons; or with the enticing appearance of godly names and pretences: *Pauci res ipsas sequuntur, plures nomina rerum, plurima nomina magistrorum*; few follow the things themselves, more the names of the things, and most the names of their masters.

ABOUT these general affections are wreathed and interlaced accidental and private emulations and discontentments, all which together, break forth into contentions; such as either violate truth, sobriety, or peace. These generalities apply themselves. The universities are the seat or the continent of this disease; whence it hath been, and is derived into the rest of the realm. There men will no longer be *è numero* of the number. There do others side themselves before they know their right hand from their left: so it is true which is said, *transcunt ab ignorantia ad praejudicium*, they skip from ignorance to a prejudicate opinion, and never take a sound judgment in their way. But as it is well noted, *inter juvenile judicium & senile praejudicium, omnis veritas corrumpitur*: when men are indifferent, and not partial, then their judgment is weak and unripe, through want of years: and when it groweth to strength and ripeness, by that time it is forestalled with such a number of prejudicate opinions,

opinions, as it is made unprofitable: so as between these two all truth is corrupted. In the mean while, the honourable names of sincerity, reformation, and discipline are put in the fore ward: so as contentions and evil zeals cannot be touched, except these holy things be thought first to be violated. But howsoever, they shall infer the solicitation for the peace of the church to proceed from carnal sense, yet I will conclude ever with the Apostle Paul: *Cum sit inter vos zelus & contentio, nonne carnales estis?* While there is amongst you zeal and contention, are ye not carnal? And howsoever they esteem the compounding of controversies to favour of man's wisdom and human policy, and think themselves led by the wisdom which is from above; yet I say with St. James: *Non est ista sapientia de sursum descendens, sed terrena, animalis, diabolica: Ubi enim zelus & contentio, ibi inconstantia & omne opus prævum.* Of this inconstancy it is said by a learned father: *Procedere volunt non ad perfectionem, sed ad permutationem;* they seek to go forward still, not to perfection, but to change.

THE third occasion of controversies I observe to be an extreme and unlimited detestation of some former heresy or corruption of the church already acknowledged and convicted. This was the cause that produced the heresy of Arius, grounded especially upon detestation of gentilism, lest the Christians should seem by the assertion of the equal Divinity of our Saviour Christ, to approach unto the acknowledgment of more Gods than one. The detestation of the heresy of Arius produced that of Sabellius; who holding for execrable the dissimilitude which Arius pretended in the Trinity, fled so far from him as he fell upon that other extremity to deny the distinction of persons; and to say they were but only names of several offices and dispensations. Yea, most of the heresies and schisms of the church have sprung up of this root; while men have made it as it were their scale, by which to measure the bounds of the most perfect religion; taking it by the farthest distance from the error last condemned. These be *postumi hæresum filii*; heresies that arise out of the ashes of other heresies that are extinct and amortized.

THIS manner of apprehension doth in some degree possess many in our times. They think it the true touchstone to try what is good and evil, by measuring what is more or less opposite to the institutions of the church of Rome, be it ceremony, be it policy or government; yea, be it other institutions of greater weight, that is ever most perfect which is removed most degrees from that church; and that is ever polluted and blemished, which participateth in any appearance with it. This is a subtle and dangerous conceit for men to entertain; apt to delude themselves, more apt to seduce the people, and most apt of all to calumniate their adversaries. This surely (but that a notorious condemnation of that position was before our eyes) had long since brought us to the re-baptization of children, baptized according to the pretended catholick religion: for I see that which is a matter of much like reason, which is the re-ordaining of priests, is a matter already resolutely maintained. It is very meet that men beware how they be abused by this opinion; and that they know that it is a consideration of much greater wisdom and sobriety to be well advised, whether in general demolition of the institutions of the church of Rome, there were not (as men's actions are imperfect) some good purged with the bad, rather than to purge the church, as they pretend every day anew; which is the way to make a wound in the bowels, as is already begun.

THE fourth and last occasion of these controversies, (a matter which did also trouble the church in former times) is the partial affectation and imitation of foreign churches. For many of our men (during the time of persecution and since) having been conversant in churches abroad, and received a great impression of the form of government there ordained, have violently sought to intrude the same upon our church. But I answer: *Consentiamus in eo quod convenit, non in eo quod receptum est*; let us agree in this, that every church do that which is convenient for the state of itself, and not in particular customs. Although their churches had received the better form, yet many times it is to be sought, *non quod optimum, sed e bonis quid proximum*; not that which is best, but of good things which is the best and readiest to be had. Our church is not now to plant; it is settled and established. It may be, in civil states a republick is a better policy than a kingdom: yet, God forbid that lawful kingdoms should be tied to innovate and make alterations. *Qui mala introducit, voluntatem Dei oppugnat revelatam in verbo; qui nova introducit, voluntatem Dei oppugnat revelatam in rebus*: he that bringeth in evil customs resisteth the will of God revealed in his word; he that bringeth in new things resisteth the will of God revealed in the things themselves. *Consule providentiam Dei cum verbo Dei*: take counsel of the providence of God, as well as of his word. Neither yet do I admit that their form, although it were possible and convenient, is better than ours, if some abuses were taken away. The parity and equality of ministers is a thing of wonderful great confusion, and so is an ordinary government by synods, which doth necessarily ensue upon the other.

IT is hard in all causes, but especially in religion, when voices shall be numbred and not weighed: *Equidem, saith a wise father, ut vere quod res est scribam, prorsus decrevi fugere omnem conventum episcoporum; nullius enim concilii bonum exitum unquam vidi; concilia enim non minuunt mala, sed augent potius*: to say the truth, I am utterly determined never to come to any council of bishops; for I never yet saw good end of any council; for councils abate not ill things, but rather increase them. Which is to be understood not so much of general councils as of synods, gathered for the ordinary government of the church. As for the deprivation of bishops, and such like causes, this mischief hath taught the use of archbishops, patriarchs and primates; as the abuse of them since hath taught men to dislike them.

BUT it will be said; look to the fruits of the churches abroad and ours. To which I say, that I beseech the Lord to multiply his blessings and graces upon those churches an hundred fold. But yet it is not good, that we fall on the numbring of them; it may be our peace hath made us more wanton: it may be also, (though I would be loth to derogate from the honour of those churches, were it not to remove scandals) that their fruits are as torches in the dark, which appear greatest afar off. I know they may have some strict orders for the repressing of sundry excesses: But when I consider of the censures of some persons, as well upon particular men as upon churches, I think on the saying of a Platonist, who saith, *certe vitia irascibilis partis animae sunt gradu praviora, quam concupiscibilis, tametsi occultiora*: a matter that appeared much by the ancient contentions of bishops. God grant that we may contend with other churches, as the vine with the olive, which of us shall bear the best fruit; and not as the briar with the thistle, which of us is most unprofitable. And thus much touching the occasions of these controversies.

Now, briefly to set down the growth and progression of the controversies; whereby will be verified the saying of Solomon: *That the course of contention is to be stopped at the first; being else as the waters, which if they gain a breach, it will hardly ever be recovered.*

It may be remembered, that on that part, which call for reformation, was propounded first, some dislike of certain ceremonies, supposed to be superstitious; some complaint of dumb ministers who possess rich benefices; and some invectives against the idle and monastical continuance within the universities, by those who had livings to be resident upon, and such like abuses: Thence they went on to condemn the government of bishops as an hierarchy remaining to us, of the corruptions of the *Roman church*, and to except to sundry institutions in the church, as not sufficiently delivered from the pollutions of former times.

AND lastly, they are advanced to define of an only and perpetual form of policy in the church; which without consideration of possibility and foresight of peril, and perturbation of the church and state, must be erected and planted by the magistrate. Here they stay. Others not able to keep footing in so steep ground, descend farther; that the same must be entered into and accepted of the people at their peril without the attending of the establishment of authority. And so in the mean time they refuse to communicate with us, reputed us to have no church. This has been the progression of that side: I mean of the generality. For I know, some persons (being of the nature, not only to love extremities, but also to fall to them without degrees) were at the highest strain at the first.

THE other part, which maintaineth the present government of the church, hath not kept one tenour neither. First, those ceremonies which were pretended to be corrupt, they maintained to be things indifferent, and opposed the examples of the good times of the church to that challenge which was made unto them; because they were used in the later superstitious times. Then were they also content mildly to acknowledge many imperfections in the church: as tares coming up amongst the corn; which yet (according to the wisdom taught by our Saviour) were not with strife to be pulled up, lest it might spoil and supplant the good corn, but to grow on together till the harvest. After they grew to a more absolute defence and maintenance of all the orders of the church, and stiffly to hold, that nothing was to be innovated; partly because it needed not, partly because it would make a breach upon the rest. Hence (exasperated through contentions) they are fallen to a direct condemnation of the contrary part; as of a sect. Yea, and some indiscreet persons have been bold in open preaching, to use dishonourable and derogatory speech and censure of the churches abroad; and that so far, as some of our men (as I have heard) ordained in foreign parts, have been pronounced to be no lawful ministers. Thus we see the beginnings were modest, but the extremes are violent; so as there is almost as great a distance now of either side from it self, as was at the first of one from the other. And surely, though my meaning and scope be not (as I said before) to enter into the controversies themselves, yet I do admonish the maintainers of the above-named discipline, to weigh and consider seriously and attentively, how near they are unto them, with whom I know they will not join. It is very hard to affirm, that the discipline which they say we want, is one of the essential parts of the worship of God; and not to affirm withal, that the people themselves, upon peril of salvation, without staying for the magistrate, are to gather themselves into it. I demand, if a civil state should receive the preaching

ing of the word and baptism, and interdict and exclude the sacrament of the Lord's supper, were not men bound upon danger of their souls to draw themselves to congregations, wherein they might celebrate this mystery, and not to content themselves with that part of God's worship which the magistrate had authorised? This I speak, not to draw them into the mislike of others, but into a more deep consideration of themselves: *Fortasse non redeunt, quia suum progressum non intelligunt.*

AGAIN, to my lords the bishops I say, that it is hard for them to avoid blame, (in the opinion of an indifferent person) in standing so precisely upon altering nothing: *leges, novis legibus non recreatae, acescunt*; laws not refreshed with new laws, wax sour. *Qui mala non permutat, in bonis non perseverat*; without change of ill, a man cannot continue the good. To take away many abuses, supplanteth not good orders, but establisheth them. *Morosa moris retentio, res turbulenta est, aequae ac novitas*; a contentious retaining of custom is a turbulent thing as well as innovation. A good husband is ever pruning in his vineyard or his field; not unseasonably indeed, not unskilfully, but lightly; he findeth ever somewhat to do. We have heard of no offers of the bishops of bills in parliament; which no doubt proceeding from them to whom it properly belongeth, would have every where received acceptance. Their own constitutions and orders have reformed them little. Is nothing amiss? Can any man defend the use of excommunication as a base process to lackey up and down for duties and fees; it being a precursory judgment of the later day?

Is there no mean to train and nurse up ministers? (for the yield of the universities will not serve, though they were never so well governed:) to train them, I say, not to preach, (for that every man confidently adventureth to do) but to preach soundly, and to handle the scriptures with wisdom and judgment? I know prophesying was subject to great abuse, and would be more abused now; because heat of contentions is encreased: but I say, the only reason of the abuse was, because there was admitted to it a popular auditory, and it was not contained within a private conference of ministers. Other things might be spoken of. I pray God to inspire the bishops with a fervent love and care of the people; and that they may not so much urge things in controversy, as things out of controversy; which all men confess to be gracious and good. And thus much for the second point.

Now, as to the third point of unbrotherly proceeding on either part, it is directly contrary to my purpose to amplify wrongs: it is enough to note and number them; which I do also, to move compassion and remorse on the offending side, and not to animate challengers and complaints on the other. And this point (as reason is) doth chiefly touch that side which can do most: *Injuriae potentiorum sunt*; injuries come from them that have the upper hand.

THE wrongs of them which are possessed of the government of the church towards the other, may hardly be dissembled or excused: they have charged them as though they denied tribute to *Caesar*, and withdrew from the civil magistrate the obedience which they have ever performed and taught. They have sorted and coupled them with the family of love, whose heresies they have laboured to destroy and confute. They have been swift of credit to receive accusations against them, from those that have quarrelled with them, but for speaking against sin and vice. Their accusations and inquisitions have been strict, swearing men to blanks and generalities, (not included within compass of matter certain, which the party which is to take the oath may

may comprehend) which is a thing captious and strainable. Their urging of subscription to their own articles, is but *laccere, & irritare morbos ecclesiae*, which otherwise would spend and waste themselves. *Non consensum quaerit sed dissidium, qui, quod factis praestatur, in verbis exigit*: He seeketh not unity; but division, which exacteth that in words, which men are content to yield in action. And it is true, there are some which (as I am persuaded) will not easily offend by inconformity, who notwithstanding make some conscience to subscribe; for they know this note of inconstancy and defection, from that which they have long held, shall disable them to do that good which otherwise they might do: for such is the weakness of many, that they think their ministry should be thereby discredited. As for their easy silencing of them in such great scarcity of preachers, it is to punish the people, and not them. Ought they not (I mean the bishops) to keep one eye open, to look upon the good that those men do, not to fix them both upon the hurt that they suppose cometh by them? Indeed, such as are intemperate and incorrigible, God forbid they should be permitted to preach: but shall every inconsiderate word, sometimes captiously watched, and for the most part hardly enforced, be as a forfeiture of their voice and gift in preaching? As for sundry particular molestations, I take no pleasure to recite them. If a minister shall be troubled for saying in baptism, *do you believe*, for *dost thou believe*? If another shall be called in question for praying for her Majesty, without the additions of her style; whereas the very form of prayer in the book of Common-Prayer hath thy servant *Elizabeth*, and no more: If a third shall be accused upon these words uttered touching the controversies, *tollatur lex, & fiat certamen*; (whereby was meant, that the prejudice of the law removed, either reasons should be equally compared) of calling the people to sedition and mutiny; as if he had said, away with the law, and try it out with force: If these, and other like particulars be true, which I have but by rumour, and cannot affirm; it is to be lamented that they should labour amongst us with so little comfort. I know restrained governments are better than remis; and I am of his mind that said, better is it to live where nothing is lawful, than where all things are lawful. I dislike that laws should not be continued, or disturbers be unpunished: but laws are likened to the grape, that being too much pressed yields an hard and unwholesome wine. Of these things I must say; *ira viri non operatur justitiam Dei*; the wrath of man worketh not the righteousness of God.

As for the injuries of the other part, they be *ictus inermes*; as it were headless arrows: they be fiery and eager invectives, and (in some fond men) uncivil and irreverent behaviour towards their superiors. This last invention also which exposeth them to derision and obloquy by libels, chargeth not (as I am persuaded) the whole side: neither doth that other which is yet more odious, practised by the worst sort of them; which is to call in (as it were to their aids,) certain mercenary bands, which impugn bishops, and other ecclesiastical dignities, to have the spoil of their endowments and livings; of those I cannot speak too hardly. It is an intelligence between incendiaries and robbers, the one to fire the house, the other to rifle it.

THE fourth point wholly pertaineth to them which impugn the present ecclesiastical government, who although they have not cut themselves off from the body and communion of the church; yet do they affect certain cognizances and differences, wherein they seek to correspond amongst themselves, and to be separate from others. And it is truly said, *tam sunt mores quidam schismatici, quam dogmata schismatica*; there be as well schismatical fashions

as opinions. First, they have impropriated unto themselves the names of zealous, sincere, and reformed; as if all others were cold minglers of holy things and prophane, and friends of abuses. Yea, be a man endued with great virtues, and fruitful in good works; yet if he concur not with them, they term him (in derogation) a civil and moral man, and compare him to *Socrates*, or some heathen philosopher: whereas the wisdom of the scriptures teacheth us otherwise; namely, to judge and denominate men religious according to their works of the second table; because they of the first are often counterfeit, and practised in hypocrisy. So *St. John* saith, *that a man doth vainly boast of loving God whom he never saw, if he love not his brother whom he hath seen.* And *St. James* saith, *this is true religion to visit the fatherless and the widow.* So as that which is with them but philosophical and moral, is in the Apostle's phrase, *true Religion and Christianity.* As in affection they challenge the said virtues of zeal and the rest; so in knowledge they attribute unto themselves light and perfection. They say, the church of *England* in *King Edward's* time, and in the beginning of her Majesty's reign, was but in the cradle; and the Bishops in those times did somewhat grope for day-break, but that maturity and fulness of light proceedeth from themselves. So *Sabinus*, Bishop of *Heraclea*, a *Macedonian* heretick, said, that the fathers in the council of *Nice* were but infants and ignorant men: that the church was not so perfect in their decrees as to refuse that farther ripeness of knowledge which time had revealed. And as they censure virtuous men by the names of civil and moral, so do they censure men truly and godly wise (who see into the vanity of their affections) by the name of politicks; saying, that their wisdom is but carnal and favouring of man's brain. So likewise if a preacher preach with care and meditation; (I speak not of the vain scholastical manner of preaching, but soundly indeed, ordering the matter he handleth distinctly for memory, deducting and drawing it down for direction, and authorizing it with strong proofs and warrants:) they censure it as a form of speaking, not becoming the simplicity of the gospel, and refer it to the reprehension of *St. Paul*, speaking of the enticing speech of man's wisdom.

Now for their own manner of preaching, what is it? Surely they exhort well, and work compunction of mind, and bring men well to the question, *Viri, fratres, quid faciemus?* But that is not enough, except they resolve the question: they handle matters of controversy weakly, and *obiter*, and as before a people that will accept of any thing. In doctrine of manners there is little but generality and repetition. The Word (the bread of life) they toss up and down, they break it not: they draw not their directions down *ad casus conscientiae*; that a man may be warranted in his particular actions whether they be lawful or not; neither indeed are many of them able to do it, what through want of grounded knowledge, what through want of study and time. It is a compendious and easy thing to call for the observation of the sabbath-day, or to speak against unlawful gain; but what actions and works may be done upon the sabbath, and what not; and what courses of gain are lawful, and in what cases: to set this down, and to clear the whole matter with good distinctions and decisions, is a matter of great knowledge and labour, and asketh much meditation and conversing in the scriptures, and other helps which God hath provided and preserved for instruction.

AGAIN, they carry not an equal hand in teaching the people their lawful liberty, as well as their restraints and prohibitions: but they think a man cannot go too far in that that hath a shew of a commandment.

THEY forget that there are sins on the right hand, as well as on the left; and that the word is double-edged, and cutteth on both sides, as well the profane transgressions, as the superstitious observances. Who doubteth but that it is as unlawful to shut where God hath opened, as to open where God hath shut; to bind where God hath loosed, as to loose where God hath bound? Amongst men it is commonly as ill taken to turn back favours, as to disobey commandments. In this kind of zeal (for example) they have pronounced generally, and without difference, all untruths unlawful; notwithstanding, that the midwives are directly reported to have been blessed for their excuse: and *Rahab* is said by faith to have concealed the spies; and *Solomon's* selected judgment proceeded upon a simulation: and our Saviour, the more to touch the hearts of the two disciples with an holy dalliance, made as if he would have passed *Emmaus*. Farther, I have heard some sermons of mortification, which, I think with very good meaning, they have preached out of their own experience and exercise, and things in private counsels not unmeet; but surely no sound conceits, much like to *Parson's* resolution, or not so good; apt to breed in men rather weak opinions and perplexed despairs, than filial and true repentance which is sought.

ANOTHER point of great inconvenience and peril, is to entitle the people to hear controversies, and all kinds of doctrine. They say no part of the counsel of God is to be suppressed, nor the people defrauded: so as the difference which the Apostle maketh between milk and strong meat is confounded; and his precept, that the weak be not admitted unto questions and controversies, taketh no place.

BUT most of all is to be suspected, as a seed of farther inconvenience, their manner of handling the scriptures; for whilst they seek express scripture for every thing; and that they have, in a manner, deprived themselves and the church of a special help and support, by embasing the authority of the fathers, they resort to naked examples, conceited inferences, and forced allusions, such as do ruin all certainty of religion.

ANOTHER extremity, is the excessive magnifying of that, which though it be a principal and most holy institution, yet hath its limits as all things else have. We see wheresoever, in a manner, they find in the scriptures the word spoken of, they expound it of preaching; they have made it, in a manner, of the essence of the sacrament of the Lord's supper, to have a sermon precedent; they have, in a sort, annihilated the use of liturgies, and forms of divine service, although the house of God be denominated of the principal, *domus orationis*, a house of prayer, and not a house of preaching. As for the life of the good monks and hermits in the primitive church, I know they will condemn a man as half a papist, if he should maintain them as other than prophane, because they heard no sermons. In the mean time, what preaching is, and who may be said to preach, they move no question; but (as far as I see) every man that presumeth to speak in chair, is accounted a preacher. But I am assured, that not a few that call hotly for a preaching ministry, deserve to be the first themselves that should be expelled. All which errors and misproceedings they do fortify and intrench by an addicted respect to their own opinions, and an impatience to hear contradiction or argument; yea, I know some of them that would think it a tempting of God, to hear or read what may be said against them; as if there could be a *quod bonum est, tenete*; without an *omnia probate*, going before.

THIS may suffice to offer unto themselves a thought and consideration, whether in these things they do well or no? and to correct and assuage the partiality

partiality of their followers. For as for any man that shall hereby enter into a contempt of their ministry, it is but his own hardness of heart. I know the work of exhortation doth chiefly rest upon these men, and they have zeal and hate of sin: But again, let them take heed that it be not true which one of their adversaries said, that they have but two small wants, knowledge, and love. And so I conclude this point.

THE last point, touching the due publishing and debating of these controversies, needeth no long speech. This strange abuse of antiques and past-quils hath been touched before: so likewise I repeat that which I said, that a character of love is more proper for debates of this nature, than that of zeal: As for all direct or indirect glances or levels at mens persons, they were ever in these causes disallowed.

LASTLY, whatsoever be pretended, the people are no meet arbitrators, but rather the quiet, modest, and private assemblies, and conferences of the learned. *Qui apud incapacem loquitur, non disceptat, sed calumniatur.* The press and pulpit would be freed and discharged of these contentions; neither promotion on the one side, nor glory and heat on the other side, ought to continue those challenges and cartels at the cross, and other places: but rather all preachers, especially such as be of good temper, and have wisdom with conscience, ought to inculcate and beat upon a peace silence and surceance. Neither let them fear *Solon's* law, which compelled in factions every particular person to range himself on the one side; nor yet the fond calumny of neutrality; but let them know that is true which is said by a wise man, That neuters in contentions, are either better or worse than either side.

THESE things have I in all sincerity and simplicity set down, touching the controversies which now trouble the church of *England*; and that without all art and insinuation, and therefore not like to be grateful to either part: Notwithstanding, I trust what hath been said shall find a correspondence in their minds which are not embarked in partiality, and which love the whole better than a part; wherefore I am not out of hope that it may do good; at the least I shall not repent myself of the meditation.

CERTAIN

OF THE PACIFICATION OF THE CHURCH
CERTAIN
CONSIDERATIONS

Touching the better

PACIFICATION and EDIFICATION
OF THE
CHURCH of ENGLAND.

Dedicated to his most Excellent MAJESTY.

THE unity of your church, (excellent Sovereign) is a thing no less precious than the union of your kingdoms; being both works wherein your happiness may contend with your worthiness. Having therefore presumed, not without your Majesty's gracious acceptation, to say somewhat of the one; I am the more encouraged not to be silent in the other: the rather, because it is an argument that I have travelled in heretofore. But *Solomon* commendeth a word spoken in season, and as our Saviour (speaking of the discerning of seasons) saith, *When you see a cloud rising in the west, you say it will be a shower*: So your Majesty's rising to this Monarchy in the west parts of the world, doth promise a sweet and fruitful shower of many blessings upon this church and commonwealth; a shower of that influence as the very first dews and drops thereof, have already layed the storms and winds throughout Christendom; reducing the very face of *Europe* to a more peaceable and amiable countenance. But to the purpose.

It is very true, that these ecclesiastical matters are things not properly appertaining to my profession; which I was not so inconsiderate, but to object to myself: but finding that it is many times seen that a man that standeth off, and somewhat removed from a plot of ground, doth better survey it and discover it, than those which are upon it; I thought it not impossible, but that I, as a looker on, might cast mine eyes upon some things which the actors themselves (especially some being interested, some led and addicted, some declared and engaged) did not or would not see. And that knowing in my conscience (whereunto God beareth witness) that the things which I shall speak, spring out of no vein of popularity, ostentation, desire of novelty, partiality to either side, disposition to intermeddle, or any the like leaven; I may conceive hope that what I want in depth of judgment, may be countervailed in simplicity and sincerity of affection. But of all things this did most animate me; that I found in these opinions of mine (which I have long held and embraced, as may appear by that which I have many years since written of them, according to the proportion nevertheless of my weakness) a consent and conformity with that which your Majesty hath published of your own most Christian, most wise, and moderate sense, in these causes; wherein you have well expressed to the world, that there is infused in your sacred breast from God

God that high principle, and position of government, that you ever hold the whole more dear than any part.

FOR who seeth not that many are affected, and give opinion in these matters, as if they had not so much a desire to purge the evil from the good, as to countenance and protect the evil by the good? Others speak as if their scope were only to set forth what is good, and not to seek what is possible, which is to wish and not to propound. Others proceed as if they had rather a mind of removing than of reforming; but howsoever either side, as men (though excellent men) shall run into extremities; yet your Majesty, as a most wise, equal, and christian moderator, is disposed to find out the golden mediocrity in the establishment of that which is sound, and in the reparation of that which is corrupt and decayed. To your princely judgment, then I do in all humbleness submit whatsoever I shall propound, offering the same but as a mite, into the treasury of your wisdom. For as the astronomers do well observe, that when three of the superior lights do meet in conjunction, it bringeth forth some admirable effects: so there being joined in your Majesty the light of nature, the light of learning, and above all, the light of God's holy Spirit; it cannot be but your government must be as a happy constellation over the states of your kingdoms. Neither is there wanting to your Majesty that fourth light, which though it be but a borrowed light, yet is of singular efficacy and moment added to the rest, which is the light of a most wise and well compounded council; to whose honourable and grave wisdoms I do likewise submit whatsoever I shall speak, hoping that I shall not need to make protestation of my mind and opinion, that until your Majesty doth otherwise determine and order, all actual and full obedience is to be given unto ecclesiastical jurisdiction as it now standeth; and when your Majesty hath determined and ordered that every good subject ought to rest satisfied, and apply his obedience to your Majesty's laws, ordinances, and royal commandments; nor of the dislike I have of all immodesty, bitterness, peremptory presumption, popular handling, and other courses, tending rather to rumour and impression in the vulgar sort, than to likelihood of effect, joined with observation of duty.

BUT before I enter into the points controverted, I think good to remove (if it may be) two opinions, which directly confront and oppone to reformation: the one bringing it to a nullity, and the other to an impossibility. The first is, that it is against good policy to innovate any thing in church matters: the other, that all reformation must be after one platform.

FOR the first of these, it is excellently said by the prophet; *State super vias antiquas, & videte, quatenus sit via recta & vera, & ambulate in ea.* So as he doth not say, *State super vias antiquas, & ambulate in eis*: For it is true, that with all wise and moderate persons, custom and usage obtaineth that reverence, as it is sufficient matter to move them to make a stand, and to discover and take a view; but it is no warrant to guide and conduct them: a just ground, I say, it is of deliberation, but not of direction. But on the other side, who knoweth not that time is truly compared to a stream that carrieth down fresh and pure waters into that salt sea of corruption which environeth all human actions? And therefore if man shall not by his industry, virtue, and policy, as it were with the oar, row against the stream and inclination of time; all institutions and ordinances, be they never so pure, will corrupt and degenerate. But not to handle this matter common-place like; I would only ask why the civil state should be purged and restored by good and wholesome laws, made every third or fourth year in parliament assembled,

bled; devising remedies as fast as time breedeth mischief; and contrariwise the ecclesiastical state should still continue upon the dregs of time, and receive no alteration now for these five and forty years and more? If any man shall object, that if the like intermission had been used in civil causes also, the error had not been great: Surely the wisdom of the kingdom hath been otherwise in experience for three hundred years space at the least. But if it be said to me, that there is a difference between civil causes and ecclesiastical, they may as well tell me that churches and chapels need no reparations, though castles and houses do: whereas commonly, to speak truth, dilapidations of the inward and spiritual edifications of the church of God are in all times as great as the outward and material. Sure I am that the very word and style of reformation used by our Saviour, *ab initio non fuit sic*, was applied to church matters, and those of the highest nature, concerning the law moral.

NEVERTHELESS, he were both unthankful and unwise, that would deny but that the church of *England*, during the time of *Queen Elizabeth*, of famous memory, did flourish. If I should compare it with foreign churches, I would rather the comparison should be in the virtues than as some make it in the defects; rather, I say, as between the vine and the olive, which should be most fruitful; and not as between the briar and the thistle, which should be most unprofitable. For that reverence should be used to the church, which the good sons of *Noah* used to their father's nakedness; that is, as it were to go backwards, and to help the defects thereof, and yet to dissemble them. And it is to be acknowledged, that scarcely any church, since the primitive church, yielded in like number of years and latitude of country, a greater number of excellent preachers, famous writers, and grave governors: but for the discipline and orders of the church as many; and the chiefest of them, are holy and good: so yet, if *St. John* were to indite an epistle to the church of *England*, as he did to them of *Asia*, it would sure have the clause; *habeo adversus te pauca*. And no more for this point, saving, that as an appendix thereto, it is not amiss to touch that objection, which is made to the time, and not to the matter; pretending, that if reformation were necessary, yet it were not now seasonable at your Majesty's first entrance: yet *Hippocrates* saith, *Si quid mores, a principio move*: and the wisdom of all examples do shew, that the wisest princes, as they have ever been the most sparing in removing or alteration of servants and officers upon their coming in: so for removing of abuses and enormities; and for reforming of laws, and the policy of their states, they have chiefly sought to ennoble and commend their beginnings therewith; knowing that the first impression with people continueth long: and when men's minds are most in expectation and suspense, then are they best wrought and managed: and therefore it seemeth to me, that as the spring of nature, (I mean the spring of the year) is the best time for purging and medicining the natural body, so the spring of kingdoms is the most proper season for the purging and rectifying of politic bodies.

THERE remaineth yet an objection, rather of suspicion than of reason; and yet such as I think maketh a great impression in the minds of very wise and well-affected persons; which is, that if way be given to mutation, though it be in taking away abuses, yet it may so acquaint men with sweetness of change, as it will undermine the stability even of that which is sound and good. This surely had been a good and true allegation in the ancient contentions and divisions between the people and the senate of *Rome*; where things were carried at the appetites of multitudes, which can never keep within

within the compass of any moderation: but these things being with us to have an orderly passage under a King who hath a royal power and approved judgment; and knoweth as well the measure of things as the nature of them: it is surely a needless fear. For they need not doubt but your Majesty, with the advice of your council, will discern what things are intermingled, like the tares amongst the wheat, which have their roots so enwrapped and entangled, as the one cannot be pulled up without endangering the other, and what are mingled, but as the chaff and the corn, which need but a fan to sift and sever them. So much therefore for the first point of no reformation to be admitted at all.

For the second point; that there should be but one form of discipline in all churches; and that imposed by a necessity of a commandment and prescript out of the word of God: it is a matter volumes have been compiled of, and therefore cannot receive a brief redargution. I for my part do confess, that in revolving the scriptures, I could never find any such thing: but that God had left the like liberty to the church government, as he had done to the civil government; to be varied according to time and place and accidents, which nevertheless his high and divine providence doth order and dispose. For all civil governments are restrained from God unto the general grounds of justice and manners; but their policies and forms of them are left free: so that monarchies and kingdoms, senates and seignories, popular states, and communalities are lawful, and where they are planted ought to be maintained inviolate.

So likewise in church matters the substance of doctrine is immutable; and so are the general rules of government: but for rites and ceremonies, and for the particular hierarchies, policies, and discipline of churches, they be left at large. And therefore it is good we return unto the ancient bounds of unity in the church of God; which was one faith, one baptism; and not one hierarchy, one discipline: and that we observe the league of Christians, as it is penned by our Saviour; which is in substance of doctrine this: *He that is not with us, is against us*: but in things indifferent, and but of circumstance this; *He that is not against us, is with us*. In these things, so as the general rules be observed; that Christ's flock be fed; that there be a succession in bishops and ministers, which are the prophets of the New Testament; that there be a due and reverent use of the power of the keys; that those that preach the gospel, live of the gospel; that all things tend to edification; that all things be done in order and with decency, and the like: the rest is left to the holy wisdom and spiritual discretion of the master builders, and inferior builders in Christ's church; as it is excellently alluded by that father that noted, that Christ's garment was without seam; and yet the church's garment was of divers colours: and thereupon setteth down for a rule; *in veste varietas sit, scissura non sit*.

In which variety, nevertheless, it is a safe and wise course to follow good examples and precedents; but then by the rules of imitation and example to consider not only which are best, but which are the likeliest; as namely, the government of the church in the purest times of the first good Emperors that embraced the faith. For the times of persecution before temporal princes received our faith, as they were excellent times for doctrine and manners, so they be improper and unlike examples of outward government and policy. And so much for this point: now to the particular points of controversies, or rather of reformation.

Circumstances in the government of BISHOPS.

FIRST therefore, for the government of bishops, I for my part, not prejudging the precedents of other reformed churches, do hold it warranted by the word of God, and by the practice of the ancient church in the better times; and much more convenient for kingdoms than parity of ministers and government by synods. But then farther, it is to be considered, that the church is not now to plant or build; but only to be pruned from corruption, and to be repaired and restored in some decays.

FOR it is worth the noting, that the scripture saith, *translatio sacerdotio, necesse est ut legis fiat translatio*. It is not possible in respect of the great and near sympathy between the state civil, and the state ecclesiastical, to make so main an alteration in the church, but it would have a perilous operation upon the kingdoms; and therefore it is fit that controversy be in peace and silence.

BUT there be two circumstances in the administration of bishops, wherein I confess I could never be satisfied; the one, the sole exercise of their authority; the other, the deputation of their authority.

FOR the first, the bishop giveth orders alone, excommunicateth alone, judgeth alone. This seemeth to be a thing almost without example in good government; and therefore not unlikely to have crept in, in the degenerate and corrupt times. We see the greatest Kings and Monarchs have their councils. There is no temporal court in *England* of the higher sort where the authority doth rest in one person: the King's bench, common pleas, and the exchequer, are benches of a certain number of judges. The chancellor of *England* hath an assistance of twelve masters of the chancery. The master of the wards hath a council of the court: so hath the chancellor of the duchy. In the exchequer chamber, the Lord Treasurer is joined with the chancellor and the barons. The Masters of the requests are ever more than one. The justices of assize are two. The Lord Presidents in the North and in *Wales* have councils of divers: the star-chamber is an assembly of the King's privy council, aspersed with the Lords spiritual and temporal: so as in the courts the principal person hath ever colleagues or assessors.

THE like is to be found in other well-governed commonwealths abroad, where the jurisdiction is yet more dispersed; as in the courts of parliament of *France*, and in other places. No man will deny but the acts that pass the bishop's jurisdiction are of as great importance as those that pass the civil courts: for mens souls are more precious than their bodies or goods, and so are their good names. Bishops have their infirmities, and have no exception from that general malediction which is pronounced against all men living, *vae soli, nam si occideret, &c.* Nay, we see that the first warrant in spiritual causes is directed to a number, *dic ecclesiae*; which is not so in temporal matters: and we see that in general causes of church government, there are as well assemblies of all the clergy in councils, as of all the states in parliament. Whence should this sole exercise of jurisdiction come? Surely I do suppose, and I think upon good ground, that *ab initio non fuit ita*: and that the deans and chapters were councils about the sees and chairs of bishops at the first, and were unto them a presbytery or consistory; and intermeddled not only in the disposing of their revenues and endowments; but much more in jurisdiction ecclesiastical. But it is probable, that the deans and chapters stuck close to the bishops in matters of profit and the world, and would not lose their hold but in matters of jurisdiction; (which they accounted

counted but trouble and attendance) they suffered the bishops to encroach and usurp; and so the one continueth, and the other is lost. And we see that the bishop of *Rome*, (*Fas enim & ab hoste doceri*, and no question in that church the first institutions were excellent) performeth all ecclesiastical jurisdiction as in consistory.

AND whereof consisteth this consistory, but of the parish priests of *Rome*, which term themselves cardinals, *a cardinibus mundi*; because the bishop pretendeth to be universal over the whole world. And hereof again we see many shadows yet remaining: as, that the dean and chapter *pro forma*, chuseth the bishop, which is the highest point of jurisdiction: and that the bishop when he giveth orders, if there be any ministers casually present, calleth them to join with him in the imposition of hands, and some other particulars. And therefore it seemeth to me a thing reasonable and religious, and according to the first institution, that bishops in the greatest causes; and those which require a spiritual discerning, namely, in ordaining, suspending or depriving ministers in excommunication, (being restored to the true and proper use, as shall be afterwards touched) in sentencing the validity of marriages and legitimations, in judging causes criminous; as simony, incest, blasphemy, and the like, should not proceed sole and unassisted: which point (as I understand it) is a reformation that may be planted *sine strepitu*, without any perturbation at all: and it is a matter which will give strength to the bishop's countenance, to the inferior degrees of prelates or ministers, and the better issue or proceeding to those causes that shall pass.

AND as I wish this strength given to the bishops by counsel, so it is not unworthy your Majesty's consideration, whether you shall not think fit to give strength to the general council of your clergy, (the convocation-house,) which was then restrained when the state of the clergy was thought a suspected part to the kingdom, in regard of their late homage to the bishop of *Rome*; which state now will give place to none in their loyalty and devotion to your Majesty.

FOR the second point, which is the deputation of their authority, I see no perfect and sure ground for that neither, being somewhat different from the examples and rules of government. The bishop exerciseth his jurisdiction by his chancellor and commissary official, &c. We see in all laws in the world, offices of confidence and skill cannot be put over or exercised by deputy, except it be especially contained in the original grant; and in that case it is doubtful. And for experience, there was never any chancellor of *England* made a deputy; there was never any judge in any court made a deputy. The bishop is a judge and of a high nature; whence cometh it that he should depute? considering, that all trust and confidence, as was said, is personal and inherent; and cannot, nor ought not to be transposed. Surely in this again, *ab initio non fuit sic*: but it is probable that bishops when they gave themselves too much to the glory of the world, and became grandees in kingdoms, and great counsellors to princes, then did they delegate their proper jurisdictions as things of too inferior a nature for their greatness: and then after the similitude and imitation of kings and counts palatine, they would have their chancellors and judges.

BUT that example of Kings and potentates giveth no good defence. For the reasons why Kings administer by their judges, although themselves are supreme judges, are two: The one, because the offices of Kings are for the most part of inheritance; and it is a rule in all laws, that offices of inheritance are rather matters that ground in interest than in confidence: for as

much as they may fall upon women, upon infants, upon lunaticks and idiots, persons incapable to execute judicature in person; and therefore such offices by all laws might ever be exercised and administred by delegation. The second reason is, because of the amplitude of their jurisdictions; which is as great as either their birth-right from their ancestors, or their sword-right from God maketh it. And therefore, if *Moses* that was governour over no great people, and those collected together in a camp, and not scattered in provinces and cities, himself of an extraordinary spirit, was nevertheless not able to suffice and hold out in person to judge the people, but did by the advice of *Jethro* approved from God, substitute elders and judges; how much more other Kings and princes?

THERE is a third reason likewise, though not much to the present purpose; and that is, that Kings either in respect of the common-wealth, or of the greatness of their own patrimonies, are usually parties in suits; and then their judges stand indifferent between them and the subject: but in the case of bishops, none of these reasons hold. For first their office is elective, and for life, and not patrimonial or hereditary; an office merely of confidence, science, and qualification. And for the second reason, it is true, that their jurisdiction is ample and spacious; and that their time is to be divided between the labours, as well in the word and doctrine, as in government and jurisdiction. But yet I do not see, (supposing the bishops courts to be used incorruptly, and without any indirect course held to multiply causes for gain of fees) but that the bishop might very well for causes of moment, supply his judicial function in his own person. For we see before our eyes, that one chancellor of *England* dispatcheth the suits in equity of the whole kingdom; which is not so much by reason of the excellency of that rare honourable person which now holdeth the place: but it was ever so, though more or less burdalous to the suitor, as the chancellor was more or less able to give dispatch. And if hold be taken of that which was said before, that the bishop's labour in the word must take up a principal part of his time; so I may say again, that matters of state have taken up most of the chancellor's time; having been for the most part persons upon whom the Kings of this realm have most relied for matters of counsel. And therefore there is no doubt but the bishop, whose circuit is less ample, and the causes in nature not so multiplying, with the help of references and certificates to and from fit persons, for the better ripening of causes in their mean proceedings, and such ordinary helps incident to jurisdiction, may very well suffice his office. But yet there is another help: for the causes that come before him are these: tythes, legacies, administrations, and other testamentary causes; causes matrimonial, accusations against ministers, tending to their suspension, deprivation, or degrading; simony, incontinency, heresy, blasphemy, breach of the sabbath, and other like causes of scandal. The first two of these, in my opinion, differ from the rest; that is, tythes and testaments: for those be matters of profit, and in their nature temporal; though by a favour and connivance of the temporal jurisdiction, they have been allowed and permitted to the courts ecclesiastical: the one, to the end the clergy might sue for that that was their sustentation before their own judges, and the other in a kind of piety and religion, which was thought incident to the performance of dead mens wills. And surely for these two the bishop, in my opinion, may with less danger discharge himself upon his ordinary judges. And I think likewise it will fall out, that those suits are in the greatest number. But for the rest, which require a spiritual science and discretion, in respect of their nature,

ture, or of the scandal, it were reason, in my opinion, there were no audience given but by the bishop himself; he being also assisted, as was touched before: but it were necessary also he were attended by his chancellor, or some others his officers, being learned in the civil laws, for his better instruction in points of formality, or the courses of the court; which if it were done, then were there less use of the officials court, whereof there is now so much complaint: and causes of the nature aforesaid, being only drawn to the audience of the bishop, it would repress frivolous and prowling suits, and give a grave and incorrupt proceeding to such causes as shall be fit for the court.

THERE is a third point also, not of jurisdiction, but of form of proceeding, which may deserve reformation: the rather, because it is contrary to the laws and customs of this land and state, which though they do not rule those proceedings, yet may they be advised with for better directions, and that is the oath *ex officio*; whereby men are enforced to accuse themselves; and what is more, are sworn unto blanks, and not unto accusations and charges declared. By the law of *England* no man is bound to accuse himself. In the highest cases of treason torture is used for discovery, and not for evidence. In capital matters no delinquent's answer upon oath, is required; no, not permitted. In criminal matters not capital, handled in the *Star-Chamber*, and in causes of conscience handled in the chancery, for the most part grounded upon trust and secrecy, the oath of the party is required. But how? Where there is an accusation and an accuser, which we call bills of complaint (from which the complainant cannot vary, and out of the compass of the which the defendant may not be examined) exhibited unto the court, and by process notified unto the defendant. But to examine a man upon oath, out of the insinuation of fame, or out of accusations secret and undeclared; though it have some countenance from the civil law; yet it is so opposite *ex diametro* to the sense and course of the common law, as it may well receive some limitation.

Concerning the Liturgy, the Ceremonies and Subscription.

FOR the liturgy, great respect and heed would be taken, lest by inveighing against the dumb ministry, due reverence be not withdrawn from the liturgy. For though the gift of preaching be far above that of reading; yet the action of the liturgy is as high and holy as that of the sermon. It is said, *Domus mea domus orationis vocabitur: the house of prayer*; not the house of preaching: and whereas the Apostle saith, *How shall men call upon him, on whom they have not believed? And how shall they believe unless they hear? And how shall they hear without a preacher?* It appeareth that as preaching is the more original, so prayer is the more final; as the difference is between the seed and the fruit: for the keeping of God's law, is the fruit of the teaching of the law, and prayer, or invocation, or divine service, or liturgy, (for these be but varieties of terms;) is the immediate hallowing of the name of God, and the principal work of the first table, and of the great commandment of the love of God. It is true that the preaching of the holy word of God is the sowing of the seed; it is the lifting up of the brazen serpent, the ministry of faith, and the ordinary means of salvation; but yet it is good to take example, how that the best actions of the worship of God may be extolled excessively and superstitiously. As the extolling of the sacrament, bred the superstition of the mass; the extolling of the liturgy and prayers, bred the superstition of the monastical orders and oraisons: and so

no doubt preaching likewise may be magnified and extolled superstitiously, as if all the whole body of God's worship should be turned into an ear. So as none (as I suppose) of sound judgment will derogate from the liturgy, if the form thereof be in all parts agreeable to the word of God, the example of the primitive church, and that holy decency which St. *Paul* commendeth. And therefore first, that there be a set form of prayer, and that it be not left either to an extemporal form, or to an arbitrary form. Secondly, that it consist as well of lauds, hymns, and thanksgivings, as of petitions, prayers, and supplications. Thirdly, that the form thereof be quickened with some shortness and diversities of prayers and hymns, and with some interchanges of the voice of the people, as well as of the minister. Fourthly, that it admit some distinctions of times, and commemorations of God's principal benefits, as well general as particular. Fifthly, that prayers likewise be appropriated to several necessities and occasions of the church. Sixthly, that there be a form likewise of words and liturgy in the administration of the sacraments, and in the denouncing of the censures of the church, and other holy actions and solemnities: these things I think will not be much controverted.

BUT for the particular exceptions to the liturgy in form as it now standeth, I think divers of them allowing they were just, yet they seem not to be weighty; otherwise than that nothing ought to be counted light in matters of religion and piety: as the heathen himself could say, *etiam vultu saepe laeditur pietas*. That the word (priest) should not be continued, especially with offence, the word (minister) being already made familiar. This may be said that it is a good rule in translation, never to confound that in one word in the translation, which is precisely distinguished in two words in the original, for doubt of equivocation and traducing. And therefore seeing the word *ιερεὺς* and *ἐπίσκοπος*, be always distinguished in the original; and the one used for a sacrificer, the other for a minister; the word priest being made common to both (whatsoever the derivation be) yet in use it confoundeth the minister with the sacrificer. And for an example of this kind, I did ever allow the discretion and tenderness of the *Rhemish* translation in this point; that finding in the original the word *ἀγάπη* and never *ἔως*, do ever translate charity, and never love, because of the indifferency and equivocation of the word with impure love.

TOUCHING the absolution, it is not unworthy consideration, whether it may not be thought improper and unnecessary: for there are but two sorts of absolution; both supposing an obligation precedent: the one upon an excommunication, which is religious and primitive; the other upon confession and penance, which is superstitious, or at least positive; and both particular, neither general. Therefore since the one is taken away, and the other hath its proper case, what doth a general absolution, wherein there is neither penance nor excommunication precedent? For the church never looseth, but where the church hath bound. And surely I may think this at the first was allowed in a kind of spiritual discretion, because the church thought the people could not be suddenly weaned from their conceit of assuaging, to which they had been so long accustomed.

FOR confirmation to my understanding, the state of the question is, whether it be not a matter mistaken and altered by time; and whether that be not now made a subsequent to baptism, which was indeed an inducement to the communion. For whereas in the primitive church children were examined of their faith before they were admitted to the communion, time may
seem

seem to have turned it to refer as if it had been to receive a confirmation of their baptism.

FOR private baptism by women, or lay-persons, the best divines do utterly condemn it; and I hear it not generally defended; and I have often marvelled, that where the book in the preface to publick baptism doth acknowledge that baptism in the practice of the primitive church was anniversary, and but at certain times; which sheweth that the primitive church did not attribute so much to the ceremony, as they would break an outward and general order for it; the book should afterwards allow of private baptism; as if the ceremony were of that necessity, as the very institution which committed baptism only to the ministers, should be broken in regard of the supposed necessity. And therefore this point of all others I think was but a *Concessum propter duritiem cordis*.

FOR the form of celebrating matrimony, the ring seemeth to many even of vulgar sense and understanding, a ceremony not grave, especially to be made (as the words make it) the essential part of the action, besides some other of the words are noted in speech to be not so decent and fit.

FOR musick in churches; that there should be singing of *Psalms* and spiritual songs, is not denied: so the question is *de modo*, wherein if a man will look attentively into the order and observation of it, it is easy to discern between the wisdom of the institution, and the excess of the late times. For first there are no songs or verses sung by the quire, which are not supposed by continual use to be so familiar with the people, as they have them without book, whereby the sound hurteth not the understanding; and those which cannot read upon the book, are yet partakers of the sense, and may follow it with their mind. So again, after the reading of the word, it was thought fit there should be some pause for holy meditations, before they proceeded to the rest of the service: which pause, was thought fit to be filled rather with some grave sound, than with a still silence; which was the reason of the playing upon the organs after the scriptures read; all which was decent and tending to edification. But then the curiosity of division and reports, and other figures of musick, have no affinity with the reasonable service of God, but were added in the more pompous times.

FOR the cap and surplice, since they be things in their nature indifferent, and yet by some held superstitious; and that the question is between science and conscience, it seemeth to fall within the compass of the Apostle's rule, which is, *that the stronger do descend and yield to the weaker*. Only the difference is, that it will be materially said, that the rule holdeth between private man, and private man; but not between the conscience of a private man, and the order of a church. But yet since the question at this time is of a toleration, not by connivance, which may encourage disobedience, but by law, which may give a liberty; it is good again to be advised whether it fall not within the equity of the former rule: the rather, because the silencing of ministers by this occasion, is, in this scarcity of good preachers, a punishment that lighteth upon the people as well as upon the party. And for the subscription, it seemeth to me in the nature of a confession, and therefore more proper to bind in the unity of faith, and to be urged rather for articles of doctrine, than for rites and ceremonies, and points of outward government. For howsoever politick considerations and reasons of state may require uniformity, yet Christian and divine grounds look chiefly upon unity.

Touching a Preaching Ministry.

TO speak of a learned ministry: it is true that the worthiness of the pastors and ministers is of all other points of religion the most summary; I do not say the greatest, but the most effectual towards the rest: but herein to my understanding, while men go on in zeal to hasten this work, they are not aware of as great or greater inconvenience, than that which they seek to remove. For while they inveigh against a dumb ministry, they make too easy and too promiscuous an allowance of such as they account preachers; having not respect enough to their learnings in other arts, which are hand-maids to divinity; not respect enough to years, except it be in case of extraordinary gift; not respect enough to the gift itself, which many times is none at all. For God forbid, that every man that can take unto himself boldness to speak an hour together in a church upon a text, should be admitted for a preacher, though he mean never so well. I know there is a great latitude in gifts, and a great variety in auditories and congregations; but yet so as there is *aliquid infimum*, below which you ought not to descend. For you must rather leave the ark to shake as it shall please God, than put unworthy hands to hold it up. And when we are in God's temple, we are warned rather to *put our hands upon our mouth, than to offer the sacrifice of fools*. And surely it may be justly thought, that amongst many causes of atheism, which are miserably met in our age; as schisms and controversies, profane scoffings in holy matters, and others; it is not the least that divers do adventure to handle the word of God which are unfit and unworthy. And herein I would have no man mistake me, as if I did extol curious and affected preaching; which is as much on the other side to be disliked, and breedeth atheism and scandal as well as the other; (for who would not be offended at one that cometh into the pulpit, as if he came upon the stage to play parts or prizes?) neither on the other side, as if I would discourage any who hath any tolerable gift.

BUT upon this point I ground three considerations: First, whether it were not requisite to renew that good exercise which was practised in this church some years, and afterwards put down by order indeed from the church, in regard of some abuse thereof, inconvenient for those times, and yet against the advice and opinion of one of the greatest and gravest prelates of this land, and was commonly called prophesying, which was this; that the ministers within a precinct did meet upon a week-day in some principal town, where there was some antient grave minister that was president, and an auditory admitted of gentlemen, or other persons of leisure. Then every minister successively, beginning with the youngest, did handle one and the same part of scripture, spending severally some quarter of an hour or better, and in the whole some two hours: and so the exercise being begun and concluded with prayer, and the president giving a text for the next meeting, the assembly was dissolved. And this was, as I take it, a fortnight's exercise; which, in my opinion, was the best way to frame and train up preachers to handle the word of God as it ought to be handled, that hath been practised. For we see orators have their declamations, lawyers have their moots, logicians their sophisms; and every practice of science hath an exercise of erudition and initiation before men come to the life; only preaching, which is the worthiest, and wherein it is most danger to do amiss, wanteth an introduction, and is ventured and rushed upon at the first: but unto this exercise of the prophecy,

I would wish these two additions: the one, that after this exercise, which is in some sort public, there were immediately a private meeting of the same ministers, where they might brotherly admonish the one the other; and especially the elder sort the younger, of any thing that had passed in the exercise in matter or manner unsound and uncomely; and in a word, might mutually use such advice, instruction, comfort, or encouragement, as occasion might minister; for publick reprehension were to be debarred. The other addition, that I mean, is, that the same exercise were used in the universities for young divines before they presumed to preach, as well as in the country for ministers. For they have in some colleges an exercise called a common place; which can in no degree be so profitable, being but the speech of one man at one time. And if it be feared, that it may be occasion to whet men's speeches for controversies, it is easily remedied, by some strict prohibition, that matters of controversy tending any way to the violating or disquieting the peace of the church, be not handled or entered into; which prohibition, in regard there is ever to be a grave person president, or moderator, cannot be frustrated. The second consideration is, whether it were not convenient there should be a more exact probation and examination of ministers: namely, that the Bishops do not ordain alone, but by advice; and then that ancient holy order of the church might be revived: by the which the bishop did ordain ministers but at four set times of the year; which were called, *quatuor tempora*; which are now called *Ember-weeks*: it being thought fit to accompany so high an action with general fasting and prayer, and sermons, and all holy exercises; and the names likewise of those that were to be ordained, were published some days before their ordination: to the end, exceptions might be taken if just cause were. The third consideration is, that if the case of the church of *England* be, that were a computation taken of all the parochian churches, (allowing the union of such as were too small and adjacent;) and again a computation to be taken of the persons who are worthy to be pastors: and upon the said account, if it fall out that there are many more churches than pastors, then of necessity recourse must be had to one of these remedies; either that pluralities must be allowed, (especially if you can by permutation make the benefices more compatible;) or that there be allowed preachers to have a more general charge, to supply and serve by turn parishes unfurnished: for that some churches should be provided of pastors able to teach, and others wholly destitute, seemeth to me to be against the communion of Saints and Christians, and against the practice of the primitive church.

Touching the abuse of Excommunication.

EXcommunication is the greatest judgment upon earth; being that which is ratified in heaven; and being a precursory or prelusive judgment of the great judgment of Christ in the end of the world. And therefore for this to be used irreverently, and to be made an ordinary process, to lackey up and down for fees; how can it be without derogation to God's honour, and making the power of the keys contemptible? I know very well the defence thereof, which hath no great force; that it issueth forth not for the thing itself, but for the contumacy. I do not deny, but this judgment is, as I said before, of the nature of God's judgments; of the which it is a model. For as the judgment of God taketh hold of the least sin of the impenitent, and taketh no hold of the greatest sin of the convert or penitent;

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so excommunication may in case issue upon the smallest offence, and in case not issue upon the greatest: but is this contumacy such a contumacy as excommunication is now used for? For the contumacy must be such as the party (as far as the eye and wisdom of the church can discern) standeth in state of reprobation and damnation: as one that for that time seemeth given over to final impenitency. Upon this observation I ground two considerations: the one, that this censure be restored to the true dignity and use thereof; which is, that it proceed not but in causes of great weight; and that it be decreed not by any deputy or substitute of the bishop, but by the bishop in person; and not by him alone, but by the bishop assisted.

THE other consideration is, that in lieu thereof, there be given to the ecclesiastical court some ordinary process with such force and coercion as appertaineth; that so the dignity of so high a sentence being retained, and the necessity of mean process supplied, the church may be indeed restored to the ancient vigour and splendour. To this purpose, join'd with some other holy and good purposes, was there a bill drawn in parliament, in the three and twentieth year of the reign of the Queen deceased; which was the gravest parliament that I have known; and the bill recommended by the gravest counsellor of estate in parliament; though afterwards it was stayed by the Queen's special commandment, the nature of those times considered.

Touching Non-Residents, and Pluralities.

FOR non-residence, except it be in case of necessary absence, it seemeth an abuse drawn out of covetousness and sloth: for that men should live of the flock, that they do not feed, or of the altar at which they do not serve, is a thing that can hardly receive just defence; and to exercise the office of a pastor, in matter of the word and doctrine by deputies, is a thing not warranted, as hath been touched before. The questions upon this point do arise upon the cases of exception and excusation, which shall be thought reasonable and sufficient, and which not. For the case of chaplains, let me speak that with your Majesty's pardon, and with reverence towards the other peers and grave persons, whose chaplains by statutes are privileged: I should think, that the attendance which chaplains give to your Majesty's court, and in the houses and families of their lords, were a juster reason why they should have no benefice, than why they should be qualified to have two: for, as it standeth with christian policy, that such attendance be in no wise neglected; because that good, which ensueth thereof to the church of God, may exceed, or countervail that which may follow of their labours in any, though never so large a congregation; so it were reasonable that their maintenance should honourably and liberally proceed thence, whence their labours be employed. Neither are there wanting in the church, dignities and preferments not joined with any exact cure of souls; by which, and by the hope of which such attendants in ordinary (who ought to be, as for the most part they are, of the best gifts and sort) may be farther encouraged and rewarded. And as for extraordinary attendants, they may very well retain the grace and countenance of their places and duties at times incident thereunto, without discontinuance or non-residence in their pastoral charges. Next, for the case of intending studies in the universities, it will more easily receive an answer; for studies do but serve and tend to the practice of those studies: and therefore for that which is most principal and final to be left undone, for the attending of that which is subaltern and

and subministrant, seemeth to be against proportion of reason. Neither do I see, but that they proceed right well in all knowledge, which do couple study with their practice; and do not first study altogether, and then practise altogether; and therefore they may very well study at their benefices. Thirdly, for the case of extraordinary service of the church; as if some pastor be sent to a general council, or here to a convocation; and likewise for the case of necessity, as in the particular of infirmity of body, and the like, no man will contradict, but that there may be some substitution for such a time. But the general case of necessity is the case of pluralities; the want of pastors and insufficiency of livings considered, *posito*, that a man doth faithfully and incessantly divide his labours between two cures; which kind of necessity I come now to speak of in the handling of pluralities.

FOR pluralities, in case the number of able ministers were sufficient, and the value of benefices were sufficient, then pluralities were in no sort tolerable. But we must take heed, we desire not contraries. For to desire that every parish should be furnished with a sufficient preacher, and to desire that pluralities be forthwith taken away, is to desire things contrary; considering, *de facto*, there are not sufficient preachers for every parish: whereto add likewise, that there are not sufficient living and maintenance in many parishes, to maintain a preacher; and it maketh the impossibility yet much the greater. The remedies in *rerum natura* are but three; union, permutation, and supply. Union of such benefices as have the living too small, and the parish not too great, and are adjacent. Permutation, to make benefices more compatible, though men be over-ruled to some loss in changing a better for a nearer. Supply, by stipendiary preachers, to be rewarded with some liberal stipends, to supply, as they may, such places which are unfurnished of sufficient pastors: As *Queen Elizabeth*, amongst other her gracious acts, did erect certain of them in *Lancashire*; towards which pensions, I see no reason but reading ministers, if they have rich benefices, should be charged.

Touching the Provision for sufficient Maintenance in the C H U R C H.

TOUCHING church-maintenance; it is well to be weighed what is *jure divino*, and what *jure positivo*. It is a constitution of the divine law, from which human laws cannot derogate; that those which feed the flock, should live of the flock; that those that serve at the altar, should live of the altar; that those which dispense spiritual things, should reap temporal things; of which it is also an appendix, that the proportion of this maintenance be not small or necessitous, but plentiful and liberal. So then, that all the places and offices of the church be provided of such a dotation, that they may be maintained, according to their several degrees, is a constitution permanent and perpetual: but for particularity of the endowment, whether it should consist of tithes, or lands, or pensions, or mixt, might make a question of convenience, but no question of precise necessity. Again, that the case of the church *de facto* is such, that there is want in the church of patrimony, is confessed. For the principal places, namely, the bishop's livings, are in some particulars not sufficient; and therefore enforced to be supplied by toleration of commendams, things of themselves unfit, and ever held of no good report. And as for the benefices and pastors places, it is manifest that very many of them are very weak and penurious. On the other side, that there was a time when the church was rather burthened with superfluity,

than with lack that is likewise apparent; but it is long since; so as the fault was in others, the want redoundeth unto us. Again, that it were to be wished that impropriations were returned to the church as the most proper and natural endowments thereof, is a thing likewise wherein men's judgments will not much vary. Nevertheless, that it is an impossibility to proceed now, either to their resumption or redemption, is as plain on the other side. For men are stated in them by the highest assurance of the kingdom, which is, act of parliament; and the value of them amounteth much above ten subsidies; and the restitution must of necessity pass their hands, in whose hands they are now in possession or interest.

BUT of these things which are manifestly true, to infer and ground some conclusions. First, in mine own opinion and sense, I must confess, (let me speak it with reverence) that all the parliaments since 27 and 31 of *Henry VIII.* (who gave away impropriations from the church) seem to me to stand in a sort obnoxious, and obliged to God in conscience to do somewhat for the church, to reduce the patrimony thereof to a competency. For since they have debarred Christ's wife of a great part of her dowry, it were reason they made her a competent jointure. Next to say, that impropriations should be only charged, that carrieth neither possibility nor reason. Not possibility, for the reasons touched before: not reason, because if it be conceived, that if any other person be charged, it should be a re-charge, or double-charge, inasmuch as he payeth tythes already, that is a thing mistaken. For it must be remembred, that as the realm gave tythes to the church, so the realm since again hath given tythes away from the church unto the King, as they may give their eighth sheaf or ninth sheaf. And therefore the first gift being evacuated, it cannot go in defeasance or discharge of that perpetual bond, wherewith men are bound to maintain God's ministers. And so we see in example, that divers godly and well disposed persons, not impropriators, are content to encrease their preachers livings; which, though in law it be but a benevolence, yet before God it is a conscience. Farther, that impropriation should not be somewhat more deeply charged than other revenues of like value, methinks cannot well be denied, both in regard of the antient claim of the church, and the intention of the first giver: and again, because they have passed in valuation between man and man, somewhat at the less rate, in regard of the said pretence or claim of the church in conscience before God. But of this point, touching church-maintenance, I do not think fit to enter into farther particularity, but reserve the same to a fitter time.

THUS have I in all humbleness and sincerity of heart, to the best of my understanding, given your Majesty tribute of my cares and cogitations in this holy business, so highly tending to God's glory, your Majesty's honour, and the peace and welfare of your states: Inasmuch, as I am persuaded, that the papists themselves should not need so much the severity of penal laws, if the sword of the spirit were better edged by strengthening the authority, and suppressing the abuses in the church.

TO conclude, renewing my most humble submission of all that I have said to your Majesty's most high wisdom: and again, most humbly craving pardon for any errors committed in this writing; which the same weakness of judgment that suffered me to commit them, would not suffer me to discover them, I end with my devout and fervent prayer to God; that as he hath made your Majesty the corner-stone, in joining your two kingdoms,

so you may be also as a corner-stone to unite and knit together these differences in the church of God; to whose heavenly grace and never-erring direction, I commend your Majesty's sacred person, and all your doings.

A PRAYER or PSALM made by the Lord BACON,
Chancellor of *England*.

MOST gracious Lord God, my merciful Father, from my youth up, my Creator, my Redeemer, my Comforter. Thou, O Lord, foundest and searchest the depths and secrets of all hearts: thou acknowledgest the upright of heart: thou judgest the hypocrite: thou ponderest mens thoughts and doings as in a balance: thou measurest their intentions as with a line; vanity and crooked ways cannot be hid from thee.

REMEMBER, O Lord, how thy servant hath walked before thee: remember what I have first fought, and what hath been principal in my intentions. I have loved thy assemblies: I have mourned for the divisions of thy church: I have delighted in the brightness of thy sanctuary. This vine which thy right hand hath planted in this nation, I have ever prayed unto thee, that it might have the first and the later rain; and that it might stretch her branches to the seas and to the floods. The state and bread of the poor and oppressed have been precious in mine eyes: I have hated all cruelty and hardness of heart: I have (though in a despised weed) procured the good of all men. If any have been my enemies, I thought not of them; neither hath the sun almost set upon my displeasure; but I have been as a dove, free from superfluity of maliciousness. Thy creatures have been my books, but thy scriptures much more. I have sought thee in the courts, fields, and gardens, but I have found thee in thy temples.

THOUSANDS have been my sins, and ten thousands my transgressions; but thy sanctifications have remained with me, and my heart (through thy grace) hath been an unquenched coal upon thine altar. O Lord, my strength, I have since my youth met with thee in all my ways, by thy fatherly compassions, by thy comfortable chastisements, and by thy most visible providence. As thy favours have increased upon me, so have thy corrections; so as thou hast been always near me, O Lord; and ever as my worldly blessings were exalted, so secret darts from thee have pierced me; and when I have ascended before men, I have descended in humiliation before thee. And now, when I thought most of peace and honour, thy hand is heavy upon me, and hath humbled me according to thy former loving-kindness, keeping me still in thy fatherly school, not as a bastard, but as a child. Just are thy judgments upon me for my sins, which are more in number than the sands of the sea, but have no proportion to thy mercies; for what are the sands of the sea, earth, heavens, and all these are nothing to thy mercies. Besides my innumerable sins, I confess before thee, that I am debtor to thee for the gracious talent of thy gifts and graces, which I have neither put into a napkin, nor put it (as I ought) to exchangers, where it might have made best profit, but mispent it in things for which I was least fit: so I may truly say, my soul hath been a stranger in the course of my pilgrimage. Be merciful unto me, O Lord, for my Saviour's sake, and receive me into thy bosom, or guide me in thy ways.

The

The STUDENT'S Prayer. Remains, pag. 181.

TO God the Father, God the Word, God the Spirit, we pour forth most humble and hearty supplications; that he remembering the calamities of mankind, and the pilgrimage of this our life, in which we wear out days few and evil, would please to open to us new refreshments out of the fountains of his goodness, for the alleviating of our miseries. This also we humbly and earnestly beg, that human things may not prejudice such as are divine; neither that from the unlocking of the gates of sense, and the kindling of a greater natural light, any thing of incredulity, or intellectual night, may arise in our minds towards divine mysteries. But rather, that by our mind thoroughly cleansed and purged from fancy and vanities, and yet subject and perfectly given up to the divine oracles, there may be given unto faith the things that are faith's. *Amen.*

The WRITER'S Prayer.

THOU, O Father, who gavest the visible light as the first-born of thy creatures, and didst pour into man the intellectual light as the top and consummation of thy workmanship, be pleased to protect and govern this work, which coming from thy goodness, returneth to thy glory. Thou after thou hadst review'd the works which thy hands had made, beheldest that every thing was very good, and thou didst rest with complacency in them. But man reflecting on the works which he had made, saw that all was vanity and vexation of spirit, and could by no means acquiesce in them. Wherefore if we labour in thy works with the sweat of our brows, thou wilt make us partakers of thy vision and thy sabbath. We humbly beg that this mind may be stedfastly in us; and that thou, by our hands, and also by the hands of others, on whom thou shalt bestow the same spirit, wilt please to convey a largess of new alms to thy family of mankind. These things we commend to thy everlasting love, by our Jesus, thy Christ, God with us. *Amen.*



THE
TRANSLATION
OF CERTAIN
PSALMS
INTO
ENGLISH VERSE.

BY THE
RIGHT HONOURABLE
FRANCIS
Lord *VERULAM*, Viscount *ST. ALBAN*.

To his very good Friend,
Mr. GEORGE HERBERT.

THE pains that it pleased you to take about some of my writings, I cannot forget; which did put me in mind to dedicate to you this poor exercise of my sickness. Besides, it being my manner for dedications, to choose those that I hold most fit for the argument, I thought, that in respect of divinity and poesy met, (whereof the one is the matter, the other the style of this little writing,) I could not make better choice: So, with signification of my love and acknowledgment, I ever rest

Your affectionate Friend,

FR. ST. ALBAN.

THE
TRANSLATION
OF THE
FIRST PSALM.

WHO never gave to wicked reed,
A yielding and attentive ear:
Who never finners paths did tread,
Nor fate him down in scorn's chair:
But maketh it his whole delight,
On law of God to meditate;
And therein spendeth day and night;
That man is in a happy state.

He shall be like the fruitful tree,
Planted along a running spring,
Which in due season, constantly,
A goodly yield of fruit doth bring.
Whose leaves continue always green,
And are no prey to winter's power:
So shall that man not once be seen
Surprized with an evil hour.

With wicked men it is not so,
Their lot is of another kind:
All as the chaff, which to and fro,
Is toss'd at mercy of the wind.
And when he shall in judgment plead,
A casting sentence bide he must:
So shall he not lift up his head,
In the assembly of the just.

For why? the Lord hath special eye,
To be the godly's stay at call:
And hath given over, righteously,
The wicked man to take his fall.

The Translation of PSALM XII.

HELP, Lord, for godly men have took their flight,
And left the earth to be the wicked's den:
Not one that standeth fast to truth and right,
But fears, or seeks to please, the eyes of men.
When one with other falls in talk apart,
Their meaning goeth not with their words, in proof;
But fair they flatter, with a cloven heart,
By pleasing words, to work their own behoof.

But

But God cut off the lips, that are all set,
 To trap the harmless soul, that peace hath vow'd;
 And pierce the tongues, that seek to counterfeit
 The confidence of truth, by lying loud:
 Yet so they think to reign, and work their will
 By fittle speech, which enters every where;
 And say, our tongues are ours, to help us still,
 What need we any higher power to fear?

Now for the bitter fighting of the poor,
 The Lord hath said, I will no more forbear,
 The wicked's kingdom to invade and scour,
 And set at large the men restrain'd in fear.
 And sure the word of God is pure and fine,
 And in the trial never loseth weight;
 Like noble gold, which since it left the mine,
 Hath seven times passed through the fiery strait.

And now thou wilt not first thy word forsake,
 Nor yet the righteous man that leans thereto;
 But wilt his safe protection undertake,
 In spite of all their force and wiles can do.
 And time it is, O Lord, thou didst draw nigh;
 The wicked daily do enlarge their bands;
 And that which makes them follow ill a vic,
 Rule is betaken to unworthy hands.

The Translation of PSALM xc.

O Lord, thou art our home, to whom we fly,
 And so hast always been from age to age;
 Before the hills did intercept the eye,
 Or that the frame was up of earthly stage!
 One God thou wert, and art, and still shalt be;
 The line of time, it doth not measure thee.

Both death and life obey thy holy lore,
 And visit in their turns, as they are sent;
 A thousand years with thee, they are no more
 Than yesterday, which, ere it is, is spent:
 Or as a watch by night, that course doth keep,
 And goes, and comes, unwares to them that sleep.

Thou carriest man away as with a tide:
 Then down swim all his thoughts, that mounted high;
 Much like a mocking dream, that will not bide,
 But flies before the sight of waking eye;
 Or as the grass, that cannot term obtain,
 To see the summer come about again.

At morning, fair it musters, on the ground,
 At even it's cut down, and laid along:
 And though it spared were, and favour found,
 The weather would perform the mower's wrong:
 Thus hast thou hang'd our life on brittle pins,
 To let us know it will not bear our sins.

Thou burie'st not within oblivion's tomb
 Our trespasses, but enterest them aright;
 Even those that are conceiv'd in darkness' womb,
 To thee appear as done at broad day-light.
 As a tale told, which sometimes men attend,
 And sometimes not, our life steals to an end.

The life of man is threescore years and ten,
 Or if that he be strong, perhaps fourscore,
 Yet all things are but labour to him then,
 New sorrows still come on, pleasures no more;
 Why should there be such turmoil and such strife
 To spin in length this feeble line of life?

But who considers duly of thine ire?
 Or doth the thoughts thereof wisely embrace?
 For thou, O God, art a consuming fire,
 Frail man, how can he stand before thy face?
 If thy displeasure thou dost not refrain,
 A moment brings all back to dust again.

Teach us, O Lord, to number well our days,
 Thereby our hearts to wisdom to apply;
 For that which guides man best in all his ways,
 Is meditation of mortality.
 This bubble light, this vapour of our breath,
 Teach us to consecrate to hour of death.

Return unto us, Lord, and balance now
 With days of joy, our days of misery;
 Help us right soon, our knees to thee we bow,
 Depending wholly on thy clemency;
 Then shall thy servants both with heart and voice,
 All the days of their life in thee rejoice.

Begin thy work, O Lord, in this our age,
 Shew it unto thy servants that now live;
 But to our children raise it many a stage,
 That all the world to thee may glory give.
 Our handy-work likewise, as fruitful tree,
 Let it, O Lord, blessed, not blasted be.

The Translation of PSALM CIV.

Father and King of powers, both high and low,
 Whose sounding fame all creatures serve to blow;
 My soul shall with the rest strike up thy praise,
 And carol of thy works, and wondrous ways.
 But who can blaze thy beauties, Lord, aright?
 They turn the brittle beams of mortal sight.
 Upon thy head thou wear'st a glorious crown,
 All set with virtues, polish'd with renown:
 Thence round about a silver veil doth fall
 Of crystal light, mother of colours all.
 The compass heaven, smooth without grain, or fold;
 All set with spangs of glitt'ring stars untold,
 And stripe'd with golden beams of power unpent,
 Is raised up for a removing tent.
 Vaulted and arched are his chamber beams,
 Upon the seas, the waters, and the streams:
 The clouds as chariots swift do scour the sky;
 The stormy winds upon their wings do fly.
 His angels spirits are, that wait his will,
 As flames of fire his anger they fulfil.
 In the beginning with a mighty hand,
 He made the earth by counterpoise to stand;
 Never to move, but to be fixed still;
 Yet hath no pillars but his sacred will.
 This earth, as with a veil, once cover'd was,
 The waters over-flowed all the mass:
 But upon his rebuke away they fled,
 And then the hills began to shew their head;
 The vales their hollow bosoms opened plain,
 The streams ran trembling down the vales again:
 And that the earth no more might drowned be
 He set the sea his bounds of liberty;
 And though his waves resound, and beat the shore,
 Yet it is bridled by his holy lore.
 Then did the rivers seek their proper places,
 And found their heads, their issues, and their races;
 The springs do feed the rivers all the way,
 And so the tribute to the sea repay:
 Running along through many a pleasant field,
 Much fruitfulness unto the earth they yield;
 That know the beasts and cattle feeding by,
 Which for to slake their thirst do thither hie.
 Nay, desert grounds the streams do not forsake,
 But through the unknown ways their journey take:
 The asses wild that hide in wilderness,
 Do thither come, their thirst for to refresh.
 The shady trees along their banks do spring,
 In which the birds do build, and sit, and sing;

Stroking the gentle air with pleasant notes,
 Plaining or chirping through their warbling throats.
 The higher grounds, where waters cannot rise,
 By rain and dews are water'd from the skies;
 Causing the earth put forth the grass for beasts,
 And garden herbs, serv'd at the greatest feasts;
 And bread that is all viands firmament,
 And gives a firm and solid nourishment;
 And wine man's spirits for to recreate;
 And oil his face for to exhilarate.
 The fappy cedars tall like stately towers,
 High flying birds do harbour in their bowers;
 The holy storks that are the travellers,
 Choose for to dwell and build within the firs;
 The climbing goats hang on steep mountains side;
 The digging conies in the rocks do bide;
 The moon, so constant in inconstancy,
 Doth rule the monthly seasons orderly;
 The sun, eye of the world, doth know his race,
 And when to shew, and when to hide his face.
 Thou makest darkness, that it may be night,
 When as the savage beasts that fly the light,
 (As conscious of man's hatred) leave their den,
 And range abroad, secur'd from sight of men.
 Then do the forests ring of lions roaring,
 That ask their meat of God, their strength restoring;
 But when the day appears, they back do fly,
 And in their dens again do lurking lie.
 Then man goes forth to labour in the field,
 Whereby his grounds more rich encrease may yield.
 O Lord, thy providence sufficeth all,
 Thy goodness not restrain'd but general
 Over thy creatures, the whole earth doth flow
 With thy great largess pour'd forth here below.
 Nor is it earth alone exalts thy name,
 But seas and streams likewise do spread the fame.
 The rowling seas unto the lot doth fall,
 Of beasts innumerable, great and small;
 There do the stately ships plow up the floods,
 The greater navies look like walking woods;
 The fishes there far voyages do make,
 To divers shores their journey they do take;
 There hast thou set the great Leviathan,
 That makes the seas to seeth like boiling pan;
 All these do ask of thee their meat to live
 Which in due season thou to them dost give.
 Ope thou thy hand, and then they have good fare;
 Shut thou thy hand, and then they troubled are.
 All life, and spirit, from thy breath proceed,
 Thy word doth all things generate and feed;
 If thou withdraw'st it, then they cease to be,
 And strait return to dust and vanity;

But when thy breath thou dost send forth again,
 Then all things do renew, and spring amain;
 So that the earth, but lately desolate,
 Doth now return unto the former state.
 The glorious Majesty of God above,
 Shall ever reign, in mercy, and in love;
 God shall rejoice, all his fair works to see,
 For, as they come from him, all perfect be.
 The earth shall quake, if aught his wrath provoke;
 Let him but touch the mountains, they shall smoke.
 As long as life doth last, I hymns will sing,
 With chearful voice, to the eternal King;
 As long as I have being, I will praise
 The works of God, and all his wondrous ways.
 I know that he my words will not despise,
 Thanksgiving is to him a sacrifice.
 But as for sinners, they shall be destroy'd
 From off the earth, their places shall be void.
 Let all his works praise him with one accord;
 Oh praise the Lord, my soul; praise ye the Lord!

The Translation of PSALM CXXVI.

WHEN God return'd us graciously
 Unto our native land,
 We seem'd as in a dream to be,
 And in a maze to stand.

The heathen likewise they could say,
 The God, that these men serve,
 Hath done great things for them this day,
 Their nation to preserve.

'Tis true, God hath pour'd out his grace
 On us abundantly,
 For which we yield him psalms, and praise,
 And thanks, with jubilee.

O Lord, turn our captivity,
 As winds that blow at south,
 Do pour the tides with violence
 Back to the rivers mouth.

Who sows in tears, shall reap in joy;
 The Lord doth so ordain;
 So that his seed be pure and good,
 His harvest shall be gain.

The Translation of PSALM CXXXVII.

WHEN as we sat all sad and desolate,
 By *Babylon*, upon the river's side,
 Eas'd from the tasks, which in our captive state,
 We were enforced daily to abide,
 Our harps we had brought with us to the field,
 Some solace to our heavy souls to yield.

But soon we found we fail'd of our account,
 For when our minds some freedom did obtain,
 Straitways the memory of *Sion Mount*,
 Did cause afresh our wounds to bleed again;
 So that with present griefs, and future fears,
 Our eyes burst forth into a stream of tears.

As for our harps, since sorrow struck them dumb,
 We hang'd them on the willow trees were near;
 Yet did our cruel masters to us come,
 Asking of us some *Hebrew* songs to hear;
 Taunting us rather in our misery,
 Than much delighting in our melody.

Alas (said we) who can once force or frame,
 His grieved and oppressed heart to sing
 The praises of *Jehovah's* glorious name,
 In banishment, under a foreign King?
 In *Sion* is his seat and dwelling-place,
 Thence doth he shew the brightness of his face.

Jerusalem, where God his throne hath set,
 Shall any hour absent thee from my mind?
 Then let my right hand quite her skill forget,
 Then let my voice and words no passage find;
 Nay if I do not thee prefer in all,
 That in the compass of my thoughts can fall.

Remember thou, O Lord, the cruel cry
 Of *Edom's* children, which did ring and sound,
 Inciting the *Chaldean's* cruelty,
 Down with it, down with it, even unto the ground.
 In that good day repay it unto them
 When thou shalt visit thy *Jerusalem*.

And thou, O *Babylon*, shalt have thy turn
 By just revenge, and happy shall he be,
 That thy proud walls and tow'rs shall waste and burn,
 And as thou didst by us, so do by thee.
 Yea happy he, that takes thy childrens bones,
 And dasheth them against the pavement stones.

The Translation of Psalm CXLIX.

O Sing a new song to our God above,
Avoid profane ones, 'tis for holy quire:
Let *Israel* sing songs of holy love
To him that made them, with their hearts on fire:
Let *Sion's* sons lift up their voice, and sing
Carols and anthems to their heavenly King.

Let not your voice alone his praise forth tell,
But move withal, and praise him in the dance;
Cymbals and harps let them be tuned well,
'Tis he that doth the poor's estate advance:
Do this not only on the solemn days,
But on your secret beds your spirits raise.

O let the saints bear in their mouth his praise,
And a two-edged sword drawn in their hand,
Therewith for to revenge the former days,
Upon all nations that their zeal withstand;
To bind their Kings in chains of iron strong,
And manacle their nobles for their wrong.

Expect the time, for 'tis decreed in Heaven,
Such honour shall unto his saints be given.



P I E C E S

ASCRIBED TO

LORD *BACON*,

Published in his *Remains* in 1648, in Quarto.

An Explanation what manner of Persons those should be that are to execute the Power or Ordinance of the King's Prerogative.

1. **T**HAT absolute prerogative, according to the King's pleasure, revealed by his laws, may be exercised and executed by any subject, to whom power may be given by the King, in any place of judgment or commission, which the King by his law hath ordained: in which the judge subordinate cannot wrong the people, the law laying down a measure by which every judge should govern and execute; against which law, if any judge proceed, he is by the law questionable, and punishable for his transgression.

IN this nature are all the judges and commissioners of the land, no otherwise than in their courts, in which the King in person is supposed to sit, who cannot make that trespass, felony, or treason, which the law hath not made so to be, neither can punish the guilty by other punishment than the laws have appointed.

THIS prerogative or power as it is over all the subjects, so being known by the subjects, they are without excuse if they offend, and suffer no wrong if they be justly punished; and by this prerogative the King governeth all sorts of people according unto known will.

2. **T**HE absolute prerogative, which is in Kings according to their private will and judgment, cannot be executed by any subject; neither is it possible to give such power by commission, or fit to subject the people to the same: for the King, in that he is the substitute of God immediately, the father of his people, and head of the commonwealth, hath, by participation with God, and with his subjects, a discretion, judgment, and feeling love towards those over whom he reigneth, only proper to himself, or to his place and person; who seeing he cannot in any others infuse his wisdom, power, or gifts, which God, in respect of his place and charge, hath enabled him withal, can neither subordinate any other judge to govern by that knowledge,
which

which the King can no otherwise than by his known will participate unto him: and if any such subordinate judge shall obtain commission according to the discretion of such judge to govern the people, that judge is bound to think, that to be his soundest discretion, which the law (in which is the King's known will) sheweth unto him to be that justice which he ought to administer; otherwise he might seem to esteem himself above the King's law, who will not govern by it, or to have a power derived from other than from the King, which in the kingdom will administer justice contrary unto the justice of the land: neither can such a judge or commissioner, under the name of the King's authority, shroud his own high action, seeing the conscience and discretion of every man is particular and private to himself, so as the discretion of the judge cannot be properly or possibly the discretion or the conscience of the King; and if not his discretion, neither the judgment that is ruled by another man's only.

THEREFORE it may seem they rather desire to be Kings, than to rule the people under the King, which will not administer justice by law, but by their own will.

3. THIS administration in a subject is derogative to the King's prerogative; for he administred justice out of a private direction, being not capable of a general direction how to use the King's subjects at pleasure, in causes of particular respect; which if no other than the King himself can do, how can it be so that any man should desire that which is unfit and impossible, but that it must proceed out of some exorbitant affection? the rather, seeing such places be full of trouble, and altogether unnecessary, no man will seek to thrust himself into them but for hopes of gain. Then is not any prerogative oppugned, but maintained, though it be desired, that every subordinate magistrate may not be made supreme, whereby he may seize upon the hearts of the people, take from the King the respect due unto him only, or judge the people otherwise than the King doth himself.

4. AND although the Prince be not bound to render any account to the law, which in person he administred himself, yet every subordinate judge must render an account to the King, by his laws, how he hath administred justice in his place where he is set. But if he hath power to rule by private direction, for which there is no law, how can he be questioned by a law, if in his private censure he offends?

5. THEREFORE, it seemeth, that in giving such authority, the King ordaineth not subordinate magistrates, but absolute Kings; and what doth the King leave to himself, who giveth so much to others, as he hath himself? Neither is there a greater bond to tie the subject to his Prince in particular, than when he shall have recourse unto him, in his person, or in his power, for relief of the wrongs which from private men be offered; or for reformation of the oppressions which any subordinate magistrate shall impose upon the people. There can be no offence in the judge, who hath power to execute according to his discretion, when the discretion of any judge shall be thought fit to be limited, and therefore there can be therein no reformation; whereby the King in this useth no prerogative to gain his subjects right; then the subject is bound to suffer helpless wrong; and the discontent of the people is cast upon the King; the laws being neglected, which with their equity in all other causes and judgments (saving this) interpose themselves and yield remedy.

6. AND to conclude, custom cannot confirm that which is any ways unreasonable of itself.

RULES FOR CONVERSATION.

WISDOM will not allow that, which is many ways dangerous, and no ways profitable.

JUSTICE will not approve that government, where it cannot be but wrong must be committed.

NEITHER can there be any rule by which to try it, nor means of reformation of it.

7. THEREFORE, whosoever desireth government, must seek such as he is capable of, not such as seemeth to himself most easy to execute; for it is apparent, that it is easy to him that knoweth not law nor justice, to rule as he listeth, his will never wanting a power to itself: But it is safe and blameless, both for the judge and people, and honour to the King, that judges be appointed who know the law, and that they be limited to govern according to the law.

Short Notes for Civil Conversation.

1. **T**O deceive mens expectations generally (with cautel) argueth a staid mind, and unexpected constancy, viz. in matters of fear, anger, sudden joy or grief, and all things which may affect or alter the mind in publick or sudden accidents, or such like.

2. **I**T is necessary to use a stedfast countenance, not wavering with action, as in moving the head or hand too much, which sheweth a fantastical light and fickle operation of the spirit, and consequently like mind as gesture: only it is sufficient, with leisure, to use a modest action in either.

3. **I**N all kinds of speech, either pleasant, grave, severe, or ordinary, it is convenient to speak leisurely, and rather drawingly, than hastily; because hasty speech confounds the memory, and oftentimes (besides unseemliness) drives a man either to a *non-plus* or unseemly stammering, harping upon that which should follow; whereas a slow speech confirmeth the memory, addeth a conceit of wisdom to the hearers, besides a seemliness of speech and countenance.

4. **T**O desire in discourse, to hold all arguments, is ridiculous, wanting true judgment; for in all things no man can be exquisite.

5, 6. **T**O have common places to discourse and to want variety, is both tedious to the hearers, and shews a shallowness of conceit; therefore it is good to vary, and suit speeches with the present occasions; and to have a moderation in all our speeches, especially in jesting, of religion, state, great persons, weighty and important business, poverty, or any thing deserving pity.

7. **A** long continued speech, without a good speech of interlocution, sheweth slowness; and a good reply, without a good set speech, sheweth shallowness and weakness.

8. **T**O use many circumstances, ere you come to matter, is wearisome; and to use none at all, is but blunt.

9. **B**ASHFULNESS is a great hindrance to a man, both of uttering his conceit, and understanding what is propounded unto him: wherefore, it is good to press himself forwards with discretion, both in speech, and company of the better sort.

Ufus promptos facit.

An ESSAY on DEATH.

1. **I** HAVE often thought upon death, and I find it the least of all evils. All that which is past is as a dream; and he that hopes or depends upon time coming, dreams waking. So much of our life as we have discovered is already dead; and all those hours which we share, even from the breasts of our mother, until we return to our grand-mother the earth, are part of our dying days; whereof even this is one, and those that succeed are of the same nature, for we die daily; and as others have given place to us, so we must in the end give way to others.

2. **PHYSICIANS** in the name of death, include all sorrow, anguish, disease, calamity, or whatsoever can fall in the life of man, either grievous or unwelcome: But these things are familiar unto us, and we suffer them every hour; therefore we die daily, and I am older since I affirmed it.

3. **I KNOW** many wise men, that fear to die; for the change is bitter, and flesh would refuse to prove it: besides, the expectation brings terror, and that exceeds the evil. But I do not believe, that any man fears to be dead, but only the stroke of death; and such are my hopes, that if heaven be pleased, and nature renew but my lease for twenty one years more, without asking longer days, I shall be strong enough to acknowledge without mourning, that I was begotten mortal. Virtue walks not in the high-way, though she go *per alta*; this is strength and the blood to virtue, to condemn things that be desired, and to neglect that which is feared.

4. **WHY** should man be in love with his fetters, though of gold? Art thou drowned in security? Then I say thou art perfectly dead. For though thou movest, yet thy soul is buried within thee, and thy good angel either forsakes his guard or sleeps. There is nothing under heaven, saving a true friend, (who cannot be counted within the number of moveables) unto which my heart doth lean. And this dear freedom hath begotten me this peace, that I mourn not for that end which must be, nor spend one wish to have one minute added to the incertain date of my years. It was no mean apprehension of *Lucian*, who says of *Menippus*, that in his travels through hell, he knew not the Kings of the earth from other men, but only by their louder cryings and tears: which was fostered in them through the remorseful memory of the good days they had seen, and the fruitful havings which they so unwillingly left behind them: he that was well seated, looked back at his portion, and was loth to forsake his farm; and others either minding marriages, pleasures, profit, or preferment, desired to be excused from death's banquet: they had made an appointment with earth, looking at the blessings, not the hand that enlarged them, forgetting how unclothedly they came hither, or with what naked ornaments they were arrayed.

5. **BUT** were we servants of the precept given, and observers of the heathens rule *memento mori*, and not become benighted with this seeming felicity, we should enjoy it as men prepared to lose, and not wind up our thoughts upon so perishing a fortune: he that is not slackly strong (as the servants of pleasure) how can he be found unready to quit the veil and false visage of his perfection? The soul having shaken off her flesh, doth then set up for herself, and condemning things that are under, shews what finger hath enforced her; for the souls of idiots are of the same piece with those of statesmen, but now and then nature is at a fault, and this good guest of ours,

takes foil in an imperfect body, and so is slackened from shewing her wonders; like an excellent musician, which cannot utter himself upon a defective instrument.

6. BUT see how I am swerved, and lose my course, touching at the soul that doth least hold action with death, who hath the surest property in this frail act; his style is the end of all flesh, and the beginning of incorruption.

THIS ruler of monuments, leads men for the most part out of this world with their heels forward; in token that he is contrary to life; which being obtained, sends man headlong into this wretched theatre, where being arrived, their first language is that of mourning. Nor in my own thoughts, can I compare men more fitly to any thing, than to the *Indian fig-tree*, which being ripened to his full height, is said to decline his branches down to the earth; whereof she conceives again, and they become roots in their own stock.

So man having derived his being from the earth, first lives the life of a tree, drawing his nourishment as a plant, and made ripe for death he tends downwards, and is sowed again in his mother the earth, where he perisheth not, but expects a quickening.

7. So we see death exempts not a man from being, but only presents an alteration; yet there are some men (I think) that stand otherwise persuaded. Death finds not a worse friend than an alderman, to whose door I never knew him welcome; but he is an importunate guest, and will not be said nay.

AND though they themselves shall affirm, that they are not within, yet the answer will not be taken; and that which heightens their fear is, that they know they are in danger to forfeit their flesh, but are not wise of the payment day: which sickly uncertainty, is the occasion that (for the most part) they step out of this world unfurnished for their general account, and being all unprovided, desire yet to hold their gravity, preparing their souls to answer in scarlet.

THUS I gather, that death is disagreeable to most citizens, because they commonly die intestate; this being a rule, that when their will is made, they think themselves nearer a grave than before: now they, out of the wisdom of thousands, think to scare destiny, from which there is no appeal, by not making a will, or to live longer by protestation of their unwillingness to die. They are for the most part well made in this world (accounting their treasure by legions, as men do devils:) their fortune looks toward them, and they are willing to anchor at it, and desire (if it be possible) to put the evil day far off from them, and to adjourn their ungrateful and killing period.

No, these are not the men which have bespoken death, or whose looks are assured to entertain a thought of him.

8. DEATH arrives gracious only to such as sit in darkness, or lie heavy burthened with grief and irons; to the poor Christian, that sits bound in the galley; to despairful widows, pensive prisoners, and deposed Kings; to them, whose fortune runs back, and whose spirit mutinies; unto such death is a redeemer, and the grave a place for retiredness and rest.

THESE wait upon the shore of death, and waft unto him to draw near, wishing above all others, to see his star, that they might be led to his place; wooing the remorseless sisters to wind down the watch of their life, and to break them off before the hour.

9. BUT death is a doleful messenger to an usurer, and fate untimely cuts their thread; for it is never mentioned by him, but when rumours of war, and civil tumults put him in mind thereof.

AND

AND when many hands are armed, and the peace of a city in disorder, and the foot of the common soldiers sounds an alarm on his stairs, then perhaps such a one (broken in thoughts of his moneys abroad, and curling the monuments of coin which are in his house) can be content to think of death, and (being hasty of perdition) will perhaps hang himself, lest his throat should be cut; provided, that he may do it in his study, surrounded with wealth, to which his eye sends a faint and languishing salute, even upon the turning off; remembering always, that he have time and liberty, by writing, to depute himself as his own heir.

FOR that is a great peace to his end, and reconciles him wonderfully upon the point.

10. HEREIN we all dally with our selves, and are without proof till necessity. I am not of those, that dare promise to pine away my self in vain-glory, and I hold such to be but feat boldness, and them that dare commit it, to be vain. Yet for my part, I think nature should do me great wrong, if I should be so long in dying, as I was in being born.

To speak truth, no man knows the lists of his own patience; nor can divine how able he shall be in his sufferings, till the storm come (the perfectest virtue being tried in action:) but I would (out of a care to do the best business well) ever keep a guard, and stand upon keeping faith and a good conscience.

11. AND if wishes might find place, I would die together, and not my mind often, and my body once; that is, I would prepare for the messengers of death, sickness, and affliction, and not wait long, or be attempted by the violence of pain.

HEREIN I do not profess myself a Stoick, to hold grief no evil, but opinion, and a thing indifferent.

BUT I consent with *Caesar*, and that the suddenest passage is easiest, and there is nothing more awakens our resolve and readiness to die than the quieted conscience, strengthened with opinion, that we shall be well spoken of upon earth by those that are just, and of the family of virtue; the opposite whereof, is a fury to man, and makes even life unsweet.

THEREFORE, what is more heavy than evil fame deserved? Or likewise, who can see worse days, than he that yet living doth follow at the funerals of his own reputation?

I have laid up many hopes, that I am privileged from that kind of mourning, and could wish that like peace to all those with whom I wage love.

12. I might say much of the commodities that death can sell a man; but briefly, death is a friend of ours, and he that is not ready to entertain him, is not at home. Whilst I am, my ambition is not to fore-flow the tide; I have but so to make my interest of it as I may account for it; I would wish nothing but what might better my days, nor desire any greater place than the front of good opinion. I make not love to the continuance of days, but to the goodness of them; nor wish to die, but refer my self to my hour, which the great dispenser of all things hath appointed me; yet as I am frail, and suffered for the first fault, were it given me to chuse, I should not be earnest to see the evening of my age; that extremity of it self being a disease, and a mere return into infancy: so that if perpetuity of life might be given me, I should think what the *Greek* poet said, such an age is a mortal evil. And since I must needs be dead, I require it may not be done before mine enemies, that I be not stript before I be cold; but before my friends. The night was even now; but that name

is

is lost; it is not now too late, but early. Mine eyes begin to discharge their watch, and compound with this fleshly weakness for a time of perpetual rest; and I shall presently be as happy for a few hours, as I had died the first hour I was born.

The Characters of a believing Christian, in Paradoxes, and seeming Contradictions. Compared with the Copy printed Lond. 1645.

I. **A** Christian is one that believes things his reason cannot comprehend; he hopes for things which neither he nor any man alive ever saw; he labours for that which he knoweth he shall never obtain; yet in the issue, his belief appears not to be false; his hope makes him not ashamed; his labour is not in vain.

II. **HE** believes three to be one, and one to be three; a Father not to be elder than his Son; a Son to be equal with his Father; and one proceeding from both to be equal with both; he believing three persons in one nature, and two natures in one person.

III. **HE** believes a Virgin to be a Mother of a Son; and that very Son of hers to be her Maker. He believes him to have been shut up in a narrow room, whom heaven and earth could not contain. He believes him to have been born in time, who was and is from everlasting. He believes him to have been a weak child carried in arms, who is the Almighty; and him once to have died, who only hath life and immortality in himself.

IV. **HE** believes the God of all grace to have been angry with one that hath never offended him; and that God, that hates sin, to be reconciled to himself, though sinning continually, and never making or being able to make him satisfaction. He believes a most just God to have punished a most just person, and to have justified himself though a most ungodly sinner. He believes himself freely pardoned, and yet a sufficient satisfaction was made for him.

V. **HE** believes himself to be precious in God's sight, and yet loaths himself in his own. He dares not justify himself even in those things wherein he can find no fault with himself, and yet believes God accepts him in those services wherein he is able to find many faults.

VI. **HE** praises God for his justice, and yet fears him for his mercy. He is so ashamed as that he dares not open his mouth before God; and yet he comes with boldness to God, and asks him any thing he needs. He is so humble as to acknowledge himself to deserve nothing but evil; and yet believes that God means him all good. He is one that fears always, yet is as bold as a lion. He is often sorrowful, yet always rejoicing; many times complaining, yet always giving of thanks. He is the most lowly-minded yet the greatest aspirer; most contented, yet ever craving.

VII. **HE** bears a lofty spirit in a mean condition; when he is ablest he thinks meanest of himself. He is rich in poverty, and poor in the midst of riches. He believes all the world to be his, yet he dares take nothing without special leave from God. He covenants with God for nothing, yet looks for a great reward. He loseth his life and gains by it; and whilst he loseth it, he saveth it.

VIII. HE lives not to himself, yet of all others he is most wise for himself. He denieth himself often, yet no man loveth himself so well as he. He is most reproached, yet most honoured. He hath most afflictions, and most comforts.

IX. THE more injury his enemies do him, the more advantages he gains by them. The more he forsakes worldly things, the more he enjoys them.

X. HE is the most temperate of all men, yet fares most deliciously; he lends and gives most freely, yet he is the greatest usurer; he is meek towards all men, yet inexorable by men. He is the best child, husband, brother, friend; yet hates father and mother, brother and sister. He loves all men as himself, yet hates some men with a perfect hatred.

XI. HE desires to have more grace than any man hath in the world, yet is truly sorrowful when he seeth any man have less than himself; he knoweth no man after the flesh, yet gives all men their due respects; he knoweth if he please man he cannot be the servant of Christ; yet for Christ's sake he pleaseth all men in all things. He is a peace-maker, yet is a continual fighter, and an irreconcilable enemy.

XII. HE believes him to be worse than an infidel that provides not for his family, yet himself lives and dies without care. He accounts all his superiors, yet stands stiffly upon authority. He is severe to his children, because he loveth them; and by being favourable unto his enemy, he revengeth himself upon him.

XIII. HE believes the angels to be more excellent creatures than himself, and yet counts them his servants. He believes that he receives many good things by their means, and yet he neither prays for their assistance, nor offers them thanks, which he doth not disdain to do to the meanest Christian.

XIV. HE believes himself to be a King, how mean soever he be; and how great soever he be, yet he thinks himself not too good to be a servant to the poorest saint.

XV. HE is often in prison, yet always at liberty: a freeman though a servant. He loves not honour amongst men, yet highly prizeth a good name.

XVI. HE believes that God hath bidden every man that doth him good, to do so; he yet of any man is the most thankful to them that do aught for him. He would lay down his life to save the soul of his enemy, yet will not adventure upon one sin to save the life of him, who saved his.

XVII. HE swears to his own hindrance, and changeth not; yet knoweth that his oath cannot tie him to sin.

XVIII. HE believes Christ to have no need of any thing he doth, yet maketh account that he doth relieve Christ in all his acts of charity. He knoweth he can do nothing of himself, yet labours to work out his own salvation. He professeth he can do nothing, yet as truly professeth he can do all things: he knoweth that flesh and blood cannot inherit the kingdom of God, yet believeth he shall go to heaven both body and soul.

XIX. HE trembles at God's word, yet counts it sweeter to him than honey, and the honey-comb, and dearer than thousands of gold and silver.

XX. HE believes that God will never damn him, and yet fears God for being able to cast him into hell. He knoweth he shall not be saved by, nor for his good works, yet he doth all the good works he can.

XXI. HE knoweth God's providence is in all things, yet is so diligent in his calling and business, as if he were to cut out the thread of his happiness. He believes before-hand that God hath purposed what he shall be, and that

nothing can make him to alter his purpose; yet prays and endeavours, as if he would force God to save him for ever.

XXII. HE prays and labours for that which he is confident God means to give; and the more assured he is, the more earnest he prays for that he knows he shall never obtain, and yet gives not over. He prays and labours for that which he knows he shall be no less happy without; he prays with all his heart not to be led into temptation, yet rejoiceth when he is fallen into it; he believes his prayers are heard, even when they are denied, and gives thanks for that, which he prays against.

XXIII. HE hath within him both flesh and spirit, yet he is not a double-minded man; he is often led captive by the law of sin, yet it never gets dominion over him; he cannot sin, yet can do nothing without sin: He doth nothing against his will, yet maintains he doth what he would not. He wavers and doubteth, yet obtains.

XXIV. HE is often tossed and shaken, yet is as mount *Sion*; he is a serpent and a dove; a lamb and a lion; a reed and a cedar. He is sometimes so troubled, that he thinks nothing to be true in religion; yet if he did think so, he could not at all be troubled. He thinks sometimes that God hath no mercy for him, yet resolves to die in the pursuit of it. He believes like *Abraham* against hope, and though he cannot answer God's logick, yet with the woman of *Canaan*, he hopes to prevail with the rhetorick of importunity.

XXV. HE wrestles, and yet prevails; and though yielding himself unworthy of the least blessing he enjoys, yet *Jacob* like, he will not let him go without a new blessing. He sometimes thinks himself to have no grace at all, and yet how poor and afflicted soever he be besides, he would not change conditions with the most prosperous man under heaven, that is a manifest worldling.

XXVI. HE thinks sometimes that the ordinances of God do him no good, yet he would rather part with his life than be deprived of them.

XXVII. HE was born dead; yet so that it had been murder for any to have taken his life away. After he began to live, he was ever dying.

XXVIII. AND though he hath an eternal life begun in him, yet he makes account he hath a death to pass through.

XXIX. HE counts self-murder a heinous sin, yet is ever busied in crucifying the flesh, and in putting to death his earthly members; not doubting, but there will come a time of glory, where he shall be esteemed precious in the sight of the great God of heaven and earth, appearing with boldness at his throne, and asking any thing he needs; being endued with humility, by acknowledging his great crimes and offences, and that he deserveth nothing but severe punishment.

XXX. HE believes his soul and body shall be as full of glory, as them that have more; and no more full, than theirs that have less.

XXXI. HE lives invisible to those that see him, and those that know him best do but guess at him; yet those many times judge more truly of him than he doth of himself.

XXXII. THE world will sometimes account him a saint, when God accounteth him a hypocrite; and afterwards when the world branded him for an hypocrite, then God owned him for a saint.

XXXIII. HIS death makes not an end of him. His soul which was put into his body, is not to be perfected without his body; yet his soul is more happy,

happy, when it is separated from his body, than when it was joined unto it: And his body though torn in pieces, burnt to ashes, ground to powder, turned to rottenness, shall be no loser.

XXXIV. His advocate, his surety shall be his judge; his mortal part shall become immortal; and what was sown in corruption and defilement shall be raised in incorruption and glory; and a finite creature shall possess an infinite happiness. Glory be to God.

A PRAYER made and used by the Lord Chancellor

BACON.

O ETERNAL God, and most merciful Father in Jesus Christ: Let the words of our mouths, and the meditations of our hearts be now and ever gracious in thy sight, and acceptable unto thee, O Lord, our God, our strength, and our redeemer.

O ETERNAL God, and most merciful Father in Jesus Christ; in whom thou hast made a covenant of grace and mercy with all those that come unto thee in him, in his name and mediation, we humbly prostrate our selves before the throne of thy mercies seat, acknowledging that by the breach of all thy holy laws and commandments, we are become wild olive-branches, strangers to thy covenant of grace; we have defaced in our selves thy sacred image imprinted in us by creation; we have sinned against heaven and before thee, and are no more worthy to be called thy children: O admit us into the place even of hired servants. Lord thou hast formed us in our mothers wombs, thy providence hath hitherto watched over us, and preserved us unto this period of time: O stay not the course of thy mercies and loving-kindness towards us: have mercy upon us, O Lord, for thy dear Son Christ Jesus sake, who is the way, the truth, and the life. In him, O Lord, we appeal from thy justice to thy mercy, beseeching thee in his name, and for his sake only, thou wilt be graciously pleased freely to pardon, and forgive us all our sins and disobedience, whether in thought, word, or deed, committed against thy divine Majesty; and in his precious blood-shedding, death, and perfect obedience, free us from the guilt, the stain, the punishment and dominion of all our sins, and clothe us with his perfect righteousness. There is mercy with thee, O Lord, that thou mayst be feared; yea, thy mercies swallow up the greatness of our sins: speak peace to our souls and consciences, make us happy in the free remission of all our sins, and be reconciled to thy poor servants in Jesus Christ, in whom thou art well pleased: suffer not the works of thine own hands to perish, thou art not delighted in the death of sinners, but in their conversion. Turn our hearts, and we shall be turned; convert us, and we shall be converted; illuminate the eyes of our minds and understanding with the bright beams of thy Holy Spirit, that we may daily grow in the saving knowledge of the heavenly mystery of our redemption, wrought by our dear Lord and Saviour Jesus Christ; sanctify our wills and affection by the same Spirit, the most sacred fountain of all grace and goodness; reduce them to the obedience of thy most holy will in the practice of all piety toward thee, and charity towards all men. In flame our hearts with thy love, cast forth of them what displeaseth thee, all infidelity, hardness of heart, prophaneness, hypocrisy, contempt of thy holy word and ordinances, all uncleanness, and whatsoever advanceth it self in opposition to

thy holy will. And grant that henceforth, through thy grace we may be enabled to lead a godly, holy, sober, and christian life in true sincerity and uprightness of heart before thee. To this end, plant thy holy fear in our hearts, grant that it may never depart from before our eyes, but continually guide our feet in the paths of thy righteousness, and in the ways of thy commandments: increase our weak faith, grant it may daily bring forth the true fruits of unfeigned repentance, that by the power of the death of our Lord and Saviour Jesus Christ, we may daily die unto sin, and by the power of his resurrection we may be quickened, and raised up to newness of life, may be truly born anew, and may be effectually made partakers of the first resurrection, that then the second death may never have dominion over us. Teach us, O Lord, so to number our days, that we may apply our hearts unto wisdom; make us ever mindful of our last end, and continually to exercise the knowledge of grace in our hearts, that in the said divorce of soul and body, we may be translated here to that kingdom of glory prepared for all those that love thee, and shall trust in thee; even then and ever, O Lord, let thy holy angels pitch their tents round about us, to guard and defend us from all the malice of Satan, and from all perils both of soul and body. Pardon all our unthankfulness, make us daily more and more thankful for all thy mercies and benefits daily poured down upon us. Let these our humble prayers ascend to the throne of grace, and be granted not only for these mercies, but for whatsoever else thy wisdom knows needful for us; and for all those that are in need, misery, and distress, whom, Lord, thou hast afflicted either in soul or body; grant them patience and perseverance in the end, and to the end: And that, O Lord, not for any merits of ours, but only for the merits of thy Son, and our alone Saviour Christ Jesus; to whom with thee, and the Holy Spirit, be ascribed all glory, &c. *Amen.*



LETTERS.

LETTERS.

I. From an original in the Earl of OXFORD's library, never before printed. *

[N. B. *Those Letters mark'd with a *, were not in the last Edition.*]

It may please your good Lordship,

I AM sorry the joint masque from the four inns of court faileth; wherein I conceive there is no other ground of that event but impossibility. Nevertheless, because it falleth out that at this time *Grays-Inn* is well furnished of gallant young gentlemen, your Lordship may be pleased to know, that rather than this occasion shall pass without some demonstration of affection from the inns of court, there are a dozen gentlemen of *Grays-Inn*, that out of the honour which they bear to your Lordship and my Lord Chamberlain, to whom at their last masque they were so much bounden, will be ready to furnish a masque, wishing it were in their power to perform it according to their mind. And so for the present I humbly take my leave, resting

Your Lordship's very humble and much bounden,

FR. BACON.

II. A LETTER of ceremony to QUEEN ELIZABETH, upon the sending of a New-year's gift.

It may please your sacred Majesty,

ACCORDING to the ceremony of the time, I would not forget, in all humbleness, to present your Majesty with a small new-year's gift: nothing to my mind. And therefore to supply it, I can but pray to God to give your Majesty his new-year's gift; that is, a new year that shall be as no year to your body; and as a year with two harvests to your coffers: and every other way prosperous and gladsome. And so I remain,

Your Majesty's loyal and obedient subject.

III. A LETTER of ceremony to QUEEN ELIZABETH, upon the sending of a New-year's gift.

Most excellent sovereign Mistress,

THE only new-year's gift which I can give your Majesty, is that which God hath given to me; which is, a mind, in all humbleness, to wait

upon your commandments and business: wherein I would to God, that I were hooded, that I saw less; or that I could perform more: for now I am like a hawk that bates, when I see occasion of service, but cannot fly because I am tied to another's fist. But mean while, I continue my presumption of making to your Majesty my poor oblation of a garment, as unworthy the wearing as his service that sends it: but the approach to your excellent person may give worth to both; which is all the happiness I aspire unto.

IV. To the Q U E E N.

It may please your sacred Majesty,

I WOULD not fail to give your Majesty my most humble and due thanks, for your royal choice of such commissioners in the great *Star-chamber* cause; being persons besides their honour of such science and integrity: by whose report I doubt not but your Majesty will find that, which you have been heretofore informed (both by my lord keeper, and by some much meaner person) touching the nature of that cause, to be true. This preparatory hearing doth already assail me, with new and enlarged offers of composition; which if I had born a mind to have hearkened unto, this matter had been quenched long ago, without any benefit to your Majesty. But your Majesty's benefit is to me in greater regard than mine own particular: trusting to your Majesty's gracious disposition and royal word, that your Majesty will include me, in any extraordinary course of your sovereign pleasure, which your Majesty shall like to take in this cause. The other man, I spoke to your Majesty of, may, within these two terms, be in the same straits, between your Majesty's justice and mercy, that this man now is, if your Majesty be so pleased. So most humbly craving pardon, for my presuming to seek access for these few lines, I recommend your Majesty to the most precious custody, and best preservation of the divine Majesty.

Your Majesty's most humble, and entirely

Probably wrote 1600.

obedient servant and subject.

V. To the Q U E E N.

It may please your excellent Majesty,

I PRESUME, according to the ceremony and good manner of the time, and my accustomed duty, in all humbleness to present your Majesty with a simple gift; almost as far from answering my mind, as sorting with your greatness; and therewith wish, that we may continue to reckon on, and ever, your Majesty's happy years of reign: and they that reckon upon any other hopes, I would they might reckon short and to their cost. And so craving pardon most humbly, I commend your Majesty to the preservation of the divine goodness.

V. To

VI. To the QUEEN.

It may please your excellent Majesty,

I MOST humbly entreat your Majesty, not to impute my absence to any weakness of mind or unworthiness. But I assure your Majesty, I do find envy beating so strongly upon me, standing as I do, (if this be to stand) as it were not strength of mind, but stupidity, if I should not decline the occasions; except I could do your Majesty more service than I can any ways discern that I am able to do. My course towards your Majesty (God is my witness) hath been pure and unleavened: and never poor gentleman (as I am persuaded) had a deeper and truer desire and care of your glory, your safety, your repose of mind, your service: wherein, if I have exceeded my outward vocation, I most humbly crave your Majesty's pardon for my presumption. On the other side, if I have come short of my inward vocation, I most humbly crave God's pardon for quenching the spirit. But in this mind I find such solitude, and want of comfort, which I judge to be, because I take duty too exactly, and not according to the dregs of this age; wherein the old anthem might never be more truly sung; *totus mundus in maligno positus est*. My life hath been threatened, and my name libelled, which I count an honour. But these are the practices of those whose despairs are dangerous, but yet not so dangerous as their hopes; or else the devices of some, that would put out all your Majesty's lights, and fall on reckoning, how many years you have reigned; which I beseech our blessed Saviour may be doubled: and that I may never live to see any eclipse of your glory, interruption of safety, or indisposition of your person; which I commend to the divine Majesty, who keep you and fortify you.

This seems to refer to the E. of Essex, 1600.

VII. To my Lord Treasurer BURGHLEY, 1591.

My Lord,

WITH as much confidence as mine own honest and faithful devotion unto your service, and your honourable correspondence unto me and my poor estate can breed in a man, do I commend my self unto your lordship. I wax now somewhat ancient; *one and thirty years is a great deal of ^{Therefore} sand in the hour-glass. My health, I thank God, I find confirmed; and I ^{wrote 1591.} do not fear that action shall impair it; because I account my ordinary course of study and meditation to be more painful than most parts of action are. I ever bore a mind (in some middle place that I could discharge) to serve her Majesty; not as a man born under *Sol*, that loveth honour; nor under *Jupiter*, that loveth business; (for the contemplative planet carrieth me away wholly :) but as a man born under an excellent sovereign, that deserveth the dedication of all mens abilities. Besides, I do not find in my self so much self-love, but that the greater part of my thoughts are to deserve well (if I were able) of my friends, and namely of your lordship; who being the *Atlas* of this commonwealth, the honour of my house, and the second founder of my poor estate, I am tied by all duties, both of a good patriot, and of an unworthy kinsman, and of an obliged servant, to employ whatsoever I am to do you service.

vice. Again, the meanness of my estate doth somewhat move me: for though I cannot accuse my self, that I am either prodigal or slothful, yet my health is not to spend, nor my course to get. Lastly, I confess that I have as vast contemplative ends, as I have moderate civil ends: for I have taken all knowledge to be my province; and if I could purge it of two sorts of rovers, whereof the one with frivolous disputations, confutations and verbofities; the other with blind experiments and auricular traditions and impostures, hath committed so many spoils; I hope I should bring in industrious observations, grounded conclusions, and profitable inventions and discoveries, the best state of that province. This, whether it be curiosity, or vain-glory, or nature, or (if one take it favourably) *Philantropia*, is so fixed in my mind, as it cannot be removed. And I do easily see, that place of any reasonable countenance doth bring commandment of more wits than of a man's own; which is the thing I greatly affect. And for your lordship, perhaps you shall not find more strength and less encounter in any other. And if your lordship shall find now or at any time, that I do seek or affect any place, whereunto any that is nearer unto your lordship shall be concurrent, say then that I am a most dishonest man. And if your lordship will not carry me on, I will not do as *Anaxagoras* did, who reduced himself with contemplation, unto voluntary poverty: But this I will do, I will sell the inheritance that I have, and purchase some lease of quick revenue, or some office of gain, that shall be executed by deputy, and so give over all care of service, and become some sorry book-maker, or a true pioneer in that mine of truth, which (he said) lay so deep. This which I have writ unto your lordship, is rather thoughts than words, being set down without all art, disguising, or reservation: wherein I have done honour both to your lordship's wisdom, in judging, that that will be best believed of your lordship which is truest; and to your lordship's good nature, in retaining nothing from you. And even so, I wish your lordship all happiness, and to my self means and occasion to be added to my faithful desire to do you service. From my lodging at *Grays-Inn*.

VIII. To the Lord Treasurer BURGHLEY.

My singular good Lord,

YOUR lordship's comfortable relation of her Majesty's gracious opinion and meaning towards me, though at that time your leisure gave me not leave to shew how I was affected therewith; yet upon every representation thereof it entereth and striketh more deeply into me, as both by nature and duty, presseth me to return some speech of thankfulness. It must be an exceeding comfort and encouragement to me, setting forth and putting my self in way towards her Majesty's service, to encounter with an example so private and domestical, of her Majesty's gracious goodness and benignity; being made good and verified in my father, so far forth, as it extendeth to his posterity; accepting them as commended by his service, during the nonage (as I may term it) of their own deserts. I, for my part, am very well content, that I take least part, either of his abilities of mind, or of his worldly advancement; both which he held and received, the one of the gift of God immediately, the other of her Majesty's gift: yet, in the loyal and earnest affection which he bare to her Majesty's service, I trust my portion shall not be with the least,

nor

nor in proportion with the youngest birth. For methinks his precedent should be a silent charge upon his blessing unto us all, in our degrees, to follow him afar off, and to dedicate unto her Majesty's service, both the use and spending of our lives: True it is, that I must needs acknowledge my self prepared and furnished thereunto, with nothing but with a multitude of lacks and imperfections; but calling to mind how diversely, and in what particular providence God hath declared himself to tender the state of her Majesty's affairs, I conceive and gather hope, that those whom he hath in a manner press'd for her Majesty's service, by working and imprinting in them a single and zealous mind to bestow their duties therein; he will see them accordingly appointed of sufficiency convenient for the rank and standing where they shall be employed: so as under this her Majesty's blessing, I trust to receive a larger allowance of God's graces. And as I may hope for this, so I can assure and promise for my endeavour, that it shall not be in fault; but what diligence can entitle me unto, that I doubt not to recover. And now seeing it hath pleased her Majesty to take knowledge of this my mind, and to vouchsafe to appropriate me unto her service, preventing any desert of mine, with her princely liberality; first, I humbly do beseech your lordship, to present to her Majesty my more than humble thanks for the same: and withal, having regard to mine own unworthiness to receive such favour, and to the small possibility in me to satisfy and answer what her Majesty conceiveth, I am moved to become a most humble suitor to her Majesty, that this benefit also may be affixed unto the other; which is, that if there appear in me no such towardness of service, as it may be her Majesty doth benignly value and assess me at, by reason of my sundry wants, and the disadvantage of my nature, being unapt to lay forth the simple store of those inferior gifts, which God hath allotted unto me, most to view; yet that it would please her excellent Majesty, not to account my thankfulness the less, for that my disability is great to shew it; but to sustain me in her Majesty's gracious opinion, whereupon I only rest, and not upon any expectation of desert to proceed from my self towards the contentment thereof. But if it shall please God to send forth an occasion, whereby my faithful affection may be tried, I trust it shall save me labour for ever making more protestation of it hereafter. In the mean time, howsoever it be not made known to her Majesty, yet God knoweth it through the daily solicitations wherewith I address my self unto him in unfeigned prayer, for the multiplying of her Majesty's prosperities. To your lordship also, whose recommendation I know right well, hath been material to advance her Majesty's good opinion of me, I can be but a bounden servant. So much may I safely promise, and purpose to be, seeing publick and private bonds vary not, but that my service to her Majesty and your Lordship, draw in a line. I wish therefore to shew it with as good proof, as I can say it in good faith, &c.

Your Lordship's, &c.

IX. To the Lord Treasurer BURGHEY.

It may please your good Lordship,

I AM to give you humble thanks for your favourable opinion, which by Mr. Secretary's report, I find you conceive of me, for the obtaining of a good place, which some of my honourable friends have wished unto me, *nec*

opinanti. I will use no reason to persuade your lordship's mediation but this, that your lordship, and my other friends, shall in this beg my life of the queen; for I see well the bar will be my bier, as I must and will use it, rather than my poor estate or reputation shall decay. But I stand indifferent, whether God call me or her Majesty. Had I that in possession, which by your lordship's only means, against the greatest opposition her Majesty granted me, I would never trouble her Majesty, but serve her still voluntarily without pay. Neither do I, in this, more than obey my friends conceits, as one that would not be wholly wanting to my self. Your Lordship's good opinion doth somewhat confirm me, as that I take comfort in above all others; assuring your lordship, that I never thought so well of my self for any one thing, as that I have found a fitness to my thinking in my self, to observe and revere your virtues: for the continuance whereof, in the prolonging of your days, I will still be your beadsman; and accordingly, at this time, commend your lordship to the divine protection.

X. To the Lord Treasurer BURGHELY.

Most honourable, and my very good Lord,

I KNOW I may commit an error in writing this letter, both in a time of great and weighty business; as also when my self am not induced thereto, by any new particular occasion; and therefore your lordship may impute to me either levity or ignorance, what appertaineth to good respects and forwardness of dealing; especially to an honourable person, in whom there is such concurrence of *magnitudo honoris & oneris*, as it is hard to say whether is the greater. But I answer my self first, that I have ever noted it as a part of your lordship's excellent wisdom, *parvis componere magna*; that you do not exclude inferior matters of access, amongst the care of great. And for my self, I thought it would better manifest what I desire to express, if I did write out of a deep and settled consideration of my own duty, rather than upon the spur of a particular occasion: and therefore, (my singular good Lord) *ex abundantia cordis*, I must acknowledge how greatly, and diversly your lordship hath vouchsafed to tie me unto you by many your benefits. The reversion of the office which your lordship only procured unto me, and carried through great and vehement opposition, though it yet bear no fruit, yet it is one of the fairest flowers of my poor estate: your lordship's constant and serious endeavours to have me solicitor; your late honourable wishes for the place of the wards; together with your lordship's attempt to give me way by the remove of Mr. Solicitor; they be matters of singular obligation; besides many other favours, as well by your lordship's grants from your self, as by your commendation to others, which I have had for my help; and may justly persuade my self, out of the few denials I have received, that fewer might have been; if mine own industry and good hap had been answerable to your lordship's goodness. But on the other side, I most humbly pray your lordship's pardon if I speak it; the time is yet to come that your lordship did ever use, or command or employ me, in my profession, in any services or occasions of your lordship's own, or such as are near unto your lordship; which hath made me fear sometimes, that your lordship doth more honourably affect me, than throughly discern of my most humble and dutiful affection to your lordship again: Which if it were not in me, I knew not whether I were unnatural;

tural, unthankful, or unwise. This causeth me most humbly to pray your lordship (and I know mine own case too well, to speak it as weening I can do your lordship service, but as willing to do it, as) to believe, that your lordship is upon just title a principal owner and proprietor of that, I cannot call, talent, but mite, that God hath given me; which I ever do, and shall devote to your service. And in like humble manner, I pray your lordship to pardon mine errors, and not to impute unto me the errors of any other; (which I know also themselves have by this time left and forethought:) but to conceive of me to be a man that daily profiteth in duty. It is true I do in part comfort my self, supposing that it is my weakness and insufficiency that moveth your lordship, who hath so general a command to use others more able. But let it be as it is, for duty only and homage I will boldly undertake, that nature and true thankfulness shall never give place to a politick dependence. Lastly, I most humbly desire your lordship to continue unto me the good favour, and countenance, and encouragement, in the course of my poor travails, whereof I have had some taste and experience; for the which I yield your lordship my very humble good thanks. And so again, craving your honour's pardon for so long a letter, carrying so empty an offer of so unpuissant a service, but yet a true and unfeigned signification of an honest and vowed duty; I cease, commending your lordship to the preservation of the Divine Majesty.

XI. A LETTER to the Lord Treasurer BURGHLEY, in excuse of his Speech in Parliament, against the Triple Subsidy.

It may please your Lordship,

I WAS sorry to find, by your lordship's speech yesterday, that my last speech in parliament, delivered in discharge of my conscience, and duty to God, her Majesty, and my country, was offensive. If it were misreported, I would be glad to attend your lordship to disavow any thing I said not; if it were misconstrued, I would be glad to expound my self, to exclude any sense I meant not. If my heart be misjudged by imputation of popularity or opposition, by any envious or officious informer, I have great wrong; and the greater, because the manner of my speech did most evidently shew, that I spake simply, and only to satisfy my conscience, and not with any advantage or policy to sway the cause: and my terms carried all signification of duty and zeal towards her Majesty and her service. It is true, that from the beginning, whatsoever was above a double subsidy, I did wish might (for precedent sake) appear to be extraordinary; and (for discontent's sake) might not have been levied upon the poorer sort: though otherwise, I wished it as rising as I think this will prove, and more. This was my mind, I confess it: And therefore I most humbly pray your good lordship, first, to continue me in your own good opinion; and then to perform the part of an honourable friend towards your poor servant and alliance; in drawing her Majesty to accept of the sincerity and simplicity of my heart, and to bear with the rest, and restore me to her Majesty's good favour, which is to me dearer than my life. And so, &c.

Your Lordship's most humbly in a duty.

XII. To the right honourable his very good lord, the Lord Keeper of the Great Seal, &c.

My very good Lord,

I WAS wished to be here ready in expectation of some good effect; and therefore I commend my fortune to your lordship's kind and honourable furtherance. My affection inclineth me to be much [your] lordship's, and my course and way in all reason and policy for my self, leadeth me to the same dependance: Hereunto if there shall be joined your lordship's obligation in dealing strongly for me as you have begun, no man can be more yours. A timorous man is every body's and a covetous man is his own. But if your lordship consider my nature, my course, my friends, my opinion with her Majesty, (if this eclipse of her favour were past) I hope you will think, I am no unlikely piece of wood to shape you a true servant of. My present thankfulness shall be as much as I have said. I humbly take my leave.

From Greenwich this
5th of April 1594.

Your Lordship's true humble servant,

FR. BACON.

XIII. To the right honourable my very good lord the Lord Keeper.

My Lord,

I HAVE since I spake with your lordship pleaded to the queen against herself for the injury she doth Mr. Bacon in delaying him so long, and the unkindness she doth me in granting no better expedition in a suit which I have followed so long, and so affectionately. And though I find that she makes some difficulty to have the more thanks, yet I do assure my self she is resolved to make him. I do write this not to solicit your lordship to stand firm in assisting me, because I know, you hold your self already tied by your affection to Mr. Bacon, and by your promise to me; but to acquaint your lordship with my resolution to set up my rest, and employ my uttermost strength to get him placed before the term: So as I beseech your lordship think of no temporizing course, for I shall think the queen deals unkindly with me, if she do not both give him the place, and give it with favour and some extraordinary advantage. I wish your lordship all honour and happiness; and rest,

Endorsed, My lord of Essex, for
Mr. Fran. Bacon, to be solicitor.

Your Lordship's very assured,

ESSEX.

XIV. To the right honourable his very good lord, the Lord Keeper of the Great Seal.

My very good Lord,

SIR Thomas Egerton failing of your lordship, being newly gone, sent his letter to me to be conveyed unto you, which I send inclosed; desiring your lordship according to your kind affection, to make the best use thereof for my furtherance. And I pray your lordship to call to remembrance my
lord

lord treasurer's kind course, who affirmed directly all the rest to be unfit. And because, *vis unita fortior*, I pray your lordship to take a time with the Queen, when my lord treasurer is present. Thus in hope to-morrow will bring forth some good effect, I rest,

Your Lordship's in all humble duty and service,

FR. BACON.

XV. To the right honourable, &c. the Lord Keeper, &c.

My very good Lord,

BECAUSE I understand your lordship remaineth at court till this day, and that my lord of *Essex* writeth to me, that his lordship cometh to *London*, I thought good to remember your good lordship, and to request you, as I touched in my last, that if my lord treasurer be absent, your lordship would forbear to fall into my business with her Majesty, lest it might receive some foil before the time, when it should be resolutely dealt in. And so commending my self to your good favour, I most humbly take my leave.

From *Gray's-Inn* this
8th of *April*, 1594.

Your Lordship's in all humble duty and service,

FR. BACON.

XVI. To the right honourable the Lord Keeper, &c.

It may please your good Lordship,

I UNDERSTAND of some business like enough to detain the Queen to-morrow, which maketh me earnestly to pray your good lordship, as one that I have found to take my fortune to heart, to take some time to remember her Majesty of a solicitor this present day.

OUR tower employment stayeth, and hath done these three days, because one of the principal offenders being brought to confess, and the other persisting in denial, her Majesty in her wisdom thought best some time were given to him that is obstinate, to bethink himself; which indeed is singular good in such cases. Thus desiring your lordship's pardon, in haste I commend my fortune and duty to your favour.

From *Gray's-Inn* this
13th of *August*, 1594.

Your Lordship's most humbly to receive your commandments,

FR. BACON.

XVII. To the right honourable the Lord Keeper, &c.

It may please your good Lordship,

AS your lordship hath at divers times helped me to pass over contrary times, so I humbly pray you not to omit this favourable time. I cannot bear my self as I should, till I be settled. And thus desiring pardon, I leave your lordship to God's preservation.

From *Gray's-Inn* this 25th
of *August*, 1594.

Your Lordship's most humbly at commandment,

FR. BACON.

XVIII. To the right honourable his very good lord, the Lord Keeper, &c.

It may please your good Lordship,

I WAS minded according to the place of employment, though not of office, wherein I serve, for my better direction and the advancement of the service, to have acquainted your lordship now before the term, with such her Majesty's causes as are in my hands. Which course intended out of duty, I do now find by that I hear from my lord of *Effex*, your lordship of your favour is willing to use for my good, upon that satisfaction you may find in my travels. And I now send to your lordship, together with my humble thanks, to understand of your lordship's being at [leisure] what part of to-morrow, to the end I may attend your lordship, which this afternoon I cannot, in regard of some conference I have appointed with Mr. Attorney General. And so I commend your honourable lordship to God's good preservation.

Your good Lordship's humbly at your hon[ourable] commandments,

From *Gray's-Inn* the 25th of September, Friday.

FR. BACON.

XIX. To the right honourable the Lord Keeper, &c.

It may please your good Lordship,

I RECEIVED, at my lord of *Effex* last going from court, a message of good assurance, which his lordship sent to my brother and to my self; which was this: That her Majesty had stedfastly promised him to dispatch my matter to-morrow. And somewhat her Majesty said to my self, when I attended her upon some service since; which I liked well, though it was with some doubtfulness, as they say her Majesty useth till the last hour. This I thought good to signify to your good lordship, both that your lordship may perceive how effectual and operative your lordship's last dealing with her Majesty was; and also that now the wheel is going, your lordship would set it forward, the rather in respect of the necessity to go presently in hand with these criminal causes, if the commission shall hold according to the adjournment. And if her Majesty should not be pleased presently to give order for a patent, yet if your lordship may by her warrant give me warning to prepare my self, it will be some hold and satisfaction. So thinking long to have the strength of place, to do your lordship acceptable service, I leave your good lordship to God's good preservation.

Your Lordship's most humbly at your hon[ourable] commandments,

From *Gray's-Inn* this 28th
of September, 1594.

FR. BACON.

XXI. To

XX. To the right honourable the Lord Keeper, &c.

It may please your Lordship,

I THOUGHT good to step aside for nine days, which is the durance of a wonder, and not for any dislike in the world; for I think her Majesty hath done me as great a favour in making an end of this matter, as if she had enlarged me from some restraint. And I humbly pray your lordship, if it so please you, to deliver to her Majesty from me, that I would have been glad to have done her Majesty service now in the best of my years, and the same mind remains in me still; and that it may be, when her Majesty hath tried others, she will think of him, that she hath cast aside. For I will take it upon that which her Majesty hath often said, that she doth reserve me, and not reject me. And so I leave your good lordship to God's good preservation.

Your Lordship's much bounden,

From Twickenham-Park this 20th of May, 1595.
Endorsed: Mr. Fr. Bacon his contentation
to leave the sollicitorship.

FR. BACON.

XXI. A LETTER to the Lord Treasurer BURGHLEY, recommending his first suit, touching the sollicitor's place.

My Lord, after the remembrance of my most humble duty,

THOUGH I know, by late experience, how mindful your lordship vouchsafeth to be of me and my poor fortunes, since it pleased your lordship, during your indisposition, when her Majesty came to visit your lordship, to make mention of me for my employment and preferment; yet being now in the country, I do presume that your lordship, who of your self had so honourable care of the matter, will not think it a trouble to be solicited therein. My hope is, that whereas your lordship told me her Majesty was somewhat gravelled upon the offence she took at my speech in parliament; your lordship's favourable and good word (who hath assured me, that for your own part you construed, that I spake to the best) will be as a good tide to remove her from that shelf. And it is not unknown to your good lordship, that I was the first of the ordinary sort of the lower house of parliament that spake for the subsidy; and that which I after spake in difference, was but in circumstances of time and manner, which methinks should be no greater matter, since there is variety allowed in counsel, as a discord in musick to make it more perfect. But I may justly doubt, not so much her Majesty's impression upon this particular, as her conceit otherwise of my insufficiency; which though I acknowledge to be great, yet it will be the less, because I purpose not to divide my self between her Majesty and the causes of other men (as others have done) but to attend her business only; hoping that a whole man meanly able, may do as well as half a man better able. And if her Majesty think that she shall make an adventure in using one that is rather a man of study, than of practice and experience; surely I may remember to have heard that my father, (an example, I confess, rather ready than like) was made sollicitor of the augmentation (a court of much business) when he had never practised,

practised, and was but twenty-seven years old; and Mr. *Brograve* was now, in my time, called to be attorney of the duchy, when he had practised little or nothing; and yet discharged his place with great sufficiency. But these things and the like are as her Majesty shall be made capable of them; wherein, knowing what authority your lordship's commendation hath with her Majesty, I conclude with my self, that the substance of strength which I may receive, will be from your lordship. It is true, my life hath been so private, as I have had no means to do your lordship service; but yet, as your lordship knoweth, I have made offer of such as I could yield: for as God hath given me a mind to love the publick; so incidently, I have ever had your lordship in singular admiration; whose happy ability her Majesty hath so long used to her great honour and yours. Besides, that amendment of state or countenance, which I have received, hath been from your lordship. And therefore if your lordship shall stand a good friend to your poor ally, you shall but *tueri opus proprium*, which you have begun. And your lordship shall bestow your benefit upon one that hath more sense of obligation than of self-love. Thus humbly desiring pardon, of so long a letter, I wish your lordship all happiness. This 7th of June, 1595.

Your Lordship's in all humbleness to be commanded.

Cab. p. 18.

XXII. To the right honourable the Lord Keeper, &c.

It may please your good Lordship,

NOT able to attend your lordship my self, before your going to the court, by reason of an ague, which offered me a fit on *Wednesday* morning, but since by abstinence, I thank God, I have starved it, so as now he had turned his back, I am chasing him away with a little physick; I thought good to write these few words to your lordship, partly to signify my excuse, if need be, that I assisted not Mr. Attorney on *Thursday* last in the star-chamber, at which time it is some comfort to me, that I hear by relation somewhat was generally taken hold of by the court, which I formerly had opened and moved; and partly to express a little my conceit, touching the news, which your lordship last told me from the Queen, concerning a condition in law knit to an interest, which your lordship remembreth, and is supposed to be broken by *misfeynance*. Wherein surely my mind, as far as it appertaineth to me, is this, that as I never liked not so much as the coming in upon a lease by way of forfeiture, so I am so much enemy to my self, as I take no contentment in any such hope of advantage. For as your lordship can give me best testimony, that I never in my life propounded any such like motion, though I have been incited thereto; so the world will hardly believe, but that it is underhand quickened and nourished from me. And truly, my lord, I would not be thought to supplant any man for great gain, and I humbly pray your lordship to continue your commendation and countenance to me in the course of the Queen's service, that I am entered into: which, when it shall please God to move the Queen to

* *f. perfect.*

* profit, I hope I shall give cause for your lordship to obtain as many thanks, as you have endured chidings. And so I commend your good lordship to God's good preservation.

Your Lordship's most humbly at your hon[ourable] commandment,

From *Gray's Inn* the
11th of June, 1595.

FR. BACON.

XXIII. To

XXIII. To the right honourable the Lord Keeper, &c.

It may please your Lordship,

THERE hath nothing happened to me in the course of my business more contrary to my expectation, than your lordship's failing me, and crossing me now in the conclusion, when friends are best tried. But now I desire no more favour of your lordship, than I would do if I were a suitor in the chancery; which is this only, that you would do me right. And I, for my part, though I have much to alledge, yet nevertheless, if I see her Majesty settle her choice upon an able man, such a one as Mr. Serjeant *Fleming*, I will make no means to alter it. On the other side, if I perceive any insufficient obscure *idole man offered to her Majesty, then I think* Ita MSS. my self double bound to use the best means I can for my self, which I humbly pray your lordship I may do with your favour, and that you will not disable me farther than is cause. And so I commend your lordship to God's preservation.

From *Gray's Inn* the 28th of *July*, 1595.Endorsed: Mr. Bacon, *wronging*
me. In Lord Keeper's hand.*That beareth your Lordship all humble respect,*

FR. BACON.

XXIV. To the right honourable the Lord Keeper, &c.

It may please your Lordship,

I THOUGHT it became me to write to your lordship, upon that which I have understood from my lord of *Essex*, who vouchsafed, as I perceive, to deal with your lordship of himself to join with him in the concluding of my business, and findeth your lordship hath conceived offence, as well upon my manner, when I saw your lordship at *Temple* last, as upon a letter, which I did write to your lordship some time before. Surely, my lord, for my behaviour I am well assured, I omitted no point of duty or ceremony towards your lordship. But I know too much of the court to beg a countenance in publick place, where I make account, I shall not receive it. And for my letter, the principal point of it was, that which I hope God will give me grace to perform, which is, that if any idle may be offered to her Majesty, (since it is mixt with my particular) to inform her Majesty truly, which I must do, as long as I have a tongue to speak, or a pen to write, or a friend to use. And farther, I remember not of my letter, except it were that I writ, I hoped your lordship would do me no wrong, which hope I do still continue. For if it please your lordship, but to call to mind from whom I am descended, and by whom, next to God, her Majesty, and your own virtue, your lordship is ascended; I know you will have a compunction of mind to do me any wrong. And therefore, good my lord, when your lordship favoureth others before me, do not lay the separation of your love and favour upon my self. For I will give no cause, neither can I acknowledge any, where none is; but humbly pray your lordship to understand things as they are. Thus sorry to write to your lordship in an

argument, which is to me unpleasant, though necessary, I commend your lordship to God's good preservation.

From *Twickenham-Park* this 19th of August, 1595. *Your Lordship's in all humble respect,*

FR. BACON.

XXV. To the right honourable the Lord Keeper, &c.

It may please your good Lordship,

I AM sorry the opportunity permitteth me not to attend your lordship as I minded. But I hope your lordship will not be the less sparing in using the argument of my being studied and prepared in the Queen's causes, for my furtherance, upon belief that I had imparted to your lordship my travels, which some time next week I mean to do. Neither have I been able to confer with Mr. Attorney, as I desired, because he was removing from one building to another. And besides, he alledged his note-book was in the country at — and so we respited it to some time next week. I think he will rather do me good offices than otherwise, except it be for the township, your lordship remembreth by the verse. Thus I commend your honourable lordship to God's good preservation.

Your Lordship's most humble at your hon[ourable] commandment,

From *Gray's-Inn* this 25th
of September, 1595.

FR. BACON.

XXVI. To the right honourable my very good Lord, the Lord Keeper of the great seal of England.

It may please your good Lordship,

MY not acquainting your lordship hath proceeded of my not knowing any thing, and of my not knowing of my absence at *Byssam* with my lady *Ruffel*, upon some important cause of her son's. And as I have heard nothing, so I look for nothing, though my lord of *Essex* sent me word, he would not write till his lordship had good news. But his lordship may go on in his affection, which nevertheless my self have desired him to limit. But I assure your lordship, I can take no farther care for the matter. I am now at *Twickenham-Park*, where I think to stay: For her Majesty placing a solicitor, my travel shall not need in her causes, though whensoever her Majesty shall like to employ me in any particular, I shall be ready to do her willing service. This I write lest your Lordship might think my silence came of any conceit towards your lordship, which I do assure you, I have not. And this needed I not to do, if I thought not so: For my course will not give me any ordinary occasion to use your favour, whereof nevertheless I shall ever be glad. So I commend your good lordship to God's holy preservation,

Your Lordship's humble, &c.

This 14th of October, 1595.

FR. BACON.

XXVII.

XXVII. To the right honourable the Lord Keeper, &c.

It may please your good Lordship,

I CONCEIVE the end already made, which will, I trust, be to me a beginning of good fortune, or at least of content. Her Majesty by God's grace shall live and reign long, she is not running away, I may trust her. Or whether she look towards me or no, I remain the same, not altered in my intention. If I had been an ambitious man, it would have overthrown me, but minded as I am, *Revertet benedictio mea in sinum meum*. If I had made any reckoning of any thing to be stirred, I would have waited on your lordship, and will be at any time ready to wait on you to do you service. So I commend your good lordship to God's holy preservation.

Your Lordship's most humble at your hon[ourable] commandment,

From Twickenham-Park this 14th of October.
Endorsed: 14 October 95.

FR. BACON.

XXVIII. To the right honourable the Lord Keeper, &c.

My very good Lord,

I RECEIVED a letter from a very friend of mine, requesting me to move your lordship, to put into the commission for the subsidy, Mr. Richard Kempe, a reader of Gray's-Inn, and besides born to good estate, being also my friend and familiar acquaintance. And because I conceive the gentleman to be every way fortiable with the service, I am bold to commend him to your lordship's good favour. And even so with remembrance of my most humble duty, I rest,

Your Lordship's affectionate to do you humble service,

Twickenham-Park, July 3. 1593. [5]

FR. BACON.

XXIX. To the right honourable the Lord Keeper, &c.

My Lord,

I IN my last conference with your lordship, I did intreat you both to forbear hurting of Mr. Fr. Bacon's cause, and to suspend your judgment of his mind towards your lordship, till I had spoken with him. I went since that time to Twickenham-park to confer with him, and had signified the effect of our conference by letter ere this, if I had not hoped to have met with your lordship, and so to have delivered it by speech. I told your lordship when I last saw you, that this manner of his was only a natural freedom, and plainness, which he had used with me, and in my knowledge with some other of his best friends, than any want of reverence towards your lordship; and therefore I was more curious to look into the moving cause of his style, than

than into the form of it; which now I find to be only a diffidence of your lordship's favour and love towards him, and no alienation of that doubtful mind, which he hath born towards your lordship. And therefore I am fully persuaded, that if your lordship would please to send for him, there would grow so good satisfaction, as hereafter he should enjoy your lordship's honourable favour, in as great a measure as ever, and your lordship have the use of his service, who, I assure your lordship, is as strong in his kindness, as you find him in his jealousy. I will use no argument to persuade your lordship, that I should be glad of his being restored to your lordship's wonted favour; since your lordship both knoweth how much my credit is engaged in his fortune, and may easily judge how sorry I should be, that a gentleman whom I love so much, should lack the favour of a person, whom I honour so much. And thus commending your lordship to God's best protection, I rest,

Endorsed: 31 August, 95. My lord of Essex to have me send for Mr. Bacon, for he will satisfy me. In Lord Keeper's own hand.

Your Lordship's very assured,

ESSEX.

XXX. To the right honourable the Lord Keeper, &c.

My very good Lord,

THE want of assistance from them which should be Mr. *Fr. Bacon's* friends, makes [me] the more industrious my self, and the more earnest in soliciting mine own friends. Upon me the labour must lie of his establishment, and upon me the disgrace will light of his being refused. Therefore I pray your lordship, now account me not as a solicitor only of my friend's cause, but as a party interested in this: And employ all your lordship's favour to me, or strength for me, in procuring a short and speedy end. For though I know, it will never be carried any other way, yet I hold both my friend and my self disgraced by this protraction. More I would write, but that I know to so honourable and kind a friend, this which I have said is enough. And so I commend your lordship to God's best protection, resting,

[No date]

[At your Lordship's commandment,

ESSEX.

XXXI. The Earl of ESSEX'S LETTER to the Council at his embarking for Spain. June 1596.

My very good Lord,

Supposed to be wrote by Mr. Bacon.

HAVING taken order for all things that belong to our land-forces, and staying only till the ships be ready to take in our soldiers; I am come aboard, as well to draw other men by my example to leave the shore, as to have time and leisure to ask account of my self what other duty I have to do, besides the governing of those troops, and the using of them to good purpose. In which meditation, as I first study to please my most gracious Sovereign,

as well as to serve her; so my next care is, to leave your lordships well satisfied of my past carriage, since I was nominated to this service; and apt to make favourable construction of what I shall do hereafter.

I IN my past carriage I will neither plead merit, nor excuse imperfections; for whatsoever I shall be able to do, I know is less than I owe: and besides my faults, my very faith and zeal (which are the best things in me) do make me commit errors. But I would fain approve the matter itself of undertaking this service, to have been good, howsoever my former have been erroneous; or at least my intent and ends unblameable, though my judgment were faulty. Your lordships know it hath been the wisdom of all times, rather to attempt and do something in another country, than to attend an enemy, and be in danger much in our own. And if this rule among the ancients was generally held true, it might be better allowed of us in particular cases, where a state little in territory, not extraordinary rich, and defended only with itself, shall have to do with another state, that hath many and ample dominions, the treasure of the *Indies*, and all the mercenaries of Christendom to serve it. For we have, as the *Athenians* had with the ancient usurping *Philip*, *proelium facile, bellum difficile*. Therefore it is our disadvantage to draw the war into length. And if any man in this kingdom should be allowed to persuade to prevention, he might be one that saw the *Spaniard* at home, apprehend an invasion with greater terror than he makes it abroad; and that was a witness how an handful of men, neither armed, victualled, nor ordered as they should be, landed, marched, and had done what they listed, if either the ships had come up, or they had had any provisions to make a hole in a wall, or to break open a gate. But though the counsel be good for some states, and for ours at some times, yet the opportunities ought to be watched; and it must appear, that this it is which is now taken. The opportunity for such service I take to be, when either the enemy may receive the most hurt, or when he is likeliest to attempt against us, if he be not impeached. The hurt that our estate should seek to do him, is to intercept his treasure, whereby we shall cut his sinews, and make war upon him with his own money; and to beat, or at least discontinue him from the sea, whereby her Majesty shall be both secured from his invasions, and become mistress of the sea; which is the greatness that the queen of an island should most aspire unto. In matter of profit, we may this journey most hurt him and benefit our selves, since he hath (as is agreed on by all men) more caracks to come home now, than ever any year before: besides many good advantages which will be offered if we command the coast. And to give him a blow, and discountenance him by sea, now is the time; when he hath declared his ambition to command the seas; and yet, so divided his fleets: some appointed to be set out, and yet scant in readiness; others upon point of coming home, and not fit to defend themselves, if either they be met at sea, or found in harbour; and all so dispersed in several places, as if at any time we might do good that way, it is now. And whether he will make war upon us, if we let him alone; let his solicitations, offers, and gifts to the rebels of *Ireland*; his besieging and winning of *Calais*, and those parts of *France* that front upon us, and his strengthening himself by sea by so many means; let these things (I say) tell us. So as if we will at any time allow the counsel of prevention to be reasonable, we must now confess it to be opportune. But whatsoever the counsel were, I am not to be charged with it; for as I was not the contriver, nor offerer of the project, so if I had refused to join with him, (that did invite me to it) I should have been thought both incompatible and backward in her Majesty's service. I say not

this for that I think the action such as it were disadvantage to be thought the projector of it; but I say, and say truly, that my lord admiral devised it, presented it to her Majesty, and had as well the approbation of her Majesty, and the assent of such of your lordships as were acquainted with it, as my promise to go with him. One thing (I confess) I above all men am to be charged withal; that is, that when her Majesty's, the city of *London's*, and the states of the *Low-Countries* charge was past, the men levied, and marching to the rendezvous, I could not see how, with her Majesty's honour and safety, the journey might be broken. Wherein, although I should be carried with passion, yet I pray your lordships consider, who almost, that had been in my case named to such an action, voiced throughout Christendom, and engaged in it as much as I was worth; and being the instrument of drawing more voluntary men of their own charge, than ever was seen these many years; who (I say) would not have been so affected? But far be it from me, in any action of this importance, to weigh my self, or my particular fortunes. I must beseech your lordships to remember, that I was from time to time warranted by all your opinions, delivered both amongst your selves, and to her Majesty, which tieth you all to allow the counsel; and that being granted, your lordships will call that zeal which maketh a man constant in a good counsel, that would be passion in an evil or a doubtful. I confess, her Majesty offered us recompence for all our charges and losses: but (my lords) I pray your lordships consider, how many things I should have sold at once for money? I will leave mine own reputation as too small a matter to be mentioned: but I should have sold the honour of her Majesty, the safety of the state, the contentment of her confederates, the fortune and hope of many of my poor countrymen, and the possibility of giving a blow to that enemy that ought ever to be hateful to all true *English* hearts. I should have sold all this for private profit. Therefore, though I ask pardon of her Majesty, and pray your lordships to mediate it for me, that I was carried by this zeal so fast, that I forgot those reverend forms which I should have used; yet I had rather have my heart out of my body, than this zeal out of my heart. And now, as I have laid before your lordships my past carriage, and entering into this action, so I beseech your lordships give me leave to prepare you to a favourable construction of that which I shall do hereafter: in which suit I am resolved neither to plead the hazarding of life, nor spending of my substance in a publick service; to the end that I might find your lordships (who are publick persons) more favourable judges: but will confess, that I receive so much favour and honour by this trust and employment, as when I have done all I can, I shall still be behind-hand. This suit only I make, that your lordships will neither have too great an expectation of our actions, nor too little; lest all we do seem either nothing, or to be done by chance. I know we must be tied to do no more than shall be for her Majesty's service, nor no less. In which strait way, though it be hard for so weak a man as my self to walk upright; yet the example of our raw soldiers may comfort an insufficient General: for they, till they grow perfect in all their orders and motions, are so afraid to be out, and with such a continual heedfulness, observe both themselves and those that are near them, that they do keep almost as good order at the first as ever after. I am sure I am as distrustful of my self as they. And because I have more sense of duty, I shall be more industrious. For sea-service, the judgment of my honourable companion shall be my compass. And for land, his assent, and the advice of those her Majesty hath named as counsellors at war, shall be my warranties. It will be honour to her

her Majesty, and a great assurance to her state, if we either bring home wealth, or give the King of *Spain* a blow by sea. But to have made a continual diversion, and to have left as it were a thorn sticking in his foot, had been a work worthy of such a queen, and of such a preparation: for then her Majesty should have heard no more of his intentions for *Ireland*, and attempts upon the coast of *France*, or his drawing of ships or galleys into these narrow seas; but should at once have delivered all Christendom from his fearful usurpation. Wherein, as she had been great in fame for such a general preservation; so she had been as great in power in making all the enemies of *Spain* in Christendom to depend upon her. She should be head of the party; she only might be said to make the wars with *Spain*, because she made them to purpose; and they all but as her assistants and dependants. And lastly, as the end of the wars is peace, so she might have had peace when she would, and with what conditions she would, and have included or left out whom she would. For she only, by this course, should force him to wish for peace, and she had the means in her hands to make the conditions. And as easy it had been to have done this, as to have performed lesser services. The objections against this will be hazard and charge. Hazard to hold any thing of his that is so mighty a king; and charge, to send such supplies from time to time as will be needful. For hazard, it is not the hazard of the state or the whole, as are the hazards of a defensive war, whensoever we are enforced to fight; but it is only the hazard of some few, and such commanders, as shall be set out for such a service. And those also that shall be so hazarded, shall be in less danger than if they were put into any frontier places of *France* or of the *Low-Countries*. For they should not be left in any part of the main or continent of *Spain* or *Portugal*, where the enemy might bring an army to attempt them; (though I doubt not, but after he had once tried what it were to besiege two or three thousand *English* in a place well fortified, and where they had a port open, he would grow quickly weary of those attempts;) but they should be so lodged, as the seat and strength of the place should warrant their safety: so that to pull her Majesty's men out of it, should be a harder task than to conquer any country that stands on firm land by him; and to let the *English* quietly possess it, should so much prejudice him, as he were not able to endure it; and for charge, there need not so much be expended, but that it might easily be borne. And the place being well chosen, and the war well conducted, in a short time there would not only arise enough to pay the charge, but great profit to her Majesty, and wealth to our country, would grow from the place that should be held: for in a short time a great part of the golden *Indian* stream might be turned from *Spain* to *England*, and her Majesty be made to give law to all the world by sea, without her charge. Besides, this fearful enemy, which is now a terror to all Christendom, should be so weakened in strength, reputation, and purse, as her Majesty should for ever after have an easy enemy of him. It may be your lordships will desire to know the place that should be attempted, the means first to take it, then to hold it; the commodity or advantage that might grow to this estate by it: but that, with your lordships leave, shall be reserved till my next. This is only to beseech you for our dear Sovereign's sake, for the glory and welfare of her, and her estate, that you will think upon this general proposition: and if your lordships find it reasonable, that you will move it to the queen; by whom if I be commanded to set down the hypothesis, or to descend unto particulars, I will offer my project with this condition, that if I advise any thing that the counsel of war shall

shall think dangerous, it may be rejected; or if my self be actor in any thing belonging to this project, wherein her Majesty receives dishonour, that I may answer it with my life. And yet your lordships know, I am matched with those in whom I have no particular interest; but I must attribute their assenting to me my good hap, to take the better part. In my lord, with whom I am joined, I find so much honour and service, as I doubt not but our unity in affection, will make an unity in counsel, action, and government. I have troubled your lordships with a tedious letter, begun in a day of leisure, and finished in the midst of our troublesome business. I pray your lordship's pardon the errors in it, and keep so honourable an opinion of me, as I be not condemned by you upon any complaints, advertisements, or reports, till I have given answer to them. For as the nature of my place is subject to envy and detraction; so a little body full of sharp humours is hardliest kept in temper. And all the discontented humours of an army do make their greatest quarrel to him that commands the army; not so much for his faults, as for because he bridles theirs. And so commending your good lordships to God's divine protection, I rest at your lordships commandment.

ROBERT ESSEX.

XXXII. To my Lord of ESSEX, from Mr. BACON, Oct. 4. 1596.

My singular good Lord,

I WILL no longer disserve part of that, which I meant to have said to your lordship at *Barn-Elms*, from the *exordium* which I then made; whereunto I will only add this, that I humbly desire your lordship, before you give access to my poor advice, to look about, even jealously a little if you will, and to consider; first, whether I have not reason to think, that your fortune comprehendeth mine? Next, whether I shift my counsel, and do not *constare mihi*; for I am persuaded, there are some would give you the same council now which I shall, but that they should derogate from that which they have said heretofore? Thirdly, whether you have taken hurt, at any time, by my careful and devoted counsel; for although I remember well your lordship once told me, that you having submitted upon my well-meant motion at *Non-such* (the place where you renewed a treaty with her Majesty of obsequious kindness) she had taken advantage of it; yet, I suppose, you do since believe, that it did much attemper a cold malignant humour then growing upon her Majesty toward your lordship, and hath done you good in consequence. And for my being against it, now lately, that you should not estrange your self, although I give place to none in true gratulation; yet neither do I repent me of safe counsel, neither do I judge of the whole play by the first act. But whether I counsel you the best, or for the best, duty bindeth me to offer to you my wishes. I said to your lordship last time, *Martba, Martba, attendis ad plurima, unum sufficit*; win the queen: if this be not the beginning of any other course, I see no end. And I will not now speak of favour of affection, but of other correspondence and agreeableness; which, whensoever it shall be conjoined with the other of affection, I durst wager my life (let them make what *Protopopoea's* they will of her Majesty's nature;) that in you she will come to the question of, *Quid fiet homini, quem Rex vult honorare?* But how is it now? A man of a nature not to be ruled, that hath the advantage

tage of my affection, and knoweth it; of an estate not grounded to his greatness; of a popular reputation; of a military dependence: I demand, whether there can be a more dangerous image than this, represented to any monarch living, much more to a lady, and of her Majesty's apprehension? And is it not more evident than demonstration it self, that whilst this impression continueth in her Majesty's breast, you can find no other condition than inventions to keep your estate bare and low; crossing and disgracing your actions; extenuating and blasting of your merit; carping with contempt at your nature and fashions; breeding, nourishing, and fortifying such instruments as are most factious against you; repulses and scorns of your friends, and dependents that are true and steadfast; winning and inveigling away from you such as are flexible and wavering; thrusting you into odious employments and offices to supplant your reputation; abusing you and feeding you with dalliances and demonstrations, to divert you from descending into the serious consideration of your own case; yea, and percase venturing you in perillous and desperate enterprises. Herein it may please your lordship to understand me; for I mean nothing less, than that these things should be plotted and intended as in her Majesty's royal mind towards you: I know the excellency of her nature too well. But I say, wheresoever the formerly described impression is taken in any king's breast towards a subject, these other recited inconveniences must, of necessity of politic consequence, follow; in respect of such instruments as are never failing about Princes: which spy into their humours and conceits, and second them; and not only second them, but in seconding encrease them; yea, and many times without their knowledge, pursue them farther than themselves would. Your lordship will ask the question, where-with the *Athenians* were wont to interrupt their orators, when they exaggerated their dangers; *Quid igitur agendum est?*

I WILL tell your lordship, *Quae mihi nunc in mentem veniunt*; supposing nevertheless, that your self, out of your own wisdom upon the case, with this plainness and liberty represented to you, will find out better expedients and remedies. I wish a cure applied to every of the five former impressions, which I will take not in order, but as I think they are of weight.

FOR the removing the impression of your nature to be *opiniastre* and not rutable: first, and above all things I wish, that all matters past, which cannot be revoked, your lordship would turn altogether upon insatisfaction; and not upon your nature or proper disposition. This string you cannot, upon every apt occasion, harp upon too much. Next, whereas I have noted you to fly and avoid (in some respect justly) the resemblance or imitation of my lord of *Leicester*, and my lord chancellor *Hatton*; yet I am persuaded (howsoever I wish your lordship, as distant as you are from them in points of favour, integrity, magnanimity, and merit;) that it will do you much good between the queen and you, to allege them (as oft as you find occasion) for authors and patterns: For I do not know a readier mean to make her Majesty think you are in your right way. Thirdly, when at any time your lordship upon occasion happen in speeches to do her Majesty right (for there is no such matter as flattery amongst you all) I fear you handle it, *magis in speciem adornatis verbis, quam ut sentire videaris*. So that a man may read formality in your countenance; whereas your lordship should do it familiarly, & *oratione fida*. Fourthly, your lordship should never be without some particulars a-foot, which you should seem to pursue with earnestness and affection; and then let them fall, upon taking knowledge of her Majesty's opposition and dislike. Of which, the weightiest sort may be, if your lordship offer to la-

hour in the behalf of some that you favour, for some of the places now void; chusing such a subject as you think her Majesty is like to oppose unto: and if you will say that this is *conjunctum cum aliena injuria*, I will not answer, *haec non aliter constabunt*; but I say, commendation from so good a mouth doth not hurt a man, though you prevail not. A less weighty sort of particulars may be the pretence of some journeys, which, at her Majesty's request, your lordship might relinquish; as if you would pretend a journey to see your living and estate towards *Wales*, or the like: for as for great foreign journeys of employment and service, it standeth not with your gravity to play or stratagem with them. And the lightest sort of particulars, which yet are not to be neglected, are in your habits, apparel, wearings, gestures and the like.

THE impression of greatest prejudice next, is that of a military dependence: wherein I cannot sufficiently wonder at your lordship's course, that you say, the wars are your occupation, and go in that course; whereas, if I might have advised your lordship, you should have left that person at *Plymouth*, more than when in counsel, or in commending fit persons for service for wars, where it had been in season. And here, my lord, I pray mistake me not: I am not to play now the part of a gown-man, that would frame you best to mine own turn. I know what I owe you. I am infinitely glad of this last journey now it is past; the rather, because you may make so honourable a full point for a time. You have property good enough in that greatness: There is none can, of many years, ascend near you in competition. Besides the disposing of the places and affairs both concerning the wars, (you encreasing in other greatness) will of themselves flow to you; which will preserve that dependence in full measure. It is a thing that of all things I would have you retain, the time considered, and the necessity of the service; for other reason I know none: yet, I say, keep it in substance, but abolish it in shews to the Queen; for her Majesty loveth peace. Next, she loveth not charge. Thirdly, that kind of dependence maketh a suspected greatness. Therefore, *quod instat agamus*. Let that be a sleeping honour a while, and cure the Queen's mind in that point. Therefore again, whereas I heard your lordship designing to your self the earl marshal's place, or the place of master of the ordnance; I did not in my mind so well like of either, because of their affinity with a martial greatness. But of the places now void, in my judgment and discretion, I would name you to the place of lord privy seal. For first, it is the third person of the great officers of the crown. Next, it hath a kind of super-intendence over the secretary. It hath also an affinity with the court of wards, in regard of the fees from the liveries: And it is a fine honour, quiet place, and worth a thousand pounds by the year: And my lord admiral's father had it, who was a martial man; and it fits a favourite to carry her Majesty's image in seal, who beareth it best expressed in heart. But my chief reason is, that which I first alleged to divert her Majesty from this impression of a martial greatness. In concurrence whereof, if your lordship shall not remit any thing of your former diligence at the *Star-chamber*; if you shall continue such intelligences as are worth the cherishing; if you shall pretend to be as bookish and contemplative as ever you were; all these courses have both their advantages and uses in themselves otherwise, and serve exceeding aptly to this purpose. Whereunto I add one expedient more, stronger than all the rest; and for mine own confident opinion, void of any prejudice or danger of diminution of your greatness; and that is, the bringing in of some martial man to be of the council, dealing directly with her Majesty in it, as

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for her service, and your better assistance; chusing nevertheless some person that may be known, not to come in against you by any former division. I judge the fittest to be my lord Mountjoy, or my lord Willoughby. And if your lordship see deeplier into it than I do, that you would not have it done in effect; yet in my opinion, you may serve your turn by the pretence of it, and stay it nevertheless.

THE third impression is of a popular reputation; which, because it is a thing good in it self, being obtained as your lordship obtaineth it, that is, *bonis artibus*; and besides, well governed, is one of the flowers of your greatness both present and to come; it would be handled tenderly. The only way is to quench it *verbis* and not *rebus*. And therefore to take all occasions to the Queen, to speak against popularity and popular courses vehemently; and to tax it in all others: but, nevertheless, to go on in your honourable common-wealth courses as you do. And therefore, I will not advise you to cure this, by dealing in monopolies, or any oppressions: Only, if in parliament your lordship be forward for treasure, in respect of the wars, it becometh your person well; and if her Majesty object popularity to you at any time, I would say to her, a parliament will shew that; and so feed her with expectation.

THE fourth impression of the inequality between your estate of means, and your greatness of respects, is not to be neglected. For believe it, my lord, that till her Majesty find you careful of your estate, she will not only think you more like to continue chargeable to her, but also have a conceit that you have higher imaginations. The remedies are, first, to profess it in all speeches to her: Next, in such suits wherein both honour, gift and profit, may be taken to communicate freely with her Majesty, by way of inducing her to grant, that it will be this benefit to you. Lastly, to be plain with your lordship, (for the gentlemen are such as I am beholden to;) nothing can make the Queen, or the world think so much that you are come to a provident care of your estate, as the altering of some of your officers; who though they be as true to you as one hand to the other; yet *opinio veritate major*: But if, in respect of the bonds they may be entered into for your lordship you cannot so well dismiss your self of them, this cannot be done but with time.

FOR the fifth and last, which is of the advantage of a favourite, as sever'd from the rest, it cannot hurt; so joined with them, it maketh her Majesty more fearful and shadowy, as not knowing her own strength. The only remedy to this, is to give way to some other favourite, as in particular you shall find her Majesty inclined; so as the subject hath no ill, nor dangerous aspect towards your self. For otherwise, whosoever shall tell me, that you may not have singular use of a favourite at your devotion, I will say he understandeth not the Queen's affection, nor your lordship's condition. And so I rest.

October 4. 1596.

XXXIII. To my Lord of ESSEX.

It may please your good Lordship.

I PRAY God her Majesty's weighing be not like the weight of a balance; *gravia deorsum, levia sursum*. But I am as far from being altered in devotion

votion towards her; as I am from distrust that she will be altered in opinion towards me, when she knoweth me better. For my self, I have lost some opinion, some time, and some means; this is my account: but then for opinion, it is a blast that goeth and cometh; for time, it is true, it goeth and cometh not; but yet I have learned that it may be redeemed.

For means, I value that most; and the rather, because I am purposed, not to follow the practice of the law; (if her Majesty command me in any particular, I shall be ready to do her willing service :) and my reason is only, because it drinketh too much time, which I have dedicated to better purposes. But even for that point of estate and means, I partly lean to *Thales* opinion, That a philosopher may be rich if he will. Thus your lordship seeth how I comfort my self; to the encrease whereof, I would fain please my self to believe that to be true which my lord treasurer writeth; which is, that it is more than a philosopher morally can digest. But without any such high conceit, I esteem it like the pulling out of an aking tooth, which, I remember, when I was a child, and had little philosophy, I was glad of when it was done. For your lordship, I do think my self more beholden to you than to any man: and I say, I reckon my self as a common, (not popular, but common;) and as much as is lawful to be enclosed of a common, so much your lordship shall be sure to have.

*Your Lordship's, to obey your honourable commands,
more settled than ever.*

XXXIV. To my Lord of Essex.

My singular good Lord,

YOUR lordship's so honourable minding my poor fortune the last year, in the very entrance into that great action, (which is a time of less leisure;) and in so liberal an allowance of your care, as to write three letters to stir me up friends in your absence, doth, after a sort, warrant me not to object to my self your present quantity of affairs, whereby to silence my self from petition of the like favour. I brake with your lordship my self at the *Tower*; and I take it my brother hath since renewed the same motion, touching a fortune I was in thought to attempt, *in genere oeconomico*. *In genere politico*, certain cross winds have blown contrary. My suit to your lordship is for your several letters to be left with me dormant, to the gentlewoman, and either of her parents: Wherein I do not doubt, but as the beams of your favour have often dissolved the coldness of my fortune; so in this argument your lordship will do the like with your pen. My desire is also, that your lordship would vouchsafe unto me, as out of your care, a general letter to my Lord Keeper, for his lordship's holding me from you recommended; both in the course of my practice, and in the course of my employment in her Majesty's service: wherein, if your Lordship shall in any *antitibesis* or relation affirm, that his lordship shall have no less fruit of me than of any other whom he may cherish, I hope your lordship shall engage your self for no impossibility. Lastly and chiefly, I know not whether I shall attain to see your lordship before your noble journey; for ceremonies are things infinitely inferiour to my love and to my zeal. This let me, with your allowance, say unto you by pen. It is true, that in my well-meaning advices, out of my love to your lordship, and perhaps out of the state of mine own mind;

I have sometimes persuaded a course differing; *ac tibi pro tutis insignia facta placebunt*: be it so, yet remember, that the signing of your name is nothing, unless it be to some good patent or charter, whereby your country may be endowed with good and benefit. Which I speak, both to move you to preserve your person for farther merit and service of her Majesty and your country, and likewise to refer this action to the same end. And so, in most true and fervent prayers, I commend your lordship and your work in hand, to the preservation and conduct of the divine Majesty; so much the more watchful, as these actions do more manifestly in shew, though alike in truth, depend upon his divine providence.

XXXV. To Sir JOHN STANHOPE.

S I R,

YOUR good promises sleep, which it may seem now no time to awake. But that I do not find that any general kalendar of observation of time serveth for the court: and besides, if that be done, which I hope by this time is done; and that other matters shall be done, which we wish may be done, I hope to my poor matter, the one of these great matters may clear the way, and the other give the occasion. And though my Lord Treasurer be absent, whose health nevertheless will enable him to be sooner at court than is expected; especially if this hard weather (too hard to continue) shall relent; yet we abroad say, his Lordship's spirit may be there, though his person be away. Once I take for a good ground, that her Majesty's business ought to keep neither vacation nor holy-day, either in the execution, or in the care and preparation of those whom her Majesty calleth and useth: and therefore I would think no time barred from remembering that, with such discretion and respect as appertaineth. The conclusion shall be, to put you in mind to maintain that which you have kindly begun, according to the reliance I have upon the sincerity of your affection, and the soundness of your judgment. And so I commend you to God's preservation.

XXXVI. To my Lord of ESSEX.

My singular good Lord,

THE message it pleased your lordship to send me, was to me delivered doubtfully. Whether your lordship said you would speak with me at the *Star-Chamber*, or with Mr. *Philip*. If with me, it is needless; for gratitude imposeth upon me satisfaction: if with Mr. *Philip*, it will be too late; because somewhat must (perchance) be done that day. This doubt not solved, maketh me write again: the rather, because I did liberally, but yet privately, affirm your lordship would write; which if I make not good, it may be a discouragement. Your lordship's letter, though it have the subject of honour and justice, yet it shall have the secrecy of a thing done upon affection. I shall ever in a firm duty submit my occasions, though great, to your lordship's respects, though small: and this is my resolution, that when your lordship doth for me, you shall encrease my obligation; when you refuse to do for me,

me, you shall encrease my merit. So leaving the matter wholly to your lordship's pleasure, I commend your lordship to the preservation of the divine Majesty. From *Grays-Inn*.

Your Lordship's ever most humbly bounden

XXXVII. To my Lord of ESSEX.

My singular good Lord,

I MAY perceive, by my lord keeper, that your lordship, as the time served, signified unto him an intention to confer with his lordship at better opportunity; which in regard of your several and weighty occasions, I have thought good to put your lordship in remembrance of; that now at his coming to the court it may be executed; desiring your good lordship, nevertheless, not to conceive out of this my diligence in soliciting this matter, that I am either much in appetite, or much in hope. For as for appetite, the waters of *Parnassus* are not like the waters of the *Spaw* that give a stomach; but rather they quench appetite and desires. And for hope, how can he hope much, than can allege no other reason than the reason of an evil debtor, who will persuade his creditor to lend him new sums, and to enter farther in with him to make him satisfy the old: And to her Majesty no other reason, but the reason of a waterman; I am her first man of those who serve in counsel of Law? And so I commit your lordship to God's best preservation.

XXXVIII. To my Lord of ESSEX.

Most honourable, and my singular good Lord,

I CANNOT but importune your lordship, with thanks for your lordship's remembling my name to my lord Keeper; which being done in such an article of time, could not but be exceedingly enriched, both in demonstration and effect; which I did well discern by the manner of expressing thereof by his lordship again to me. This accumulating of your lordship's favours upon me hitherto, worketh only this effect; that it raiseth my mind to aspire to be found worthy of them, and likewise to merit and serve you for them. But whether I shall be able to pay my vows or no, I must leave that to God who hath them *in deposito*: whom also I most instantly beseech to give you fruit of your actions, beyond that your heart can propound: *Nam Deus major est corde*: Even to the envining of his benedictions, I recommend your Lordship.

XXXIX. To the QUEEN.

It may please your Majesty,

Written by
Mr. Bacon,
for my lord
of Essex.

IT were great simplicity in me to look for better, than that your Majesty should cast away my letter as you have done me; were it not that it is possible your Majesty will think to find somewhat in it, whereupon your displeasure may take hold; and so indignation may obtain that of you which

favour

favour could not. Neither might I in reason presume to offer unto your Majesty dead lines, my self being excluded as I am; were it not upon this only argument or subject; namely, to clear my self in point of duty. Duty, though my state lie buried in the sands, and my favours be cast upon the waters, and my honours be committed to the wind, yet standeth surely built upon the rock, and hath been, and ever shall be, unforced and unattempted. And therefore, since the world, out of error, and your Majesty, I fear out of art, is pleased to put upon me; that I have so much as any election or will in this my absence, from attendance, I cannot but leave this protestation with your Majesty; that I am, and have been merely a patient, and take my self only to obey and execute your Majesty's will. And indeed, Madam, I had never thought it possible that your Majesty could have so disinterested your self of me; nor that you had been so perfect in the art of forgetting; nor that after a quintessence of wormwood, your Majesty would have taken so large a draught of poppy, as to have passed so many * summers without all feeling of my sufferings. But the only comfort I have is this, that I know your Majesty taketh delight and contentment in executing this disgrace upon me. And since your Majesty can find no other use of me, I am glad yet I can serve for that. Thus making my most humble petition to your Majesty, that in justice (howsoever you may by strangeness untie, or by violence cut asunder all other knots) your Majesty would not touch me in that which is indissoluble; that is, point of duty; and that your Majesty will pardon this my unwarranted presumption of writing, being to such an end: I cease in all humbleness;

Your Majesty's poor, and never so unworthy servant,

E S S E X.

XL. To Sir ROBERT CECIL.

S I R,

I FORBEAR not to put in paper, as much as I thought to have spoken to your honour to-day, if I could have stayed: knowing, that if your honour should make other use of it, than is due to good meaning, and than I am persuaded you will; yet to persons of judgment, and that know me otherwise, it will rather appear (as it is) a precise honesty, and this same, *suum cuique tribuere*, than any hollowness to any. It is my luck still to be a-kin to such things as I neither like in nature, nor would willingly meet with in my course; but yet cannot avoid, without shew of base timorousness, or else of unkind or suspicious strangeness.

[Some *Hiatus* in the Copy.]

And I am of one spirit still. I ever liked the *Galenists* that deal with good compositions; and not the *Paracelsians* that deal with these fine separations: and in musick, I ever loved easy airs that go full all the parts together; and not these strange points of accord and discord. This I write not, I assure your honour, officiously; except it be according to *Tully's* offices; that is, honestly and morally. For though, I thank God, I account upon

* This shews this Letter was wrote before the Earl of Essex had been reconciled to the Queen: and our author not having been called or advised with for some year and a half before the Earl's going into *Ireland*, determines the date at latest to the beginning of 1598.

the proceeding in the Queen's service, or not proceeding, both ways ; and therefore neither mean to fawn nor retire ; yet I naturally desire good opinion with any person, which for fortune or spirit is to be regarded ; much more with a secretary of the Queen's, and a cousin-german, and one, with whom I have ever thought my self to have some sympathy of nature, though accidents have not suffered it to appear. Thus not doubting of your honourable interpretation, and usage of that I have written, I commend you to the divine preservation. From *Grays-Inn*.

XLII. To Sir ROBERT CECIL.

S I R,

YOUR honour knoweth, my manner is, though it be not the wisest way, yet taking it for the honestest, to do as *Alexander* did by his physician, in drinking the medicine, and delivering the advertisement of suspicion : so I trust on, and yet do not smother what I hear. I do assure you, Sir, that by a wise friend of mine, and not factious toward your honour, I was told with asseveration, that your honour was bought by Mr. *Coventry* for two thousand angels : and that you wrought in a contrary spirit to my lord your father. And he said farther, that from your servants, from your lady, from some counsellors that have observed you in my business, he knew you wrought underhand against me : The truth of which tale I do not believe. You know the event will shew, and God will right. But as I reject this report, (though the strangeness of my case might make me credulous) so I admit a conceit, that the last messenger my lord and your self used, dealt ill with your honours ; and that word (speculation) which was in the Queen's mouth, rebounded from him as a commendation : for I am not ignorant of those little arts. Therefore, I pray, trust not him again in my matter. This was much to write ; but I think my fortune will set me at liberty, who am weary of asserviling my self to every man's charity. Thus I, &c.

XLII. To FOULK GREVIL.

S I R,

I UNDERSTAND of your pains to have visited me, for which I thank you. My matter is an endless question. I assure you I had said, *requiesce anima mea* : but now I am otherwise put to my psalter ; *nolite considerare*. I dare go no farther. Her Majesty had, by set speech, more than once assured me of her intention to call me to her service ; which I could not understand but of the place I had been named to. And now, whether *invidus homo hoc fecit* ; or whether my matter must be an appendix to my lord of *Effex* suit ; or whether her Majesty, pretending to prove my ability, meaneth but to take advantage of some errors, which, like enough, at one time or other I may commit ; or what it is ; but her Majesty is not ready to dispatch it. And what though the master of the Rolls, and my lord of *Effex*, and your self, and others, think my case without doubt ; yet in the mean time I have a hard condition to stand so, that whatsoever service I do to her Majesty, it shall be thought to be but *servitium viscatum*, lime-twigs and fetches to place my self ;

self; and so I shall have envy, not thanks. This is a course to quench all good spirits, and to corrupt every man's nature; which will, I fear, much hurt her Majesty's service in the end. I have been like a piece of stuff bespoken in the shop; and if her Majesty will not take me, it may be the selling by parcels will be more gainful. For to be, as I told you, like a child following a bird, which when he is nearest flieth away, and lieth a little before, and then the child after it again, and so *in infinitum*; I am weary of it, as also of wearying my good friends; of whom, nevertheless, I hope in one course or other gratefully to deserve. And so, not forgetting your business, I leave to trouble you with this idle letter, being but *justa & moderata querimonia*: For indeed, I do confess, *primus amor* will not easily be cast off. And thus again I commend me to you.

XLIII. To my lord of ESSEX.

It may please your good Lordship,

I AM very sorry her Majesty should take my motion to travail in offence: But surely, under her Majesty's royal correction, it is such an offence as it should be an offence to the sun, when a man, to avoid the scorching heat thereof, flieth into the shade. And your lordship may easily think, that having now these twenty years (for so long it is and more, since I went with * Sir Amyas Paulet into France, from her Majesty's royal hand) made her Majesty's service the scope of my life; I shall never find a greater grief than this, *relinquere amorem primum*. But since, *principia actionum sunt tantum in nostra potestate*; I hope her Majesty of her clemency, yea and justice, will pardon me, and not force me to pine here with melancholy. For though mine heart be good, yet mine eyes will be sore; so as I shall have no pleasure to look abroad: and if I should otherwise be affected, her Majesty in her wisdom will but think me an impudent man, that would face out a disgrace. Therefore, as I have ever found you my good lord and true friend, so I pray open the matter so to her Majesty, as she may discern the necessity of it, without adding hard conceit to her rejection; of which, I am sure, the latter I never deserved. Thus, &c.

* This letter was therefore wrote about the year 1598.

XLIV. To Sir ROBERT CECIL, at his being in France.

It may please your honourable Lordship,

I KNOW you will pardon this my observance, in writing to you, empty of matter, but out of the fulness of my love. I am sorry that as your time of absence is prolonged, above that was esteemed at your lordship's setting forth; so now, upon this last advertisement received from you, there groweth an opinion amongst better than the vulgar, that the difficulties also of your negotiation are encreased. But because, I know, the gravity of your nature to be not to hope lightly, it maketh me to despair the less. For you are *natus ad ardua*: and the indisposition of the subject may honour the skill of the workman. Sure I am, judgment and diligence shall not want in your lordship's self: but this was not my purpose; being only to signify unto your lordship, my continual and incessant love towards you, thirsting after your return, for many respects. So I commend you ever to the good preservation of the divine Majesty. *Grays-Inn. 1598.*

At your honour's commandment ever and particularly.

XLV. To Sir ROBERT CECIL.

My singular good Lord,

THE argument of my letters to your lordship, rather increaseth than spendeth; it being only the desire I have to salute you; which by your absence is more augmented than abated. For me to write your lordship occurrences either of *Scotish* brags, or *Irish* plants, or *Spanish* ruffling, or *Low-Country* states, were (besides that it is *alienum quiddam*, from mine own humour) to forget to whom I write; save that you, that know true advertisements, sometimes desire and delight to hear common reports; as we that know but common reports, desire to hear the truth. But to leave such as write to your fortunes, I write to yourself, in regard of my love to you; you being as near to me in heart's blood, as in blood of descent. This day I had the contentment to see your * father, upon occasion: and methought his lordship's countenance was not decayed, nor his cough vehement; but his voice was as faint all the while as at first. Thus wishing your lordship a happy and speedy return, I commend you to the divine Majesty.

* This seems to be written 1598, the time of the lord Burghley's last sickness.

XLVI. A Letter of advice to the Earl of ESSEX, to take upon him the care of *Irish* causes, when Mr. Secretary CECIL was in *France*, 1598.

My singular good Lord,

I Do write, because I had no time fully to express my conceit to your lordship, touching *Irish* affairs; considering them as they may concern your lordship; knowing that you will consider them, as they may concern the state. That it is one of the aptest particulars that hath come, or can come upon the stage for your lordship to purchase honour upon, I am moved to think for three reasons. Because, it is ingenerate, in your house, in respect of my lord your father's noble attempts: because of all the accidents of state on foot at this time, the labour resteth most in that particular; and because the world will make a kind of comparison, between those that set it out of frame, and those that bring it into frame: which kind of honour giveth the quickest kind of reflection. The transferring this honour upon your self, consisteth in two points: the one, if the principal persons employ'd, come in by you and depend upon you; the other, if your lordship declare your self, and profess to undertake a care of that kingdom. For the persons, it falleth out well, that your lordship hath had no interest in the persons of imputation: for neither Sir *William Fitz-Williams*, nor Sir *John Norris*, was yours. Sir *William Russel* was conceived yours, but was curbed. Sir *Corniers Clifford* (as I conceived) dependeth on you, who is said to do well. And if my lord of *Ormond*, in this interim, doth accommodate things well, (as it is said he doth) I take it he hath always had good understanding with your lordship: so as all things hitherto are not only whole and entire, but of favourable aspect towards your lordship, if hereafter you chuse well: wherein

in your wisdom you will remember there is a great difference in choice of the persons, as you shall think the affairs to incline to composition or to war. Concerning the care of business, the general and popular conceit hath been, that *Irish* causes have been much neglected; whereby the very reputation of better care will put life into them. And I am sure her Majesty, and my lords of the council, do not think their care dissolved when they have chosen whom to employ: but that they will proceed in a spirit of state, and not leave the main point to discretion. Then if a resolution be taken, a consultation must proceed; and the consultation must be govern'd upon information to be had from such as know the place, and matters in fact: and in taking of information I have always noted there is a skill and a wisdom. But for a beginning and key to that which shall follow, it were good your lordship would have some large and serious conference with Sir William Ruffel, Sir Richard Bingham, the Earl of Thomond, and Mr. Wilbrabam; to know their relation of the past; their opinion of the present; and their advice for the future. But I am of opinion much more would be had of them, if your lordship shall be pleased severally to confer; not *obiter*, but expressly upon some caveat given them to think of it before: for *bene docet qui prudenter interrogat*.

For the points of opposing them, I am too much a stranger to the business to deduce them: but in a general topick, methinks the pertinent interrogations must be; either of the possibility and means of accord; or of the nature of the war; or of the reformation of abuses; or of the joining of practice with force in the disunion of the rebels. If your lordship doubt to put your sickle into another's harvest, yet consider you have these advantages; first, time brings it to you in Mr. Secretary's absence: next, *vis unita fortior*: thirdly, the business being mixt with matters of war, it is fittest for you: and lastly, I know your lordship will carry it with that modesty and respect towards aged dignity, and that good correspondence towards my dear kinsman and your good friend now abroad, as no inconvenience may grow that way.

Thus have I played the ignorant statesman; which I do to no body but your lordship; except I do it to the Queen sometimes when she trains me on. But your lordship will accept my duty and good meaning, and secure me touching the privateness of that I write.

XLVII. A Letter of advice to the Earl of Essex, upon the treaty with Tyrone 1598, before the Earl was nominated for the charge of Ireland.

My very good Lord,

CONCERNING the advertisements, which your lordship imparted to me, touching the state of Ireland, I hold them to be no more certain to make judgment upon, than a patient's water to a physician: therefore for me upon one water to make a judgment, were indeed like a foolish bold mountebank or Dr. Birket: yet for willing duties sake, I will set down to your lordship what opinion sprang in my mind upon that I read.

THE letter from the council there, leaning to mistrust and dissuade the treaty, I do not much rely on, for three causes. First, because it is always the grace and the safety from blame of such a council to err in caution: whereunto add, that it may be, they, or some of them, are not without envy towards the person, who is used in treating the accord. Next, because the time of this treaty

treaty hath no shew of dissimulation; for that *Tyrone* is now in no straits; but he is more like a gamester that will give over because he is a winner, than because he hath no more money in his purse. Lastly, I do not see but those articles, whereupon they ground their suspicion, may as well proceed out of fear, as out of falsehood. For the retaining the dependence of the *Vraights*, the protracting the admission of a sheriff, the refusing to give his son for an hostage, the holding off from present repair to *Dublin*, the refusing to go presently to accord, without including *Odonnell*, and other his associates, may very well come, of an apprehension, in case he should receive hard measure; and not out of treachery, so as if the great person you write of be faithful, and that you have not heard some present intelligence of present succours from *Spain*, (for the expectation whereof, *Tyrone* would win time;) I see no deep cause of distrusting this course of treaty, if the main conditions may be good. For her Majesty seemeth to me to be a winner thereby three ways: first, her purse shall have some rest: next, it will divert the foreign designs upon the place: thirdly, though her Majesty be like for a time to govern but *precario*, in the north, and be not (as to a true command) in better state there than before; yet, besides the two respects of ease of charge, and advantage of opinion abroad, before mentioned, she shall have time to use her princely policy in two points to weaken them: the one, by division and disunion of the heads: the other, by recovering and winning the people from them by justice; which of all other courses is the best.

Now for the *Athenian* question: you discourse well; *Quid igitur agendum est?* I will shoot my fool's bolt, since you will have it so. The earl of *Ormond*, to be encouraged and comforted. Above all things, the garrisons to be instantly provided for. For opportunity maketh a thief: and if he should mean never so well now, yet such an advantage as the breaking of her Majesty's garrisons might tempt a true man.

AND because he may as well waver upon his own inconstancy as upon occasion, (and wanton variableness is never restrained but by fear;) I hold it necessary he be menaced with a strong war: not by words, but by musters and preparations of forces here, in case the accord proceed not: but none to be sent over, lest it disturb the treaty, and make him look to be over-run as soon as he hath laid away arms. And but that your lordship is too easy to pass in such causes from dissimulation to verity; I think, if your lordship lent your reputation in this case; that is, to pretend, that if peace go not on, and the Queen mean to make, not a defensive war as in times past, but a full reconquest of those parts of the country, you would accept the charge: I think it would help to settle *Tyrone* in his seeking accord, and win you a great deal of honour *gratis*.

AND that, which most properly concerns this action, if it prove a peace, I think her Majesty shall do well to cure the root of the disease; and to profess, by a commission of peaceable men, chiefly of respect and countenance, reformation of abuses, extortions and injustices there; and to plant a stronger and surer government than heretofore, for the ease and protection of the subject. For the removing of the sword or government in arms from the Earl of *Ormond*, or the sending of a deputy, (which will eclipse it) if peace follow, I think it unreasonable.

LASTLY, I hold still my opinion, (both for your better information, and the fuller declaration of your care, in meddling in this urgent and meriting service) that your lordship have a set conference with the persons I named in my former letter.

XLVIII. A LETTER of Advice to my Lord of Essex, immediately before his going into *Ireland*. 1599.

My singular good Lord,

*YOUR late note of my silence, in your occasions, hath made me set down these few wandering lines, as one that would say somewhat, and can say nothing, touching your lordship's intended charge for *Ireland*: which my endeavour I know your lordship will accept graciously and well; whether your lordship take it by the handle of the occasion ministred from your self, or of the affection from which it proceeds.

YOUR lordship is designed to a service of great merit and great peril; and as the greatness of the peril must needs include a like proportion of merit; so the greatness of the merit may include no small consequence of peril, if it be not temperately governed. For all immoderate success extinguisheth merit, and stirreth up distaste and envy; the assured forerunners of whole charges of peril. But I am at the last point first, some good spirit leading my pen to preface to your lordship success; wherein, it is true, I am not without my oracles and divinations; none of them superstitious, and yet not all natural. For first, looking into the course of God's providence in things now depending, and calling to consideration, how great things God hath done by her Majesty and for her; I collect he hath disposed of this great defection in *Ireland*, thereby to give an urgent occasion to the reduction of that whole kingdom; as upon the rebellion of *Desmond* there ensued the reduction of that whole province.

NEXT, your lordship goeth against three of the unluckiest vices of all others, disloyalty, ingratitude, and insolency; which three offences, in all examples, have seldom their doom adjourned to the world to come.

LASTLY, he that shall have had the honour to know your lordship inwardly, as I have had, shall find *bona exta*, whereby he may better ground a divination of good, than upon the dissection of a sacrifice. But that part I leave; for it is fit for others to be confident upon you, and you to be confident upon the cause; the goodness and justice whereof is such as can hardly be matched in any example; it being no ambitious war against foreigners, but a recovery of subjects; and that after lenity of conditions often tried; and a recovery of them not only to obedience, but to humanity and policy, from more than *Indian* barbarism.

THERE is yet another kind of divination familiar to matters of state; being that which *Demosthenes* so often relied upon in his time; when he said, That which for the time past is the worst of all, is for the time to come the best: which is, that things go ill, not by accident, but by errors; wherein, if your lordship have been heretofore an awaking censor, yet you must look for no other now, but *medice cura teipsum*: and though you shall not be the happy physician that cometh in the declination of the disease; yet you embrace that condition which many noble spirits have accepted for advantage; which is; that you go upon the greater peril of your fortune, and the less of your reputation; and so the honour countervaileth the adventure; of which honour your lordship is in no small possession, when that her Majesty (known to be

* Our Author observes, I was not called nor advised with for some year and a half before his lordship's [viz. the Earl of Essex's] going into *Ireland*, which explains this passage, Apol. Vol. IV. p. 432.

one of the most judicious princes in discerning of spirits that ever governed) hath made choice of you (merely out of her royal judgment; her affection inclining rather to continue your attendance;) into whose hand, and trust, to put the command and conduct of so great forces: the gathering the fruit of so great charge; the execution of so many counsels; the redeeming of the defaults of so many former governors; the clearing of the glory, of her so many happy years reign, only in this part eclipsed. Nay farther, how far forth the peril of that state is interlaced with the peril of *England*; and therefore, how great the honour is, to keep and defend the approaches or avenues of this kingdom, I hear many discourse; and there is a great difference, whether the tortoise gathereth herself within her shell hurt or unhurt.

AND if any man be of opinion, that the nature of the enemy doth extenuate the honour of the service, being but a rebel and a savage, I differ from him; for I see the justest triumphs that the *Romans* in their greatness did obtain; and that whereof the Emperors in their styles took addition and denomination, were of such an enemy as this; that is, people barbarous, and not reduced to civility, magnifying a kind of lawless liberty, and prodigal of life, hardened in body, fortified in woods and bogs, and placing both justice and felicity in the sharpness of their swords: such were the *Germans* and ancient *Britons*, and divers others. Upon which kind of people, whether the victory were a conquest, or a reconquest, upon a rebellion or a revolt, it made no difference (that ever I could find) in honour. And therefore it is not the enriching predatory war that hath the pre-eminence in honour, else should it be more honour to bring in a carrack of rich burden, than one of the twelve *Spanish* Apostles. But then this nature of people doth yield a higher point of honour, considered in truth and substance, than any war can yield, which should be achieved against a civil enemy; if the end may be, *pacificque imponere morem*, to replant and refound the policy of that nation; to which nothing is wanting, but a just and civil government; which design, as it doth descend unto you from your noble father who lost his life in that action; (though he paid tribute to nature, and not to fortune;) so I hope your lordship shall be as fatal a captain to this war, as *Africanus* was to the war of *Carthage*, after that both his uncle and father had lost their lives in *Spain* in the same war. Now although it be true, that these things which I write (being but representations unto your lordship, of the honour and appearance of success of the enterprise;) be not much to the purpose of any advice; yet it is that which is left to me, being no man of war, and ignorant in the particulars of estate. For a man may, by the eye, set up the white in the midst of the butt, though he be no archer. Therefore I will only add this wish, according to the *English* phrase, which termeth a well-willing advice, a wish; that your lordship in this whole action, looking forward, would set down this position; that merit is worthier than fame; and looking back hither, would remember this text, *That obedience is better than sacrifice*. For designing to fame and glory may make your lordship in the adventure of your person to be valiant as a private soldier, rather than as a general: it may make you in your commandments rather to be gracious than disciplinary: it may make you press action (in respect of the great expectation conceived,) rather hastily than seasonably and safely: it may make you seek rather to achieve the war by force, than by intermixture of practice: it may make you (if God shall send prosperous beginnings,) rather seek the fruition of that honour, than the perfection of the work in hand. And for the other point, that is, the proceeding like a good protestant upon express warrant, and not upon good intention, your lordship in your wisdom knoweth;

knoweth; that as it is most fit for you to desire convenient liberty of instructions, so it is no less fit for you to observe the due limits of them; remembering that the exceeding of them may not only procure, in case of adverse accident, a dangerous disavow; but also (in case of prosperous success) be subject to interpretation, as if all were not referred to the right end.

THUS have I presumed to write these few lines to your lordship, *in methodo ignorantiae*; which is, when a man speaketh of any subject, not according to the parts of the matter, but according to the model of his own knowledge; and most humbly desire your lordship, that the weakness thereof may be supplied in your lordship by a benign acceptation, as it is in me by my best wishing.

XLIX. To my Lord of ESSEX.

My Lord,

CONCEIVING that your lordship came now up in the person of a good servant, to see your sovereign mistress; which kind of complements are many times, *instar magnorum meritorum*; and therefore that it would be hard for me to find you: I have committed to this poor paper the humble salutations of him that is more yours than any man's; and more yours than any man. To these salutations I add a due and joyful gratulation, confessing that your lordship, in your last conference with me before your journey, spake not in vain, God making it good; that you trusted, we should say, *quis putasset?* Which, as it is found true in a happy sense, so I wish you do not find another *quis putasset*, in the manner of taking this so great a service. But I hope it is, as he said, *nubecula est, cito transibit*: And that your lordship's wisdom, and obsequious circumspection, and patience, will turn all to the best. So referring all to some time that I may attend you, I commit you to God's best preservation.

L. A LETTER to the Earl of ESSEX, in offer of his service when he was first enlarged to *Essex-House*.

My Lord,

NO man can expound my doings better than your lordship, which makes me need to say the less; only I humbly pray you to believe, that I aspire to the conscience and commendation of *bonus civis*, and *bonus vir*; and that though I love some things better (I confess) than I love your lordship, yet I love few persons better; both for gratitude's sake, and for your virtues, which cannot hurt but by accident; of which my good affection, it may please your lordship to assure your self; and of all the true effects and offices I can yield. For as I was ever sorry your lordship should fly with waxen wings, doubting *Icarus's* fortune, so for the growing up of your own feathers, be they ostriches or other kind, no man shall be more glad. And this is the axle-tree whereon I have turned, and shall turn. Which having already signified to you by some near mean, having so fit a messenger for mine own letter, I thought good also to redouble by writing. And so I commend you to God's protection. From *Gray's-Inn* this 9th of July, 1600.

19 Jul. Cab.

LI. Aa

LI. An Answer of my Lord of ESSEX, to the preceding
LETTER of Mr. BACON.

Mr. BACON,

I CAN neither expound nor censure your late actions; being ignorant of all of them, save one; and having directed my sight inward only to examine my self. You do pray me to believe, that you only aspire to the conscience and commendation of *bonus civis*, and *bonus vir*: and I do faithfully assure you, that while that is your ambition (though your course be active, and mind contemplative) yet we shall both, *convenire in eodem tertio*; and *convenire inter nos-ipsos*. Your profession of affection, and offer of good offices, are welcome to me: for answer to them I will say this; that you have believed I have been kind to you, and you may believe that I cannot be other, either upon humour, or mine own election. I am a stranger to all poetical conceits, or else I should say somewhat of your poetical example. But this I must say, that I never flew with other wings than desire to merit, and confidence in my sovereign's favour; and when one of these wings failed me, I would light no where but at my sovereign's feet, though she suffered me to be bruised with my fall. And till her Majesty, that knows I was never bird of prey, finds it to agree with her will and her service that my wings should be impeded again, I have committed my self to the mue. No power but my God's, and my sovereign's, can alter this resolution of

Your retired Friend,

ESSEX.

LII. To my Lord of ESSEX.

I AM glad your lordship hath plunged out of your own business: Wherein, I must commend your lordship, as *Xenophon* commended the state of this country, which was this, that having chosen the worst form of government of all others, they governed the best in that kind. *Hoc pace & venia tua*, according to my charter. Now, as your lordship is my witness, that I would not trouble you whilst your own cause was in hand; (though that I know, that the farther from the term, the better the time was to deal for me;) so that being concluded, I presume I shall be one of your next cares. And having communicated with my brother of some course, either to perfect the first, or to make me some other way; or rather, by seeming to make me some other way to perfect the first, wherewith he agreed to acquaint your lordship; I am desirous, for mine own better satisfaction, to speak with your lordship my self: which I had rather were somewhere else than at court; and as soon as your lordship will assign me to wait on you. And so in, &c.

LIII. To my Lord of ESSEX.

It may please your Lordship,

THAT your lordship is *in statu quo prius*, no man taketh greater gladness than I do; the rather, because I assure my self that of your eclipses, as this hath been the longest, it shall be the least; as the comical poet saith,
Neque

Neque illam tu satis noveras, neque te illa: hocque fit, ubi non vere vivitur. For if I may be so bold as to say what I think, I believe neither your lordship looked to have found her Majesty in all points as you have done; neither her Majesty *per case*, looked to have found your lordship as she hath done. And therefore I hope upon this experience may grow more perfect knowledge, and upon knowledge more true consent; which I, for my part, do infinitely wish, as accounting these accidents to be like the fish *remora*; which though it be not great, yet hath it a hidden property to hinder the sailing of the ship. And therefore, as bearing unto your lordship, after her Majesty, of all publick persons, the second duty, I could not but signify unto you my affectionate gratulation. And so I commend your good lordship to the best preservation of the divine Majesty. From *Gray's-Inn*.

Terent.
Heaut. 1. 1.

LIV. To Sir ROBERT CECIL.

It may please your good Honour,

I AM apt enough to contemn *mendacia famae*, yet it is with this distinction, as fame walks among inferiors, and not as it hath entrance into some ears. And yet, nevertheless, in that kind also, I intend to avoid a suspicious silence, but not to make any base apology. It is blown about the town, that I should give opinion touching my lord of *Effex* cause; first, that it was a *praemunire*; and now last, that it reached to high treason: and this opinion should be given in opposition to the opinion of the Lord Chief Justice, and of Mr. Attorney General. Sir, I thank God whatsoever opinion my head serveth me to deliver to her Majesty, being asked, my heart serveth me to maintain, the same honest duty directing me and assisting me. But the utter untruth of this report God and the Queen can witness; and the improbability of it, every man that hath wit, more or less, can conceive. The root of this I discern to be not so much a light and humorous envy at my accesses to her Majesty, (which of her Majesty's grace, being begun in my first years, I would be sorry she should estrange in my last years; for so I account them, reckoning by health, not by age;) as a deep malice to your honourable self; upon whom, by me, through nearness, they think to make some aspersion. But as I know no remedy against libels and lyes; so I hope it shall make no manner of disservice of your honourable good conceits and affection towards me; which is the thing I confess to fear. For as for any violence to be offered to me, wherewith my friends tell me, to no small terror, that I am threatened, I thank God I have the privy coat of a good conscience; and have a good while since put off any fearful care of life, or the accidents of life. So desiring to be preserved in your good opinion, I remain.

This last letter seems to be wrote 1600, in the interval between the return of the Earl of *Effex* from *Ireland*, and his hearing before the Lord Chancellor, &c.

LV. To my Lord HENRY HOWARD.

My Lord,

THERE be very few besides your self, to whom I would perform this respect. For I contemn *mendacia famae*, as it walks among inferiors; though I neglect it not, as it may have entrance into some ears. For your

lordship's love, rooted upon good opinion, I esteem it highly, because I have tasted the fruits of it; and we both have tasted of the best waters, in my account, to knit minds together. There is shaped a tale in *London's* forge, that beateth apace at this time, that I should deliver opinion to the Queen in my lord of *Essex* cause. First, that it was *praemunire*; and now last, that it was high treason; and this opinion to be in opposition and encounter of the Lord Chief Justice's opinion, and the Attorney General's. My lord, (I thank God) my wit serveth me not to deliver any opinion to the Queen, which my stomach serveth me not to maintain; one and the same conscience of duty guiding me and fortifying me. But the untruth of this fable God and my Sovereign can witness, and there I leave it; knowing no more remedy against lyes, than others do against libels. The root, no question of it is, partly, some light-headed envy at my accesses to her Majesty; which being begun and continued since my childhood, as long as her Majesty shall think me worthy of them, I scorn those that shall think the contrary. And another reason is, the aspersion of this tale, and the envy thereof, upon some greater man, in regard of my nearness. And therefore, my lord, I pray you answer for me, to any person that you think worthy your own reply, and my defence. For my lord of *Essex*, I am not servile to him, having regard to my superior's duty. I have been much bound unto him. And on the other side, I have spent more time and more thoughts about his well doing, than ever I did about mine own. I pray God you his friends, amongst you, be in the right. *Nulla remedia tam faciunt dolorem, quam quae sunt salutaria.* For my part I have deserved better, than to have my name objected to envy, or my life to a ruffian's violence. But I have the privy coat of a good conscience. I am sure these courtes and bruits hurt my lord more than all. So having written to your lordship, I desire exceedingly to be preferred in your good opinion and love: And so leave you to God's goodness.

LVI. Two Letters framed; the one as from Mr. *Anthony Bacon*, to the Earl of *Essex*; the other, as the Earl's Answer thereunto, both written by Mr. *Francis Bacon*, at the instance of Mr. *Anthony Bacon* his Brother, and to be shewed to the Queen, upon some fit occasion; as a mean to work her Majesty to receive the Earl again to favour and attendance at Court: They were devised whilst my Lord remained Prisoner in his own House. See Sir *Francis Bacon's* Apology to the Earl of *Devonshire*.

My singular good Lord,

THIS standing at a stay in your lordship's fortunes doth make me, in my love towards your lordship, jealous lest you do somewhat, or omit somewhat, that amounteth to a new error. For I suppose that of all former matters there is a full expiation; wherein, for any thing that your lordship doth, I for my part (who am remote) cannot cast nor devise wherein any error should be, except in one point, which I dare not censure nor dissuade; which is, that (as the prophet saith) in this affliction you look up, *ad manum percutientem*, and so make your peace with God. And yet I have heard it noted, that my

my lord of *Leicester*, (who could never get to be taken for a saint,) nevertheless in the Queen's disfavour waxed seeming religious; which may be thought by some, and used by others, as a case resembling yours, if men do not see, or will not see the difference between your two dispositions. But to be plain with your lordship, my fear rather is, because I hear how some of your good and wise friends, not unpractised in the court, and supposing themselves not to be unseen in that deep and unscrutable centre of the court, which is her Majesty's mind, do not only toll the bell, but even ring out peals, as if your fortune were dead and buried, and as if there were no possibility of recovering her Majesty's favour; and as if the best of your condition, were to live a private and retired life, out of want, out of peril, and out of manifest disgrace; and so in this persuasion of theirs, include a persuasion to your lordship to frame and accommodate your actions and mind to that end: I fear, I say, that this untimely despair may in time bring forth a just despair, by causing your lordship to slacken and break off your wise, loyal, and seasonable endeavours and industry for redintegration to her Majesty's favour; in comparison whereof all other circumstances are but as *atomi*, or rather as a *vacuum*, without any substance at all. Against this opinion it may please your lordship to consider of these reasons which I have collected, and to make judgment of them: neither out of the melancholy of your present fortune, nor out of the infusion of that which cometh to you by others relation, (which is subject to much tincture,) but *ex rebus ipsis*, out of the nature of the persons and actions themselves, as the truest and least deceiving grounds of opinion. For though I am so unfortunate as to be a stranger to her Majesty's eye, and much more to her nature and manners; yet by that which is apparent, I do manifestly discern, that she hath that character of the divine nature and goodness; *quos amavit, amavit usque ad finem*: and where she hath a creature, she doth not deface nor defeat it; insomuch, as if I observe rightly in those persons whom heretofore she hath honoured with her special favour, she hath covered and remitted not only defects and ingritudes in affection, but errors in state and service. *Secondly*, if I can spell and scholar-like put together the parts of her Majesty's proceedings now towards your lordship, I cannot but make this construction, that her Majesty in her royal intention never purposed to call your lordship's doings into publick question; but only to have used a cloud without a shower, in censuring them by some temporary restraint only of liberty and debarring you from her presence. For first, the handling the cause in the *Star-chamber*, you not being called, was enforced by the violence of libelling and rumours; (wherein the Queen thought to have satisfied the world, and yet spared your lordship's appearance;) and after, when that means which was intended for the quenching of malicious bruits, turned to kindle them; (because it was said your lordship was condemned unheard, and your lordship's sister wrote that piquant letter;) then her Majesty saw plainly, that these winds of rumours could not be commanded down without a handling of the cause, by making you a party, and admitting your defence. And to this purpose I do assure your lordship, that my brother *Francis Bacon*, who is too wise (I think) to be abused, and too honest to abuse; though he be more reserved in all particulars than is needful; yet in generality, he hath ever constantly and with asseveration affirmed to me, that both those days, that of the *Star-Chamber*, and that at my Lord Keeper's, were won from the Queen merely upon necessity and point of honour, against her own inclination. *Thirdly*, in the last proceeding I note three points, which are directly significant, that her Majesty did expressly forbear any point which

was

* Irrecuperable, *Cab.*

was * irreparable, or might make your lordship in any degree incapable of the return of her favour; or might fix any character indelible of disgrace upon you: for she spared the publick place of the *Star-Chamber*, which spared ignominy; she limited the charge precisely not to touch upon any pretence of disloyalty; and no record remaineth to memory of the charge or sentence. *Fourthly*, the very distinction which was made in the sentence of sequestration from the places of service in state, and leaving to your lordship the place of master of the horse, doth, to my understanding, *indicative*, point at this; that her Majesty meant to use your lordship's attendance in court, while the exercises of the other places stood suspended. *Fifthly*, I have heard, and your lordship knoweth better than I, that now, since you were in your own custody, her Majesty, in *verbo regio*, and by his mouth, to whom she committeth her royal grants and decrees, hath assured your lordship she will forbid, and not suffer your ruin. *Sixthly*, as I have heard her Majesty to be a princess of that magnanimity, that she will spare the service of the ablest subject or peer, when she shall be thought to stand in need of it: so she is of that policy, as she will not lose the service of a meaner than your lordship, where it shall depend merely upon her choice and will. *Seventhly*, I hold it for a principle, that generally those diseases are hardest to cure whereof the cause is obscure; and those easiest, whereof the cause is manifest: whereupon I conclude, that since it hath been your error in your courses towards her Majesty, which hath prejudiced you, that your reforming and conformity will restore you; so as you may be, *faber fortunae propriae*. *Lastly*, considering your lordship is removed from dealing in causes of state, and left only to a place of attendance; methinks the ambition of any man, who can endure no partners in state-matters, may be so quenched, as that they should not laboriously oppose themselves to your being in court: so as upon the whole matter, I can find neither in her Majesty's person, nor in your own person, nor in any third person; neither in former precedents, nor in your own case, any cause of dry and peremptory despair. Neither yet do I speak this so, but that if her Majesty, out of her resolution, should design you to a private life, you should not be as willing, upon her appointment, to go into the wilderness, as into the land of promise. Only I wish your lordship will not preoccupate despair, but put trust, next to God, in her Majesty's grace, and not to be wanting to your self. I know your lordship may justly interpret, that this which I persuade, may have some reference to my particular fortune, because I may truly say, *te stante*, (not *virebo*, for I am withered in my self, but) *manebo*, or *tenebo*; and that I shall in some sort be able to hold out. But though your lordship's years and health may expect return of grace and fortune; yet your eclipse for a time is an *ultimum vale* to my fortune; and were it not that I desire and hope to see my brother established, by her Majesty's favour, (as I think him well worthy, for that he hath done and suffered) it were time I did take that course, from which I dissuade your lordship. But now, in the mean time, I cannot chuse but perform these honest duties unto you, to whom I have been so deeply bounden.

LVII. A LETTER framed as from the Earl; in answer to the former LETTER.

Mr. BACON,

I THANK you for your kind and careful letter. It persuades me to that which I wish strongly, and hope for weakly; that is, a possibility of restitution to her Majesty's favour: but your arguments that would cherish hope, turn me to despair. You say the Queen never meant to call me to publick censure, which sheweth her goodness; but you see I passed under it, which sheweth others power. I believe most stedfastly her Majesty never intended to bring my cause to a sentence; and I believe as verily, that since that sentence, she meant to restore me to attend upon her person. But they that could use occasions (which was not in me to let) and amplify occasions, and practise upon occasions to represent to her Majesty a necessity to bring me to the one, can and will do the like to stop me from the other. You say my errors were my prejudice, and therefore I can mend my self: it is true; but they that know that I can mend my self, and that if ever I recover the Queen, that I will never lose her again; will never suffer me to re-obtain an interest in her favour. And you say the Queen never forsook utterly, where she inwardly favoured: but I know not whether the hour-glass of time hath altered her mind; yet sure I am the false glass of others informations must alter her, when I want access to plead my own cause. I know I ought doubly, infinitely, to be her Majesty's; both *jure creationis*, for I am her creature; and *jure redemptionis*, for I know she hath saved me from overthrow. But for her first love, and for her last protection, and for all her great benefits, I can but pray for her Majesty; and my endeavours are now to make my prayers for her Majesty and my self better heard. For, thanks be to God, they that can make her Majesty believe that I counterfeit with her, cannot make God believe that I counterfeit with him: and they which can let me from coming near unto her, cannot let me from drawing near unto him, as I hope I do daily. For your brother, I hold him to be an honest Gentleman, and wish him all good, much the rather for your sake. Your self I know hath suffered more for me and with me than any friend I have: yet I cannot but lament freely, as you see I do; and advise you not to do that which I do, which is to despair. You know letters what hurt they have done me, and therefore make sure of this: and yet I could not (as having no other pledge of my love) but communicate freely with you, for the ease of my heart and yours.

LVIII. A Letter to Mr. SECRETARY CECIL, after the * defeating of the *Spanish* forces in *Ireland*; inciting him to embrace the care of reducing that kingdom to civility, with some reasons sent inclosed.*It may please your Honour,*

AS one that wisheth you all encrease of honour; and as one that cannot leave to love the state, (what interest soever I have, or may come to

* Therefore this was wrote 1601.

* Fettered
sense, Cab.

have in it) and as one that now this dead vacation time hath some leisure, *ad aliud agendum*; I will presume to propound unto you that which though you cannot but see, yet I know not whether you apprehend and esteem it in so high a degree; that is, for the best action of importation to your self, of found honour and merit to her Majesty and this crown, without ventosity and popularity, that the riches of any occasion, or the tide of any opportunity, can possibly minister or offer: and that is the causes of *Ireland*, if they be taken by the right handle. For if the wound be not ripped up again, and come to a *recrudency by new foreign succours, I think that no physician will go on with much letting of blood, *in declinatione morbi*; but will intend to purge and corroborate. To which purpose I send you mine opinion, without labour of words, in the inclosed; and sure I am, that if you shall enter into the matter, according to the vivacity of your own spirit, nothing can make unto you a more gainful return. For you shall make the Queen's felicity compleat, which now (as it is) is incomparable; and for your self, you shall shew your self as good a patriot as you are thought a politick, and make the world perceive you have not less generous ends, than dexterous delivery of your self towards your ends; and that you have as well true arts and grounds of government, as the facility and felicity of practice and negotiation; and that you are as well seen in the periods and tides of estates, as in your own circle and way: than the which, I suppose nothing can be a better addition and accumulation of honour unto you. This, I hope, I may in privateness write, either as a kinsman, that may be bold; or as a scholar, that hath liberty of discourse, without the committing any absurdity. But if it seem any error in me thus to intromit my self, I pray your honour believe, I ever loved her Majesty and the state, and now love your self; and there is never any vehement love, without some absurdity, as the *Spaniard* well says; *desuavio con la calentura*. So desiring your honour's pardon, I ever continue.

Considerations touching the QUEEN'S service in IRELAND.

THE reduction of that country, as well to civility and justice, as to obedience and peace (which things, as affairs now stand, I hold to be inseparable;) consisteth in four points.

1. THE extinguishing of the relicks of the war.
2. THE recovery of the hearts of the people.
3. THE removing of the root and occasions of new troubles.
4. PLANTATIONS and buildings.

Al. Taglaes. FOR the first; concerning the places, and times, and particularities of farther prosecution, in fact, I leave it to the opinion of men of war; only the difficulty is, to distinguish and discern the propositions, which shall be according to the ends of the state here; (that is, final and summary towards the extirpation of the troubles;) from those, which though they pretend publick ends, yet may refer indeed to the more private and compendious ends of the council there; or of the particular governours or captains. But still (as I touched in my letter) I do think much letting blood, *in declinatione morbi*, is against method of cure: and that it will but induce necessity, and exasperate despair; and percase discover the hollowness of that which is done already, which now blazeth to the best shew. For *Iaglia's* and proscriptions of two or three of the principal rebels, they are no doubt, *jure gentium*, lawful: in *Italy* usually practised upon the banditti; best in season when a side goeth down:

down; and may do good in two kinds; the one, if they take effect; the other, in the distrust which may follow amongst the rebels themselves. But of all other points, to my understanding, the most effectual is, the well expressing or impressing the design of this state, upon that miserable and desolate kingdom; containing the same between these two lists or boundaries; the one, that the Queen seeketh not an extirpation of that people, but a reduction; and that now she hath chastised them by her royal power and arms, according to the necessity of the occasion, her Majesty taketh no pleasure in effusion of blood, or displanting of antient generations. The other, that her Majesty's princely care is principally and intentionally bent upon the action of *Ireland*; and that she seeketh not so much the ease of charge, as the royal performance of the office of protection, and reclaim of those her subjects: and in a word, that the case is altered so far as may stand with the honour of the time past: which it is easy to reconcile, as in my last note I shewed. And again I do repeat, that if her Majesty's design be, *ex professo*, to reduce wild and barbarous people to civility and justice, as well as to reduce rebels to obedience, it makes weakness turn Christianity, and conditions Graces; and so hath a fineness in turning utility upon point of honour, which is agreeable to the humour of these times. And besides, if her Majesty shall suddenly abate the lists of her forces, and shall do nothing to countervail it in point of reputation, of a politic proceeding, I doubt things may too soon fall back into the state they were in. Next to this: Adding reputation to the cause, by imprinting an opinion of her Majesty's care and intention upon this action, is the taking away the reputation from the contrary side, by cutting off the opinion and expectation of foreign succours; to which purpose, this enterprize of *Algiers* (if it hold according to the advertisement, and if it be not wrapped up in the period of this summer) seemeth to be an opportunity, *coelitus demissa*. And to the same purpose nothing can be more fit than a treaty, or a shadow of a treaty of a peace with *Spain*, which methinks should be in our power to fasten, at least *rumore tenus*, to the deluding of as wise people as the *Irish*. Lastly, for this point; that which the ancients called *potestas facta redeundi ad sanitatem*; and, which is but a mockery when the enemy is strong, or proud, but effectual in his declination; that is, a liberal proclamation of grace and pardon to such as shall submit, and come in within a time prefixed, and of some farther reward to such as shall bring others in; that one's sword may be sharpened by another's, is a matter of good experience, and now, I think, will come in time. And percase, though I wish the exclusions of such a pardon exceeding few, yet it will not be safe to continue some of them in their strength, but to translate them and their generations into *England*; and give them recompence and satisfaction here, for their possessions there; as the King of *Spain* did, by divers families of *Portugal*. To the effecting of all the points aforesaid, and likewise those which fall within the divisions following, nothing can be in priority, (either of time or matter) better than the sending of some commission of countenance, *ad res inspiciendas & componendas*: for it will be a very significant demonstration of her Majesty's care of that kingdom; a credence to any that shall come in and submit; a bridle to any that shall have their fortunes there, and shall apply their propositions to private ends, and an evidence that her Majesty, after arms laid down, speedily pursueth a politic course, without neglect or respiration: and it hath been the wisdom of the best examples of government.

TOWARDS

TOWARDS the recovery of the hearts of the people, there be but three things in *natura rerum*.

1. RELIGION.

2. JUSTICE and protection.

3. OBLIGATION and reward.

FOR religion (to speak first of piety, and then of policy) all divines do agree, that if consciences be to be enforced at all (wherein yet they differ) two things must precede their inforcement; the one, means of instruction; the other, time of operation; neither of which they have yet had. Besides, till they be more like reasonable men than they yet are, their society were rather scandalous to the true religion, than otherwise; as pearls cast before swine: for till they be cleansed from their blood, incontineny, and theft (which are now not the lapses of particular persons, but the very laws of the nation,) they are incompatible with religion reformed. For policy, there is no doubt but to wrestle with them now, is directly opposite to their reclaiming, and cannot but continue their alienation of mind from this government. Besides, one of the principal pretences, whereby the heads of the rebellion have prevailed both with the people, and with the foreigner, hath been the defence of the catholick religion: and it is this that likewise hath made the foreigner reciprocally more plausible with the rebel. Therefore a toleration of religion (for a time not definite) except it be in some principal towns and precincts, after the manner of some *French* edicts, seemeth to me to be a matter warrantable by religion, and in policy of absolute necessity. And the hesitation in this point (I think) hath been a great casting back of the affairs there. Neither if any *English* papist or recusant shall, for liberty of his conscience, transfer his person, family, and fortunes thither; do I hold it a matter of danger, but expedient to draw on undertaking, and to further population. Neither if *Rome* will cozen it self, by conceiving it may be some degree to the like toleration in *England*, do I hold it a matter of any moment; but rather a good mean to take off the fierceness and eagerness of the humour of *Rome*; and to stay further excommunications, or interdictions for *Ireland*. But there would go hand in hand with this, some course of advancing religion indeed, where the people is capable thereof; as the sending over some good preachers, especially of that sort which are vehement and zealous persuaders, and not scholastical, to be resident in principal towns; endowing them with some stipends out of her Majesty's revenues, as her Majesty hath most religiously and graciously done in *Lancashire*: and the recontinuing and replenishing the college begun at *Dublin*, the placing of good men to be bishops in the sees there, and the taking care of the versions of bibles, and catechisms, and other books of instructions, into the *Irish* language; and the like religious courses, both for the honour of God, and for avoiding the scandal and insatisfaction here, by the shew of a toleration of religion in some parts there.

FOR justice: the barbarism and desolation of the country considered, it is not possible they should find any sweetness at all of justice; if it shall be (which hath been the error of times past) formal, and fetched far off from the state; because it will require running up and down for process; and give occasion for polling and exactions by fees, and many other delays and charges. And therefore there must be an interim in which the justice must be only summary; the rather, because it is fit and safe for a time the country do participate of martial government; and therefore, I could wish in every principal town or place of habitation, there were a captain or governour; and a judge, such as recorders and learned stewards are here in corporations, who may have a
prerogative

prerogative commission to hear and determine, *secundum sanam discretionem*; and as near as may be to the laws and customs of *England*; and that by bill or plaint, without original writ; reserving from their sentence matter of freehold and inheritance, to be determined before a superior judge itinerant; and both sentences, as well of the bailywick judge, as itinerant, to be reversed (if cause be) before the counsel of the province to be established there with fit instructions.

FOR obligation and reward; it is true (no doubt) which was antiently said, that a state is contained in two words, *praemium*, and *poena*; and I am persuaded, if a penny in the pound which hath been spent in *poena* (for this kind of war is but *poena*, a chastisement of rebels, without fruit or emolument to this state) had been spent in *praemio*, that is, in rewarding, things had never grown to this extremity. But to speak forwards. The keeping of the principal *Irish* persons in terms of contentment, and without cause of particular complaint; and generally the carrying of an even course between the *English* and the *Irish*; whether it be in competition, or whether it be in controversy, as if they were one nation; (without that same partial course which hath been held by the governours and counsellors there, that some have favoured the *Irish*, and some contrary;) is one of the best medicines of that state. And as for other points of contentment, as the countenancing of their nobility as well in this court as there; the imparting of knighthood; the care of education of their children, and the like points of comfort and allurements; they are things which fall into every man's consideration.

FOR the extirpating of the seeds of troubles, I suppose the main roots are but three. The first, the ambition and absoluteness of the chief of the families and septs; the second, the licentious idleness of their kerns and soldiers that lie upon the country, by cesses and such like oppressions. And the third, the barbarous laws, customs, their *breben* laws, habits of apparel, their poets or heralds that enchant them in savage manners, and sundry other such dregs of barbarism and rebellion, which by a number of politic statutes of *Ireland*, meet to be put in execution, are already forbidden; unto which such additions may be made as the present time requireth. But the deducing of this branch requireth a more particular notice of the state and manners there, than falls within my compass.

FOR plantations and buildings, I do find it strange that in the last plot for the population of *Munster*, there were limitations how much in demesne, and how much in farm, and how much in tenancy: again, how many buildings should be erected, how many *Irish* in mixture should be admitted, and other things foreseen almost to curiosity; but no restraint that they might not build *sparsim* at their pleasure; nor any condition that they should make places fortified and defensible: which omission was a strange neglect and secureness to my understanding. So as for this last point of plantations and buildings, there be two considerations which I hold most material; the one for quickening, and the other for assuring. The first is, that choice be made of such persons for the government of towns and places, and such undertakers be procured, as be men gracious and well beloved, and are like to be well followed. Wherein for *Munster* it may (because it is not *res integra*; but that the former undertakers stand interested) there will be some difficulty: but surely, in mine opinion, either by agreeing with them, or by over-ruling them with a parliament in *Ireland*; (which in this course of a politick proceeding, infinite occasions will require speedily to be held;) it will be fit to supply fit qualified persons for undertakers. The other, that it be not left (as heretofore) to the

pleasure of the undertakers and adventurers, where and how to build and plant; but that they do it according to a prescript or formulary. For first, the places both maritime and inland, which are fittest for colonies or garrisons; as well for doubt of the foreigner, as for the keeping the country in bridle, would be found surveyed and resolved upon: and then that the patentees be tied to build in those places only, and to fortify as shall be thought convenient. And lastly, it followeth of course, in countries of new populations, to invite and provoke inhabitants by ample liberties and charters.

LIX. To my Lord of CANTERBURY, [Dr. Whitgift.]

It may please your Grace,

I HAVE considered the objections, perused the statutes, and framed the alterations, which I send, still keeping my self within the brevity of a letter, and form of a narration; not entering into a form of argument or disputation: for, in my poor conceit, it is somewhat against the Majesty of princes actions, to make too curious and striving apologies, but rather to set them forth plainly, and so as there may appear an harmony and constancy in them, so that one part upholdeth another. And so I wish your Grace all prosperity. From my poor lodging this, &c.

Your Grace's most dutiful pupil and servant.

LX. To Sir THOMAS LUCY.

S I R,

THERE was no news better welcome to me this long time, than that of the good success of my kinsman; wherein if he be happy, he cannot be happy alone, it consisting of two parts. And I render you no less kind thanks for your aid and favour towards him, than if it had been for my self; assuring you that this bond of alliance shall on my part tie me to give all the tribute to your good fortune upon all occasions, that my poor strength can yield. I send you, so required, an abstract of the lands of inheritance; and one lease of great value which my kinsman bringeth; with a note of the tenures, values, contents, and state, truly and perfectly drawn; whereby you may perceive the land is good land, and well countenanced by scope of acres, woods, and royalties; though the total of the rents be set down as it now goeth, without improvement; in which respect it may somewhat differ from your first note. Out of this, what he will assure in jointure, I leave it to his own kindness; for I love not to measure affection. To conclude, I doubt not your daughter might have married to a better living, but never to a better life; having chosen a gentleman bred to all honesty, virtue, and worth, with an estate convenient. And if my brother or my self were either thrivers, or fortunate in the Queen's service, I would hope there should be left as great an house of the Cokes in this gentleman, as in your good friend Mr. Attorney General. But sure I am, if scriptures fail not, it will have as much of God's blessing; and sufficiency is ever the best feast, &c.

LXI. A LETTER* of recommendation of his service to the Earl of NORTHUMBERLAND, a few days before Queen ELIZABETH'S death.

It may please your good Lordship,

AS the time of sowing a seed is known, but the time of coming up and disclosing is casual, or according to the season; so I am witness to my self, that there hath been covered in my mind a long time, a seed of affection and zeal towards your lordship, sown by the estimation of your virtues, and your particular honours and favours to my brother deceased, and my self; which seed still springing, now bursteth forth into this profession. And to be plain with your lordship, it is very true; (and no winds or noises of civil matters, can blow this out of my head or heart;) that your great capacity and love towards studies and contemplations of an higher and worthier nature than popular (a nature rare in the world, and in a person of your lordship's quality almost singular); is to me a great and chief motive to draw my affection and admiration towards you. And therefore, good my lord, if I may be of any use to your lordship, by my head, tongue, or pen, means or friends, I humbly pray you to hold me your own; and herewithal, not to do so much disadvantage to my good mind, nor partly to your own worth, as to conceive that this commendation of my humble service proceedeth out of any straits of my occasions, but merely out of an election, and indeed the fulness of my heart. And so wishing your lordship all prosperity, I continue, &c.

* This letter is printed twice in the *Cabala*, and inscribed to the Earl of Northumberland, p. 25. and to the Earl of Northampton, p. 27.



LETTERS,

LETTERS, in the reign of King JAMES.

LXII. To Mr. *FOWLYS.

S I R,

THE occasion awaketh in me the remembrance of the constant and mutual good offices, which passed between my good brother and your self; whereunto (as you know) I was not altogether a stranger; tho' the time and design (as between brethren) made me more reserved. But well do I bear in mind the great opinion which my brother (whose judgment I much reverence) would often express to me, of your extraordinary sufficiency, dexterity, and temper, which he had found in you, in the business and service of the King our Sovereign Lord †. This later bred in me an election, as the former gave an inducement for me, to address my self to you; and to make this signification of my desire towards a mutual entertainment of good affection and correspondence between us: hoping that both some good effect may result of it towards the King's service; and that for our particulars, though occasion give you the precedence of furthering my being known, by good note, unto the King; so no long time will intercede before I, on my part, shall have some means given to requite your favours, and to verify your commendation. And so with my loving commendations, good Mr. Fowlys, I leave you to God's goodness. From *Grays-Inn 27 March 1603.*

* Upon the death of Queen Elizabeth, Mr. Fowlys was sent out of Scotland with letters to divers of the lords of the privy council; soon after whose arrival the Lord Treasurer, the Lord High Admiral and Sir Robert Cecil, principal Secretary of State, return'd a large letter of thanks, and of advice to the King concerning the then posture of affairs. He was afterwards created a Baronet by the name of Sir David Fowlys of Ingleby, in the north-riding of Yorkshire, where he had seated himself, and where his posterity now remain. *Stephens.*

† Mr. Anthony Bacon, the elder and only brother to our author, of the whole blood, reported to have been equal to him in height of wit, tho' inferior in the improvements of learning and knowledge. Sir Henry Watton observes, that he was a gentleman of impotent feet, but of a nimble head, through whose hands ran all the intelligences with Scotland. *Stephens.*

LXIII. To Mr. FOWLYS.

Mr. FOWLYS,

I DID write unto you yesterday by Mr. Lake, (who was dispatched hence from their lordships) a letter of revival of those sparks of former acquaintance between us in my brother's time: and now, upon the same confidence, finding so fit a messenger, I would not fail to salute you; hoping it will fall out so happily, as that you shall be one of the King's servants, which his Majesty will first employ here with us; where I hope to have some means not to be barren in friendship towards you.

WE all thirst after the King's coming, accounting all this but as the dawning of the day before the rising of the sun, till we have his presence. And though now his Majesty must be *Janus bifrons*, to have a face to Scotland, as well as to England, yet *quod nunc instat agendum*: the expectation is here that he will come in state, and not in strength †. So for this time I commend you to God's goodness. 28 March 1603.

† My lord Bacon, in his history of K. Henry VII, observes the like conduct in that wise prince, in order to quiet the fears of the people, and disperse the conceit of his coming in by conquest.

LXIV.

LXIV. To Sir † THOMAS CHALONER, then in *Scotland*, before his Majesty's entrance.

S I R,

FOR our money-matters, I am assured you received no infatigation; for you know my mind, and you know my means; which now the openness of the time, caused by this blessed consent, and peace, will encrease; and so our agreement, according to your time, be observed. For the present, according to the *Roman* adage, (that one cluster of grapes ripeneth best besides another;) I know you hold me not unworthy, whose mutual friendship you should cherish: and I, for my part, conceived good hope, that you are likely to become an acceptable servant to the King our master: not so much for any way made heretofore, (which, in my judgment, will make no great difference) as for the stuff and sufficiency which I know to be in you; and whereof, I know, his Majesty may reap great service. And therefore, my general request is, that according to that industrious vivacity which you use towards your friends, you will further his Majesty's good conceit and inclination towards me, to whom words cannot make me known, neither mine own, nor others; but time will, to no disadvantage of any that shall fore-run his Majesty's experience, by their testimony and commendation. And though occasion give you the precedence of doing me this special good office; yet I hope no long time will intercede before I shall have some means to requite your favour, and acquit your report. More particularly, having thought good to make oblation of my most humble service to his Majesty by a few lines, I desire your loving care and help, by your self, or such means as I refer to your discretion, to deliver and present the same to his Majesty's hands: Of which letter I send you a copy, that you may know what you carry; and may take of Mr. *Matthew* the letter it self, if you be pleased to undertake the delivery. Lastly, I do commend to your self, and such your courtesies, as occasion may require, this gentleman Mr. *Matthew*, eldest son to my lord bishop of *Duresme*, and my very good friend, assuring you that any courtesy you shall use towards him, you shall use to a very worthy young gentleman, and one, I know, whose acquaintance you will much esteem. And so I ever continue. 1603.

† Sir *Thomas Chaloner* was son to Sir *Tbo. Chaloner*, who had behaved himself with great valour, under the command of the Emperor *Charles V.* and the Duke of *Somerset*, and with equal prudence, in the courts of the Emperor and the King of *Spain*; whither he was sent ambassador in the beginning of the reign of Queen *Elizabeth*. The son was, like his father, a gentleman of great parts and abilities, to whose care *K. James* committed the tuition of prince *Henry*, 17 Aug. 1603. *Rymer*, xvi. 545. Sir *Thomas* had, a few years before, made the first discovery of alum-mines in this nation, at or near *Gisborough* in *Yorkshire*; where some of his name and family still continue. He survived his royal pupil just three years, dying in *November*, 1615. *Stephens*.

LXV. An offer of service to the KING, upon his first coming in.

It may please your most excellent Majesty,

IT is observed by some, upon a place in the *Canticles*, *ego sum flos campi*, & *lilium convallium*, that à *dispari*, it is not said, *ego sum flos borti*, & *lilium montium*; because the Majesty of that person is not enclosed for

† Notice,
Matth.

† Pleasure to
ordain, Matt.

a few, nor appropriate to the great. And yet, notwithstanding this royal virtue of access, which both nature and judgment have planted in your Majesty's mind, as the portal of all the rest, could not of it self (my imperfections considered) have animated me to make oblation of my self immediately to your Majesty, had it not been joined with an habit of the like liberty, which I enjoyed with my late dear sovereign mistress; a princess happy in all things else, but most happy in such a successor. And yet farther, and more nearly, I was not a little encouraged, not only upon a supposal, that unto your Majesty's sacred ear, (open to the air of all virtues) there might perhaps have come some † small breath of the good memory of my father, so long a principal counsellor in this your kingdom*; but also a more particular knowledge of the infinite devotion and incessant endeavours, (beyond the strength of his body, and the nature of the times) which appeared in my good brother, Mr. *Anthony Bacon*, towards your Majesty's service; and were on your Majesty's part, through your singular benignity, by many most gracious and lively significations and favours accepted and acknowledged, beyond the merit of any thing he could effect: which endeavours and duties, for the most part, were common to my self with him, though by design, (as between brethren) dissembled. And therefore, most high and mighty King, my most dear and dread sovereign lord, since now the corner stone is laid of the mightiest monarchy in *Europe*; and that God above, who hath ever a hand in bridling the floods and motions both of the seas, and of people's hearts, hath by the miraculous and universal consent, (the more strange, because it proceedeth from such diversity of causes) in your coming in, given a sign and token of great happiness by the continuance of your reign; I think there is no subject of your Majesty's, which loveth this island, and is not hollow or unworthy, whose heart is not set on fire, not only to bring you peace-offerings, to make you propitious; but to sacrifice himself a burnt-offering or *holocaust* to your Majesty's service: amongst which number no man's fire shall be more pure and fervent than mine; but how far forth it shall blaze out, that resteth in your Majesty's † employment. So thirsting after the happiness of kissing your royal hand, I continue ever. 1603.

* Sir N. Bacon, L. Keeper of the great seal from the first to the 21 *Elizabeth*.

LXVI. A letter commending his love to the lord of † *Kingliffe* upon his Majesty's entrance.

MY LORD,

THE present occasion awakeneth in me a remembrance of the constant amity and mutual good offices which passed between my brother deceased and your lordship, whereunto I was less strange than in respect of the time, I had reason to pretend; and withal, I call to mind the great opinion which my brother, who seldom failed in judgment of a person, would often express to me of your lordship's great wisdom and soundness, both in head and heart, towards the service and affairs of our sovereign lord the King.

† Edward Bruce Mil. Dom. Kinliffe, Magist. Rotulorum curiae cancellariae, 19 Jul. 1603. Rymer xvi. p. 491.

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THE one of those hath bred in me an election, and the other a confidence to address my good will and sincere affection to your good lordship; not doubting, in regard that my course of life hath wrought me not to be altogether unseen in the matters of the kingdom, that I may be in some use, both in point of service to the King, and in your lordship's particular.

AND on the other side, I will not omit to desire humbly your lordship's favour, in furthering a good conceit and impression of my most humble duty and true zeal towards the King; to whose Majesty words cannot make me known, neither mine own nor others; but time will, to no disadvantage of any, that shall forerun his Majesty's experience, by their humanity and commendations: And so I commend your good lordship to God's providence and protection.

From *Gray's-Inn, &c.* 1603.

LXVII. A letter to Doctor *Morison*, a *Scottish* physician, upon his Majesty's coming in.

Mr. Doctor MORISON,

I HAVE thought good by this my letter to renew this my ancient acquaintance which hath passed between us, signifying my good mind to you, to perform to you any good office, for your particular, and my expectation; and a firm assurance of the like on your part towards me: wherein I confess you may have the start of me, because occasion hath given you the precedency in investing you with opportunity to use my name well, and by your loving testimony to further a good opinion of me in his Majesty, and the court.

BUT I hope my experience of matters here will, with the light of his Majesty's favour, enable me speedily both to requite your kindness, and to acquit and make good your testimony and report. So not doubting to see you here with his Majesty; considering that it belongeth to your art to feel pulses: And I assure you, *Galen* doth not set down greater variety of pulses, than do vent here in men's hearts. I wish you all prosperity, and remain

Yours, &c.

From my chamber at *Gray's-Inn, &c.* 1603.

LXVIII. To Mr. † *Davis*, gone to meet the King.

Mr. DAVIS,

THOUGH you went on the sudden, yet you could not go before you had spoken with yourself, to the purpose which I will now write: And therefore I know it shall be altogether needless, save that I meant to shew you, that I was not asleep. Briefly, I commend myself to your love, and the well using of my name; as well in repressing and an-

† Mr. *Davis* having made his way unto the knowledge of K. *James*, by a poem he dedicated unto the late Queen, entitled, *Nosce teipsum*, was very favourably received by the King; and not long after made his attorney-general in *Ireland*, and serjeant at law: And in the next reign, was nominated to be chief justice of the King's-bench in *England* upon the displacing of Sir *Randal Crean*; but died suddenly on 27 December, 1626. He was very conversant with the wits of his time; some of his writings declare his excellency in that kind, as others do his abilities in his own profession. *Stephens.*

swering

swering for me, if there be any biting or nibbling at it in that place; as by imprinting a good conceit and opinion of me, chiefly in the King, (of whose favour I make myself comfortable assurance) as otherwise in that court: And not only so, but generally to perform to me all the good offices which the vivacity of your wit can suggest to your mind, to be performed to one, with whose affection you have so great sympathy; and in whose fortune you have so great interest. So desiring you to be good to concealed poets, I continue. 1603.

LXIX. To Mr. *Robert Kempe*, upon the death of Queen *Elizabeth*.

Mr. KEMPE,

THIS alteration is so great, as you might justly conceive some coldness of my affection towards you, if you should hear nothing from me, I living in this place. It is in vain to tell you with what wonderful still and calm this wheel is turned round; which, whether it be a remnant of her felicity that is gone, or a fruit of his reputation that is coming, I will not determine. For I cannot but divide myself between her memory and his name: Yet we account it but a fair morn, before sun-rising, before his Majesty's presence: tho' for my part I see not whence any weather should arise. The Papists are contained with fear enough, and hope too much. The French is thought to turn his practice upon procuring some disturbance in Scotland, where crowns may do wonders: But this day is so welcome to the nation, and the time so short, as I do not fear the effect. My lord of Southampton expecteth release by the next dispatch, and is already much visited and much well wished. There is continual posting by men of good quality towards the King: The rather, I think, because this spring-time it is but a kind of sport. It is hoped, that as the state here hath performed the part of good attorneys to deliver the King quiet possession of his kingdoms, so the King will redeliver them quiet possession of their places; rather filling places void, than removing men placed. So, &c. 1603.

LXX. To the earl of * *Northumberland*, recommending a proclamation to be made by the King at his entrance.

It may please your Lordship,

I Do hold it a thing formal and necessary for the King to forerun his coming, (be it never so speedy) with some gracious declaration for the

* *Henry Percy*, the ninth earl of *Northumberland* of that name, had not only great learning himself, but was also patron of other learned men, especially mathematicians. And tho' no man espoused the title of K. *James* to the *English* throne with a greater zeal than himself; declaring that he would remove all impediments by his sword: Yet the King (perhaps fearing that one who thought he could confer crowns, might attempt to resume them) caused this great man to be effectually prosecuted in the star-chamber in the year 1606, upon a supposition of his being privy to the powder-plot, or at least of concealing his cousin Mr. *Thomas Percy* one of the conspirators therein; that he was fined 30000 *l.* and condemned to perpetual imprisonment. But the lord *Hay*, afterwards created viscount *Doncaster* and earl of *Carlisle*, marrying in 1617 his youngest daughter the lady *Lucy Percy*, a lady of the most celebrated wit and beauty of any in her times; his release from the tower was obtained about the year 1621. Tho' it is said the earl was with great difficulty prevail'd to accept of this favour, because procured by a man, he disdained to own to be so near a relation as that of a son, *Stephens*.

cherishing, entertaining, and preparing of men's affections*. For which purpose I have conceived a draught, it being a thing familiar in my mistress her times, to have my pen used in publick writings of satisfaction. The use of this may be in two sorts: First, properly, if your lordship think it convenient to shew the King any such draught, because the veins and pulses of this state cannot but be best known here; which if your lordship should do, then I would desire you to withdraw my name, and only signify, that you gave some heads of direction of such a matter to one, of whose style and pen you had some opinion. The other, collateral; That tho' your lordship make no other use of it, yet it is a kind of portraiture of that which I think worthy to be advised by your lordship to the King; and perhaps more compendious and significant, than if I had set them down in articles. I would have attended your lordship but for some little physick I took. To-morrow morning I will wait on you. So I ever, &c. 1603.

* Instead of this declaration, Sir Francis Bacon tells us, that at this time there came forth in print the King's book, containing matter of instruction to the Prince his son, touching the office of a King; which falling into every man's hand, filled the whole realm as with a good perfume or incense before the King's coming in; and far exceeded any formal or curious edict or declaration, which could have been devised of that nature, wherewith princes in the beginning of their reigns do use to grace themselves, or at least express themselves gracious in the eyes of their people. Vol. III. p. 511.

LXXI. To the Earl of † Southampton, upon the King's coming in.

It may please your Lordship,

I WOULD have been very glad to have presented my humble service to your lordship by my attendance, if I could have foreseen that it should not have been displeasing unto you. And therefore, because I would be sure to commit no error, I chose to write; assuring your lordship, how little soever it may seem credible to you at first, yet it is as true as a thing that God knoweth; that this great change hath wrought in me no other change towards your lordship than this, that I may safely be that to you now, which I was truly before. And so craving no other pardon, than for troubling you with my letter, I do not now begin to be, but continue to be

1603.

Your lordship's humble and much devoted

FR. BACON.

† Henry Wriothesley earl of Southampton having been involved in the guilt of the unfortunate earl of Essex, was condemned for the same crimes; but that earl, who seemed careless of his own life, interceded for the life of his friend, as did Southampton's own modest behaviour at his trial: From which time he suffer'd imprisonment in the tower till the 10th of April, 1603. He was afterwards restored in blood, made knight of the garter, and one of his Majesty's privy council. Stephens.

LXXII. To Mr. † Matthews, signifying the wise proceeding of King James at his first entrance into England.

S I R,

I WAS heartily glad to hear that you had passed so great a part of your journey in so good health. My aim was right in my address of letters to those persons in the court of Scotland, who were likeliest to be used

Vol. IV.

7 C

† Mr. Matthews was son to Dr. Toby Matthews bishop of Durham, afterwards archbishop of York; an eminent divine, consider'd either in the schools, the pulpit, or the episcopal chair. He was born in Oxford in 1578, whilst his father was dean of Christ's Church; but was, to the great grief of his parents, a few years after the King's accession, reconciled to the church of Rome, through the means

* viz. Into Scotland to meet the King. See N. LXIV.

for the affairs of *England*; but the pace they held was too swift, for the men were come away before my letters could reach them. With the first I have renewed acquaintance, and it was like a bill of revivor, by way of cross-suits; for he was as ready to have begun with me. The second did this day arrive, and took acquaintance with me instantly in the council-chamber, and was willing to entertain me with farther demonstrations of confidence, than I was willing at that time to admit. But I have had no serious speech with him, nor do I yet know whether any of the doubles of my letter have been delivered to the King. It may perhaps have proved your luck to be the first.

THINGS are here in good quiet. The King acts excellently well; for he puts in clauses of reservation to every proviso. He saith, he would be sorry to have just cause to remove any. He saith, he will displace none who hath served the Queen and state sincerely, &c. The truth is, here be two extremes; some few would have no change, no not reformation: some many would have much change, even with perturbation. God, I hope, will direct this wise King to hold a mean between reputation enough and no terrors*. In my particular I have many comforts and assurances; but in my own opinion the chief is, that the canvassing world is gone, and the deserving world is come. And withal I find myself as one awaked out of sleep; which I have not been this long time, nor could I think have been now without such a great noise as this, which yet is *in aura leni*. I have written this to you in haste, my end being no more than to write, and thereby to make you know that I will ever continue the same, and still be sure to wish you as heartily well as to myself. 1603.

as is said, of *Parsons* the Jesuit: and became so industrious an agent for her, that his refusal of the oath of allegiance establish'd by act of parliament, together with some imprudent carriage, gave the King such offence, that he was in a manner exiled the kingdom in the year 1607. He continued roving from one country and prince's court to another till 1617, when applying himself with much earnestness to the earl of *Buckingham*, he obtain'd a permission to come into *England*, which he did in *July* that year, presenting himself in the first place to Sir *Francis Bacon* then Lord Keeper of the great seal. But the King being afterwards displeased with him, did, notwithstanding his moving and pressing letters, command him again to depart in *October*, 1618. Yet in 1622, he was recalled to assist in the business of the *Spanish* match then in agitation, and knighted the year following. He is represented as a man of very good parts and literature, but of an active and restless temper. What opinion Sir *Francis Bacon* had of him when young, appears before in his letter to Sir *Thomas Chaloner*; and what esteem he had for Sir *Francis*, may be seen in the preface to his collection of letters: at the beginning of which is printed his character of the lady *Carlisle* whom I have mentioned N° LXX. He died at *Ghent* in *Flanders* in 1655. *Stephens*.

* Upon this occasion it may not be amiss to remember what cardinal *d'Ofsat* writ from *Rome* to *M. de Villeroi* upon the accession of King *James* to the crown of *England*, part of which I wish no Prince would ever forget.

C'est l'ordinaire des hommes de regarder plus au soleil orient qu'à l'occident, & des Princes bien advisez qui sont appelez à un nouvel estat, d'y entrer doucement, sans irriter ni mécontenter personne ni dedans ni dehors. Si ce Prince continue guidé par la vertu & accompagné de bonheur, comme jusques icy, il sera tres-grand, & sera bon l'avoir pour amy; & nous, qui depuis quelques années en ça n'avions eu l'œil quasi qu'en un lieu, faudra que l'ayons cy-après en deux; comme faudra bien aussi qui fassent encore d'autres. Et en fin de compte, Celui de tous qui regnera le mieux & le plus justement à l'honneur & gloire de Dieu, & au soulagement, profit & félicité de ses sujets; sera le plus asseuré, le plus fort, & le plus aimé, loué & bené de Dieu & des hommes; en quoy consiste la vraye & perdurable grandeur & puissance des Rois, & l'assurance de leur posterité. *Stephens*.

LXXIII. To the Earl of *Northumberland*.

It may please your good Lordship,

I WOULD not have lost this journey, and yet I have not that I went for: for I have had no private conference to purpose with the King; no more hath almost any other *English*: For the speech his Majesty admitteth with some noblemen, is rather matter of grace than matter of business. With the

the attorney he spake, urged by the treasurer of *Scotland*, but no more than needs must. After I had receiv'd his Majesty's first welcome, and was promised private access; yet not knowing what matter of service your lordship's letter carried (for I saw it not) and well knowing that primeness in advertisement is much; I chose rather to deliver it to Sir *Tho. Heskins*, than to cool it in my own hands, upon expectation of access. Your lordship shall find a Prince the farthest from vain-glory that may be; and rather like a Prince of the ancient form, than of the latter time. His speech is swift and cursory, and in the full dialect of his country; and in speech of business, short; in speech of discourse, large. He affecteth popularity by gracing such as he hath heard to be popular, and not by any fashions of his own: He is thought somewhat general in his favours; and his virtue of access is rather, because he is much abroad and in press, than that he giveth easy audience. He hasteneth to a mixture of both kingdoms and occasions, faster perhaps than policy will well bear. I told your lordship once before, that (methought) his Majesty rather asked counsel of the time past, than of the time to come: But it is yet early to ground any settled opinion. For the particulars, I refer to conference, having in these generals gone farther in so tender an argument, than I would have done, were not the bearer hereof so assured. So I continue, &c. 1603.

LXXIV. A Letter to Mr. * *Murray*, of the King's bed-chamber.

Mr. MURRAY,

IT is very true, that his Majesty most graciously at my humble request knighted the last sunday my brother in law, a towardly young gentleman; for which favour I think myself more bound to his Majesty, than for the benefit of ten knights: And to tell you truly, my meaning was not that the suit of this other gentleman Mr. *Temple* should have been moved in my name.

FOR I should have been unwilling to have moved his Majesty for more than one at once, though many times in his Majesty's courts of justice, if we move once for our friends, we are allowed to move again for our fee.

BUT indeed my purpose was, that you might have been pleased to have moved it as for my self.

NEVERTHELESS since it is so far gone, and that the gentleman's friends are in some expectation of success, I leave it to your kind regard what is farther to be done, as willing to give satisfaction to those which have put me in trust, and loth on the other side to press above good manners. And so with my loving commendations I remain

1603.

Yours, &c.

* Made tutor to the D. of *York*, with a yearly pension of 300 marks, *June* 28, 1605. *Rymer* XVI. p. 631.

LXXV. To Mr. *Pierce*, Secretary to the Lord Deputy of *Ireland*.

Mr. PIERCE,

I AM glad to hear of you, as I do; and for my part, you shall find me ready to take any occasion to further your credit and preferment. And I dare assure you (though I am no undertaker) to prepare your way with my lord of *Salisbury*, for any good fortune which may befall you. You teach me to complain of business, whereby I write the more briefly; and yet

yet I am so unjust, as that which I alledge for mine own excuse, I cannot admit for yours: for I must, by expecting, exact your letters, with this fruit of your sufficiency, as to understand how things pass in that kingdom. And therefore having begun, I pray you continue. This is not merely curiosity, for I have ever, (I know not by what instinct) wished well to that impolished part of this crown. And so, with my very loving commendations, I remain.

LXXVI. To the Earl of * NORTHAMPTON, desiring him to present the ADVANCEMENT of Learning to the KING.

It may please your good Lordship,

HAVING finished a work touching the advancement of learning, and dedicated the same to his sacred Majesty, whom I dare avouch (if the records of time err not) to be the learnedst King that hath reigned; I was desirous, in a kind of congruity, to present it by the learnedst counsellor in this kingdom; to the end that so good an argument, lighting upon so bad an author, might receive some reputation by the hands into which, and by which it should be delivered. And therefore, I make it my humble suit to your lordship, to present this mean but well-meant writing to his Majesty, and with it my humble and zealous duty; and also, my like humble request of pardon, if I have too often taken his name in vain, not only in the dedication, but in the voucher of the authority of his speeches and writings. And so I remain. 1605.

* The earl of Northampton was the second son, and bore the name of that accomplished gentleman Henry Howard earl of Surrey, son and heir to the duke of Norfolk, who suffer'd under the severity of King Henry's later days; the one by death, the other by imprisonment. During great part of the reign of Queen Elizabeth, while his family lay under the cloud, he apply'd himself to learning; and to what degree he arrived, appears by a book he publish'd in 1583, against the poison of supposed prophecies, dedicated to Sir Francis Walsingham; and from the eulogy that was generally given him, that he was the most learned among the noble, and the most noble among the learned. But in the King's reign his advancement was speedy both in honours and riches. The services he performed as a commissioner in making the peace between England and Spain, gave birth to a saying in those times, (but with what truth I know not) that his house in the Strand, now call'd Northumberland house, was built with Spanish gold. He died in 1614, leaving behind him the memory of some real good works, and of some supposed ill ones; being suspected of concealing his religion for many years, and of being privy to the untimely death of Sir Tb. Overbury. Stephens.

LXXVII. To Sir † THOMAS BODLEY, upon sending his book of ADVANCEMENT of Learning.

S I R,

I THINK no man may more truly say with the Psalm, *multum incola fuit anima mea*, than my self; for I do confess since I was of any understanding, my mind hath in effect been absent from that I have done: and in absence are many errors, which I do willingly acknowledge; and amongst the rest, this great one that led the rest; that knowing my self by inward calling to be fitter to hold a book than to play a part, I have led my life in civil causes; for which I was not very fit by nature, and more unfit by the pre-occupation of my mind. Therefore calling my self home, I have now for a time enjoyed my self, whereof likewise I desire to make the world partaker.

† Sir Thomas Bodley restored the publick library in Oxford, begun in the times of K. Henry VI, by Humphry Duke of Gloucester; or was rather the founder of a new one, which now bears his name, and which hath placed him among the chief benefactors to that university, and to the commonwealth of learning. He died in the entrance of the year 1543. Stephens.

My

My labours (if I may so term that which was the comfort of my other labours) I have dedicated to the King; desirous, if there be any good in them, it may be as the fat of a sacrifice, incensed to his honour: and the second copy I have sent unto you, not only in good affection, but in a kind of congruity, in regard of your great and rare desert of learning. For books are the shrines where the saint is, or is believed to be: And you have built an ark to save learning from deluge, deserve propriety in any new instrument or engine, whereby learning should be improved or advanced. 1605.

LXXVIII. To the Earl of † SALISBURY, upon sending the ADVANCEMENT of learning.

It may please your good Lordship,

I PRESENT your lordship with a work of my vacant time, which if it had been more, the work had been better. It appertaineth to your lordship (besides my particular respects) in some propriety; in regard you are a great governor in a province of learning. And (that which is more) you have added to your place affection towards learning; and to your affection, judgment: Of which, the last I could be content were (for the time) less, that you might the less exquisitely censure that which I offer unto you. But sure I am, the argument is good, if it had lighted up a good author. But I shall content my self to awake better spirits, like a bell-ringer, which is first up to call others to church. So with my humble desire of your lordship's good acceptation, I remain. 1605.

† Sir Robert Cecil, created by King James lord Cecil, viscount Cranborne, and earl of Salisbury; was not only the son to one of the greatest statesmen of his age, the lord Burleigh, but succeeded him in his places and abilities, and was one of the great supports of the Queen's declining years. Yet the ill offices he was thought to perform towards the noble and popular earl of Essex, together with his conduct in some particulars in her successor's reign, abated the lustre of his character, which otherwise from his parts and prudence would have appear'd very conspicuous. After he had been long secretary of state, some years lord treasurer and chancellor of the university of Cambridge, he died in May 1612, at Marlborough, in his return from the Bath; as by a diary of his sickness, and the account given by Sir Robert Naunton, one of his retinue, appears: which I should not mention, but that his enemies in their libels which flew freely about, have suggested that he died on the *Dorons*; which if true, could be esteemed at most but his misfortune. Stephens.

LXXIX. To the * Lord Treasurer BUCKHURST, on the same subject.

May it please your Lordship,

I HAVE finished a work touching the advancement or setting forward of learning, which I have dedicated to his Majesty, the most learned of a

* I shall draw this noble lord's character from Sir Robert Naunton's observations of the favourites of Queen Elizabeth; and much in his own words: My lord of Buckhurst was of the noble house of the Sackvilles, and of the Queen's consanguinity. He was a very fine gentleman of person and endowments both of art and nature, but without measure magnificent, till on the turn of his humour, and the alloy that his years and good counsels of the Queen, &c. had wrought upon those immoderate courses of his youth, and that height of spirit inherent to his house; he began to assist him in the reparation of that vast patrimony he had much wasted. After the honour she had given him of lord Buckhurst, and knight of the garter, she procured him to be chosen chancellor of the university of Oxford, upon the death of Sir Christopher Hatton, and constituted him lord treasurer on the death of the lord Burleigh, which office he enjoy'd till April 1608, dying then suddenly at the council-table; the King having some years before created him earl of Dorset. He is also much commended for his happy vein in poetry, to which he was addicted in his youth; and for his elocution, and the excellencies of his pen, faculties that yet run in the blood, as Sir Robert Naunton observes in his son Robert, and his grandsons Richard and Edward, successive earls of Dorset; and the last age had the satisfaction to be continued in the person of the right honourable Charles earl of Dorset and Middlesex. Stephens.

Sovereign, or temporal prince, that time hath known: and upon reason, not unlike, I humbly present one of the books to your lordship; not only as a chancellor of an university, but as one that was excellently bred in all learning; which I have ever noted to shine in all your speeches and behaviours: and therefore your lordship will yield a gracious aspect to your first love, and take pleasure in the adorning of that wherewith your self are so much adorned. And so humbly desiring your favourable acceptation thereof, with signification of humble duty, I remain. 1605.

LXXX. To the Lord Chancellor [Sir T. EGERTON Lord
Ellesmere] on the same subject.

May it please your good Lordship,

I HUMBLY present your lordship with a work, wherein as you have much commandment over the author, so your lordship hath great interest in the argument: for to speak without flattery, few have like use of learning, or like judgment in learning, as I have observed in your lordship. And again, your lordship hath been a great planter of learning, not only in those places in the church, which have been in your own gift, but also in your commendatory vote, no man hath more constantly held; *detur digniori*: and therefore, both your lordship is beholden to learning, and learning beholden to you; which maketh me presume with good assurance that your lordship will accept well of these my labours; the rather, because your lordship in private speech hath often begun to me in expressing your admiration of his Majesty's learning, to whom I have dedicated this work; and whose virtue and perfection in that kind did chiefly move me to a work of this nature. And so with signification of my most humble duty and affection to your lordship, I remain. 1605.

LXXXI. To Mr. MATTHEW.

SIR,

I PERCEIVE you have some time when you can be content to think of your friends; from whom, since you have borrowed your self, you do well (not paying the principal) to send the interest at six months day. The relation which here I send you inclosed, carries the truth of that which is publick; and tho' my little leisure might have required a briefer, yet the matter would have endured and asked a larger.

I HAVE now at last taught that child to go, at the swadling whereof you were. My work touching the proficiency and advancement of learning, I have put into two books; whereof the former, which you saw, I can't but account as a page to the later. I have now publish'd them both; whereof I thought it a small adventure to send you a copy, who have more right to it than any man, except bishop *Andrews*, who was my inquisitor.

THE death of the late great judge concerned not me, because the other was not removed. I write this in answer to your good wishes; which I return not as † flowers of *Florence*, but as you mean them; whom I conceive place can't alter no more than time shall me, except it be for the better. 1605.

† Mr. *Matthew* wrote an elegy on the D. of *Florence's* felicity. See N°. CL.

LXXXII. To Dr. PLAYFER, desiring him to translate the
ADVANCEMENT into *Latin*.

Mr. Dr. Playfer,

A GREAT desire will take a small occasion to hope and put in trial that which is desired. It pleased you a good while since to express unto me the good liking which you conceived of my book of the advancement of learning; and that more significantly (as it seemed to me) than out of courtesy or civil respect. My self, as I then took contentment in your approbation thereof, so I should esteem and acknowledge not only my contentment increased, but my labours advanced, if I might obtain your help in that nature which I desire: Wherein, before I set down in plain terms my request unto you, I will open my self, what it was which I chiefly sought and propounded to my self in that work; that you may perceive that which I now desire, to be pursuant thereupon. If I do not much err, (for any judgment that a man maketh of his own doings, had need be spoken with a *si nunquam fallat imago*) I have this opinion, that if I had sought mine own commendation, it had been a much fitter course for me to have done as gardeners used to do, by taking their seed and slips, and rearing them first into plants, and so uttering them in pots, when they are in flower, and in their best state. But for as much as my end was merit of the state of learning (to my power) and not glory; and because my purpose was rather to excite other mens wits than to magnify mine own, I was desirous to prevent the uncertaintie of mine own life and times, by uttering rather seeds than plants: nay and farther, (as the proverb is) by sowing with the basket rather than with the hand: wherefore, since I have only taken upon me to ring a bell to call other wits together, (which is the meanest office) it cannot but be consonant to my desire, to have that bell heard as far as can be. And since they are but sparks which can work but upon matter prepared, I have the more reason to wish that those sparks may fly abroad, that they may the better find and light upon those minds and spirits which are apt to be kindled. And therefore the privateness of the language considered, wherein it is written, excluding so many readers; as on the other side, the obscurity of the argument in many parts of it, excludeth many others; I must account it a second birth of that work, if it might be translated into *Latin*, without manifest loss of the sense and matter. For this purpose I could not represent to my self any man into whose hands I do more earnestly desire that work should fall than your self; for by that I have heard and read, I know no man a greater master in commanding words to serve matter. Nevertheless, I am not ignorant of the worth of your labours, whether such as your place and profession imposeth, or such as your own virtue may, upon your voluntary election, take in hand. But I can lay before you no other persuasions than either the work it self may affect you with; or the honour of his Majesty, to whom it is dedicated, or your particular inclination to my self; who, as I never took so much comfort in any labours of mine own, so I shall never acknowledge my self more obliged in any thing to the labours of another, than in that which shall assist it: Which your labour, if I can by my place, profession, means, friends, travel, work, deed, requite unto you, I shall esteem my self so straitly bound thereunto, as I shall be ever most ready both to take and seek occasion of thankfulness. So leaving it nevertheless, *salva amicitia*, as reason is, to your good liking; I remain.

LXXXIII.

LXXXIII. To the Lord Chancellor, touching the history of
*Britain.**It may please your good Lordship,** Thought,
Maith.

SOME late act of his Majesty, referred to some former speech which I have heard from your lordship, bred in me a great desire; and the strength of desire a boldness to make an humble proposition to your lordship, such as in me can be no better than a * wish: but if your lordship should apprehend it, it may take some good and worthy effect. The act I speak of, is the order given by his Majesty for the erection of a tomb or monument for our late Sovereign Queen *Elizabeth* †: wherein I may note much, but only this at this time, that as her Majesty did always right to his Majesty's hopes; so his Highness doth in all things right to her memory; a very just and princely retribution. But from this occasion, by a very easy ascent I passed farther, being put in mind by this representative of her person, of the more true and more vive representation, which is of her life and government: for as statues and pictures are dumb histories, so histories are speaking pictures; wherein if my affection be not too great, or my reading too small, I am of this opinion, that if *Plutarch* were alive to write lives by parallels, it would trouble him both for virtue and fortune, to find for her a parallel amongst women. And tho' she was of the passive sex, yet her government was so active, as in my simple opinion, it made more impression upon the several states of *Europe*, than it received from thence. But I confels unto your lordship I could not stay here, but went a little farther into the consideration of the times which have passed since King *Henry VIII*; wherein I find the strangest variety, that in so little number of successions of any hereditary monarchy hath ever been known. The reign of a child; the offer of an usurpation, though it were but as a diary ague; the reign of a lady married to a foreigner, and the reign of a lady solitary and unmarried; so that as it cometh to pass in massy bodies, that they have certain trepidations and waverings before they fix and settle; so it seemeth that by the providence of God, this monarchy (before it was to settle in his Majesty, and his generations, in which I hope it is now established for ever) hath had these prelusive changes in these barren princes. Neither could I contain my self here, (as it is easier for a man to multiply than to stay a wish) but calling to remembrance the unworthiness of the history of *England* **, in the main continuance thereof; and the partiality and obliquity

† The monument here spoken of was erected in K. *Henry VII*'s chapel at *Westminster*, in the year 1606.

** The unworthiness of the history of *England* hath been long complain'd of by ingenious men, both of this and other nations. Sir *Francis Bacon* hath expressed himself much to the same effect, tho' more at large in his second book of the advancement of learning: where he carries this period of remarkable events somewhat higher than in this letter, beginning with the union of the roses under *Henry VII*. and ending with the union of the kingdoms under K. *James*. A portion of time filled with so great and variable accidents both in church and state, and since so well discovered to the view of the world, that had other parts the same performance, we should not longer lie under any reproach of this kind. The reign of K. *Henry VII*. was written by our author soon after his retirement, with so great beauty of style, and wisdom of observation, that nothing can be more entertaining; the truth of history not being disguised with the false colours of romance. It was so acceptable a present to the P. of *Wales*, that when he became King, he commanded him to proceed with the reign of K. *Henry VIII*. But my lord *Bacon* meditating the history of nature, which he hardly lived to publish; his ill state of health, and succeeding death, put an end to this and other noble designs: leaving the ecclesiastical and civil affairs of those times to be related by the learned pens of Dr. *Burnet*, (notwithstanding the objections of the avow'd enemies, and seeming friends to the reformation) and the lord *Herbert of Chertbury*; that I think there is not much of moment to be expected from a future hand. And for the annals of Queen *Elizabeth* compiled by Mr. *Camden*, the esteem of them is as universal as the language in which they are written. Nor must I forget in this place to take notice of two fair and large volumes lately published in *French* by Monsieur de *Larrey*; where building upon the foundations laid by these gentlemen, and some other memoirs, he hath not forgotten to do much honour to the *English* nation: beginning his history also with *Henry VII*. *Stephens*.

of that of *Scotland*, in the latest and largest author † that I have seen; I conceived it would be honour for his Majesty, and a work very memorable; if this island of *Great Britain*, as it is now joined in monarchy for the ages to come, so it were joined in history for the times past; and that one just and compleat history were compiled of both nations. And if any man perhaps should think it may refresh the memory of former discords, he may satisfy himself with the verse, *olim haec meminisse juvabit*; for the case being now altered, it is matter of comfort and gratulation to remember former troubles. Thus much, if it may please your lordship, is in the optative mood; and it is time that I did look a little into the potential; wherein the hope which I conceived was grounded upon three observations. The first, the nature of these times, which flourish in learning, both of art and language; which giveth hope not only that it may be done, but that it may be well done. Secondly, I do see that which all the world sees in his Majesty, both a wonderful judgment in learning, and a singular affection towards learning; and works which are of the mind more than of the hand. For there cannot be the like honour sought and found, in building of galleries*, and planting of elms along high-ways, and in those outward ornaments, wherein *France* is now so busy; (things rather of magnificence than of magnanimity;) as there is in the uniting of states‡, pacifying of controversies**, nourishing and augmenting of learning and arts; and the particular actions appertaining to these; of which kind *Cicero* judged truly; when he said to *Caesar*, *quantum operibus tuis detrabet vetustas, tantum addet laudibus*. And lastly, I call to mind, that your lordship at some times hath been pleased to express unto me a great desire, that something of this nature should be performed; answerable indeed to your other noble and worthy courses and actions; joining and adding unto the great services towards his Majesty, (which have, in small compass of time; been performed by your lordship) other great deservings both of the church and commonwealth, and particular men; so as the opinion of so great and wise a man, doth seem to me a good warrant both of the possibility and worth of this matter. But all this while I assure my self, I cannot be so far mistaken by your lordship, as if I sought an office or employment for my self: for no man knows better than your lordship, that if there were in me any faculty thereunto, yet neither my course of life, nor profession would permit it: but because there be so many || good painters both for hand and colours, it needeth but encouragement and instructions to give life unto it; so in all humbleness I conclude, my presenting unto your lordship this wish; which, if it perish, it is but a loss of that which is not: And so craving pardon that I have taken so much time from your lordship, I remain.

|| Great Masters, Masters

† This I take to be meant of *Buchanan's* history of *Scotland*; a book much admired by some, tho' censured by many, for his partiality in favour of the lords, against *Mary Queen of the Scots*, and the regal power. In other respects, *Archbishop Spotswood* informs us that he penned it with such judgment and eloquence, as no country can shew a better. *Stephens*.

* The magnificent gallery at the *Louvre* in *Paris*, built by *Henry IV*.

‡ The union of *England* and *Scotland*.

** The conference at *Hampton-court* held between the bishops and puritans, as they were then called, soon after the King's coming to the crown of *England*, and where his Majesty was the moderator. *Stephens*.

LXXXIV. To the KING, touching the history of his times.

It may please your Majesty;

HEARING that your Majesty is at leisure to peruse story, a desire took me to make an experiment what I could do in your Majesty's times, which being but a * leaf or two, I pray your pardon, if I send it for your recreation;

recreation; considering that love must creep where it cannot go. But to this I add these petitions. First, that if your Majesty do dislike any thing, you would conceive I can amend it upon your least beck. Next, that if I have not spoken of your Majesty encomiastically, your Majesty would be pleased only to ascribe it to the law of an history; which doth not clutter together praises upon the first mention of a name, but rather disperfeth and weaveth them through the whole narrative. And as for the proper place of commemoration, (which is in the period of life) I pray God I may never live to write it. Thirdly, that the reason why I presumed to think of this oblation, was because whatsoever my disability be, yet I shall have that advantage which almost no writer of history hath had; in that I shall write of times not only since I could remember, but since I could observe. And lastly, that it is only for your Majesty's reading.

LXXXV. A letter of expostulation to Sir EDWARD COKE,
Attorney-General.

Mr. ATTORNEY,

I THOUGHT best, once for all, to let you know in plainness what I find of you, and what you shall find of me. You take to your self a liberty to disgrace and disable my law, my experience, my discretion; what it pleaseth you I pray think of me: I am one that knows both mine own wants and other mens; and it may be, perchance, that mine mend, when others stand at a stay. And surely I may not endure, in publick place, to be wronged without repelling the same to my best advantage to right my self. You are great, and therefore have the more enviers, which would be glad to have you paid at another's cost. Since the time I missed the sollicitor's place, (the rather I think by your means) I cannot expect that you and I shall ever serve as attorney and sollicitor together; but either to serve with another upon your remove, or to step into some other course: so as I am more free than ever I was from any occasion of unworthy conforming my self to you, more than general good manners, or your particular good usage shall provoke; and if you had not been short-sighted in your own fortune, (as I think) you might have had more use of me. But that tide is passed. I write not this to shew my friends what a brave letter I have written to Mr. Attorney; I have none of those humours: but that I have written is to a good end; that is, to the more decent carriage of my master's service, and to our particular better understanding one of another. This letter, if it shall be answered by you in deed, and not in word, I suppose it will not be worse for us both; else it is but a few lines lost, which for a much smaller matter I would have adventured. So this being to your self, I for my part rest.

LXXXVI. To the Earl of SALISBURY, concerning the
Sollicitor's place.

It may please your Lordship,

I AM not privy to my self of any such ill deserving towards your lordship, as that I should think it an impudent thing to be a suitor for your favour in a reasonable matter; your lordship being to me as (with your good favour) you

you cannot cease to be: but rather it were a simple and arrogant part in me to forbear it.

It is thought Mr. Attorney shall be Chief Justice of the common pleas; in case Mr. Solicitor rise, I would be glad now at last to be Solicitor; chiefly because I think it will increase my practice, wherein God blessing me a few years, I may mend my state, and so after fall to my studies and ease; whereof one is requisite for my body, and the other serveth for my mind: wherein if I shall find your lordship's favour, I shall be more happy than I have been, which may make me also more wise. I have small store of means about the King, and to sue my self is not fit; and therefore I shall leave it to God, his Majesty, and your lordship, for I must still be next the door. I thank God in these transitory things I am well resolved. So beseeching your lordship not to think this letter the less humble, because it is plain, I rest, &c.

FR. BACON.

LXXXVII. Another letter to the Earl of SALISBURY, touching the Solicitor's place.

It may please your good Lordship,

I AM not ignorant how mean a thing I stand for, in desiring to come in to the solicitor's place: for I know well, it is not the thing it hath been; time having wrought alteration both in the profession, and in that special place. Yet because, I think, it will encrease my practice, and that it may satisfy my friends; and because I have been voiced to it, I would be glad it were done. Wherein I may say to your lordship, in the confidence of your poor kinsman, and of a man by you advanced; *Tu idem ser opem, qui spem dedisti*: for, I am sure, it was not possible for a man living to have received from another, more significant and comfortable words of hope; your lordship being pleased to tell me, during the course of my last service, that you would raise me; and that, when you had resolved to raise a man, you were more careful of him than himself; and that what you had done for me in my marriage, was a benefit to me, but of no use to your lordship; and therefore, I might assure my self, you would not leave me there; with many like speeches, which I know my duty too well, to take any other hold of than the hold of a thankful remembrance. And I acknowledge, and all the world knoweth, that your lordship is no dealer of holy water, but noble and real; and, on my part, I am of a sure ground, that I have committed nothing that may deserve alteration. And therefore my hope is, your lordship will finish a good work, and consider, that time groweth precious with me, and that I am now *in vergentibus annis*. And although I know that your fortune is not to need an hundred such as I am, yet I shall be ever ready to give you my first and best fruits; and to supply (as much as in me lieth,) worthiness, by thankfulness.

LXXXVIII. To

LXXXVIII. To the Lord CHANCELLOR, concerning the Solicitor's place.

It may please your good Lordship,

AS I conceived it to be a resolution, both with his Majesty, and among your lordships of his council, that I should be placed solicitor, and the solicitor to be removed to be the King's serjeant: so I most thankfully acknowledge your lordship's furtherance and forwardness therein; your lordship being the man that first devised the mean: Whereof my humble request to your lordship is, that you would set in with some strength to finish this your work; which I assure your lordship I desire the rather, because being placed, I hope, for many favours, at last to be able to do you some better service. For as I am, your lordship cannot use me; nor scarcely indeed know me: Not that I vainly think, I shall be able to do any great matters, but certainly it will frame me to use a more industrious observance and application to such, as I honour so much as I do your lordship; and not (I hope) without some good offices, which may now and then deserve your thanks. And herewithal (good my lord) I humbly pray your lordship to consider, that time groweth precious with me, and that a married man is seven years elder in his thoughts the first day: And therefore what a discomfortable thing is it for me to be unsettled still? Certainly, were it not that I think my self born do my Sovereign service, and therefore in that station I will live and die; otherwise, for mine own private comfort, it were better for me that the King should blot me out of his book; or that I shou'd turn my course to endeavour to serve in some other kind, than for me to stand thus at a stop; and to have that little reputation, which by my industry I gather, to be scatter'd and taken away by continual disgraces, every new man coming above me. Sure I am, I shall never have fairer promises and words from all your lordships. For I know not what my services are, (saying that your lordships told me they were good;) and I would believe you in a much greater matter. Were it nothing else, I hope the modesty of my suit deserveth somewhat; for I know well, the solicitor's place is not as your lordship left it; time working alteration, somewhat in the profession, much more in that special place. And were it not to satisfy my wife's friends, and to get my self out of being a common gaze and a speech, I protest before God I would never speak word for it. But to conclude, as my honourable lady, your wife, was some mean to make me to change the name of another; so if it please you to help me to change mine own name, I can be but more and more bounden to you: And I am much deceived, if your lordship find not the King well inclined, and my lord of *Salisbury* forward and affectionate.

LXXXIX. To my Lady PACKINGTON, in answer to a message by her sent.

MADAM,

YOU shall with right good will be made acquainted with any thing that concerneth your daughters, if you bear a mind of love and concord; otherwise you must be content to be a stranger unto us: For I may not be so unwise as to suffer you to be an author or occasion of dissension between your daughters and their husbands, having seen so much of that kind in your self.

AND

AND above all things I will turn back your kindness, in which you say, you will receive my wife if she be cast off: for it is much more likely we have occasion to receive you being cast off, if you remember what is passed. But it is time to make an end of these follies: and you shall at this time pardon me this one fault of writing to you; for I mean to do it no more till you use me and respect me as you ought. So wishing you better than it seemeth you will draw upon yourself, I rest

Yours.

XC. To the KING, touching the Solicitor's place.

HOW honestly ready I have been (most gracious Sovereign) to do your Majesty humble service, to the best of my power, and in a manner beyond my power (as I now stand,) I am not so unfortunate but your Majesty knoweth. For both in the commission of union, (the labour whereof, for men of my profession, rested most upon my hand;) and this last parliament, in the bill of the subsidy, both body and preamble; in the bill of attainders, both *Tresham* and the rest; in the matter of purveyance; in the ecclesiastical petitions; in the grievances; and the like; as I was ever careful (and not without good success) sometimes to put forward that which was good, sometimes to keep back that which was not so good; so your Majesty was pleased kindly to accept of my services, and to say to me, such conflicts were the wars of peace, and such victories the victories of peace; and therefore such servants that obtained them were by Kings, that reign in peace, no less to be esteemed, than services of commanders in the wars. In all which nevertheless I can challenge to myself no sufficiency, but that I was diligent and reasonably happy to execute those directions, which I received either immediately from your royal mouth, or from my lord of *Salisbury*: at which time it pleased your Majesty also to promise and assure me, that upon the remove of the then attorney, I shou'd not be forgotten, but brought into ordinary place. And this was after confirmed to me, by many of my lords, and towards the end of the last term, the manner also in particular was spoken of; that is, that Mr. Solicitor shou'd be made your Majesty's Serjeant, and I Solicitor; for so it was thought best to sort with both our gifts and faculties for the good of your service: and of this resolution both court and country took knowledge. Neither was this any invention or project of mine own; but moved from my lords, and I think, first from my lord Chancellor; whereupon resting, your Majesty well knoweth I never opened my mouth for the greater place; though I am sure I had two circumstances, that Mr. Attorney, that now is, could not alledge: the one, nine years service of the crown; the other, the being cousin germain to the lord of *Salisbury*, whom your Majesty esteemeth and trusteth so much. But for the less place, I conceived it was meant me. But after that Mr. Attorney *Hobart* was placed, I heard no more of my preferment; but it seemed to be at a stop, to my great disgrace and discouragement. For, gracious Sovereign, if still, when the waters are stirr'd, another shall be put in before me, your Majesty had need work a miracle, or else I shall be still a lame man to do your Majesty service. And therefore my most humble suit to your Majesty, is; this, which seemed to me intended, may speedily be performed: And, I hope, my former service shall be but as beginnings to better, when I am better strengthened: For sure I am, no man's heart is fuller (I say not but

many may have greater hearts, but I say not fuller) of love and duty towards your Majesty and your children; as, I hope, time will manifest against envy and detraction, if any be. To conclude, I most humbly crave pardon for my boldness and rest.

XCI. To the Earl of SALISBURY upon a New-year's-tide.

It may please your good Lordship,

HAVING no gift to present you with in any degree proportionable to my mind, I desire nevertheless to take the advantage of a ceremony to express myself to your lordship; it being the first time I could make the like acknowledgment, when I stood out of the person of a suitor: wherefore I most humbly pray your lordship to think of me, that now it hath pleased you, by many effectual and great benefits, to add the assurance and comfort of your love and favour to that precedent disposition, which was in me, to admire your virtue and merit; I do esteem whatsoever I have or may have in this world, but as trash, in comparison of having the honour and happiness to be a near and well accepted kinsman to so rare and worthy a counsellor, governour and patriot: For having been a studious, if not a curious observer of antiquities of virtue as of late pieces; I forbear to say to your lordship what I find and conceive; but to any other I would think to make myself believed. But not to be tedious in that which may have the shew of a complement, I can but wish your lordship many happy years, many more than your father had; even so many more, as we may need you more. So I remain.

XCII. To Mr. MATTHEW, imprison'd for religion.

Mr. MATTHEW,

DO not think me forgetful or altered towards you; but if I should say, I could do you any good, I should make my power more than it is. I do hear that which I am right sorry for; that you grow more impatient and busy than at first; which maketh me exceedingly fear the issue of that which seemeth not to stand at a stay. I my self am out of doubt, that you have been miserably abused, when you were first seduced; but that which I take in compassion, others may take in severity. I pray God, that understandeth us all better than we understand one another, contain you (even as I hope he will) at the least, within the bounds of loyalty to his Majesty, and natural piety towards your country. And I intreat you much, sometimes to meditate upon the extreme effects of superstition in this last powder-treason; fit to be tabled and pictured in the chambers of meditation, as another hell above the ground; and well justifying the censure of the heathen, that superstition is far worse than atheism: by how much it is less evil to have no opinion of God at all, than such as is impious towards his divine Majesty and goodness*. Good Mr. Matthew, receive yourself back from these courses of perdition: Willing to have written a great deal more, I continue, &c.

* See Essays,
Vol. III. p.
325.

XCIII. To Mr. MATTHEW.

S I R,

TWO letters of mine are now already walking towards you ; but so that we might meet, it were no matter though our letters shou'd lose their way. I make a shift in the mean time to be glad of your approaches, and would be more glad to be an agent for your presence, who have been a patient by your absence. If your body by indisposition make you acknowledge the healthful air of your native country ; much more do I assure myself, that you continue to have your mind no way estranged. And as my trust with the state is above suspicion, so my knowledge both of your loyalty and honest nature will ever make me shew myself your faithful friend without scruple : You have reason to commend that gentleman to me, by whom you sent your last, although his having travelled so long amongst the sadder nations of the world make him much the less easy upon small acquaintance to be understood. I have sent you some copies of my book of the *Advancement*, which you desired ; and a little work of my recreation, which you desired not : My *Instauration* I reserve for our conference, it sleeps not. Those works of the *Alphabet* are in my opinion of less use to you where you are now, than at *Paris* ; and therefore I conceived, that you had sent me a kind of tacit countermand of your former request. But in regard that some friends of yours have still insisted here, I send them to you ; and for my part, I value your own reading more than your publishing them to others. Thus in extreme haste, I have scribbled to you I know not what, which therefore is the less affected, and for that very reason will not be esteemed the less by you.

XCIV. To Sir GEORGE * CAREW, on sending him the treatise, in *felicem memoriam Elizabethae*.

BEING asked a question by this bearer, an old servant of my brother Anthony Bacon's, whether I would command him any thing into *France* ; and being at better leisure than I would, in regard of sickness ; I began to remember that neither your business nor mine (though great and continual) can be, upon an exact account, any just occasion, why so much good-will as hath passed between us should be so much discontinued as it hath been. And therefore, because one must begin, I thought to provoke your remembrance of me by a letter : And thinking to fit it with somewhat besides salutations, it came to my mind, that this last summer vacation, by occasion of a factious book that endeavoured to verify, *Misera Foemina*, (the addition of the *Pope's Bull*) upon Queen *Elizabeth*, I did write a few lines in her *Memorial*†, which I thought you would be pleased to read, both for the argument, and because you were wont to bear affection to my pen. *Verum, ut aliud ex alio*, if it came handsomely to pass, I would be glad the

† See Vol. II.
p. 389. of
this edition.

* Sir George Carew of Cornwall was master in Chancery in the time of Queen Elizabeth ; and in 1597 sent ambassador into Poland ; and in 1606 went unto the court of France with the like character. After about three years continuance, he was recalled by the King to make use of his services at home ; but he surviv'd not many years. M. de Thou, in a letter to Mr. Camden in 1613, very much laments his death ; as losing a friendship he much valued, and an assistant in the prosecution of his history : having receiv'd helps from him in that part which relates to the dissensions between the Poles and the Swedes in the year 1598, as appears before the contents of Book CXXI. Stephens.

President

President de Thou (who hath written an history, as you know, of that fame and diligence) saw it; chiefly because I know not whether it may not serve him for some use in his story; wherein I wou'd be glad he did right to the truth, and to the memory of that lady, as I perceive by that he hath already written he is well inclined to do. I would be glad also, it were some occasion (such as absence may permit) of some acquaintance or mutual notice between us. For though he hath many ways the precedence (chiefly in worth) yet this is common to us both, that we serve our Sovereigns in places of law eminent: And not ourselves only, but that our fathers did so before us. And lastly, that both of us love learning and liberal sciences, which was ever a bond of friendship in the greatest distance of places. But of this I make no farther request, than your own occasions and respects (to me unknown) may further or limit; my principal purpose being to salute you, and to send you this token: Whereunto I will add my very kind commendations to my lady; and so commit you both to God's holy protection.

XCV. To the KING, upon presenting the discourse touching the plantation of *Ireland*.

It may please your excellent Majesty,

I KNOW not better how to express my good wishes of a new-year to your Majesty, than by this little book, which in all humbleness I send you. The style is a style of business rather than curious or elaborate. And herein I was encouraged by my experience of your Majesty's former grace, in accepting of the like poor field-fruits touching the union. And certainly I reckon this action as a second brother to the union. For I assure myself that *England, Scotland and Ireland* well united, is such a trefoil as no Prince except yourself (who are the worthiest) weareth in his crown; *Si potentia reducatur in actum*. I know well, that for me to beat my brains about these things, they be *Majora quam pro fortuna*; but yet they may be *minora quam pro studio ac voluntate*. For as I do yet bear an extreme zeal to the memory of my old mistress *Queen Elizabeth*; to whom I was rather bound for her trust than her favour; so I must acknowledge myself more bound to your Majesty both for trust and favour; whereof I will never deceive the one, as I can never deserve the other. And so in all humbleness kissing your Majesty's sacred hand, I remain.

XCVI. To the Bishop of ELY, upon sending his writing, entitled, *Cogitata & Visa*.

My very good Lord,

NOW your lordship hath been so long in the church and the palace, disputing between Kings and Popes*; methinks you should take pleasure to look into the field, and refresh your mind, with some matter of philosophy;

* The King and kingdom being exasperated by the gun-powder treason, thought it necessary to make some more effectual laws to distinguish between those papists that paid due obedience to the King, and those that did not. For which end, in the parliament which met upon the memorable fifth of November 1605, a new oath of allegiance was framed; declaring that the Pope, &c. had no power to depose Kings, absolve their subjects, or dispose of their kingdoms, &c. The court of Rome, jealous of losing an authority, they had been many years assailing, and especially perceiving that many papists submitted

philosophy; tho' that science be now thro' age waxed a child again, and left to boys and young men. And because you were wont to make me believe you took liking to my writings, I send you some of this vacation's fruits; and thus much more of my mind and purpose. I hasten not to publish, perishing I would prevent; and I am forced to respect as well my times as the matter. For with me it is thus; and, I think, with all men in my case: If I bind myself to an argument, it loadeth my mind; but if I rid my mind of the present cogitation, it is rather a recreation. This hath put me into these miscellanies; which I purpose to suppress, if God give me leave, to write a just and perfect volume of philosophy, which I go on with, tho' slowly. I send not your lordship too much, lest it may glut you. Now let me tell you what my desire is: if your lordship be so good now, as when you were the good dean of *Westminster*, my request to you is; that not by pricks, but by notes, you wou'd mark unto me whatsoever shall seem unto you either not current in the style, or harsh to credit and opinion, or inconvenient for the person of the writer; for no man can be judge and party: and when our minds judge by reflexion on our selves, they are more subject to error. And tho', for the matter itself, my judgment be in some things fixed, and not accessible by any man's judgment that goeth not my way; yet even in those things, the admonition of a friend may make me express myself diversly. I would have come to your lordship, but that I am hastening to my house in the country: and so I commend your lordship to God's goodness.

submitted to the oath, as not intrenching upon matters of faith, severely inhibited them from taking the same by two briefs, the one quickly succeeding the other. The King on the other hand esteeming it a point that nearly concerned him, had recourse to those arms he could best manage, encounter'd the briefs by a premonition directed to all Christian Princes; exhorting them to espouse the common quarrel. Cardinal *Bellarmino*, who, by virtue of his title, thought himself almost equal to Princes, and by his great learning much superiour, enters the lists with the King. The seconds coming in on both sides, no man was thought fitter to engage this remarkable antagonist than that great and renowned prelate in learning and sanctity Dr. *Andrews*, then bishop of *Ely*, and after of *Winchester*. Neither were the reformed of the French church idle spectators; as *Monsieur du Moulin*, and *Monsieur du Plessis Moruay*: This last publish'd a book at *Saumur* in 1611, entitled, *The Mystery of Iniquity*, &c. shewing by what degrees the bishops of *Rome* had raised themselves to their present grandeur, asserting the right of sovereign princes against the positions of the cardinals *Bellarmino* and *Baronius*: The French edition whereof he dedicated to *Lewis* the thirteenth, and the Latin to King *James*. This last performance was presented to King *James*, with a letter exhorting him, *de quitter d'oresnavant la plume, pour aller espee à la main desnicher l'Antichrist hors de sa forteresse*: To give over waging a war with his pen, and to destroy the papal power with his sword; which he excites the King to attempt in the conclusion of his dedication, with so much life, that I shall crave the liberty to insert part of his own words, in order to declare the spirit and zeal of the gentleman, who for his valour and conduct in war, his judgment in counsel, his dexterity in dispatches, and his firmness and constancy in religion; in the defence of which, hand, and tongue, and pen were employ'd, is far above all the titles that can be given.

Hanc tu, Rex potentissime, laudem, hanc lauream, absit ut tibi praeripi patiari; cuiquam alii servatam velis; non sanguine, non vita, non carioribus caeteris redemptam malis. At tu Jehova Deus, cujus res, cujus gloria hic proprie agitur; cujus absque ope frustra sint vota, suspiria, molimina nostra; evigila, exsurge, robur induit, justitiam ut lorica. Voca servum tuum per nomen suum, prebende dexteram Uncti tui, ambula ante faciem ejus; complanentur valles, subsidant montes, consternantur fluvii, pateant januae, conterantur caeterae, contremiscant populi, corruat Jericho illa in spiritu oris tui, in conspectu ejus. Ego sexagenario licet jam major, lateri tunc ipsius haeream indurcatus; inter angustia, inter aspera Alpium senectam exuam; inter principia proelium misceam; inter triumphos praecinente angelo cecidit illud congenitum; sanctae huic laetitiae totus immergar, aeternae contiguus immoriar raptus.

But this was an enterprise suited to the warlike genius of *Du Plessis*, great master of *Henry* the fourth, and not to the peaceable spirit of King *James*. Besides the King, in his answer of the 20th of *October* 1611, (after he had excused his long silence, and very much commended this author in the design of his book, and as freely called the Pope Antichrist, and *Rome Babylon*) conceives that neither the scriptures, the doctrine or example of the primitive church, would sufficiently justify an offensive war, undertaken purely for religion; could he in prudence expect any success in such an attempt.

XCVII. To Sir THO. BODELEY, after he had imparted to him a writing, entitled, *Cogitata & Visa*.

S I R,

I N respect of my going down to my house in the country, I shall have miss of my papers, which I pray you therefore to return unto me. You are, I bear you witness, slothful, and you help me nothing; so as I am half in conceit, that you affect not the argument: for my self, I know well you love and affect. I can say no more to you, but *Non canimus surdis, respondent omnia sylvae*. If you be not at the lodgings chalk'd up, (whereof I speak in my preface,) I am but to pass by your door. But if I had you a fortnight at *Gorbambury*, I would make you tell me another tale; or else I would add a cogitation against libraries, and be revenged on you that way. I pray you send me some good news of Sir *Tho. Smith*: and commend me very kindly to him. So I rest.

XCVIII. Sir THOMAS BODELEY's letter to Sir FRANCIS BACON, about his *Cogitata & Visa*, wherein he declareth his opinion freely touching the same.

S I R,

AS soon as the term was ended, supposing your leisure was more than before, I was coming to thank you two or three times, rather chusing to do it by word than by letter: but I was still disappointed of my purpose, as I am at this present upon an urgent occasion, which doth tie me fast to *Fulham*, and hath now made me determine to impart my mind in writing.

I think you know I have read your *Cogitata & Visa*, which I protest I have done with great desire, reputed it a token of your singular love, that you joined me with those your chiefest friends, to whom you would commend the first perusal of your draught: for which, I pray you, give me leave to say but this unto you.

FIRST, that if the depth of my affection to your person and spirit, to your works and your words, and to all your abilities, were as highly to be valued, as your affection is to me, it might walk with yours arm in arm, and claim your love by just desert. But there can be no comparison where our states are so uneven, and our means to demonstrate our affections so different; inso-much as for my own, I must leave it to be prized in the nature that it is, and you shall evermore find it most addicted to your worth.

As touching the subject of your book, you have set a-foot so many rare and noble speculations, as I cannot chuse but wonder (and I shall wonder at it ever) that your expence of time considered in your publick profession, which hath in a manner no acquaintance with scholarship of learning, you should have culled out the quintessence, and sucked up the sap of the chiefest kind of learning.

FOR howsoever, in some points you do vary altogether from that which is, and hath been ever the received doctrine of our schools, and was always by the wisest, as still they have been deemed, of all nations and ages adjudged the truest; yet it is apparent, that in those very points, and in all your proposals and plots in that book, you shew your self a master workman.

FOR my self, I must confess, and I speak it *ingenue*, that for the matter of learning, I am not worthy to be reckoned in the number of smatterers.

AND yet because it may seem, that being willing to communicate your treatise with your friends, you are likewise willing to listen to whatsoever I or others can except against it; I must deliver unto you for my private opinion, that I am one of that crew that say there is, and we profess a far greater holdfast of certainty in your sciences, than you by your discourse will seem to acknowledge.

FOR whereas, first you do object the ill success and errors of practitioners in physick, you know as well they do proceed of the patient's unruliness; for not one of a hundred doth obey his phylician in observing his cautels: or by misinformation of their own indispositions, for few are able in this kind to explicate themselves, or by reason their diseases are by nature incurable, which is incident you know to many sorts of maladies, or for some other hidden cause which cannot be discovered by course of conjecture. Howbeit, I am full of this belief, that as physick is ministred now-a-days by physicians, it is much to be ascribed to their negligence or ignorance, or other touch of imperfection, that they speed no better in their practice: for few are found of that profession so well instructed in their art, as they might by the precepts which their art doth afford; which though it be defective in regard of such perfection, yet for certain it doth flourish with admirable remedies, such as tract of time hath taught by experimental events, and are the open highway to that principal knowledge that you recommend.

As for alchymy and magick, some conclusions they have that are worthy the preserving; but all their skill is so accompanied with subtleties and guiles, as both the crafts and craft-masters are not only despised, but named with derision; whereupon to make good your principal assertion, methinks you should have drawn your examples from that which is taught in the liberal sciences, not by picking out cases that happen very seldom, and may by all confession be subject to reproof, but by controlling the generals, and grounds, and eminent positions, and aphorisms, which the greatest artists and philosophers have from time to time defended.

FOR it goeth for current amongst all men of learning, that those kind of arts which clerks in times past did term *quadrivials*, confirm their propositions by infallible demonstrations.

AND likewise in the *trivials* such lessons and directions are delivered unto us, as will effect very near, or as much altogether, as every faculty doth promise. Now in case we should concur, to do as you advise, which is to renounce our common notions, and cancel all our theorems, axioms, rules, and tenets, and so to come babes *ad regnum naturae*, as we are willed by scriptures to come *ad regnum coelorum*; there is nothing more certain in my understanding, than that it would instantly bring us to barbarism, and after many thousand years, leave us more unprovided of theorical furniture than we are at this present; for that were indeed to become very babes, or *tabula rasa*, when we shall leave no impression of any former principles, but be driven to begin the world again, and to travel by trials of axioms and sense (which are your proofs by particulars) what to place *in intellectu*, for our general conceptions, it being a maxim of all mens approving, *in intellectu nihil esse quod non prius fuit in sensu*; and so in appearance it would befall us, that till Plato's year be come about, our insight in learning would be of less reckoning than now it is accounted.

As for that which you inculcate, of a knowledge more excellent than now is among us, which experience might produce, if we would but essay to extract it out of nature by particular probations, it is no more upon the matter, but to incite us unto that, which without instigation by a natural instinct men will practise of themselves; for it cannot in reason be otherwise thought, but that there are infinite numbers in all parts of the world, (for we may not in this case confine our cogitations within the bounds of *Europe*;) which embrace the course that you purpose, with all the diligence and care that ability can perform; for every man is born with an appetite of knowledge, wherewith he cannot be so glutted, but still, as in a dropsy, thirst after more.

BUT yet why they should hearken to any such persuasion, as wholly to abolish those settled opinions and general theorems, to which they attained by their own and their ancestors experience, I see nothing yet alledged to induce me to think it.

MOREOVER I may speak, as I should suppose with good probability, that if we should make a mental survey what is like to be effected all the world over, those five or six inventions which you have selected, and imagine to be but of modern standing, would make but a slender shew amongst so many hundreds of all kinds of natures, which are daily brought to light by the enforcement of wit, or casual events, and may be compared, or partly preferred above those that you have named.

BUT were it so here that all were admitted, that you can require, for the augmentation of our knowledge; and that all our theorems and general positions were utterly extinguished with a new substitution of others in their places, what hope may we have of any benefit of learning by this alteration?

ASSUREDLY, as soon as the new are brought with their additions *ad auxilia*, by the inventors and their followers, by an interchangeable course of natural things, they will fall by degrees to be buried in oblivion, and so on continuance to perish out-right; and that perchance upon the like to your present pretences, by proposal of some means to advance all our knowledge to an higher pitch of perfectness: for still the same defects that antiquity found will reside in mankind.

AND therefore, other issues of their actions, devices and studies are not to be expected, than is apparent by records were in former times observed.

I remember here a note which *Paterculus* made of the incomparable wits of the *Grecians* and *Romans* in their flourishing state, that there might be this reason of their notable downfall in their issue that came after; because by nature, *Quod summo studio petatum est, ascendit in summum, difficilisque in perfecto mora est*; insomuch, that men perceiving that they could go no farther, being come to the top, they turned back again of their own accord, forsaking those studies that are most in request, and betaking themselves to new endeavours, as if the thing that they sought had been by prevention surprised by others.

So it fared in particular with the eloquence of that age, that when their successors found that hardly they could equal, by no means excel their predecessors, they began to neglect the study thereof, and both to write and speak for many hundred years in a rustical manner; till this later revolution brought the wheel about again, by inflaming gallant spirits to give the onset afresh, with straining and striving to climb unto the top and height of perfection, not in that gift only, but in every other skill in any part of learning.

FOR I do not hold it an erroneous conceit to think of every science, that as now they are professed, so they have been before in all precedent ages, though not alike in all places, nor at all times alike in one and the same place, but

but according to the changings and twinings of times, with a more exact and plain, or with a more rude and obscure kind of teaching.

AND if the question should be asked, what proof I have of it, I have the doctrine of *Aristotle*, and of the deepest learned clerks, of whom we have any means to take any notice, that as there is of other things, so there is of sciences, *ortus & interitus*, which is also the meaning, if I should expound it, of *nihil novum sub sole*, and is as well to be applied, *ad facta*, as *ad dicta*, *ut nihil neque dictum neque factum quod non est dictum & factum prius*. I have farther for my warrant that famous complaint of *Solomon* to his son, against the infinite making of books in his time, of which in all congruity it must needs be understood, that a great part were observations and instructions in all kind of literature; and of those there is not now so much as one petty pamphlet, only some parts of the bible excepted, remaining to posterity.

As then there was not in like manner any footing to be found of millions of authors that were long before *Solomon*, and yet we must give credit to that which he affirmed, that whatsoever was then, or had been before, it could never be truly pronounced of it, behold this is new.

WHEREUPON I must for my final conclusion infer, seeing all the endeavours, study, and knowledge of mankind, in whatsoever art or science, have ever been the same, as they are at this present, though full of mutabilities, according to the changes and accidental occasions of ages and countries, and clerks dispositions, which can never be but subject to intention and remission, both in their devices and practices of their knowledge: If now we should accord in opinion with you;

FIRST, to condemn our present knowledge of doubts and incertitudes, which you confirm but by averment, without other force of argument, and then to disclaim all our axioms and maxims, and general assertions that are left by tradition from our elders to us, which (for so it is to be pretended) have passed all probations of the sharpest wits that ever were.

AND lastly, to devise, being now become again as it were *abecedarii* by the frequent spelling of particulars, to come to the notice of the true generals, and so afresh to create new principles of sciences, the end of all would be, that when we shall be dispossessed of the learning which we have, all our consequent travails will but help us in a circle to conduct us to the place from whence we set forward, and bring us to the happiness to be restored *in integrum*, which will require as many ages as have marched before us to be perfectly achieved.

AND this I write with no dislike of increasing our knowledge with new-found devices, which is undoubtedly a practice of high commendation, in regard of the benefit they will yield for the present; that the world hath ever been, and will assuredly for ever continue very full of such devisors, whose industry hath been very obstinate and eminent that way, and hath produced strange effects, above the reach and the hope of mens common capacities; and yet our notions and theorems have always kept in grace both with them, and with the rarest that ever were named among the learned. By this you see to what boldness I am brought by your kindness, that if I seem to be too saucy in this contradiction, it is the opinion that I hold of your noble disposition, and of the freedom in these cases that you will afford your special friend that hath induced me to do it. And although I my self like a carrier's horse cannot baulk the beaten way in which I have been trained, yet such is my censure of your *Cogitata*, that I must tell you, to be plain, you have very much wronged your self and the world, to smother such a treasure

so long in your coffer; for though I stand well assured for the tenor and subject of your main discourse, you are not able to impanel a substantial jury in any university that will give up a verdict to acquit you of error, yet it cannot be gainsaid, but all your treatise over doth abound with choice conceits of the present state of learning, and with so worthy contemplations of the means to procure it, as may persuade with any student to look more narrowly to his business, not only by aspiring to the greatest perfection of that which is now-a-days divulged in the sciences, but by diving yet deeper into (as it were) the bowels and secrets of nature, and by enforcing of the powers of his judgment and wit, to learn of *St. Paul*, *consecrari meliora dona*: which course, would to God (to whisper so much in your ear) you had followed at the first, when you fell into the study of such a study as was not worthy such a student. Nevertheless being so as it is, that you are therein settled, and your country soundly served, I cannot but wish with all my heart, as I do very often, that you gain a fit reward to the full of your deserts, which I hope will come with heaps of happiness and honour.

From Fulham, Feb. 19. 1607.

Yours to be used and commanded,

THO. BODELEY.

POSTSCRIPT.

SIR,

ONE kind of boldness doth draw on another, insomuch, as methinks, I should offend not to signify, that before the transcript of your book be fitted for the press, it will be requisite for you to cast a censor's eye upon the style and the elocution; which in the framing of some periods, and in divers words and phrases will hardly go for current, if the copy brought to me be just the same that you would publish.

XCIX. To Mr. MATTHEW, upon sending to him a part of INSTAURATIO MAGNA.

Mr. MATTHEW,

I PLAINLY perceive by your affectionate writing, touching my work, that one and the same thing affecteth us both; which is, the good end to which it is dedicated: For as to any ability of mine, it cannot merit that degree of approbation. For your caution for church-men and church-matters, as for any impediment it might be to the applause and celebrity of my work, it moveth me not; but as it may hinder the fruit and good which may come of a quiet and calm passage to the good port to which it is bound, I hold it a just respect; so as to fetch a fair wind I go not too far about. But the truth is, that I at all have no occasion to meet them in my way; except it be, as they will needs confederate themselves with *Aristotle*, who, you know, is intemperately magnified by the school-men; and is also allied, as I take it, to the Jesuits, by *Faber*, who was a companion of *Loyola*, and a great *Aristotelian*. I send you at this time the only part which hath any harshness; and yet I framed to my self an opinion, that whosoever allowed well of that preface which you so much commend, will not dislike, or at least ought not to dislike this other speech of preparation; for it is written out of the same spirit, and out of the same necessity: nay, it doth more fully lay open, that the question between me and the ancients, is not of the virtue of the race, but of the rightness of the way. And to speak truth. it is to the other but

as *palma* to *pugnis*, part of the same thing more large. You conceive aright that in this, and the other, you have commission to impart and communicate them to others, according to your discretion. Other matters I write not of. My self am like the miller of *Granchester*, that was wont to pray for peace amongst the willows; for while the winds blew, the wind-mills wrought, and the water-mill was less customed. So I see that controversies of religion must hinder the advancement of sciences. Let me conclude with my perpetual wish towards your self, that the approbation of your self, by your own discreet and temperate carriage, may restore you to your country, and your friends to your society. And so I commend you to God's goodness.

Gray's Inn, Oct. 10. 1609.

C. To Mr. MATTHEW.

SIR,

I THANK you for your last, and pray you to believe, that your liberty in giving opinion of those writings which I sent you, is that which I sought, which I expected, and which I take in exceeding good part; so good, as that it makes me recontinue, or rather continue my hearty wishes of your company here, that so you might use the same liberty concerning my actions, which now you exercise concerning my writings. For that of *Queen Elizabeth*, your judgment of the temper and truth of that part, which concerns some of her foreign proceedings, concurs fully with the judgment of others, to whom I have communicated part of it; and as things go, I suppose they are likely to be more and more justified and allowed. And whereas you say, for some other part, that it moves and opens a fair occasion, and broad way, into some field of contradiction: on the other side, it is written to me from the leiger at *Paris*, and some others also, that it carries a manifest impression of truth with it, and that it even convinces as it grows. These are their very words; which I write not for mine own glory, but to shew what variety of opinion rises from the disposition of several readers. And I must confess my desire to be, that my writings should not court the present time, or some few places in such sort as might make them either less general to persons, or less permanent in future ages. As to the *Instauration*, your so full approbation thereof, I read with much comfort, by how much more my heart is upon it; and by how much less I expected consent and concurrence in a matter so obscure. Of this I can assure you, that though many things of great hope decay with youth, (and multitude of civil businesses is wont to diminish the price, though not the delight of contemplations;) yet the proceeding in that work doth gain with me upon my affection and desire, both by years and businesses. And therefore I hope, even by this, that it is well pleasing to God, from whom, and to whom, all good moves. To him I most heartily commend you.

CI. To Mr. MATTHEW.

Mr. MATTHEW,

I HEARTILY thank you for your letter of the 10th of *February*, and am glad to receive from you matter both of encouragement, and of advertisement touching my writings. For my part I do wish, that since there is no ** lumen siccum*, in the world, but all *madidum*, and *maceratum*, in-

* Our author alludes to one of the dark sayings of *Heraclitus*, that dry light is ever the best; which in another place he thus expounds: Certainly the light that a man receiveth by counsel from another, is drier and purer than that which cometh from his own understanding and judgment, this being ever infused and drenched in his affections. *Stephens.*

fused in affections, and bloods, or humours, that these things of mine had those separations that might make them more acceptable: so that they claim not so much acquaintance of the present times, as they be thereby the less apt to last. And to shew you that I have some purpose to new-mould them; I send you a leaf or two of the preface, carrying some figure of the whole work. Wherein I purpose to take that which I count real and effectual of both writings; and chiefly, to add a pledge, (if not payment,) to my promises, I send you also a memorial of Queen *Elizabeth*; to requite your eulogy of the late duke of † *Florence's* felicity. Of this, when you were here, I shewed you some model; at what time, methought, you were more willing to hear *Julius Caesar*, than Queen *Elizabeth*, commended. But this which I send is more full, and hath more of the narrative: And farther, hath one part that, I think, will not be disagreeable either to you or that place; being the true tract of her proceedings towards the catholicks which are infinitely mistaken. And though I do not imagine they will pass allowance there, yet they will gain upon excuse. I find Mr. *Le Zure* to use you well, (I mean his tongue of you,) which shews you either honest, or wise: but this I speak merrily. For in good faith I do conceive hope, that you will so govern your self, as we may take you as assuredly for a good subject and patriot, as you take your self for a good christian; and so we may again enjoy your company, and you your conscience, if it may no otherways be. For my part assure your self, (as we say in the law,) *mutatis mutandis*, my love and good wishes to you are not diminished. And so I remain.

† This duke of *Florence* was named *Ferdinand* of the house of *Medici*; whose memory Sir *Henry Wotton* celebrated in a letter printed in his remains, and presented to King *Charles I.* *Piascius* the bishop of *Premista* in *Poland*, begins his chronicle of the year 1609, with an account of his death; and sums up his character in these words: *Princeps animo excelsus, & omnibus politicis artibus in tantum instructus, ut in multis sæculis vix æqualem habuerit.* *Stephens.*

CII. To Mr. MATTHEW, upon sending his book DE SAPIENTIA VETERUM.

Mr. MATTHEW,

I Do very heartily thank you for your letter of the 24th of *August* from *Salamanca*; and in recompence thereof I send you a little work of mine, that hath begun to pass the world. They tell me my *Latin* is turn'd into silver, and become current: had you been here, you should have been my inquisitor before it came forth: But, I think, the greatest inquisitor in *Spain* will allow it. But one thing you must pardon me if I make no haste to believe, that the world should be grown to such an ecstasy as to reject truth in philosophy, because the author dissenteth in religion; no more than they do by *Aristotle* or *Averroes*. My great work goeth forward; and after my manner, I alter ever when I add. So that nothing is finished till all be finished. This I have witten in the midst of a term and parliament; thinking no time so possessed, but that I should talk of these matters with so good and dear a friend. And so with my wonted wishes I leave you to God's goodness.

From *Gray's Inn*,
Feb. 27. 1610.

CIII. To the KING.

It may please your Majesty,

YOUR great and princely favours towards me in advancing me to place; and that which is to me of no less comfort, your Majesty's benign and gracious acceptation from time to time of my poor services, much above the merit

merit and value of them; hath almost brought me to an opinion that I may sooner (perchance) be wanting to my self in not asking, than find your Majesty's goodness wanting to me in any my reasonable and modest desires. And therefore perceiving how at this time preferments of law fly about mine ears, to some above me, and to some below me; I did conceive your Majesty may think it rather a kind of dulness, or want of faith, than modesty, if I should not come with my pitcher to *Jacob's* well as others do. Wherein I shall propound to your Majesty, that which tendeth not so much to the raising of my fortune, as to the settling of my mind; being sometimes assailed with this cogitation, that by reason of my slowness to see and apprehend sudden occasions, keeping on one plain course of painful service; I may (*in fine diertum*) be in danger to be neglected and forgotten: and if that should be, then were it much better for me, now while I stand in your Majesty's good opinion (though unworthy) and have some little reputation in the world, to give over the course I am in, and to make proof to do you some honour by my pen, either by writing some faithful narrative of your happy (though not untraduced) times; or by recompiling your laws, (which, I perceive, your Majesty labour-eth with; and hath in your head, as *Jupiter* had *Pallas*;) or some other the like work; (for without some endeavour to do you honour, I would not live;) than to spend my wits and time in this laborious place wherein I now serve; if it shall be deprived of those outward ornaments which it was wont to have, in respect of an assured succession to some place of more dignity and rest; which seemeth now to be an hope altogether casual, if not wholly intercepted. Wherefore, (not to hold your Majesty long,) my humble suit to you is, that, than the which I think I cannot well go lower; which is, that I may obtain your royal promise to succeed, (if I live,) into the attorney's place, whensoever it shall be void; it being but the natural and immediate step and rise which the place I now hold hath ever (in sort) made claim to, and almost never failed of. In this suit I make no friends but to your Majesty, rely upon no other motive but your grace, nor any other assurance but your word; whereof I had good experience, when I came to the solicitor's place; that it was like to the two great lights, which in their motions are never retrograde. So with my best prayers for your Majesty's happiness, I rest.

CIV. To the KING.

It may please your most excellent Majesty,

I Do understand by some of my good friends, to my great comfort, that your Majesty hath in mind your Majesty's royal promise, (which to me is *anchora spei*;) touching the attorney's place. I hope Mr. Attorney shall do well. I thank God I wish no man's death, nor much mine own life, more than to do your Majesty service. For I account my life the accident, and my duty the substance. But this I will be bold to say; if it please God that ever I serve your Majesty in the attorney's place, I have known an attorney *Coke*, and an attorney *Hobart*, both worthy men, and far above my self: but if I should not find a middle way between their two dispositions and carriages, I should not satisfy my self. But these things are far or near as it shall please God. Mean while, I most humbly pray your Majesty to accept my sacrifice of thanksgiving for your gracious favour. God preserve your Majesty. I ever remain.

CV. To the most high and excellent Prince, HENRY Prince of *Wales*, Duke of *Cornwall*, and Earl of *Chester*. *

It may please your Highness,

HAVING divided my life into the contemplative, and active part, I am desirous to give his Majesty, and your Highness, of the fruits of both, simple though they be.

To write just treatises, requireth leisure in the writer, and leisure in the reader, and therefore are not so fit, neither in regard of your Highness's princely affairs, nor in regard of my continual service; which is the cause, that hath made me chuse to write certain brief notes, set down rather significantly, than curiously, which I have called *Essays*. The word is late, but the thing is ancient; for *Seneca's* Epistles to *Lucilius*, if you mark them well, are but essays, that is, dispersed Meditations, though conveyed in the form of Epistles. These labours of mine, I know, cannot be worthy of your Highness, for what can be worthy of you? But my hope is, they may be as grains of salt, that will rather give you an appetite, than offend you with satiety. And although they handle those things wherein both men's lives, and their persons are most conversant; yet what I have attained I know not; but I have endeavoured to make them not vulgar, but of a nature, whereof a man shall find much in experience, and little in books; so as they are neither repetitions nor fancies. But however, I shall most humbly desire your Highness to accept them in gracious part, and to conceive that if I cannot rest, but must shew my dutiful and devoted affection to your Highness in these things which proceed from my self, I shall be much more ready to do it in performance of any of your princely commandments. And so wishing your Highness all princely felicity, I rest,

Your Highness's most humble servant,

FR. BACON.

Sir Francis Bacon design'd to have prefix'd this epistle to his *Essays*, printed in the year 1612, but was prevented by the Prince's death; yet it was so well liked by Mr. *Matthew*, that he inserted part of it in his dedication to the Duke of *Tuscany*, before his translation of those *Essays*, printed in 1618.

CVI. To the Earl of SALISBURY Lord Treasurer.

It may please your good Lordship,

I WOULD intreat the new year to answer for the old, in my humble thanks to your lordship; both for many your favours, and chiefly upon the occasion of Mr. Attorney's infirmity, I found your lordship even as I could wish. This doth increase a desire in me, to express my thankful mind to your lordship; hoping that though I find age and decays grow upon me, yet I may have a flash or two of spirit left to do you service: and I do protest before God without complement, or any light vanity of mind; that if I knew in what course of life to do you best service, I would take it, and make my thoughts, which now fly to many pieces, to be reduced to that center. But all this is no more but that I am, which is not much, but yet the entire of him that is, &c.

CVII. To

CVII. To my LORD MAYOR.

My very good Lord,

I DID little expect, when I left your lordship last, that there would have been a proceeding against Mr. *Barnard* to his overthrow: wherein I must confess my self to be in a sort accessory; because he relying upon me for counsel, I advised that course which he followed. Wherein now I begin to question my self, whether in preserving my respects unto your lordship, and the rest, I have not failed in the duty of my profession towards my client. For certainly, if the words had been heinous, and spoken in a malicious fashion, and in some publick place, and well proved; and not a prattle in a tavern, caught hold of by one who (as I hear) is a detected sycophant (*Standish* I mean;) yet I know not what could have been done more, than to impose upon him a grievous fine, and to require the levying the same; and to take away his means of life by his disfranchisement, and to commit him to a defamed prison during *Christmas*; in honour whereof, the prisoners in other courts do commonly of grace obtain some enlargement. This rigor of proceeding (to tell your lordship and the rest, as my good friends, my opinion plainly) tendeth not to strengthen authority, which is best supposed by love and fear intermixed; but rather to make people discontented and servile; especially when such punishment is inflicted for words not by rule of law, but by a jurisdiction of discretion, which would ever more be moderately used. And I pray God, whereas Mr. Recorder, when I was with you, did well and wisely put you in mind of the admonitions you often received from my lords, that you should bridle unruly tongues; that those kind of speeches and rumours, whereunto those admonitions do refer, which are concerning the state, and honour thereof, do not pass too licentiously in the city unpunished; while these words which concern your particular, are so straitly enquired into and punished with such extremity. But these things your own wisdom (first or last) will best represent unto you. My writing unto you at this time is, to the end, that howsoever I do take it somewhat unkindly, that my mediation prevailed no more; yet that I might preserve that farther respect that I am willing to use unto such a state, in delivering my opinion unto you freely, before I would be of counsel, or move any thing that should cross your proceedings; which, notwithstanding, (in case my client can receive no relief at your hands,) I must and will do. Continuing nevertheless, in other things, my wonted good affection to your selves and your occasions.

CVIII. To Sir *Vincent Skinner*.

Sir + Vincent Skinner,

I SEE that by your needless delays, this matter is grown to a new question; wherein for the matter itself, if it had been staid at the beginning by my Lord Treasurer and Mr. Chancellor, I shou'd not so much have stood upon it. For the great and daily travels which I take in his Majesty's service, either are rewarded in themselves, in that they are but my duty, or else may deserve a much greater matter. Neither can I think amiss of any man, that in furtherance of the King's benefit moved the doubt, that knew not what warrant I had. But my wrong is, that you, having had my Lord

Treasurer's

† Officer of
the receipts
of the exche-
quer. *Rymer*
XVI. p. 497.

Treasurer's and Mr. Chancellor's warrant for payment above a month since; you, I say, (making your payments belike, upon such differences, as are better known to yourself than agreeable to the respect of his Majesty's service;) have delay'd all this time otherwise than I might have expected from our ancient acquaintance, or from that regard which one in your place may owe to one in mine. By occasion whereof there ensueth to me a greater inconvenience; that now my name in fort must be in question among you, as if I were a man likely to demand that which were unreasonable, or be denied that which is reasonable: and this must be, because you can pleasure men at pleasure. But this I leave with this: That it is the first matter wherein I had occasion to discern of your friendship, which I see to fall to this; that whereas Mr. Chancellor, the last time in my man's hearing, very honourably said, that he would not discontent any man in my place; it seems you have no such caution. But my writing to you now, is to know of you where now the stay is, without being any more beholden to you, to whom indeed no man ought to be beholden in those cases in a right course. And so I bid you farewell.

FRA. BACON.

CIX. To Sir * *Henry Saville*.

SIR,

COMING back from your invitation at *Eton*, where I had refreshed myself with company which I loved, I fell into a consideration of that part of policy whereof philosophy speaketh too much, and laws too little; and that is, of education of youth. Whereupon fixing my mind a while, I found streightways, and noted even in the discourses of philosophers, which are so large in this argument, a strange silence concerning one principal part of that subject. For as touching the framing and seasoning of youth to moral virtues, (as tolerance of labours, continency from pleasures, obedience, honour, and the like) they handle it; but touching the improvement, and helping of the intellectual powers, as of conceit, memory and judgment, they say nothing; whether it were, that they thought it to be a matter wherein nature only prevailed; or that they intended it, as referred, to the several and proper arts, which teach the use of reason and speech. But for the former of these two reasons, howsoever it pleaseth them to distinguish of habits and powers, the experience is manifest enough, that the motions and faculties of the wit and memory may be not only governed and guided, but also confirmed and enlarged by custom and exercise duly applied; as if a man exercise shooting, he shall not only shoot nearer the mark, but also draw a stronger bow. And as for the later, of comprehending these precepts within the arts of logick and rhetoric, if it be rightly considered, their office is distinct altogether from this point; for it is no part of the doctrine of the use or handling of an instrument, to teach how to whet or grind the instrument to give it a sharp edge, or how to quench it, or otherwise whereby to give it a stronger temper. Wherefore finding this

* Sir *Henry Saville*, so justly celebrated for his noble edition of *St. Chrysostom* and other learned works, was many years warden of *Merton-College* in *Oxford*, (in which university he founded a geometry and astronomy lecture 25 May 1620. See the instrument of foundation, *Rymer* XVII. p. 217.) and likewise provost of *Eton*. To this gentleman, as of all the most proper, Sir *Francis Bacon* sends this discourse touching *Helps for the intellectual powers in youth*; but being an imperfect essay to incite others, he places this useful subject among the deficiencies reckon'd up in his *Advancement of Learning*. *Stephens*.

part of knowledge not broken, I have, but *tanquam aliud agens*, enter'd into it, and salute you with it; dedicating it, after the ancient manner, first as to a dear friend, and then as to an apt person, forasmuch as you have both place to practise it, and judgment and leisure to look deeper into it than I have done. Herein you must call to mind, Ἀπὸ τοῦ μὲν ὁδοῦ. Tho' the argument be not of great height and dignity, nevertheless it is of great and universal use: And yet I do not see why, to consider it rightly, that shou'd not be a learning of height, which teacheth to raise the highest and worthiest part of the mind. But howsoever that be, if the world take any light and use by this writing, I will the gratulation be to the good friendship and acquaintance between us two: And so recommend you to God's divine protection.

A discourse touching helps for the intellectual powers.

I DID ever hold it for an insolent and unlucky saying, *faber quisque fortunæ suæ*; except it be uttered only as an hortative or spur to correct sloth. For otherwise, if it be believed as it soundeth, and that a man entereth into an high imagination that he can compass and fathom all accidents; and ascribeth all successes to his drifts and reaches; and the contrary to his errors and sleepings: it is commonly seen that the evening fortune of that man is not so prosperous as of him that without slackening of his industry attributeth much to felicity and providence above him. But if the sentence were turned to this *faber quisque ingenii sui*, it were somewhat more true, and much more profitable; because it would teach men to bend themselves to reform those imperfections in themselves which now they seek but to cover, and to attain those virtues and good parts which now they seek but to have only in show and demonstration: Yet notwithstanding every man attempteth to be of the first trade of carpenters, and few bind themselves to the second; whereas nevertheless the rising in fortune seldom amendeth the mind; but on the other side, the removing of the stands and impediments of the mind, doth often clear the passage and current to a man's fortune. But certain it is, whether it be believed or no, that as the most excellent of metals gold is of all other the most pliant and most enduring to be wrought; so of all living and breathing substances, the perfectest (man) is the most susceptible of help, improvement, impression and alteration; and not only in his body, but in his mind and spirit; and there again not only in his appetite and affection, but in his powers of wit and reason.

FOR as to the body of man, we find many and strange experiences, how nature is over-wrought by custom, even in actions that seem of most difficulty and least possible. As first in voluntary motion, which tho' it be termed voluntary, yet the highest degrees of it are not voluntary; for it is in my power and will to run; but to run faster than according to my lightness or disposition of body, is not in my power nor will. We see the industry and practice of tumblers and *funambulo's*, what effects of great wonder it bringeth the body of man unto. So for suffering of pain and dolour, which is thought so contrary to the nature of man, there is much example of penances in strict orders of superstition what they do endure, such as may well verify the report of the *Spartan* boys, which were wont to be scourged upon the altar so bitterly as sometimes they died of it, and yet were never heard to complain. And to pass to those faculties which are reckon'd more involuntary,

as long fasting and abstinence, and the contrary extreme (voracity) the leaving and forbearing the use of drink for altogether, the enduring vehement cold and the like; there have not wanted, neither do want divers examples of strange victories over the body in every of these. Nay, in respiration the proof hath been of some who by continual use of diving and working under the water have brought themselves to be able to hold their breath an incredible time; and others that have been able without suffocation, to endure the stifling breath of an oven or furnace so heated as tho' it did not scald nor burn, yet it was many degrees too hot for any man not made to it to breathe or take in. And some impostors and counterfeits likewise have been able to wreath and cast their bodies into strange forms and motions; yea, and others to bring themselves into trances and astonishments. All which examples do demonstrate how variously and to how high points and degrees the body of man may be as it were moulded and wrought: And if any man conceive then it is some secret propriety of nature that hath been in those persons which have attained to those points, and that it is not open for every man to do the like tho' he had been put to it; for which cause such things come but very rarely to pass: It is true no doubt but some persons are apter than others; but so as the more aptness causeth perfection, but the less aptness doth not disable: So that for example, the more apt child, that is taken to be made *à funambulo*, will prove more excellent in his feats; but the less apt will be *gregarius funambulo* also. And there is small question, but that these abilities would have been more common, and others of like sort not attempted would likewise have been brought upon the stage, but for two reasons: The one because of mens diffidence in prejudging them as impossibilities; for it holdeth in those things which the poet saith, *possunt quia posse videntur*; for no man shall know how much may be done, except he believe much may be done. The other reason is, because they be but practices base and inglorious and of no great use, and therefore sequester'd from reward of value, and on the other side painful; so as the recompence balanceth not with the travail and suffering. And as to the will of man, it is that which is most manageable and obedient; as that which admitteth most medicines to cure and alter it. The most sovereign of all is religion, which is able to change and transform it in the deepest and most inward inclinations and motions; and next to that is opinion and apprehension, whether it be infused by tradition and institution, or wrought in by disputation and persuasion; and the third is example, which transformeth the will of man into the similitude of that which is most obversant and familiar towards it; and the fourth is, when one affection is healed and corrected by another, as when cowardice is remedied by shame and dishonour, or sluggishness and backwardness by indignation and emulation, and so of the like; and lastly, when all these means or any of them have new framed or formed human will, then doth custom and habit corroborate and confirm all the rest: Therefore it is no marvel, tho' this faculty of the mind, (of will and election) which inclineth affection and appetite, being but the inceptions and rudiments of will, may be so well governed and managed; because it admitteth access to so divers remedies to be applied to it and to work upon it: The effects whereof are so many and so known, as require no enumeration; but generally they do issue as medicines do into two kinds of cures, whereof the one is a just or true cure, and the other is called palliation: For either the labour and intention is to reform the affections really and truly, restraining them if they be too violent, and raising them if they be too soft and weak; or else it is to

LETTERS OF SIR FR. BACON TEMP. JAC.

cover them ; or, if occasion be, to pretend them and represent them : Of the former sort whereof the examples are plentiful in the schools of philosophers, and in all other institutions of moral virtue ; and of the other sort the examples are more plentiful in the courts of Princes, and in all politick traffick : where it is ordinary to find, not only profound diffimulations and suffocating the affections, that no note or mark appear of them outwardly ; but also lively simulations and affectations carrying the tokens of passions which are not, as *risus jussus* and *lacrymae coactae*, and the like.

Of helps of the intellectual powers.

THE intellectual powers have fewer means to work upon them than the will or the body of man ; but the one that prevaieth, that is exercise, worketh more forcibly in them than the rest.

THE ancient habit of the philosophers, *Si quis quaerat in utramque partem de omni scibili*. These that follow are but indigested notes.

THE exercise of scholars making verses *extempore*, *Stans pede in uno*.

THE exercise of lawyers in memory narrative.

THE exercise of *sophists*, and *Jo. ad oppositum*, with manifest effect.

ARTIFICIAL memory greatly holpen by exercise.

THE exercise of buffoons to draw all things to conceits ridiculous.

THE means that help the understanding and faculties thereof are, (NOT example, as in the will, by conversation ; and here the conceit of imitation already digested, with the confutation, *obiter, si videbitur*, of Tully's opinion, advising a man to take some one to imitate. Similitude of faces analysed.)

ARTS, Logic, Rhetoric : The ancients, *Aristotle, Plato, Theaetetus, Gorgias litigiosus vel sophista, Protagoras, Aristotle, schola sua*. Topics, Elenchs, Rhetorics, *Organon, Cicero, Hermogenes*. The neoterics, *Ramus, Agricola*. Nil sacri ; Lullius his *Typocosmia*, studying Cooper's dictionary, Matthaeus collection of proper words for metaphors, *Agrippa de vanitatibus, &c.*

Que. If not here of imitation.

COLLECTIONS preparative. *Aristotle's* similitude of a shoemaker's shop, full of shoes of all sorts : *Demosthenes, Exordia concionum*. Tully's precept of *theses* of all sorts preparative.

THE relying upon exercise, with the difference of using and tempering the instrument ; and the similitude of prescribing against the laws and nature of estate.

Five Points.

1. THAT exercises are to be framed to the life ; that is to say, to work ability in that kind whereof a man, in the course of action, shall have most use.
2. THE indirect and oblique exercises, which do, *per partes* and *per consequentiam*, inable these faculties ; which perhaps direct exercise at first would but distort ; and these have chiefly place where the faculty is weak, not *per se*, but *per accidens* : As if want of memory grow through lightness of wit and want of staid attention ; then the mathematics or the law helpeth ; because they are things, wherein if the mind once roam, it cannot recover.
3. OF the advantages of exercise ; as to dance with heavy shoes, to march with heavy armour and carriage ; and the contrary advantage (in natures very dull and unapt) of working alacrity, by framing an exercise with some delight or affection ; *Horat. Sat. I. 25*.

— Ut

—*Ut pueris olim dant crustula blandi
Doctores, elementa velint ut discere prima.*

4. OF the cautions of exercise ; as to beware lest by evil doing (as all beginners do weakly) a man grow not, and be inveterate, in an ill habit, and so take not the advantage of custom in perfection, but in confirming ill. Slubbering on the lute.

5. THE marshalling and sequel of sciences and practices: Logic and rhetoric should be used to be read after poesy, history and philosophy: First, exercise, to do things well and clean: after, promptly and readily.

THE exercises in the universities and schools are of memory and invention; either to speak by heart that which is set down *verbatim*, or to speak *extempore*: whereas there is little use in action of either or both; but most things which we utter are neither verbally premeditate, nor merely extemporal. Therefore exercise would be framed to take a little breathing, and to consider of heads; and then to fit and form the speech *extempore*. This would be done in two manners; both with writing and tables, and without: for in most actions it is permitted and passable to use the note, whereunto, if a man be not accustomed, it will put him out.

THERE is no use of a narrative memory in *academiis*, viz. with circumstances of times, persons and places, and with names; and it is one art to discourse, and another to relate and describe; and herein use and action is most conversant.

ALSO to sum up and contract, is a thing in action of very general use.

CX. Sir FRANCIS BACON to Mr. MATTHEW, about his writings, and the death of a friend.

S I R,

THE reason of so much time taken before my answer to yours of the fourth of *August*, was chiefly my accompanying my letter with the paper which here I send you; and again, now lately, (not to hold from you till the end of a letter, that which by grief may, for a time, efface all the former contents) the death of your good friend and mine *A. B.* to whom, because I used to send my letters for conveyance to you, it made me so much the more unready in the dispatch of them. In the mean time I think my self (howsoever it have pleased God otherwise to bless me) a most unfortunate man, to be deprived of two (a great number in true friendship) of those friends, whom I accounted as no stage-friends, but private friends; (and such, as with whom I might both freely and safely communicate;) him by death, and you by absence. As for the memorial of the late deceased Queen, I will not question whether you be to pass for a disinterested man or no; I freely confess my self am not, and so I leave it. As for my other writings, you make me very glad of your approbation; the rather, because you add a concurrence in opinion with others; for else I might have conceived, that affection would, perhaps, have prevailed with you, beyond that, which (if your judgment had been neat and free) you could have esteemed. And as for your caution, touching the dignity of ecclesiastical persons, I shall not have cause to meet with them any otherwise, than in that some school-men have, with excess, advanced the authority of *Aristotle*. Other occasion I shall have none. But now I have sent you that only part of the whole writing, which may perhaps have a little harshness

harshness and provocation in it : although I may almost secure my self, that if the preface passed so well, this will not irritate more ; being indeed, to the preface, but as *palma ad pugnum*. Your own love expressed to me, I heartily embrace ; and hope that there will never be occasion of other, than entireness between us ; which nothing but *maiores charitates*, shall ever be able to break off.

CXI. To the KING.

It may please your excellent Majesty,

IT grieveth me exceedingly that your Majesty should be so much troubled with this matter of *Peacham*, whose raging devil seemeth to be turn'd into a dumb devil. But although we are driven to make our way through questions, (which I wish were otherwise,) yet I hope well the end will be good. But then every man must put to his helping hand ; for else I must say to your Majesty, in this and the like cases, as *St. Paul* said to the centurion, when some of the mariners had an eye to the cock-boat, except these stay in the ship ye cannot be safe. I find in my lords great and worthy care of the business : And for my part, I hold my opinion and am strengthened in it by some records that I have found. God preserve your Majesty.

Your Majesty's most humble and devoted subject and servant,

Jan. 21. 1614.

FR. BACON.

CXII. To the KING, touching *Peacham's* cause.

It may please your excellent Majesty,

THIS day in the afternoon was read your Majesty's letters of direction touching * *Peacham* ; which because it concerneth properly the duty of my place, I thought it fit for me to give your Majesty both a speedy and a private account thereof ; that your Majesty knowing things clearly how they pass, may have the true fruit of your own wisdom and clear-seeing judgment in governing the business.

FIRST, for the regularity which your Majesty (as a master in business of estate,) doth prudently prescribe in examining and taking examinations, I subscribe to it ; only I will say for my self, that I was not at this time the principal examiner.

FOR the course your Majesty directeth and commandeth for the feeling of the judges of the King's bench, their several opinions, by distributing our selves and enjoining secrecy ; we did first find an encounter in the opinion of my Lord *Coke*, who seemed to affirm, that such particular and (as he call'd it) auricular taking of opinions was not according to the custom of this realm ; and seemed to divine, that his brethren would never do it. But when I replied, that it was our duty to pursue your Majesty's directions ; and it were not amiss for his lordship to leave his brethren to their own answers : it was so concluded ; and his lordship did desire that I might confer with himself ;

* *Peacham* was accused of having inserted several treasonable passages in a sermon ; but in a sermon never preached, nor intended to be made publick : it had been taken out of his study. The King would have the judges give their opinion of this affair privately and apart ; which my Lord *Coke* refused to do, as a thing of dangerous tendency. *Peacham* was found guilty of high treason ; as was *Algernon Sidney* for the like crime, in *Charles* the second's time.

and Mr. Serjeant *Mountague* was named to speak with Justice *Crook*; Mr. Serjeant *Crew* with Justice *Houghton*; and Mr. Solicitor with Justice * *Dodderidge*. This done, I took my fellows aside, and advised that they should presently speak with the three judges, before I could speak with my Lord *Coke*, for doubt of infusion; and that they should not in any case make any doubt to the judges, as if they mistrusted they would not deliver any opinion apart, but speak resolutely to them, and only make their coming to be, to know what time they would appoint to be attended with the papers: This sorted not amiss; for Mr. Solicitor came to me this evening, and related to me that he had found Judge *Dodderidge* very ready to give opinion in secret; and fell upon the same reason, which upon your Majesty's first letter I had used to my Lord *Coke* at the council-table; which was, that every judge was bound expressly by his oath, to give your Majesty counsel when he was called; and whether he should do it jointly or severally, that rested in your Majesty's good pleasure, as you would require it. And though the ordinary course was to assemble them, yet there might intervene cases, wherein the other course was more convenient. The like answer made † Justice *Crook*: Justice *Houghton*, ‡ who is a soft man, seemed desirous first to confer; alledging that the other three judges had all served the crown before they were judges, but that he had not been much acquainted with business of this nature.

WE purpose therefore forthwith, they shall be made acquainted with the papers; and if that could be done as suddenly as this was, I should make small doubt of their opinions: and howsoever, I hope, force of law and precedent will bind them to the truth: neither am I wholly out of hope,

* Sir John *Dodderidge* was born in *Devonshire*, and successively admitted in *Exeter college Oxford*, and the *Middle Temple, London*: where having acquired the reputation of being a very great common and civil lawyer, as well as a general scholar, he was made serjeant at law 1 *Jacobi*, then the King's solicitor, and after that the King's serjeant, till he was advanced to be one of the judges of the King's bench; where he sat many years. He died 13 Sept. 1628, in the 73d year of his age, and was succeeded by Sir *George Crook*, who tells us, Sir John *Dodderidge* was a man of great knowledge, as well in the common law, as in other sciences, and divinity. *Stephens*. See p. 98. of this Vol.

† Sir John *Crook*, eldest Son of Sir John *Crook of Chilton in Buckinghamshire*, inherited his father's virtues and fortunes; and was very famous for his wisdom, eloquence, and knowledge in our laws: who being Speaker of the house of commons in the last parliament of Queen *Elizabeth*, had from her this commendation at the end thereof; that he had proceeded therein with such wisdom and discretion, that none before him had deserved better. After he had been recorder of *London*, and serjeant at law, he was 5 *Jacobi* made one of the justices of the King's bench; where he continued till his death, 23 Jan. 1619. He was brother to Sir *George Crook* so well known to the professors of the common laws by his three large volumes of reports: which Sir *George* was one of the judges of the court of common pleas, in the latter end of the reign of King *James*, and in a few years after removed into the King's bench; where he sat till the year 1641, when, by reason of his great age and infirmities, the King at his own request gave him a gracious discharge, as appears in the preface to one of his books; where a due character is given of his virtues by his son-in-law Sir *Harbottle Grimston*, late master of the rolls. But certainly nothing can raise in us a more lively idea of his merit, than part of a letter written to the Duke of *Buckingham*, by the bishop of *Lincoln* Lord Keeper of the great seal, which I copied from his own hand.

May it please your Grace,

Westminster coll. Feb. 11. 1624.

I Will not trouble your grace with any long congratulation, for the honour your grace hath gained, in the preferring of this most worthy man Sir *George Crook* to a judge his place. I know you must meet with the applause of this act from every man that cometh from hence. In good faith, I never observed in all my small experience any accident in this kind, so generally and universally accompanied with the acclamation of all kind of people.

I am importuned by the rest of the judges of the common pleas, to return their most humble and hearty thanks to the King's Majesty for his choice, and to assure his Majesty, that though his Majesty hath been extraordinary fortunate (above all his predecessors) in the continual election of most worthy judges; yet hath his Majesty never placed upon any bench, a man of more integrity and sufficiency than this gentleman: For which act they do with tears in their eyes praise and bless him. *Stephens*.

‡ This expression is to be understood in a favourable sense, since Sir *George Crook* gives a more than ordinary character of him. *Mem.* That in *Hilary term*, 21 *Jac.* Sir *Robert Houghton* died at *Serjeants-Inn in Chancery-lane*, being a most reverend, prudent, learned, and temperate judge, and inferior to none of his time. *Stephens*.

that

that my Lord *Coke* himself, when I have in some dark manner put him in doubt that he shall be left alone, will not continue singular.

FOR *Owen*, I know not the reason why there should have been no mention made thereof in the last advertisement: for I must say for my self, that I have lost no moment of time in it, as my lord of *Canterbury* can bear me witness. For having received from my lord an additional of great importance; which was, that *Owen* of his own accord after examination should compare the case of your Majesty, (if you were excommunicate,) to the case of a prisoner condemned at the bar; which additional was subscribed by one witness; but yet I perceived it was spoken aloud, and in the hearing of others: I presently sent down a copy thereof, which is now come up, attested with the hands of three more, lest there should have been any scruple of *singularis testis*; so as for this case I may say, *omnia parata*; and we expect but a direction from your Majesty for the acquainting the judges severally; or the four judges of the King's bench, as your Majesty shall think good.

I FORGET not, nor forswear not, your Majesty's commandment touching recusants; of which, when it is ripe, I will give your Majesty a true account, and what is possible to be done, and where the impediment is. Mr. Secretary bringeth *bonam voluntatem*, but he is not versed much in these things; and sometimes urgeth the conclusion without the premisses, and by haste hindereth. It is my lord treasurer, and the exchequer must help it, if it be holpen. I have heard more ways than one, of an offer of 20000 *l. per annum*, for farming the penalties of recusants, not including any offence capital, or of *praemunire*; wherein I will presume to say, that my poor endeavours, since I was by your great and sole grace your attorney, have been no small spurs to make them feel your laws, and seek this redemption; wherein I must also say, my Lord *Coke* hath done his part. And I do assure your Majesty, I know it somewhat inwardly and groundedly, that by the courses we have taken they conform daily and in great numbers; and I would to God it were as well a conversion as a conformity: but if it should die by dispensation or dissimulation, then I fear that whereas your Majesty hath now so many ill subjects poor and detected, you shall then have them rich and dissembled. And therefore I hold this offer very considerable, of so great an increase of revenue: if it can pass the fiery trial of religion and honour, (which I wish) all projects may pass.

THUS, in as much as I have made to your Majesty, somewhat a naked and particular account of business, I hope your Majesty will use it accordingly. God preserve your Majesty.

Your Majesty's most humble and devoted subject and servant,

Jan. 27. 1614.

FR. BACON.

CXIII. To the KING.

It may please your excellent Majesty,

BECAUSE I know your Majesty would be glad to hear how it is with my lord chancellor; and that it pleased him, out of his ancient and great love to me, (which many times in sickness appeareth most) to admit me to a great deal of speech with him this afternoon, which during these three days he hath scarcely done to any, I thought it might be pleasing to your Majesty to certify you how I found him. I found him in bed, but his spirits fresh and good, speaking stoutly, and without being spent or weary; and

Mr. Oliver
St. John.

and both willing and beginning of himself to speak, but wholly of your Majesty's business: wherein I cannot forget to relate this particular; that he wished, that his sentencing of *O. S.* at the day appointed might be his last work, to conclude his services and express his affection towards your Majesty. I told him, I knew your Majesty would be very desirous of his presence that day, so it might be without prejudice; but otherwise, your Majesty esteemed a servant more than a service, especially such a servant. Not to trouble your Majesty, though good spirits in sickness be uncertain calendars, yet I have very good comfort of him, and I hope by that day, &c.

Jan. 29. 1614.

CXIV. To the KING, touching *Peacham*, &c.

It may please your excellent Majesty,

I RECEIVED this morning by Mr. *Murray*, a message from your Majesty, of some warrant and confidence that I should advertise your Majesty of your business, wherein I had part: Wherein, I am first humbly to thank your Majesty for your good acceptance of my endeavours and service, which I am not able to furnish with any other quality, save faith and diligence.

FOR *Peacham's* case, I have, since my last letter, been with my Lord *Coke* twice; once before Mr. Secretary's going down to your Majesty, and once since, which was yesterday: at the former of which times I delivered him *Peacham's* papers; and at this later the precedents, which I had with care gathered and selected: for these degrees and order the business required.

AT the former I told him that he knew my errand, which stood upon two points; the one to inform him of the particular case of *Peacham's* treasons, (for I never give it other word to him;) the other, to receive his opinion to my self, and in secret, according to my commission from your Majesty.

AT the former time he fell upon the same allegation which he had begun at the council-table; that judges were not to give opinion by fractions, but entirely according to the vote, whereupon they should settle upon conference: and that this auricular taking of opinions, single and apart, was new and dangerous; and other words more vehement than I repeat.

I replied in civil and plain terms, that I wish'd his lordship, in my love to him to think better of it: for that this, that his lordship was pleased to put into great words, seemed to me and my fellows, when we spake of it amongst our selves, a reasonable and familiar matter, for a King to consult with his judges, either assembled or selected, or one by one. And then to give him a little out-let to save his first opinion, (wherewith he is most commonly in love,) I added, that judges sometimes might make a suit to be spared for their opinion, till they had spoken with their brethren; but if the King, upon his own princely judgment, for reason of estate, should think it fit to have it otherwise, and should so demand it, there was no declining: nay, that it touched upon a violation of their oath, which was to counsel the King without distinction, whether it were jointly or severally. Thereupon, I put him the case of the privy council, as if your Majesty should be pleased to command any of them to deliver their opinion apart and in private; whether it were a good answer to deny it, otherwise than if it were propounded at the table. To this he said, that the cases were not alike, because this concern'd life. To which I replied, that questions of estate might concern thousands of lives, and many things more precious than the life of a particular; as war, and peace, and the like.

To

To conclude, his lordship, *tanquam exitum quaerens*, desired me for the time to leave with him the papers, without pressing him to consent to deliver a private opinion till he had perused them. I said I would; and the more willingly, because I thought his lordship, upon due consideration of the papers, would find the case to be so clear a case of treason, as he would make no difficulty to deliver his opinion in private; and so I was persuaded of the rest of the judges of the King's-bench, who likewise (as I partly understood) made no scruple to deliver their opinion in private: Whereunto he said, (which I noted well) that his brethren were wise men, and that they might make a shew as if they would give an opinion as was required; but the end would be, that it would come to this: They would say, they doubted of it, and so pray advice with the rest. But to this I answered, that I was sorry to hear him say so much, lest, if it came so to pass, some that loved him not might make a construction, that that which he had foretold, he had wrought. Thus your Majesty sees, that as *Solomon* saith, *Gressus nolentis tanquam in sepi spinarum*, it catcheth upon every thing.

THE later meeting is yet of more importance; for then coming armed with divers precedents, I thought to set in with the best strength I could, and said, that before I descended to the record, I would break the case to him thus: That it was true we were to proceed upon the ancient statute of King *Edward* the third, because other temporary statutes were gone; and therefore it must be said in the indictment, *Imaginatus est & compassavit mortem & finalem destructionem domini Regis*: then must the particular treasons follow in this manner, *viz. Et quod ad perimplendum nefandum propositum suum, composuit & conscripsit quendam detestabilem & venenosum libellum, sive scriptum, in quo, inter alia proditoria, continetur, &c.* And then the principal passages of treason, taken forth of the papers, are to be entered *in haec verba*; and with a conclusion in the end, *Ad intentionem quod ligeus populus & veri subditi domini Regis cordialem suum amorem a domino Rege retraherent, & ipsum dominum Regem relinquerent, & guerram & insurrectionem contra eum levarent & facerent, &c.* I have in this form followed the ancient style of the indictments for brevity sake, tho' when we come to the business itself, we shall enlarge it according to the use of the later times. This I represented to him, (being a thing he is well acquainted with,) that he might perceive the platform of that was intended, without any mistaking or obscurity. But then I fell to the matter itself, to lock him in as much as I could, *viz.*

THAT there be four means or manners, whereby the death of the King is compassed and imagined.

THE first, by some particular fact or plot.

THE second, by disabling his title; as by affirming, that he is not lawful King; or that another ought to be King; or that he is an usurper; or a bastard; or the like.

THE third, by subjecting his title to the pope; and thereby making him of an absolute King a conditional King.

THE fourth, by disabling his regiment, and making him appear to be incapable or indigne to reign.

THESE things I relate to your Majesty in sum, as is fit; which, when I opened to my lord, I did insist a little more upon, with more efficacy and edge, and authority of law and record than I can now express.

THEN I placed *Peacham's* treason within the last division, agreeable to divers precedents, whereof I had the records ready; and concluded, that your Majesty's safety and life and authority was thus by law insconced and quartered;

and that it was in vain to fortify on three of the sides, and so leave you open on the fourth.

It is true, he heard me in a grave fashion more than accustomed, and took a pen and took notes of my divisions; and when he read the precedents and records, would say, This you mean falleth within your first, or your second, division. In the end, I expressly demanded his opinion, as that whereto both he and I was enjoined. But he desired me to leave the precedents with him, that he might advise upon them. I told him, the rest of my fellows should dispatch their part, and I should be behind with mine; which I persuaded myself your Majesty would impute rather to his backwardness than my negligence. He said, as soon as I should understand that the rest were ready, he would not be long after with his opinion.

FOR Mr. *St. John*, your Majesty knoweth, the day draweth on; and my lord chancellor's recovery the season and his age promising not to be too hasty. I spake with him on Sunday, at what time I found him in bed, but his spirits strong, and not spent or wearied, and spake wholly of your business, leading me from one matter to another; and wished and seemed to hope, that he might attend the day for O. S. and it were (as he said) to be his last work to conclude his services, and express his affection towards your Majesty. I presumed to say to him, that I knew your Majesty would be exceeding desirous of his being present that day, so as that it might be without prejudice to his continuance; but that otherwise your Majesty esteemed a servant more than a service, especially such a servant. Surely in mine opinion your Majesty were better put off the day than want his presence, considering the cause of the putting off is so notorious; and then the capital and the criminal may come together the next term.

I HAVE not been unprofitable in helping to discover and examine within these few days a late patent, by surreption obtained from your Majesty, of the greatest forest in *England* worth 30,000 *l.* under colour of a defective title for a matter of 400 *l.* The person must be named, because the patent must be questioned. It is a great person, my lord of *Shrewsbury*; or rather, (as I think) a greater than he, which is my lady of * *Shrewsbury*. But I humbly

* That she was a woman of intrigue, and as *Camden* says in his annals of King *James*, *rebus turbandis nata*, will appear from her conduct relating to the King and her kinswoman the lady *Arabella*: For having been the great instrument of her marriage with Sir *William Seymour*, afterwards earl and marquis of *Hertford*, and of procuring her escape from the tower; she was convened before the privy council, and for refusing to give any answer in a matter which so nearly concerned the state, she was fined in the star-chamber: and the charge which was then given against her printed in the *Cabala*, p. 369, was I doubt not (says Mr. *Stephens*) made by Sir *Francis Bacon*. But as if this was not a sufficient warning, she afterwards reported that the lady *Arabella* left a child by her husband; for which and her repeated obstinacy she incurred a greater censure in the same court. That charge, whether Sir *Francis Bacon's* or not, is as follows.

YOUR lordships do observe the nature of this charge: My lady of *Shrewsbury*, a lady wife, and that ought to know what duty requireth, is charged to have refused, and to have persisted in refusal to answer, and to be examined in a high cause of state; being examined by the council-table, which is a representative body of the King. The nature of the cause, upon which she was examined is an essential point which doth aggravate and increase this contempt and presumption; and therefore of necessity with that we must begin.

How graciously and parent-like his Majesty used the lady *Arabella* before she gave him cause of indignation, the world knoweth.

My lady notwithstanding, extremely ill-advised, transacted the most weighty and binding part and action of her life, which is her marriage, without acquainting his Majesty; which had been a neglect even to a mean parent: but being to our Sovereign, and she standing so near to his Majesty as she doth, and then chusing such a condition as it pleased her to chuse, all parties laid together, how dangerous it was my lady might have read it in the fortune of that house wherewith she is matched; for it was not unlike the case of Mr. *Seymour's* grandmother.

The King nevertheless so remember'd he was a King, as he forgot not he was a kinsman, and placed her only *sub libera custodia*. Bug

humbly pray your Majesty to know this first from my Lord Treasurer, who methinks groweth even studious in your business. God preserve your Majesty.

Your Majesty's most humble and devoted subject and servant,

Jan. 31. 1614.

FR. BACON.

The rather, in regard of Mr. Murray's absence, I humbly pray your Majesty to have a little regard to this letter.

But now did my lady accumulate and heap up this offence with a far greater than the former, by seeking to withdraw herself out of the King's power into foreign parts.

That this flight or escape into foreign parts might have been seed of trouble to this state, is a matter whereof the conceit of a vulgar person is not incapable.

For although my lady should have put on a mind to continue her loyalty, as nature and duty did bind her; yet when she was in another sphere, she must have moved in the motion of that orb, and not of the planet itself: and God forbid the King's felicity should be so little, as he should not have envy and envious enough in foreign parts.

It is true, if any foreigner had wrought upon this occasion, I do not doubt but the intent would have been, as the prophet saith, *They have conceived mischief, and brought forth a vain thing.* But yet your lordships know that it is wisdom in Princes, and it is a watch they owe to themselves and to their people, to stop the beginnings of evils, and not to despise them. *Seneca* saith well, *Non jam amplius levia sunt pericula, si levia videantur*; dangers cease to be light, because by despising they grow and gather strength.

And accordingly hath been the practice both of the wisest and stoutest princes to hold, for matter pregnant of peril, to have any near them in blood to fly into foreign parts. Wherein I will not wander; but take the example of King Henry the seventh, a Prince not unfit to be parallel'd with his Majesty; I mean not the particular of *Perkin Warbeck*, for he was but an idol or a disguise; but the example I mean, is that of the earl of *Suffolk*, whom the King extorted from *Philip of Austria*. The story is memorable, That *Philip*, after the death of *Isabella*, coming to take possession of his kingdom of *Castile* (which was but matrimonial to his father-in-law *Ferdinando of Aragon*) was cast by weather upon the coast of *Weymouth*, where the *Italian* story saith, King Henry used him in all things else as a Prince, but in one thing as a prisoner; for he forced upon him a promise to restore the earl of *Suffolk* that was fled into *Flanders*; and yet this I note was in the 21st year of his reign, when the King had a goodly Prince at man's estate, besides his daughters, nay, and the whole line of *Clarence* nearer in title; for that earl of *Suffolk* was descended of a sister of *Edward* the fourth, so far off did that King take his aim. To this action of so deep consequence, it appeareth you, my lady of *Shrewsbury*, were privy, not upon foreign suspicions or strained inferences, but upon vehement presumptions, now clear and particular testimony, as hath been opened to you; so as the King had not only reason to examine you upon it, but to have proceeded with you upon it as for a great contempt; which if it be reserved for the present, your ladyship is to understand it aright, that it is not defect of proof, but abundance of grace that is the cause of this proceeding; and your ladyship shall do well to see into what danger you have brought yourself: All offences consist of the fact which is open, and the intent which is secret; this fact of conspiring in the flight of this lady may bear a hard and gentler construction; if upon overmuch affection to your kinswoman, gentler; if upon practice or other end, harder; you must take heed how you enter into such actions, whereof if the hidden part be drawn unto that which is open, it may be your overthrow; which I speak not by way of charge, but by way of caution.

For that which you are properly charged with, you must know that all subjects without distinction of degrees, owe to the King tribute and service, not only of their deed and hand, but of their knowledge and discovery.

If there be any thing that imports the King's service, they ought themselves undemanded to impart it; much more if they be called and examined; whether it be of their own fact or of another's, they ought to make direct answer: neither was there ever any subject brought into causes of estate to trial judicial, but first he passed examination; for examination is the entrance of justice in criminal causes; it is one of the eyes of the King's politick body; there are but two, information and examination; it may not be endured that one of the lights be put out by your example.

Your excuses are not worthy your own judgment; rash vows of lawful things are to be kept, but unlawful vows not; your own divines will tell you so. For your examples, they are some erroneous traditions. My lord of *Pembroke* spake somewhat that he was unlettered, and it was but when he was examined by one private counsellor, to whom he took exception: That of my lord *Lamley* is a fiction; the pre-eminences of nobility I would hold with to the last grain; but every day's experience is to the contrary: Nay, you may learn duty of my lady *Arabella* herself, a lady of the blood, of an higher rank than yourself, who declining (and yet that but by request neither to declare of your fact) yieldeth ingenuously to be examined of her own. I do not doubt but by this time you see both your own error, and the King's grace in proceeding with you in this manner. N. B. See the proclamation for apprehending the lady *Arabella*, and *William Seymour*, second son of lord *Beauchamp*, dated June 4. 1611, who had made their escape the day before, *Rymer* XVI. p. 710.

CXV. To the KING, touching my Lord Chancellor's amendment, &c.

It may please your excellent Majesty,

MY Lord Chancellor sent for me to speak with me this morning, about eight of the clock. I perceive he hath now that *signum sanitatis*, as to feel better his former weakness: for it is true, I did a little mistrust that it was but a boutade of desire and good spirit, when he promis'd himself strength for Friday, tho' I was won and carried with it. But now I find him well inclined to use (should I say) your liberty, or rather your interdict, signified by Mr. Secretary from your Majesty. His lordship shewed me also your own letter, whereof he had told me before, but had not shewed it me. What shall I say? I do much admire your goodness for writing such a letter at such a time.

He had sent also to my Lord Treasurer, to desire him to come to him about that time. His lordship came; and not to trouble your Majesty with circumstances, both their lordships concluded, myself present and concurring; that it could be no prejudice to your Majesty's service to put off the day for † Mr. *St. John* till the next term: the rather, because there are seven of your privy council, which are at least *numerus* and part of the court, which are by infirmity like to be absent; that is, my Lord Chancellor, my Lord Admiral, my Lord of *Shrewsbury*, my Lord of *Exeter*, my Lord *Zouch*, my Lord *Stanhope*, and Mr. Chancellor of the duchy; wherefore they agreed to hold a council to-morrow in the afternoon for that purpose.

It is true, that I was always of opinion that it was no time lost; and I do think so the rather, because I could be content, that the matter of *Peacham* were first settled and put to a point. For there be perchance, that would make the example upon Mr. *St. John* to stand for all. For *Peacham*, I expect some account from my fellows this day; if it should fall out otherwise, then I hope it may not be left so. Your Majesty, in your last letter, very wisely put in a disjunctive, that the judges should deliver an opinion privately, either to my Lord Chancellor or to ourselves distributed: His sickness made the later way to be taken; but the other may be reserved with some accommodating when we see the success of the former.

I AM appointed this day to attend my Lord Treasurer for a proposition of raising profit and revenue by infranchising copyholders. I am right glad to see the patrimonial part of your revenue well look'd into, as well as the fiscal: And I hope it will so be in other parts as well as this. God preserve your Majesty.

Your Majesty's most humble and devoted subject and servant,

FR. BACON.

Feb. 7. 1614.

† In 1614, a benevolence was set on foot. Mr. *Oliver St. John* gave his opinion publicly, that it was against law, reason, and religion; for which he was condemned in a fine of five thousand pounds, and to be imprisoned during the King's pleasure.

CXVI. To the KING, concerning OWEN's cause, &c.

It may please your excellent Majesty,

MY self, with the rest of your council learned, conferred with my Lord *Coke*, and the rest of the judges of the King's bench only, being met at

at my lord's chamber, concerning the business of *Owen*. For although it be true, that your Majesty in your letter did mention that the same course might be held in the taking of opinions apart in this, which was prescribed and used in *Peacham's* cause; yet both my lords of the council, and we amongst our selves, holding it, in a case so clear, not needful; but rather that it would import a diffidence in us, and deprive us of the means to debate it with the judges (if cause were) more strongly, (which is somewhat) we thought best rather to use this form.

THE judges desired us to leave the examinations and papers with them for some little time, to consider, (which is a thing they use;) but, I conceive, there will be no manner of question made of it. My Lord Chief Justice, to shew forwardness (as I interpret it) shewed us passages of *Suarez* and others, thereby to prove, that though your Majesty stood not excommunicate by particular sentence, yet by the general bulls of *coena Domini*, and others, you were upon the matter excommunicate; and therefore, that the treason was as *de praesenti*. But I that foresee that if that course should be held, when it cometh to a publick day, to disseminate to the vulgar an opinion, that your Majesty's case is all one, as if you were *de facto* particularly and expressly excommunicate; it would but increase the danger of your person with those that are desperate papists; and that it is needless; commended my lord's diligence, but withal put it by; and fell upon the other course, (which is the true way;) that is, that whosoever shall affirm, *in diem*, or *sub conditione*, that your Majesty may be destroyed, is a traitor *de praesenti*; for that he maketh you but tenant for life, at the will of another. And I put the Duke of *Buckingham's* case, who said, that if the King caused him to be arrested of treason, he would stab him; and the case of the impostress *Elizabeth Barton*, that said, that if King *Henry* the eighth took not his wife again, *Katharine* dowager, he should be no longer King; and the like.

It may be these particulars are not worth the relating: but because I find nothing in the world so important to your service, as to have you thoroughly informed, (the ability of your direction considered) it maketh me thus to do; most humbly praying your Majesty to admonish me, if I be over-troublesome.

FOR *Peacham*, the rest of my fellows are ready to make their report to your Majesty, at such time, and in such manner, as your Majesty shall require it. My self yesterday took my Lord *Coke* aside, after the rest were gone, and told him all the rest were ready, and I was now to enquire his lordship's opinion according to my commission. He said I should have it; and repeated that twice or thrice, as thinking he had gone too far in that kind of negative, (to deliver any opinion apart) before; and said, he would tell it me within a very short time, though he were not that instant ready. I have tossed this business *in omnes partes*, whereof I will give your Majesty knowledge when time serveth. God preserve your Majesty.

Your Majesty's most humble and devoted subject and servant,

Febr. 11, 1614.

FR. BACON,

CXVII. To the KING.

It may please your excellent Majesty,

I SEND your Majesty enclosed, my Lord *Coke's* answers; I will not call them rescripts, much less oracles. They are of his own hand, and offered to me as they are in writing; though I am glad of it for mine own discharge. I

thought it my duty, as soon as I received them, instantly to send them to your Majesty; and forbear, for the present, to speak farther of them. I, for my part, (though this *Muscovia* weather be a little too hard for my constitution) was ready to have waited upon your Majesty this day, all respects set aside; but my Lord Treasurer, in respect of the season and much other business, was willing to save me. I will only conclude touching these papers with a text, divided I cannot say; *oportet isthaec fieri*; but I may say, *finis autem nondum*. God preserve your Majesty.

Your Majesty's most humble and devoted subject and servant,

14 Feb. 1614.

FR. BACON.

CXVIII. To the KING, of revenue and profit.

It may please your Majesty,

I MAY remember what *Tacitus* saith, by occasion that *Tiberius* was often and long absent from *Rome*. *In urbe, & parva & magna negotia imperatorem simul premunt*: but saith he, *in recessu, dimissis rebus minoris momenti, summae rerum magnarum magis agitantur*. This maketh me think it shall be no incivility to trouble your Majesty with business, during your abode from *London*; knowing that your Majesty's meditations are the principal wheel of your estate; and being warranted from a former commandment which I received from you.

I do now only send your Majesty these papers enclosed, because I do greatly desire, so far forth to preserve my credit with you, as thus, that whereas lately, (perhaps out of too much desire, which induceth too much belief,) I was bold to say, that I thought it as easy for your Majesty to come out of want, as to go forth of your gallery; your Majesty would not take me for a dreamer, or a projector; I send your Majesty therefore some grounds of my hopes. And for that paper which I have gathered of increasements sperate, I beseech you to give me leave to think, that if any of the particulars do fail, it will be rather for want of workmanship in those that shall deal in them, than want of materials in the things themselves. The other paper hath many discarding cards; and I send it chiefly, that your Majesty may be the less surprized by projectors; who pretend sometimes great discoveries and inventions in things, that have been propounded, and, perhaps, after a better fashion, long since. God Almighty preserve your Majesty.

Your Majesty's most humble and devoted subject and servant,

25 April 1614.

FR. BACON.

CXIX. To the KING.

It may please your excellent Majesty,

MR. *St. John* his day is past, and well past. I hold it to be *Janus bifrons*; it hath a good aspect to that which is past, and to the future; and doth both satisfy and prepare. All did well; my Lord Chief Justice delivered the law for the benevolence strongly; I would he had done it timely.

* Mr.

* Mr. Chancellor of the exchequer spake finely, somewhat after the manner of my late || Lord Privy Seal ; not all out so sharply, but as elegantly. Sir *Thomas Lake* (who is also new in that court) did very well, familiarly and counsellor-like †. My lord of *Pembroke* (who is likewise a stranger there,) did extraordinary well, and became himself well, and had an evident applause ‡. I meant well also ; and because my information was the ground ; having spoken out of a few heads which I had gathered, (for I seldom do more,) || I set down, as soon as I came home, cursorily, a frame of that I had said ; though I persuade my self I spake it with more life. I have sent it to Mr. *Murray* sealed ; if your Majesty have so much idle time to look upon it, it may give some light of the day's work : but I most humbly pray your Majesty to pardon the errors. God preserve you ever.

|| Late Earl of Northampton.

|| Printed P. 314. of this Vol.

Your Majesty's most humble subject, and devoted servant,

April 29. 1615.

FR. BACON.

* The Chancellor of the exchequer here meant was Sir *Fulke Greville*, who being early initiated into the court of Queen *Elizabeth*, became a polite and fine gentleman ; and in the 18th of King *James* was created Lord *Brooke*. He erected a noble monument for himself on the north-side of *Warwick* church (which hath escap'd the late desolation) with this well-known inscription, *Fulke Greville*, servant to Queen *Elizabeth*, counsellor to King *James*, and friend to Sir *Philip Sidney*. Nor is he less remembered by the monument he has left in his writings and poems, chiefly composed in his youth, and in familiar exercises with the gentleman I have before-mentioned. *Stephens.*

† Sir *Thomas Lake* was about this time made one of the principal secretaries of state, as he had been formerly Latin secretary to Queen *Elizabeth*, and before that time bred under Sir *Francis Walsingham*. But in the year 1618, falling into the King's displeasure, and being engaged in the quarrels of his wife and daughter the Lady *Ross*, with the Countess of *Exeter* ; he was at first suspended from the execution of his place, and afterwards removed, and deeply censured and fined in the star-chamber ; although it is said the King then gave him in open court this publick eulogy, that he was a minister of state fit to serve the greatest prince in *Europe*. Whilst this storm was hanging over his head, he writ many letters to the King, and Marquis of *Buckingham*, which I have seen, complaining of his misfortune, that his ruin was likely to proceed from the assistance he gave to his nearest relations. *Stephens.*

‡ *William* Earl of *Pembroke*, son to *Henry Herbert* Earl of *Pembroke*, Lord President of the council in the marches of *Wales*, by *Mary* his wife, a lady in whom the muses and graces seem'd to meet ; whose very letters, in the judgment of one who saw many of them, declared her to be mistress of a pen not inferior to that of her brother's, the admirable Sir *Philip Sidney*, and to whom he address'd his *Arcadia*. Nor did this gentleman degenerate from their wit and spirit, as his own poems, his great patronage of learned men, and resolute opposition to the *Spanish* match, did, among other instances, fully prove. In the year 1616, he was made Lord Chamberlain, and chosen Chancellor of the university of *Oxford*. He died suddenly on the 10th of April 1630, having just compleated fifty years : but his only son deceasing a child before him, his estate and honours descended upon the younger brother, *Philip* Earl of *Montgomery*, the lineal ancestor of the present noble and learned Earl. *Stephens.*

CXX. To the KING, concerning the new company.

It may please your most excellent Majesty,

YOUR Majesty shall shortly receive the bill for the incorporation of the new company *, together with a bill for the privy seal, being a dependency

* Among other projects for supplying his Majesty with money, after his abrupt dissolution of the parliament, there was one propos'd through the Lord Treasurer's means by Sir *William Cockaine*, an alderman of *London*. For the society or fellowship of *Merchants Adventurers*, having enjoy'd by licence from the crown a power of exporting yearly several thousands of *English* cloaths undyed ; it was imagin'd that the King would not only receive an increase in his customs by the importation of materials necessary for dying, but the nation a considerable advantage in employing the subjects, and improving the manufacture to its utmost before it was exported. This proposition being besides attended with the offer of an immediate profit to his Majesty, was soon embraced ; the charter granted to the *Merchants Adventurers* recalled, and Sir *William Cockaine* and several other traders incorporated upon certain conditions, as appears in part from this letter ; tho' some other letters in the same and the following years inform us, what difficulties the King and Council, and indeed the whole kingdom sustain'd thereby. For the trading towns in the *Low Countries* and in *Germany*, which were the great mart and staple of these commodities, perceiving themselves in danger of losing the profit, which they had long reaped by dying and dressing great quantities of *English* cloth, the *Dutch* prohibited the whole com-

dency thereof: for this morning I subscribed and docketted them both. I think it therefore now time to represent to your Majesty's high wisdom that which I conceive, and have had long in my mind concerning your Majesty's service, and honourable profit in this business.

THIS project which hath proceeded from a worthy service of the Lord Treasurer, I have, from the beginning, constantly affected; as may well appear by my sundry labours from time to time in the same: for I hold it a worthy character of your Majesty's reign and times; inasmuch, as though your Majesty might have at this time (as is spoken) a great annual benefit for the quitting of it; yet I shall never be the man that should with your Majesty to deprive your self of that beatitude; *Beatius est dare, quam accipere*, in this cause; but to sacrifice your profit (though as your Majesty's state is, it be precious to you,) to so great a good of your kingdom: although this project is not without a profit immediate unto you, by the encreasing of customs upon the materials of dyes.

BUT here is the case: the new company by this patent and privy seal, are to have two things wholly diverse from the first intention; or rather, *ex diametro*, opposite unto the same; which nevertheless they must of necessity have, or else the work is overthrown: so as I may call them *mala necessaria*, but yet withal temporary. For as men make war to have peace; so these merchants must have licence for whites, to the end to banish whites; and they must have licence to use tenters, to the end to banish tenters.

THIS is therefore that I say; your Majesty upon these two points, may justly, and with honour, and with preservation of your first intention inviolate, demand profit in the interim, as long as these unnatural points continue, and then to cease. For your Majesty may be pleased to observe, that they are to have all the old company's profit by the trade of whites; they are again to have, upon the proportion of cloaths which they shall vent dyed and dressed, the *Flemmings* profit under the tenter. Now then I say, as it had been too good husbandry for a King to have taken profit of them, if the project could have been effected at once, (as was voiced;) so on the other side it might be, perchance, too little husbandry and providence to take nothing of them, for that which is merely lucrative to them in the mean time. Nay, I say farther, this will greatly conduce, and be a kind of security to the end desired. For I always feared, and do yet fear, that when men, by condition merchants, though never so honest, have gotten into their hands the trade of whites, and the dispensation to tenter, wherein they shall reap profit, for that which they never sowed; but have gotten themselves certainties, in respect of the state's hopes: they are like enough to sleep upon this as upon a pillow, and to make no haste to go on with the rest. And though it may be said, that this is a thing will easily appear to the state, yet (no doubt) means may be devised and found to draw the business in length. So that I conclude, that if your Majesty take a profit of them in the *interim*, (con-

commodity; and the materials being either dearer here, or the manufacturers less skill'd in fixing of the colours, the vent of the cloth was soon at a stand; upon which the clamour of the countries extended it self to the court. So that after several attempts to carry on the design, Sir Fr. Bacon finding the new company variable in themselves, and not able to comply with their proposals, but making new and springing demands, and that the whole matter was more and more perplex'd, sent on the 14th of October 1616, a letter to the Lord Villiers, inclosing his reasons why the new company was no longer to be trusted, but the old company to be treated with and revived. Accordingly, pursuant to a power of revocation contain'd in the new charter, it was recall'd, and a proclamation publish'd for restoring the old company, dated Aug. 12. 1617; and soon after another charter granted them upon their payment of 50,000 *l.* Stephens's *Introduç.* p. 38, 39.

dering you refuse profit from the old company,) it will be both spur and bridle to them, to make them pace aright to your Majesty's end.

THIS in all humbleness, according to my avowed care and fidelity, being no man's man but your Majesty's, I present, leave, and submit to your Majesty's better judgment; and I could wish your Majesty would speak with Sir *Thomas Lake* in it; who, besides his good habit which he hath in business, beareth (methinks) an indifferent hand in this particular; and (if it please your Majesty,) it may proceed as from your self, and not as a motion or observation of mine.

Your Majesty need not in this to be straitened in time; as if this must be demanded or treated before you sign their bill. For I foreseeing this, and foreseeing that many things might fall out which I could not foresee, have handled it so, as with their good contentment, there is a power of revocation inserted into their patent. And so commending your Majesty to God's blessed and precious custody; I rest,

Your Majesty's most humble and devoted subject and servant,

Aug. 12. 1615.

FF. BACON.

CXXI. To Sir GEORGE VILLIERS, about *Roper's* place.

S I R,

SENDING to the King upon occasion, I would not fail to salute you by my letter; which, that it may be more than two lines, I add this for news; that as I was sitting by my Lord Chief Justice, upon the commission for the indicting of the great person; one of the judges asked him, whether *Roper* were dead? He said, he for his part knew not; another of the judges answered, it should concern you, my lord, to know it. Whereupon he turned his speech to me, and said, No, Mr. Attorney, I will not wrestle now in my later times. My lord, said I, you speak like a wise man. Well, saith he, they have had no luck with it that have had it. I said again, those days be past. Here you have the dialogue to make you merry. But in sadness, I was glad to perceive he meant not to contest. I can but honour and love you, and rest,

Your assured friend and servant,

Jan. 22. 1615.

FR. BACON.

CXXII. To the KING, against the new company.

It may please your excellent Majesty,

I SPAKE yesterday long with my Lord Coke; and for the *rege inconsulto*, I conceive by him it will be, *an amplius deliberandum censeo*, (as I thought at first;) so as for the present your Majesty shall not need to renew your commandment of stay. I spake with him also about some propositions concerning your Majesty's casual revenue; wherein I found him to consent with me fully; assuming, nevertheless, that he had thought of them before; but it is one thing to have the vapour of a thought, another to digest business aright. He, on his part, imparted to me divers things of great weight, concerning the reparation of your Majesty's means and finances, which I heard gladly; insomuch as he perceiving the same, I think was the readier to open himself to me in one circumstance, which he did much inculcate. I concur fully

with him, that they are to be held secret; for I never saw but that business is like a child, which is framed invisibly in the womb; and if it come forth too soon, it will be abortive. I know, in most of them, the prosecution must rest much upon my self. But I that had the power to prevail in the farmer's case of the *French* wines, without the help of my Lord *Coke*, shall be better able to go through these with his help, the ground being no less just. And this I shall ever add of mine own, that I shall ever respect your Majesty's honour no less than your profit; and shall also take care, according to my pensive manner, that that which is good for the present, have not in it hidden seeds of future inconveniences.

THE matter of the new company was referred to me by the lords of the privy council; wherein, after some private speech with Sir *Lionel Cranfield*, I made that report which I held most agreeable to truth, and your Majesty's service. If this new company break, it must either be put upon the patent, or upon the order made by themselves. For the patent, I satisfied the board that there was no tittle in it which was not either *verbatim* in the patent of the old company, or by special warrant from the table inserted. My Lord *Coke*, with much respect to me, acknowledged, but disliked the old patent in it self, and disclaimed his being at the table when the additions were allowed. But, in my opinion, (howsoever my Lord *Coke*, to magnify his science in law, draweth every thing, though sometimes improperly and unseasonably, to that kind of question;) it is not convenient to break the business upon those points. For considering they were but clauses that were in the former patents, and in many other patents of companies; and that the additions likewise passed the allowance of the table, it will be but clamoured, and perhaps conceived, that to quarrel them now, is but an occasion taken; and that the times are changed, rather than the matter. But that which preserveth entire your Majesty's honour, and the constancy of your proceedings, is to put the breach upon their orders.

FOR this light I gave in my report, which the table readily apprehended, and much approved; that if the table reject their orders as unlawful and unjust, it doth free you from their contract: for whosoever contracteth or undertaketh any thing, is always understood to perform it by lawful means; so as they have plainly abused the state, if that which they have undertaken be either impossible or unjust.

I AM bold to present this consideration to that excellent faculty of your Majesty's judgment; because I think it importeth that future good which may grow to your Majesty in the close of this business; that the falling off be without all exception. God have you in his precious custody.

Your Majesty's most humble and bounden subject and servant,

Feb. 3. 1615.

FR. BACON.

CXXIII. To the KING, touching the Chancellor's sickness.

It may please your most excellent Majesty,

I AM glad to understand by *Murray*, that your Majesty accepteth well of my poor endeavours, in opening unto you the passages of your service; that business may come the less crude, and the more prepared to your royal judgment; the perfection whereof, as I cannot expect they should satisfy in every

every particular; so I hope, through my assiduity there will result a good total.

My Lord Chancellor's sickness falleth out, *dura tempore*. I have always known him a wise man, and of just elevation for monarchy; but your Majesty's service must not be mortal. And if you lose him, as your Majesty hath now of late purchased many hearts by depressing the wicked; so God doth minister unto you a counterpart to do the like, by raising the honest. God evermore preserve your Majesty.

Your Majesty's most humble subject and bounden servant,

Feb. 9. 1615.

FR. BACON.

CXXIV. To the KING.

It may please your most excellent Majesty,

YOUR worthy Chancellor*, I fear, goeth his last day. God hath hitherto used to weed out such servants as grew not fit for your Majesty; but now he hath gathered to himself one of the choicer plants, a true *sage* or *salvia*, out of your garden; but your Majesty's service must not be mortal. * Chanc. Egerton.

UPON this heavy accident I pray your Majesty, in all humbleness and sincerity, to give me leave to use a few words: I must never forget, when I moved your Majesty for the attorney's place, that it was your own sole act, and not my Lord of *Somerset's*; who when he knew your Majesty had resolved it, thrust himself into the business to gain thanks; and therefore I have no reason to pray to saints.

I SHALL now again make oblation to your Majesty, first of my heart, then of my service; thirdly of my place of Attorney (which I think is honestly worth 6000 *l. per annum*;) and fourthly, of my place in the star-chamber, which is worth 1600 *l. per annum*; and with the favour and countenance of a Chancellor much more. I hope I may be acquitted of presumption if I think of it, both because my father had the place, which is some civil inducement to my desire; (and I pray God your Majesty may have twenty no worse years in your greatness, than Queen *Elizabeth* had in her model, after my father's placing;) and chiefly, because the chancellor's place, after it went to the law, was ever conferred upon some of the learned council, and never upon a judge. For *Audeley* was raised from King's serjeant; my father from attorney of the wards; *Bromley* from solicitor; *Puckering* from Queen's serjeant; *Egerton* from master of the rolls, having newly left the attorney's place. Now I beseech your Majesty let me put you the present case truly. If you take my Lord *Coke*, this will follow; first, your Majesty shall put an over-ruling nature into an over-ruling place, which may breed an extreme; next, you shall blunt his industries in matter of finances, which seemeth to aim at another place; and lastly, popular men are no sure mounters for your Majesty's saddle. If you take my Lord *Hobart*, you shall have a judge at the upper end of your council-board, and another at the lower end; whereby your Majesty will find your prerogative pent: For tho' there should be emulation between them, yet as legists they will agree in magnifying that wherein they are best; he is no statesman, but an oeconomist wholly for himself; so as your Majesty (more than an outward form) will find little help in him for the business. If you take my Lord of *Canterbury*, I will say no more, but the chancellor's place requires a whole man; and to have both jurisdictions, spiritual and temporal, in that height is fit but for a King.

FOR

FOR myself, I can only present your Majesty with *gloria in obsequio**; yet I dare promise, that if I sit in that place, your business shall not make such short turns upon you, as it doth; but when a direction is once given, it shall be pursued and performed, and your Majesty shall only be troubled with the true care of a King, which is, to think what you would have done in chief, and not how for the passages.

I do presume also, in respect of my father's memory, and that I have been always gracious in the lower house, I have interest in the gentlemen of *England*, and shall be able to do some good effect in rectifying that body of parliament-men, which is *cardo rerum*. For let me tell your Majesty, that that part of the chancellor's place, which is to judge in equity between party and party, that same *regnum judiciale* (which since my father's time is but too much enlarged) concerneth your Majesty least, more than the acquitting of your conscience for justice: but it is the other parts of a moderator amongst your council, of an overseer over your judges, of a planter of fit justices and governors in the country, that importeth your affairs and these times most.

I WILL add also, that I hope by my care the inventive part of your council will be strengthen'd, who now commonly do exercise rather their judgments than their inventions; and the inventive part cometh from projectors and private men, which cannot be so well; in which kind my Lord of *Salisbury* had a good method, if his ends had been upright.

To conclude, if I were the man I would be, I should hope, that as your Majesty hath of late won hearts by depressing; you should in this lose no hearts by advancing: for I see your people can better skill of *concretum* than *abstractum*, and that the waves of their affections flow rather after persons than things: So that acts of this nature (if this were one) do more good than twenty bills of grace. If God call my Lord Chancellor, the warrants and commissions which are requisite for the taking off the seal, and for the working with it, and for reviving of warrants under his hand, which die with him, and the like, shall be in readiness. And in this, time presseth more, because it is the end of a term, and almost the beginning of the circuits; so that the seal cannot stand still: But this may be done as heretofore by commission, till your Majesty hath resolved of an officer. God ever preserve your Majesty.

Your Majesty's most humble subject, and bounden servant,

Feb. 12. 1615.

FR. BACON.

* *Gloria in obsequio* is taken from the sixth book of the annals of *Tacitus*: Where, some persons being accused for their intimacy with *Sejanus*, the late great favourite of the Emperor *Tiberius*; *M. Terentius*, a Roman knight, did not, like others, excuse or deny the same for fear of punishment; but doth in the senate make an ingenuous confession thereof, and gives his reasons why he not only courted, but rejoiced in obtaining the friendship of *Sejanus*. And then addresses himself, as if speaking to *Tiberius*, in these words; *Non est nostrum aestimare, quem supra ceteros, & quibus de causis extollas: Tibi summum rerum judicium Dii dedere; nobis obsequii gloria relicta est.* 'It does not become us to enquire into the person you are pleased to prefer above others, or into the reasons: To you heaven hath given a con-
* summate judgment; to us there remains the glory of a cheerful obedience.' *Stephens.*

CXXV. A Letter to the KING, of my Lord Chancellor's amendment, and the difference begun between the Chancery and the King's-bench.

It may please your excellent Majesty,

I DO find, God be thanked, a sensible amendment in my Lord Chancellor: I was with him yesterday in private conference about half an hour; and this day again, at such a time as he did seal, which he endured well almost the
space

space of an hour, though the vapour of wax be offensive to him. He is free from a fever, perfect in his powers of memory and speech; and not hollow in his voice nor looks: he hath no panting or labouring respiration; neither are his coughs dry or weak. But whosoever thinketh his disease is but melancholy, he maketh no true judgment of it; for it is plainly a formed and deep cough, with a pectoral surcharge; so that at times he doth almost *animam agere*. I forbear to advertise your Majesty of the care I took to have commissions in readiness, because Mr. Secretary *Lake* hath let me understand he signified as much to your Majesty: but I hope there shall be no use for them at this time. And as I am glad to advertise your Majesty of the amendment of your chancellor's person, so I am sorry to accompany it with an advertisement of the sickness of your chancery court, though (by the grace of God) that cure will be much easier than the other. It is true I did lately write to your Majesty, that for the matter of the *babeas corpora*, (which was the third matter in law you had given me in charge;) I did think the communion in service between my Lord Chancellor and my Lord Chief Justice, in the great business of examination, would so join them as they would not square at this time; but pardon me (I humbly pray your Majesty,) if I have too reasonable thoughts.

AND yet that which happened the last day of the term, concerning certain indictments in the nature of *praemunire*, preferred into the King's-bench but not found; is not so much as is voiced abroad; though I must say, it was *omni tempore nimium, & hoc tempore alienum*: and therefore, I beseech your Majesty not to give any believing ear to reports, but to receive the truth from me, that am your Attorney-General, and ought to stand indifferent for jurisdictions of all courts; which account I cannot give your Majesty now, because I was then absent; and some are now absent, which are properly and authentically to inform me touching that which passed. Neither let this any ways disjoint your other business, for there is a time for all things, and this very accident may be turned to good. Not that I am of opinion that that same cunning maxim of *separa & impera*, which sometimes holdeth in persons, can well take place in jurisdictions; but because some good occasion by this excess may be taken to settle that, which would have been more dangerous, if it had gone out by little and little. God ever preserve your Majesty.

Your Majesty's most humble subject and most bounden servant,

Feb. 15, 1615,

FR. BACON.

CXXVI. TO SIR GEORGE VILLIERS.

SIR,

I RECEIVED this morning from you two letters by the same bearer; the one written before, the other after his Majesty had received my last.

IN this difference between the two courts of Chancery and King's-bench, (for so I had rather take it for this time, than between the persons of my Lord Chancellor and my Lord Chief Justice,) I marvel not, if rumour get way of true relation; for I know fame hath swift wings, specially that which hath black feathers: but within these two days, (for sooner I cannot be ready,) I will write unto his Majesty both the narrative truly, and my opinion sincerely; taking much comfort that I serve such a King, as hath God's property in discerning truly of mens hearts. I purpose to speak with my Lord Chancellor this day; and so to exhibit that cordial of his Majesty's grace, as I hope

that other accident will rather rouze and raise his spirit, than deject him or incline him to relapse. Mean while I commend the wit of a mean man that said this other day, Well, the next term you shall have an old man come with a besom of wormwood in his hand, that will sweep away all this. For it is my Lord Chancellor's fashion, specially towards the summer, to carry a posy of wormwood. I write this letter in haste to return your messenger with it. God keep you, and long and happily may you serve his Majesty.

Your true and affectionate servant,

Feb. 19. 1615.

FR. BACON.

Sir, I thank you for your inward letter; I have burned it as you commanded: but the fire it hath kindled in me will never be extinguished.

CXXVII. To Sir GEORGE VILLIERS, about swearing him into the privy council.

S I R,

MY Lord Chancellor's health growing with the days, and his resignation being an uncertainty, I would be glad you went on with my first motion, my swearing Privy Counsellor. This I desire, not so much to make my self more sure than the other, and to put it past competition, (for herein I rest wholly upon the King and your excellent self;) but because I find hourly that I need this strength in his Majesty's service, both for my better warrant and satisfaction of my conscience, that I deal not in things above my vocation; and for my better countenance and prevailing, where his Majesty's service is, under any pretext, opposed, I would it were dispatched. I remember a greater matter than this was dispatched by a letter from *Roxton*, which was the placing of the Archbishop that now is; and I imagine the King did it on purpose, that the act might appear to be his own.

My Lord Chancellor told me yesterday in plain terms, that if the King would ask his opinion touching the person that he would commend to succeed him upon death or disability, he would name me for the fittest man. You may advise, whether use may not be made of this offer.

I SENT a pretty while since a paper to Mr. *John Murray*, which was indeed a little remembrance of some things past, concerning my honest and faithful services to his Majesty; not by way of boasting, (from which I am far,) but as tokens of my studying his service uprightly and carefully. If you be pleased to call for the paper which is with Mr. *John Murray*, and to find a fit time that his Majesty may cast an eye upon it, I think it will do no hurt; and I have written to Mr. *Murray* to deliver the paper, if you call for it. God keep you in all happiness.

Your truest servant,

Feb. 21. 1615.

FR. BACON.

CXXVIII. To the KING, of the Chancery and King's-Bench.

It may please your most excellent Majesty,

I WAS yesterday in the afternoon with my Lord Chancellor, according to your commandment which I received by the master of the horse, and find the old man well comforted, both towards God, and toward the world, and that

that same middle comfort which is divine and humane, proceeding from your Majesty, being God's lieutenant upon earth, I am persuaded hath been a great cause that such a sickness hath been portable to such an age. I did not fail in my conjecture, that this business of the chancery hath stirred him; he sheweth to despise it, but he is full of it, and almost like a young duellist that findeth himself behind-hand.

I WILL now, as your Majesty requireth, give you a true relation of that which hath passed; neither will I decline your royal commandment for delivering my opinion also, though it be a tender subject to write on; but I that account my being but as an accident to my service, will neglect no duty upon self-safety.

FIRST, it is necessary I let your Majesty know the ground of the difference between the two courts, that your Majesty may the better understand the narrative.

THERE was a statute made 27 *Edw.* 3. cap. 1. which (no doubt) in the principal intention thereof, was ordained against those that sued to *Rome*; wherein there are words somewhat general against any that questioneth or impeacheth any judgment given in the King's courts, or in any other courts. Upon these doubtful words (other courts) the controversy groweth. For the sounder interpretation taketh them to be meant of those courts, which though locally they were not held at *Rome*, or where the pope's chair was, but here within the realm; yet in their jurisdiction had their dependence upon the court of *Rome*; as were the court of the legate here, and the courts of the archbishops and bishops, which were then but subordinate judgment-seats to that high tribunal of *Rome*. And for this construction, the opposition of the words (if they be well observed) between the King's courts and other courts, maketh very much; for it importeth as if those others courts were not the King's courts. Also the main scope of the statute fortifieth the same. And lastly, the practice of many ages. The other interpretation, (which cleaveth to the letter,) expoundeth the King's courts to be the courts of law only, and other courts to be courts of equity, as the chancery, exchequer-chamber, duchy, &c. Though this also flieth indeed from the letter, for that all these are the King's courts.

THERE is also another statute, which is but a simple prohibition, and not with a penalty, of a *praemunire*, (as the other is;) that after judgments given in the King's courts, the parties shall be in peace, except the judgment be undone by error or attain, which is a legal form of reversal. And of this also I hold the sounder interpretation to be to settle possessions against disturbances, and not to take away remedy in equity, where those judgments are obtained *ex rigore juris*, and against good conscience.

BUT upon these two statutes there hath been a late conceit in some, that if a judgment pass at the common law against any, that he may not after sue for relief in chancery; and if he doth, both he and his counsel and his solicitors, yea and the judge in equity himself are within the danger of those statutes.

HERE your Majesty hath the true state of the question, which I was necessarily to open to you first, because your Majesty calleth for this relation; not as news, but as business. Now to the historical part.

IT is the course of the King's-bench, that they give in charge to a Grand Jury offences of all natures to be presented within *Middlesex*, where the said court is; and the manner is, to enumerate them as it were in articles. This was done by Justice *Crook*, the Wednesday before the term ended. And that article

article (*If any man, after a judgment given, had drawn the said judgment to a new examination in any other court*) was by him specially given in charge; which had not used to be given in charge before. It is true, it was not solemnly dwelt upon, but as it were thrown in amongst the rest.

THE last day of the term, (and that which all men condemn, the supposed last day of my Lord Chancellor's life,) there were two indictments preferred of *praemunire*, for suing in chancery after judgment in common law; the one by *Rich. Granville*, the other by *William Allen*: the former against *Courtney*, the party in chancery, *Gibb* the Counsellor, and *Deurst* the Clerk; the latter against Alderman *Bowles* and *Humfry Smith*, parties in chancery; Serjeant *More* the Counsellor, *Elias Wood* Solicitor in the cause, and Sir *John Tindal*, Master of the Chancery, and an assessor to my Lord Chancellor.

FOR the cases themselves, it were too long to trouble your Majesty with them; but this I will say, if they were set on that preferred them, they were the worst marks-men that ever were that set them on. For there could not have been chosen two such causes to the honour and advantage of the chancery, for the justness of the decrees, and the foulness and scandal both of fact and person, in those that impeach the decrees.

THE grand jury consisting (as it seemeth) of very substantial and intelligent persons, would not find the bills, notwithstanding they were clamoured by the parties, and twice sent back by the court; and in conclusion, resolutely seventeen of nineteen found an *ignoramus*; wherein, for that time, I think *ignoramus* was wiser than those that know too much.

YOUR Majesty will pardon me, if I be sparing in delivering to you some other circumstances of aggravation, and of concurrences of some like matters the same day; as if it had been some fatal constellation. They be not things so sufficiently tried, as I dare put them into your ear.

FOR my opinion, I cannot but begin with this preface, that I am infinitely sorry that your Majesty is thus put to salve and cure, not only accidents of time, but errors of servants; for I account this a kind of sickness of my Lord *Coke's*, that comes almost in as ill a time as the sickness of my Lord Chancellor. And as (I think) it was one of the wisest parts that ever he played when he went down to your Majesty to *Royston*, and desired to have my Lord Chancellor joined with him; so this was one of the weakest parts that ever he played, to make all the world perceive that my Lord Chancellor is sever'd from him at this time.

BUT for that which may concern your service, which is my end, (leaving other men to their own ways;) first, my opinion is plainly, that my Lord *Coke* at this time is not to be disgraced; both because he is so well habituate for that which remaineth of these capital causes, and also for that which I find is in his breast touching your finances and matters of repair of your estate; and (if I might speak it) as I think it were good his hopes were at an end in some kind, so I could wish they were raised in some other.

ON the other side, this great and publick affront, not only to the reverend and well deserving person of your chancellor, (and at a time when he was thought to lie on dying, which was barbarous,) but to your high court of chancery, which is the court of your absolute power, may not (in my opinion) pass lightly, nor end only in some formal atonement, but use is to be made thereof for the settling of your authority and strengthening of your prerogative according to the true rules of monarchy.

NOW to reconcile and accommodate these two advices, which seem almost opposite: First, your Majesty may not see it, (though I confess it be suspicious) that my Lord *Coke* was any way aforehand privy to that which was

done; or that he did set it or animate it, but only took the matter as it came before him; and that his error was only, that at such a time he did not divert it in some good manner.

SECONDLY, If it be true, (as is reported,) that any of the puisne judges did stir this business; or that they did openly revile and menace the jury for doing their conscience, (as they did honestly and truly;) I think that judge is worthy to lose his place. And to be plain with your Majesty, I do not think there is any thing a greater *polychreston*, or *ad multa utile*, to your affairs, than upon a just and fit occasion to make some example against the presumption of a judge in causes that concern your Majesty, whereby the whole body of those magistrates may be contained the better in awe; and it may be this will light upon no unfit subject of a person, that is rude, and that no man cares for.

THIRDLY, If there be no one so much in fault, (which I cannot yet affirm either way, and there must be a just ground, God forbid else;) yet I should think, that the very presumption of going so far, in so high a cause, deserveth to have that done which was done in this very case upon the indictment of Serjeant *Heale* in Queen *Elizabeth's* time; that the judges should answer it upon their knees before your Majesty or your council, and receive a sharp admonition: At which time also, my Lord *Wray* being then chief justice, slipped the collar and was forborn.

FOURTHLY, For the persons themselves, *Glanville* and *Allen*, which are base fellows and turbulent, I think there will be discovered and proved against them (besides the preferring of the bills) such combinations and contemptuous speeches and behaviours, as there will be good ground to call them, and perhaps some of their petty counsellors at law, into the star-chamber.

IN all this which I have said your Majesty may be pleased to observe, that I do not engage you much in the main point of the jurisdiction, for which I have a great deal of reason, which I now forbear. But two things I wish to be done: The one, that your Majesty take this occasion to redouble unto all your judges your ancient and true charge and rule, that you will endure no innovating the point of jurisdiction, but will have every court impaled within their own precedents, and not assume to themselves new powers upon conceits and inventions of law: The other, that in these high causes that touch upon state and monarchy, your Majesty give them streight charge; that upon any occasions intervenient hereafter, they do not make the vulgar party to their contestations, by publickly handling them before they have consulted with your Majesty to whom the reglement of those things only appertaineth.

To conclude, I am not without hope, that your Majesty managing this business according to your great wisdom, (unto which I acknowledge myself not to be worthy to be card-holder, or candle-holder,) will make profit of this accident as a thing of God's sending.

LASTLY, I may not forget to represent to your Majesty, that there is no thinking of arraignments until these things be somewhat accommodated, and some outward and superficial reconciliation at least made between my Lord Chancellor and my Lord Chief Justice; for this accident is a banquet to all the delinquent's friends. But this is a thing that falleth out naturally of itself, in respect of the judges going circuit, and my lord chancellor's infirmity with hope of recovery: And although this protraction of time may breed some doubt of mutability, yet I have lately learned out of an excellent

letter of a certain King, that the sun sheweth sometimes watery to our eyes, but when the cloud is gone, the sun is as before. God ever preserve your Majesty.

Your Majesty's most humble subject and bounden servant,

Feb. 21. 1615.

FR. BACON.

CXXIX. To the KING, on the breach of the new company.

It may please your excellent Majesty,

YOUR privy council have wisely and truly discerned of the orders and demands of the new company, that they are unlawful and unjust; and themselves have now acknowledged the work impossible without them, by their petition in writing now register'd in the council-book; so as this conclusion (of their own making) is become peremptory and final to themselves; and the impossibility confessed, the practice and abuse reserved to the judgment the state shall make of it.

THIS breach then of this great contract is wholly on their part, which could not have been if your Majesty had broken upon the patent; for the patent was your Majesty's act, the orders are their act; and in the former case they had not been liable to farther question, now they are.

THERE rest two things to be considered: the one, if they (like *Proteus* when he is hard held) shall yet again vary their shape; and shall quit their orders convinced of injustice, and lay their imposition only upon the trade of whites, whether your Majesty shall farther expect: The other, if your Majesty dissolve them upon this breach, on their part what is farther to be done for the setting of the trade again in joint, and for your own honour and profit: In both which points I will not presume to give opinion, but only to break the business for your Majesty's better judgment.

FOR the first, I am sorry the occasion was given, (by my Lord *Coke's* speech at this time of the commitment of some of them,) that they should seek *omnem movere lapidem* to help themselves. Better had it been, if (as my Lord *Fenton* said to me that morning very judiciously and with a great deal of foresight) that for that time they should have had a bridge made for them to be gone. But my Lord *Coke* floweth according to his own tides, and not according to the tides of business. The thing which my Lord *Coke* said was good and too little, but at this time it was too much; but that is past. Howsoever, if they should go back and seek again to entertain your Majesty with new orders or offers, (as is said to be intended) your Majesty hath ready two answers of repulse, if it please your Majesty to use them.

THE one, that this is now the fourth time that they have mainly broken with your Majesty, and contradicted themselves. First, they undertook to dye and dress all the cloaths of the realm; soon after, they wound themselves into the trade of whites, and came down to the proportion contracted. Secondly, they ought to have performed that contract according to their subscription *pro rata*, without any of these orders and impositions; soon after, they deserted their subscription, and had recourse to these devices of orders. Thirdly, if by order and not by subscription, yet their orders should have laid it upon the whites, which is an unlawful and prohibited trade; nevertheless they would have brought in lawful and settled trades, full manufactures, merchandize of all natures, poll-money or brotherhood-money, and I cannot tell

tell what. And now lastly, it seemeth, they would go back to lay it upon the whites; and therefore whether your Majesty will any more rest and build this great wheel of your kingdoms upon these broken and brittle pins, and try experiments farther upon the health and body of your state, I leave to your princely judgment.

THE other answer of repulse, is a kind of apposing them what they will do after the three years contracted for; which is a point hitherto not much stirred, tho' Sir *Lionel Cranfield* hath ever beaten upon it in his speech with me; for after the three years they are not tied otherways than as trade shall give encouragement, of which encouragement your Majesty hath a bitter taste: And if they should hold on according to the third year's proportion, and not rise on by farther gradation, your Majesty hath not your end. No, I fear, and have long feared that this feeding of the foreigner may be dangerous; for as we may think to hold up our cloathing by vent of whites, till we can dye and dress; so they (I mean the *Dutch*) will think to hold up their manufacture of dying and dressing upon our whites, till they can clothe: so as your Majesty hath the greatest reason in the world to make the new company to come in and strengthen that part of their contract; and they refusing, (as it is confidently believed they will,) to make their default more visible to all men.

For the second main part of your Majesty's consultation, that is, what shall be done supposing an absolute breach, I have had some speech with Mr. Secretary *Lake*, and likewise with Sir *Lionel Cranfield*; and (as I conceive) there may be three ways taken into consideration: The first is, that the old company be restored, who (no doubt) are in appetite and (as I find by Sir *Lionel Cranfield*) not unprepared; and that the licences, the one, that of 30000 cloaths, which was the old licence; the other that of my Lord of *Cumberland's*, which is, without stint, (my Lord of *Cumberland* receiving satisfaction,) be compounded into one entire licence without stint; and then, that they amongst themselves take order for that profit which hath been offered to your Majesty. This is a plain and known way, wherein your Majesty is not an actor; only it hath this, that the work of dying and dressing cloaths, which hath been so much glorified, seemeth to be wholly relinquished, if you leave there. The second is, that there be a free trade of cloth, with this difference, that the dyed and dressed pay no custom, and the whites double custom, it being a merchandize prohibited and only licentiate. This continueth in life and fame the work desired, and will have a popular applause: But I do confess, I did ever think that trading in companies is most agreeable to the *English* nature, which wanteth that same general vein of a republick which runneth in the *Dutch*, and serveth to them instead of a company; and therefore I dare not advise to venture this great trade of the kingdom (which hath been so long under government) in a free or loose trade. The third is a compounded way of both, which is, to go on with the trade of whites by the old company restored; and that your Majesty's profit be raised by order amongst themselves, rather than by double custom, wherein you must be the actor; and that nevertheless there be added a privilege to the same company to carry out cloaths dyed, and dressed, custom-free; which will still continue as a glorious beam of your Majesty's royal design. I hope and wish at least, that this which I have written may be of some use to your Majesty, to settle, by the advice of the lords about you, this great business: At the least, it is the effect of my care and poor ability, which, if in me
be

be any, it is given me to no other end but faithfully to serve your Majesty. God ever preserve you.

Your Majesty's most humble subject, and bounden servant,

Feb. 25. 1615.

FR. BACON.

CXXX. To Sir GEORGE VILLIERS.

S I R,

I HUMBLY pray you not to think me over-hasty or in much appetite, if I put you in remembrance of my motion of strengthening me with the oath and trust of a privy counsellor; not for mine own strength, (for as to that I thank God I am armed within;) but for the strength of my service. The times I submit to you, who knoweth them best. But sure I am, there were never times which did more require a King's Attorney to be well armed, and (as I said once to you) to wear a gauntlet and not a glove. The arraignments when they proceed; the contention between the Chancery and King's-bench; the great cause of the *Rege inconsulto*, which is so precious to the King's prerogative; divers other services that concern the King's revenue and the repair of his estate. Besides, it pleaseth his Majesty to accept well of my relations touching his business, which may seem a kind of interloping (as the merchants call it) for one that is no counsellor. But I leave all unto you, thinking myself infinitely bounden unto you for your great favours, the beams whereof I see plainly reflect upon me even from others; so that now I have no greater ambition than this, that as the King sheweth himself to you the best master, so I might be found your best servant. In which wish and vow I shall ever rest,

Most devoted and affectionate to obey your commands,

Feb. 27. 1615.

FR. BACON.

CXXXI. To his MAJESTY about the E. of Somersset.

It may please your most excellent Majesty,

AT my last access to your Majesty, it was fit for me to consider the time and your journey, which maketh me now trouble your Majesty with a remnant of that I thought then to have said: besides your old warrant and commission to me, to advertise your Majesty when you are *aux champs*, of any thing that concern'd your service and my place. I know your Majesty is *nunquam minus solus, quam cum solus*; and I confess in regard of your great judgment, (unto which nothing ought to be presented but well weighed,) I could almost wish that the manner of *Tiberius* were in use again, of whom *Tacitus* saith, *mos erat quamvis praesentem scripto adire*; much more in absence. I said to your Majesty that which I do now repeat, that the evidence upon which my Lord of Somersset standeth indicted is of a good strong thread, considering impoisoning is the darkest of offences; but that the thread must be well spun and woven together: for your Majesty knoweth it is one thing to deal with a jury of *Middlesex* and *Londoners*, and another to deal with the peers; whose objects perhaps will not be so much what is before them in the present case, (which I think is as odious to them as to the vulgar,) but what may be hereafter. Besides, there be two disadvantages, we that shall

shall give in evidence shall meet with, somewhat considerable; the one, that the same things often open'd lose their freshness, except there be an asperision of somewhat that is new; the other is the expectation raised, which makes things seem less than they are, because they are less than opinion. Therefore I were not your attorney, nor my self, if I should not be very careful, that in this last part, which is the pinnacle of your former justice, all things may pass *sine offendiculo, sine scrupulo*. Hereupon I did move two things, which (having now more fully explain'd my self) I do in all humbleness renew. First, that your Majesty will be careful to chuse a steward of judgment, that may be able to moderate the evidence and cut off digressions; for I may interrupt, but I cannot silence: The other, that there may be special care taken for the ordering the evidence, not only for the knitting, but for the list, and (to use your Majesty's own words) the confining of it. This to do, if your Majesty vouchsafe to direct it your self, that is the best; if not, I humbly pray you to require my Lord Chancellor, that he, together with my Lord Chief Justice, will confer with my self and my fellows, that shall be used for the marshalling and bounding of the evidence, that we may have the help of his opinion, as well as that of my Lord Chief Justice; whose great travels as I much commend, yet that same *plerophoria*, or over-confidence, doth always subject things to a great deal of chance.

THERE is another business proper for me to crave of your Majesty at this time, (as one that have in my eye a great deal of service to be done,) concerning your casual revenue; but considering times and persons, I desire to be strengthened by some such form of commandment under your royal hand, as I send you here inclosed. I most humbly pray your Majesty to think, that I understand my self right well in this which I desire, and that it tendeth greatly to the good of your service. The warrant I mean not to impart, but upon just occasion; thus thirsty to hear of your Majesty's good health, I rest.

22 Jan. 1615.

CXXXII. To his MAJESTY about the chancellor's place.

It may please your most excellent Majesty,

THE last day, when it pleased your Majesty to express your self towards me in favour, far above that I can deserve or could expect, I was surprized by the prince's coming in: I most humbly pray your Majesty therefore, to accept these few lines of acknowledgment. I never had great thoughts for my self, farther than to maintain those great thoughts which, I confess, I have for your service. I know what honour is, and I know what the times are; but, I thank God, with me my service is the principal; and it is far from me, under honourable pretences, to cover base desires; which I account them to be, when men refer too much to themselves, especially serving such a King. I am afraid of nothing but that the master of the horse, your excellent servant, and I shall fall out about this, who shall hold your stirrup best. But were your Majesty mounted and seated without difficulties and distastes in your business, as I desire and hope to see you; I should *ex animo* desire to spend the decline of my years in my studies: wherein also I should not forget to do him honour, who, besides his active and politic virtues, is the best pen of Kings, and much more, the best subject of a pen. God ever preserve your Majesty.

Your Majesty's most humble subject, and more and more obliged servant,

April 1. 1616.

FR. BACON.

CXXXIII. To Sir GEORGE VILLIERS, about the E. of *Somerſet*.

S I R,

I THOUGHT it convenient to give his Maſteſty an account of that which his Maſteſty gave me in charge in general, reſerving the particulars for his coming; and I find it neceſſary to know his pleaſure in ſome things ere I could farther proceed.

My Lord Chancellor and my ſelf ſpent *Thursday* and yeſterday, the whole forenoons of both days, in the examination of Sir *Robert Cotton*; whom we find hitherto but empty, ſave only the great point of the treaty with *Spain*.

THIS examination was taken before his Maſteſty's warrant came to Mr. Vice-chamberlain, for communicating unto us the ſecrets of the penſions; which warrant I received yeſterday morning being *Friday*, and a meeting was appointed at my Lord Chancellor's in the evening after council; upon which conference we find matter of farther examination for Sir *Robert Cotton*, of ſome new articles, whereupon to examine *Somerſet*, and of entering into examination of Sir *William Mounſon*.

WHEREFORE, firſt for *Somerſet*, being now ready to proceed to examine him, we ſtay only upon the Duke of *Lenox*, who it ſeemeth is fallen ſick and keepeth in; without whom, we neither think it warranted by his Maſteſty's direction, nor agreeable to his intention, that we ſhould proceed; for that will want, which ſhould ſweeten the cup of medicine, he being his countryman and friend. Herein then we humbly crave his Maſteſty's direction with all convenient ſpeed, whether we ſhall expect the duke's recovery, or proceed by our ſelves; or that his Maſteſty will think of ſome other perſon (qualified according to his Maſteſty's juſt intention,) to be joined with us. I remember we had ſpeech with his Maſteſty of my Lord *Hay*; and I, for my part, can think of no other, except it ſhould be my Lord Chancellor of *Scotland*, for my Lord *Binnin* may be thought too near allied.

I am farther to know his Maſteſty's pleaſure concerning the day; for my Lord Chancellor and I conceiv'd his Maſteſty to have deſigned the *Monday* and *Tueſday* after *St. George's* feaſt; and nevertheleſs we conceived alſo, that his Maſteſty underſtood that the examinations of *Somerſet* about this, and otherwiſe touching the *Spaniſh* practices, ſhould firſt be put to a point; which will not be poſſible, as time cometh on, by reaſon of this accident of the duke's ſickneſs, and the cauſe we find of Sir *William Mounſon's* examination, and that divers of the peers are to be ſent for from remote places.

IT may pleaſe his Maſteſty therefore to take into conſideration, whether the days may not well be put off till *Wednesday* and *Thursday* after the term, which endeth on the *Monday*, being the *Wednesday* and *Thursday* before *Whitſuntide*; or, if that pleaſe not his Maſteſty, (in reſpect it may be, his Maſteſty will be then in town, whereas theſe arraignments have been ſtill in his Maſteſty's abſence from town,) then to take *Monday* and *Tueſday* after *Trinity Sunday*, being the *Monday* and *Tueſday* before *Trinity* term.

Now for Sir *William Mounſon*, if it be his Maſteſty's pleaſure that my Lord Chancellor and I ſhall proceed to the examination of him, (for that of the duke of *Lenox* differs, in that there is not the like cauſe as in that of *Somerſet*;) then his Maſteſty may be pleaſed to direct his commandment and warrant to my Lord Chief Juſtice, to deliver unto me the examinations he took of Sir *William Mounſon*, that thoſe joined to the information which we have received from Mr. Vice-Chamberlain, may be full inſtructions unto us for his examination.

mination. Farther, I pray let his Majesty know, that on *Thursday* in the evening my Lord Chief Justice and my self attended my Lord Chancellor at his house for the settling that scruple which his Majesty most justly conceived in the examination of the Lady *Somerſet*; at which time, resting on his Majesty's opinion, that that evidence, as it standeth now uncleared, must *secundum leges sanæ conscientiae* be laid aside; the question was, whether we should leave it out, or try what a re-examination of my Lady *Somerſet* would produce? Whereupon we agreed upon a re-examination of my Lady *Somerſet*, which my Lord Chief Justice and I have appointed for *Monday* morning. I was bold at that meeting to put my Lord Chief Justice a posing question; which was, whether that opinion which his brethren had given upon the whole evidence, and he had reported to his Majesty, *viz.* that it was good evidence, in their opinions, to convict my Lord of *Somerſet*, was not grounded upon this part of the evidence now to be omitted, as well as upon the rest: who answered positively, no; and they never saw the exposition of the letter, but the letter only.

THE same *Thursday* evening, before we enter'd into this last matter, and in the presence of Mr. Secretary *Winwood* (who left us when we went to the former business,) we had conference concerning the frauds, and abusive grants passed to the prejudice of his Majesty's state of revenue; where my Lord Chief Justice made some relation of his collections which he had made of that kind; of which I will only say this, that I heard nothing that was new to me, and I found my Lord Chancellor in divers particulars, more ready than I found him. We grew to a distribution both of times and of matters, for we agreed what to begin with presently, and what should follow, and also we had consideration what was to be holpen by law, what by equity, and what by parliament; wherein I must confess, that in the last of these (of which my Lord Chief Justice made most account) I make most doubt. But the conclusion was, that upon this entrance I should advise and confer at large with my Lord Chief Justice, and set things in work. The particulars I refer till his Majesty's coming.

THE learned council have now attended me twice at my chamber, to confer upon that which his Majesty gave us in commandment, for our opinions upon the case set down by my Lord Chancellor, whether the statutes extend to it or no; wherein we are more and more edified and confirmed that they do not, and shall shortly send our report to his Majesty.

SIR, I hope you will bear me witness I have not been idle; but all is nothing to the duty I owe his Majesty, for his singular favours past and present; supplying all with love and prayers, I rest,

Your true friend and devoted servant,

Apr. 13. 1616.

FR. BACON.

CXXXIV. To Sir GEORGE VILLIERS, about the E. of *Somerſet*.

SIR,

I RECEIVED from you a letter of very brief and clear directions; and I think it a great blessing of God upon me and my labours, that my directions come by so clear a conduit, as they receive no tincture in the passage.

YESTERDAY my Lord Chancellor, the Duke of *Lenox*, and my self, spent the whole afternoon at the tower, in the examination of *Somerſet*, upon the articles sent from his Majesty, and some other additional, which were in effect contained in the former, but extended to more particularity, by occasion of somewhat discovered by *Cotton's* examination, and Mr. Vice-Chamberlain's information,

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He is full of protestations, and would fain keep that quarter toward *Spain* clear; using but this for argument, that he had such fortunes from his Majesty, as he could not think of bettering his conditions from *Spain*, because (as he said) he was no military man. He cometh nothing so far on (for that which concerneth the treaty) as *Cotton*, which doth much aggravate suspicion against him: The farther particulars I reserve to his Majesty's coming.

In the end, *tanquam obiter*, but very effectually, my Lord Chancellor put him in mind of the state he stood in for the imprisonment; but he was little moved with it, and pretended carelessness of life, since ignominy had made him unfit for his Majesty's service. I am of opinion that the fair usage of him, as it was fit for the *Spanish* examinations, and for the questions touching the papers and dispatches, and all that, so it was no good preparative to make him descend into himself touching his present danger: and therefore my Lord Chancellor and my self thought not good to insist upon it at this time.

I have received from my Lord Chief Justice the examination of Sir *William Mounson*; with whom we mean to proceed to farther examination with all speed.

My Lord Chief Justice is altered touching the re-examination of the lady, and desired me that we might stay till he spake with his Majesty, saying it could be no casting back to the business, which I did approve.

My self, with the rest of my fellows, upon due and mature advice, perfected our report touching the chancery; for the receiving whereof, I pray you put his Majesty in mind at his coming, to appoint some time for us to wait upon him all together, for the delivery in of the same, as we did in our former certificate.

For the revenue matters, I reserve them to his Majesty's coming; and in the mean time I doubt not but Mr. Secretary *Winwood* will make some kind of report thereof to his Majesty.

For the conclusion of your letter concerning my own comfort, I can but say the *Psalm* of *quid retribuam*? God that giveth me favour in his Majesty's eyes, will strengthen me in his Majesty's service. I ever rest

Your true and devoted servant,

April 18. 1616.

FR. BACON.

To requite your postscript of excuse for scribbling, I pray you excuse that the paper is not gilt, I writing from *Westminster-hall*, where we are not so fine.

CXXXV. A LETTER to the KING, with his MAJESTY'S observations upon it.

It may please your most excellent Majesty,

YOUR Majesty hath put me upon a work of providence in this great cause, which is to break and distinguish future events into present cases; and so to present them to your royal judgment, that in this action which hath been carried with so great prudence, justice, and clemency, there may be (for that which remaineth,) as little surprize as is possible; but that things duly foreseen may have their remedies and directions in readiness; wherein I cannot forget what the poet *Martial* saith; *O quantum est subitis casibus ingenium*! signifying, that accident is many times more subtle than foresight, and

and over-reacheth expectation; and besides, I know very well the meanness of my own judgment, in comprehending or forecasting what may follow.

IT was your Majesty's pleasure also, that I should couple the suppositions with my opinion in every of them, which is a harder task; but yet your Majesty's commandment requireth my obedience, and your trust giveth me assurance.

I will put the case, which I wish; that *Somerſet* should make a clear confession of his offences, before he be produced to tryal.

IN this case it seemeth your Majesty will have a new consult; the points whereof will be, 1. Whether your Majesty will stay the tryal, and so save them both from the stage, and that publick ignominy. 2. Or whether you will (or may fitly by law) have the tryal proceed, and stay or reprieve the judgment, which saveth the lands from forfeiture, and the blood from corruption. 3. Or whether you will have both tryal and judgment proceed and save the blood only, not from corrupting, but from spilling.

THESE be the depths of your Majesty's mercy which I may not enterin to: but for honour and reputation they have these grounds.

THAT the blood of *Overbury* is already revenged by divers executions.

THAT confession and penitency are the footstools of mercy; adding this circumstance likewise, that the former offenders did none of them make a clear confession.

THAT the great downfall of so great persons carrieth in it self a heavy judgment, and a kind of civil death, although their lives should not be taken.

ALL which may satisfy honour for sparing their lives. But if your Majesty's mercy should extend to the first degree, which is the highest of sparing the stage and the tryal; then three things are to be considered.

FIRST, That they make such a submission or deprecation as they prosecute themselves, and all that they have, at your Majesty's feet, imploring your mercy.

SECONDLY, That your Majesty, in your own wisdom, do advise what course you will take, for the utter extinguishing of all hopes of resuscitating of their fortunes and favour; whereof if there should be the least conceit, it will leave in men a great deal of envy and discontent.

AND lastly; whether your Majesty will not suffer it to be thought abroad, that there is cause of farther examination of *Somerſet*, concerning matters of estate, after he shall begin once to be a confessant, and so make as well a politick ground, as a ground of clemency for farther stay.

AND for the second degree of proceeding to tryal, and staying judgment, I must better inform my self by precedents, and advise with my Lord Chancellor.

THE second case is, if that fall out which is likest (as things stand, and which we expect) which is, that the lady confess; and that *Somerſet* himself plead not guilty, and be found guilty:

IN this case, first, I suppose your Majesty will not think of any stay of judgment, but that the publick process of justice pass on.

SECONDLY, For your mercy to be extended to both for pardon of their execution, I have partly touched in the considerations applied to the former case; whereunto may be added, that as there is ground of mercy for her, upon her penitency and free confession, and will be much more upon his finding guilty; because the malice on his part will be thought the deeper source of the offence: so there will be ground for mercy on his part, upon the nature

Rex. I say with *Apollo*, *Medio tutius itur*, if it may stand with law; and if it cannot, when I shall hear that he confesseth, I am then to make choice of the first or the last.

Rex. This article cannot be mended in point thereof.

Rex. If stay of judgment can stand with the law, I could even wish it in this case: in all the rest this article cannot be mended.

ture of the proof; and because it rests chiefly upon presumptions. For certainly there may be an evidence so balanced, as it may have sufficient matter for the conscience of the peers to convict him, and yet leave sufficient matter in the conscience of a King upon the same evidence to pardon his life; because the peers are astringed by necessity either to acquit or condemn; but grace is free: And for my part, I think the evidence in this present case will be of such a nature.

THIRDLY, It shall be my care so to moderate the manner of charging him, as it might make him not odious beyond the extent of mercy.

Rex. That danger is well to be foreseen, lest he upon the one part commit unpardonable errors, and I on the other part seem to punish him in the spirit of revenge.

Rex. This article cannot be mended.

LASTLY, All these points of mercy and favour, are to be understood with this limitation, if he do not, by his contemptuous and insolent carriage at the bar, make himself incapable and unworthy of them.

THE third case is, if he should stand mute and will not plead, whereof your Majesty knoweth there hath been some secret question.

IN this case I should think fit, that, as in publick, both my self, and chiefly my Lord Chancellor, (sitting then as Lord Steward of *England*) should dehort and deter him from that desperation; so nevertheless, that as much should be done for him, as was done for *Weston*; which was to adjourn the court for some days, upon a christian ground, that he may have time to turn from that mind of destroying himself; during which time your Majesty's farther pleasure may be known.

THE fourth case is that which I should be very sorry it should happen, but it is a future contingent; that is, if the peers should acquit him and find him not guilty.

IN this case the Lord Steward must be provided what to do. For as it hath been never seen, (as I conceive it) that there should be any rejecting of the verdict, or any respiting of the judgment of the acquittal; so on the other side this case requireth, that because there be many high and heinous offences, (though not capital) for which he may be questioned in the star-chamber, or otherwise, that there be some touch of that in general at the conclusion, by my Lord Steward of *England*; and that therefore he be remanded to the tower, as close prisoner.

Rex. This is so also.

FOR matter of examination, or other proceedings, my Lord Chancellor with my advice hath set down,

TO-MORROW, being Monday, for the re-examination of the lady:

WEDNESDAY next, for the meeting of the judges concerning the evidence:

THURSDAY, for the examination of *Somerſet* himself, according to your Majesty's instructions:

WHICH three parts, when they shall be performed, I will give your Majesty advertisement with speed, and in the mean time be glad to receive from your Majesty (whom it is my part to inform truly) such directions or significations of your pleasure as this advertisement may induce, and that with speed, because the time cometh on: Well remembring who is the person whom your Majesty admitted to this secret; I have sent this letter open unto him, that he may take your Majesty's times to report it, or shew it unto you; assuring myself that nothing is more firm than his trust, tyed to your Majesty's commandments.

Your Majesty's most humble and most bounden subject and servant,

Apr. 28. 1616.

FR. BACON.

CXXXVI. To Sir GEORGE VILLIERS, about the E. of *Somerſet*.

S I R,

I HAVE received my letter from his Maſteſty with his marginal notes, which ſhall be my directions, being glad to perceive I underſtand his Maſteſty ſo well. That ſame little charm, which may be ſecretly infuſed into *Somerſet*'s ear ſome few hours before his trial, was excellently well thought of by his Maſteſty; and I do approve it both for matter and time; only if it ſeem good to his Maſteſty, I would wiſh it a little enlarged: for if it be no more than to ſpare his blood, he hath a kind of proud humour which may overwork the medicine. Therefore I could wiſh it were made a little ſtronger, by giving him ſome hopes that his Maſteſty will be good to his lady and child; and that time (when juſtice and his Maſteſty's honour is once ſaved and ſatiſfied) may produce farther fruit of his Maſteſty's compaſſion: which was to be ſeen in the example of *Southampton*, whom his Maſteſty after attainder reſtored; and *Cobbam* and *Gray*, to whom his Maſteſty, notwithstanding they were offenders againſt his own Perſon, yet he ſpared their lives; and for *Gray*, his Maſteſty gave him back ſome part of his eſtate, and was upon point to deliver him much more: He having been ſo highly in his Maſteſty's favour, may hope well, if he hurt not himſelf by his publick miſdemeanour.

For the perſon that ſhould deliver this meſſage, I am not ſo well ſeen in the region of his friends, as to be able to make choice of a particular; my Lord Treasuſer, the Lord *Knollys*, or any of his neareſt friends, ſhould not be truſted with it; for they may go too far, and perhaps work contrary to his Maſteſty's ends. Thoſe which occur to me, and my Lord *Hay*, my Lord *Burleigh* (of *England* I mean,) and Sir *Robert Carre*.

My Lady *Somerſet* hath been re-examined, and his Maſteſty is found both a true prophet and a moſt juſt King in that ſcruple he made; for now ſhe expoundeth the word He, that ſhould ſend the tarts to *Elwys*'s wife, to be of *Overbury* and not of *Somerſet*; but for the perſon that ſhould bid her, ſhe ſaith it was *Northampton* or *Weſton*, not pitching upon certainty, which giveth ſome advantage to the evidence.

YEſTERDAY being Wedneſday, I ſpent four or five hours with the judges, whom his Maſteſty deſign'd to take conſideration with, the four judges of the King's-bench, of the evidence againſt *Somerſet*: They all concur in opinion, that the queſtioning and drawing him on to trial is moſt honourable and juſt, and that the evidence is fair and good.

His Maſteſty's letter to the Judges concerning the *Commendams* was full of magnanimity and wiſdom. I perceive his Maſteſty is never leſs alone, than when he is alone; for I am ſure there was no body by him to inform him, which made me admire it the more.

THE judges have given a day over, till the ſecond Saturday of the next term; ſo as that matter may endure farther conſideration, for his Maſteſty not only not to loſe ground, but to win ground.

TO-MORROW is appointed for the examination of *Somerſet*, which by ſome infirmity of the Duke of *Lenox* was put off from this day. When this is done, I will write more fully, ever reſting,

Your true and devoted ſervant,

FR. BACON.

CXXXVII.

CXXXVII. To Sir GEORGE VILLIERS, of *Somerſet's* arraignment.

S I R,

I AM far enough from opinion, that the redintegration or reſucitation of *Somerſet's* fortune can ever ſtand with his Maſteſty's honour and ſafety; and therein I think I expreſs'd my ſelf fully to his Maſteſty in one of my former letters; and I know well any expectation or thought abroad will do much hurt. But yet the glimmering of that which the King hath done to others by way of talk to him, cannot hurt as I conceive; but I would not have that part of the meſſage as from the King, but added by the meſſenger as from himſelf. This I remit to his Maſteſty's princely judgment.

FOR the perſon, tho' he truſt the lieutenant well, yet it muſt be ſome new man; for in theſe caſes, that which is ordinary worketh not ſo great impreſſions as that which is new and extraordinary.

THE time I wiſh to be the Tueſday, being the even of his lady's arraignment: For, as his Maſteſty firſt conceived, I would not have it ſtay in his ſtomach too long, leſt it ſour in the digeſtion; and to be too near the time, may be thought but to tune him for that day.

I ſend herewithal the ſubſtance of that which I purpoſe to ſay nakedly, and only in that part which is of tenderneſs; for that I conceive was his Maſteſty's meaning.

IT will be neceſſary, becauſe I have diſtributed parts to the two ſerjeants, (as that paper doth expreſs,) and they underſtand nothing of his Maſteſty's pleaſure of the manner of carrying the evidence more than they may gueſs by obſervation of my example, (which they may aſcribe as much to my nature as to direction :) Therefore that his Maſteſty would be pleaſed to write ſome few words to us all, ſigned with his own hand, that the matter itſelf being tragical enough, bitterneſs and inſulting be forborn; and that we remember our part to be to make him delinquent to the peers, and not odious to the people. That part of the evidence of the lady's expoſition of the pronoun (*be*) which was firſt caught hold of by me, and afterwards by his Maſteſty's ſingular wiſdom and conſcience excepted to, and now is by her re-examination retracted, I have given order to Serjeant *Montague* (within whoſe part it falleth) to leave it out of the evidence. I do yet crave pardon, if I do not certify touching the point of law for reſpiting the judgment, for I have not fully adviſed with my Lord Chancellor concerning it, but I will advertiſe it in time.

I ſend his Maſteſty the Lord Steward's commiſſion in two ſeveral inſtruments, the one to remain with my Lord Chancellor, which is that which is written in ſecretary-hand for his warrant, and is to paſs the ſignet; the other, that whereunto the great ſeal is to be affixed, which is in chancery-hand; his Maſteſty is to ſign them both, and to tranſmit the former to the ſignet, if the Secretaries either of them be there; and both of them are to be returned to me with all ſpeed. I ever reſt,

Your true and devoted ſervant,

May 5. 1616.

FR. BACON.

CXXXVIII.

CXXXVIII. To the KING, about *Somerſet's* examination.*It may pleaſe your Maſteſty,*

WE have done our beſt endeavours to perform your Maſteſty's commiſſion, both in matter and manner, for the examination of my Lord of *Somerſet*; wherein that which paſſed, for the general, was to this effect; That he was to know his own caſe, for that his day of trial could not be far off; but that this day's work was that which would conduce to your Maſteſty's juſtice little or nothing, but to your mercy much, if he did lay hold upon it; and therefore might do him good, but could do him no hurt. For as for your juſtice, there had been taken great and grave opinion, not only of ſuch judges as he may think violent, but of the moſt ſad and moſt temperate of the kingdom, who ought to underſtand the ſtate of the proofs, that the evidence was full to convict him, ſo as there needeth neither confeſſion, nor ſupply of examination. But for your Maſteſty's mercy (altho' he were not to expect we ſhould make any promiſe) we did aſſure him, that your Maſteſty was compaſſionate of him if he gave you ſome ground whercon to work; that as long as he ſtood upon his innocency and trial, your Maſteſty was tyed in honour to proceed according to juſtice; and that he little underſtood, being a cloſe priſoner, how much the expectation of the world, beſides your love to juſtice itſelf, engaged your Maſteſty, whatſoever your inclinations were: But nevertheleſs that a frank and clear confeſſion might open the gate of mercy, and help to ſatiſfy the point of honour.

THAT his lady (as he knew, and that after many oaths and imprecations to the contrary) had nevertheleſs in the end been touched with remorse, confeſſed that ſhe that led him to offend, might lead him likewiſe to repent of his offence: That the confeſſion of one of them could not fitly do either of them much good, but the confeſſion of both of them might work ſome farther effect towards both: And therefore, in concluſion, we wiſh'd him not to ſhut the gate of your Maſteſty's mercy againſt himſelf, by being obdurate any longer. This was the effect of that which was ſpoken, part by one of us, part by another, as it fell out; adding farther, that he might well diſcern who ſpake in us in the courſe we held; for that commiſſioners for examination might not preſume ſo far of themſelves.

NOT to trouble your Maſteſty with circumſtances of his answers, the ſequel was no other, but that we found him ſtill not to come any degree farther on to confeſs; only his behaviour was very ſober, and modeſt, and mild, (differing apparently from other times;) but yet, as it ſeem'd, reſolv'd to have his trial.

THEN did we proceed to examine him upon divers queſtions touching the empoiſonment, which indeed were very material and ſupplemental to the former evidence; wherein either his affirmatives gave ſome light, or his negatives do greatly falſify him in that which is apparently proved.

WE made this farther obſervation; that when we aſked him ſome queſtion that did touch the prince or ſome foreign practice, (which we did very ſparingly at this time,) yet he grew a little ſtir'd, but in the queſtions of the empoiſonment very cold and modeſt. Thus not thinking it neceſſary to trouble your Maſteſty with any farther particulars, we end with prayer to God ever to preſerve your Maſteſty.

Your Maſteſty's moſt loyal and faithful ſervant,

FR. BACON.

Poſtſcript.

Postscript. If it seem good unto your Majesty, we think it not amiss some preacher (well chosen) had access to my Lord of *Somerſet* for his preparing and comfort, although it be before his trial.

CXXXIX. An Expoſtulation to the Lord Chief Juſtice C O K E.

My very good Lord,

Ecclef. xi. 4.

THOUGH it be true, that who conſidereth the wind and the rain, ſhall neither ſow nor reap; yet there is a ſeaſon for every action, and ſo there is a time to ſpeak, and a time to keep ſilence. There is a time when the words of a poor ſimple man may profit; and that poor man in the preacher, which delivered the city by his wiſdom, found that without this opportunity the power both of wiſdom and eloquence loſe but their labour, and cannot charm the deaf adder. God therefore, before his Son that bringeth mercy, ſent his ſervant the trumpeter of repentance to level every high hill, to prepare the way before him, making it ſmooth and ſtreight: And as it is in ſpiritual things, where Chriſt never comes before his way-maker hath laid even the heart with ſorrow and repentance, (ſince ſelf-conceited and proud perſons think themſelves too good and too wiſe to learn of their inferiors, and therefore need not the phyſician;) ſo in the rules of earthly wiſdom, it is not poſſible for nature to attain any mediocrity of perfection, before ſhe be humbled by knowing herſelf and her own ignorance. Not only knowledge, but alſo every other gift (which we call the gifts of fortune) have power to puff up earth: Afflictions only level theſe mole-hills of pride, plough the heart, and make it fit for wiſdom to ſow her ſeed, and for grace to bring forth her increaſe. Happy is that man therefore, both in regard of heavenly and earthly wiſdom, that is thus wounded to be cured, thus broken to be made ſtraight; thus made acquainted with his own imperfections that he may be perfected.

SUPPOSING this to be the time of your affliction, that which I have propounded to myſelf is, by taking this ſeaſonable advantage, like a true friend, (though far unworthy to be counted ſo) to ſhew you your true ſhape in a glaſs; and that not in a falſe one to flatter you, nor yet in one that ſhould make you ſeem worſe than you are, and ſo offend you; but in one made by the reflection of your own words and actions; from whoſe light proceeds the voice of the people, which is often not unſitly called the voice of God. But therein (ſince I have purpoſed a truth) I muſt intreat liberty to be plain, a liberty that at this time I know not whether or no I may uſe ſafely, I am ſure at other times I could not; yet of this reſolve yourſelf, it proceedeth from love and a true deſire to do you good; that you knowing the general opinion, may not altogether neglect or contemn it, but mend what you find amiſs in yourſelf, and retain what your judgment ſhall approve; for to this end ſhall truth be delivered as naked as if yourſelf were to be anatomized by the hand of opinion. All men can ſee their own profit, that part of the wallet hangs before. A true friend (whoſe worthy office I would perform, ſince I fear, both yourſelf and all great men want ſuch, being themſelves true friends to few or none) is firſt to ſhew the other, and which is from your eyes.

FIRST therefore behold your errors; in diſcourſe you delight to ſpeak too much, not to hear other men; this, ſome ſay, becomes a pleader not a judge; for by this ſometimes your affections are intangled with a love of your own arguments,

arguments, tho' they be the weaker; and rejecting of those, which, when your affections were settled, your own judgment would allow for strongest. Thus while you speak in your own element, the law, no man ordinarily equals you; but when you wander (as you often delight to do) you then wander indeed, and give never such satisfaction as the curious time requires. This is not caused by any natural defect, but first for want of election, when you having a large and fruitful mind, should not so much labour what to speak, as to find what to leave unspeaken: Rich soils are often to be weeded.

SECONDLY, You cloy your auditory when you would be observed; speech must be either sweet or short.

THIRDLY, You converse with books, not men, and books specially human; and have no excellent choice with men, who are the best books: for a man of action and employment you seldom converse with, and then but with your underlings; not freely, but as a schoolmaster with his scholars, ever to teach, never to learn: But if sometimes you would in your familiar discourse hear others, and make election of such as know what they speak, you should know many of these tales you tell to be but ordinary; and many other things, which you delight to repeat and serve in for novelties, to be but stale: As in your pleadings, you were wont to insult over misery, and to inveigh bitterly at the persons (which bred you many enemies, whose poison yet swelleth, and the effects now appear;) so are you still wont to be a little careless in this point, to praise or disgrace upon slight grounds, and that sometimes untruly; so that your reproofs or commendations are for the most part neglected and contemned; when the censure of a judge (coming slow but sure) should be a brand to the guilty, and a crown to the virtuous. You will jest at any man in publick without respect of the person's dignity or your own: This disgraceth your gravity, more than it can advance the opinion of your wit; and so do all actions which we see you do directly with a touch of vain-glory, having no respect to the true end. You make the law to lean too much to your opinion, whereby you shew yourself to be a legal tyrant, striking with that weapon where you please, since you are able to turn the edge any way: For thus the wise master of the law gives warning to young students, that they should be wary, lest while they hope to be instructed by your integrity and knowledge, they should be deceived with your skill armed with authority. Your too much love of the world is too much seen, when having the living of * a thousand, you relieve few or none: The hand that has taken so much, can it give so little? Herein you shew no bow-^{10000 l.} Cab. els of compassion, as if you thought all too little for yourself; or that God hath given you all that you have (if you think wealth to be his gift, I mean that you get well, for I know sure the rest is not;) only to that end you should still gather more, and never be satisfied; but try how much you would gather, to account for all at the great and general audit-day. We desire you to amend this, and let your poor tenants in *Norfolk* find some comfort; where nothing of your estate is spent towards their relief, but all brought up hither to the impoverishing of your country.

In your last, which might have been your best piece of service to the state, affectioned to follow that old rule, which giveth justice leaden heels and iron hands; you used too many delays till the delinquents hands were loosed, and yours bound: In that work you seemed another *Fabius*, where the humour of *Marcellus* would have done better; what need you have sought more evidences than enough? while you pretended the finding out of more (missing your aim) you discredited what you had found. This best judgments think;

think; though you never used such speeches as are fathered upon you, yet you might well have done it, and but rightly; for this crime was second to none, but the powder-plot: That would have blown up all at one blow, a merciful cruelty; this would have done the same by degrees, a lingering but a sure way; one might by one be called out, till all opposers had been removed.

BESIDES, that other plot was scandalous to *Rome*, making popery odious in the sight of the whole world: This hath been scandalous to the truth of the whole gospel; and since the first nullity to this instant, when justice hath her hands bound, the devil could not have invented a more mischievous practice to our state and church than this hath been, is, and is like to be. God avert the evil.

BUT herein you committed another fault: That as you were too open in your proceedings, and so taught them thereby to defend themselves; so you gave them time to undermine justice, and to work upon all advantages both of affections and honour and opportunity and breach of friendship; which they have so well followed, sparing neither pains nor costs, that it almost seemeth an higher offence in you to have done so much indeed, than that you have done no more; you stopt the confessions and accusations of some, who perhaps, had they been suffered, would have spoken enough to have removed some stumbling-blocks out of your way; and that you did not this in the favour of any one, but of I know not what present unadvised humours, supposing enough behind to discover all; which fell not out so. Howsoever, as the apostle saith in another case, you *went not rightly to the truth*; and therefore, though you were to be commended for what you did, yet you were to be reprehended for many circumstances in the doing; and doubtless God hath an eye in this cross to your negligence, and the briars are left to be pricks in your sides and thorns in your eyes. But that which we commend you for, are those excellent parts in nature and knowledge in the law, which you are endowed withal; but these are only good in their good use. Wherefore we thank you heartily for standing stoutly in the commonwealth's behalf; hoping it proceedeth not from a disposition to oppose greatness, (as your enemies say) but to do justice, and deliver truth indifferently without respect of persons; and in this we pray for your prosperity, and are sorry that your good actions should not always succeed happily. But in the carriage of this you were faulty; for you took it in hand in an evil time, both in respect of the present business which is interrupted, and in regard of his present sickness whom it concerned, whereby you disunited your strength, and made a gap for the enemies to pass out at, and to return and assault you.

BUT now since the case so standeth, we desire you to give way to power, and so to fight that you be not utterly broken, but reserved intirely to serve the commonwealth again, and to do what good you can, since you cannot do all the good you would; and since you are fallen upon this rock, cast out the goods to save the bottom; stop the leaks and make towards land; learn of the steward to make friends of the unrighteous mammon. Those *Spaniards* in *Mexico* who were chased of the *Indians*, tell us what to do with our goods in our extremity, they being to pass over a river in their flight, as many as cast away their gold swam over safe; but some more covetous, keeping their gold, were either drowned with it, or overtaken and slain by the savages: you have received, now learn to give. The beaver learns us this lesson, who being hunted for his stones, bites them off: you cannot but have much of your estate (pardon my plainness) ill got; think how much of that you never
spake

spake for, how much by speaking unjustly or in unjust causes. Account it then a blessing of God, if thus it may be laid out for your good, and not left for your heir, to hasten the wasting of so much of the rest, perhaps of all: for so we see God oftentimes proceeds in judgment with many hasty gatherers; you have enough to spare, being well laid to turn the tide, and fetch all things again. But if you escape, I suppose it worthy of an (if,) since you know the old use, that none called in question must go away uncensured: Yet consider that accusations make wounds, and leave scars; and though you see the toil behind your back, your self free, and the covert before, yet remember there are stands: trust not a reconciled enemy; and think the peace is but to secure you for farther advantage, or expect a second and a third encounter; the main battle, the wings are yet unbroken, they may charge you at an instant, or death before them; walk therefore circumspectly, and if at length by means of our good endeavours and yours, you recover the favour that you have lost; give God the glory in action, not in words only; and remember us with sense of your past misfortune, whose estate hath, doth, and may hereafter lie in the power of your breath.

THERE is a great mercy in dispatch, delays are tortures, wherewith by degrees we are rent out of our estates*; do not you (if you be restored) as some others do, fly from the service of virtue to serve the time, as if they repented their goodness, or meant not to make a second hazard in God's house; but rather let this cross make you zealous in God's cause, sensible in ours, and more sensible in all; which expresses thus. You have been a great enemy to papists, if you love God be so still, but more indeed than heretofore; for much of your zeal was heretofore wasted in words: call to remembrance that they were the persons that prophesied of that cross of yours long before it happened; they saw the storm coming, being the principal contrivers and furtherers of the plot, the men that blew the coals, heat the iron, and made all things ready; they owe you a good turn, and will, if they can, pay it you; you see their hearts by their deeds, prove then your faith so too: the best good work you can do, is to do the best you can against them, that is to see the law severely, justly, and diligently executed.

AND now we beseech you, my lord, be sensible both of the stroke and hand that striketh; learn of *David* to leave *Shimei*, and call upon God; he hath some great work to do, and he prepareth you for it; he would neither have you faint, nor yet bear this cross with a *stoical* resolution: there is a christian mediocrity, worthy of your greatness. I must be plain, perhaps rash; had some notes which you had taken at sermons been written in your heart to practise, this work had been done long ago, without the envy of your enemies; but when we will not mind our selves, God (if we belong to him) takes us in hand; and because he seeth that we have unbridled stomachs, therefore he sends outward crosses, which, while they cause us to mourn, do comfort us, being assured testimonies of his love that sends them. To humble our selves therefore before God, is the part of a Christian; but for the world and our enemies the counsel of the poet is apt,

Tu ne cede malis, sed contra audentior ito.

AEneid. vi. 95.

THE last part of this counsel you forget, yet none need be ashamed to make use of it, that so being armed against casualties, you may stand firm against the assaults on the right hand, and on the left. For this is certain, the mind

* My Lord Bacon observes elsewhere, that the scripture saith, there be that turn judgment into wormwood; and saith he, surely there be also that turn it into vinegar; for injustice maketh it bitter, and delays make it sour. Essay LVII. Vol. III. p. 377.

that is most prone to be puffed up with prosperity, is most weak and apt to be dejected with the least puff of adversity. Indeed she is strong enough to make an able man to stagger, striking terrible blows; but true Christian wisdom gives us armour of proof against all assaults, and teacheth us in all estates to be content: for though she cause all our truest friends to declare themselves our enemies; though she give heart then to the most cowardly to strike us; though an hour's continuance countervails an age of prosperity; though she cast in our dish all that ever we have done; yet hath she no power to hurt the humble and wise, but only to break such as too much prosperity hath made stiff in their own thoughts, but weak indeed; and fitted for renewing: When the wise rather gather from thence profit and wisdom; by the example of *David*, who said, *Before I was chastised I went astray*. Now then he that knoweth the right way, will look better to his footing. *Cardan* saith, that weeping, fasting, and sighing, are the chief purgers of grief; indeed naturally they do assuage sorrow; but God in this case is the only and best physician; the means he hath ordained are the advice of friends, the amendment of our selves; for amendment is both physician and cure. For friends, although your lordship be scant, yet I hope you are not altogether destitute; if you be, do but look upon good books; they are true friends, that will neither flatter nor dissemble: be you but true to your self, applying what they teach unto the party grieved, and you shall need no other comfort nor counsel. To them, and to God's holy Spirit, directing you in the reading of them, I commend your lordship; beseeching him to send you a good issue out of these troubles, and from henceforth to work a reformation in all that is amiss, and a resolute perseverance, proceeding, and growth, in all that is good; and that for his glory, the bettering of your self, this church, and commonwealth; whose faithful servant whilst you remain,

I remain a faithful servant to you,

FR. BACON.

CXL. To Sir GEORGE VILLIERS.

S I R,

THE time is, as I should think, now or never, for his Majesty to finish his good meaning towards me; if it please him to consider, what is past, and what is to come.

If I would tender my profit, and oblige men unto me by my place and practice, I could have more profit than I could devise; and could oblige all the world, and offend none; which is a brave condition for a man's private. But my heart is not on these things. Yet on the other side, I would be sorry that worthless persons should make a note that I get nothing but pains and enemies; and a little popular reputation, which followeth me whether I will or no. If any thing be to be done for your self, I should take infinite contentment, that my honour might wait upon yours; but I would be loth it should wait upon any man's else. If you would put your strength to this business, it is done; and that done, many things more will begin. God keep you ever. I rest

Your true and devoted servant,

May 30. 1616.

FR. BACON.

CXLI.

CXLI. To the KING, about the *Commendams*.

May it please your most excellent Majesty,

I AM not swift to deliver any thing to your Majesty, before it be well weighed. But now that I have informed my self of as much as is necessary, touching this proceeding of the judges to the argument of the *Commendams*, (notwithstanding your Majesty's pleasure signified by me, upon your Majesty's commandment, in presence of my Lord Chancellor and the Bishop of *Winchester* to the contrary;) I do think it fit to advertise your Majesty what hath passed; the rather, because I suppose the judges, since they perform'd not your commandment, have at least given your Majesty their reasons of failing therein; I being to answer for the doing your Majesty's commandments, and they for the not doing.

I DID conceive, that in a cause that concerned your Majesty and your royal power, the judges having heard your attorney-general argue the *Saturday* before, would of themselves have taken farther time to be advised.

And (if I fail not in memory) my Lord *Coke* received from your Majesty's self, as I take it, a precedent commandment in *Hilary* term, that both in the *rege inconsulto*, and in the *Commendams*, your attorney should be heard to speak, and then stay to be made of farther proceedings, till my lord had spoken with your Majesty.

NEVERTHELESS, hearing that the day appointed for the judges argument held, contrary to my expectation, I sent on *Thursday* in the evening (having received your Majesty's commandment but the day before in the afternoon,) a letter to my Lord *Coke*; whereby I let him know, that upon some report of my Lord of *Winchester*, (who by your commandment was present at my argument of that which passed,) it was your Majesty's express pleasure, that no farther proceedings should be, until you had conferr'd with your judges: which your Majesty thought to have done at your being now last in town; but by reason of your many and weighty occasions, your princely times would not serve; and that it was your pleasure he should signify so much to the rest of the judges, whereof his lordship might not fail. His answer by word to my man was, that it were good the rest of the judges understood so much from my self; whereupon I (that cannot skill of scruples in matter of service) did write on *Friday* three several letters of like content to the judges of the common pleas, and the barons of the exchequer, and the other three judges of the King's-bench, mentioning in that last my particular letter to my Lord Chief Justice.

THIS was all I did, and thought all had been sure; in so much as the same day being appointed in chancery for your Majesty's great cause, (followed by my Lord *Hunsden**) I writ two other letters to both the Chief Justices, to put them in mind of assisting my Lord Chancellor at the hearing. And when my Lord Chancellor himself took some notice upon that occasion openly in the chancery, that the *Commendams* could not hold presently after, I heard the judges were gone about the *Commendams*; which I thought at first had been only to adjourn the court, but I heard after that they proceeded to argument.

IN this their doing, I conceive they must either except to the nature of the commandment, or to the credence thereof; both which, I assure my self, your Majesty will maintain.

FOR if they should stand upon the general ground, † *nulli negabimus, nulli differemus justitiam*, it receiveth two answers. The one, that reasonable

* This case is reported by my Lord *Hobart*, p. 109.

† *Mag. Chart.*

ble and mature advice may not be confounded with delay; and that they can well alledge when it pleaseth them. The other is, that there is a great difference between a case merely between subject and subject, and where the King's interest is in question directly or by consequence. As for the attorney's place and commission, it is as proper for him to signify the King's pleasure to the judges, as for the secretary to signify the same to the privy council; and so it hath ever been.

THESE things were a little strange if there came not so many of them together, as the one maketh the other seem less strange: but your Majesty hath fair occasions to remedy all, with small aid; I say no more for the present.

I WAS a little plain with my Lord *Coke* in these matters; and when his answer was, that he knew all these things; I said he could never profit too much, in knowing himself and his duty.

CXLII. A memorial for his MAJESTY, corrected with Sir *Fr. Bacon's* own hand. 1616.

IT seemeth this year of the fourteenth of his Majesty's reign, being a year of a kind of majority in his government, is consecrate to justice: || which as his Majesty hath performed to his subjects in this late memorable occasion, so he is now to render and perform to himself, his crown and posterity.

THAT his council shall perceive by that which his Majesty shall now communicate with them, that the mass of his business is continually prepared in his own royal care and cogitations, howsoever he produceth the same to light, and to act *per opera dierum* †.

THAT his Majesty shall make unto them now a declarative of two great causes, whereof he doubteth not they have heard by glimpses; the one concerning his high court of chancery, the other concerning the church and prelacy; but both of them deeply touching his prerogative and sovereignty and the flowers of his crown.

THAT about the end of *Hilary* term last, there came to his Majesty's ears, only by common voice and report, not without great rumour and wonder, that there was somewhat done in the King's-bench the last day of that term, whereby his chancery should be pulled down, and be brought in question for *Praemunire*; being the most heinous offence after treason, and felony, and misprision of treason; and that the time should be when the chancellor lay at the point of death.

THAT his Majesty was so far from hearing of this by any complaint from his chancellor (who then had given over worldly thoughts;) that he wrote letters of comfort to him upon this accident, before he heard from him; and for his attorney, his Majesty challenged him for not advertising him of that, of which it was proper for his Majesty to be informed from him.

THAT his Majesty being sensible of this so great novelty and perturbation in his courts of justice, nevertheless used this method and moderation, that

|| By the laws, several ages are assigned to persons for several purposes: and by the common law the fourteenth year is a kind of majority, and accounted an age of discretion. At that time a man may agree or disagree to a precedent marriage: The heir in socage may reject the guardian appointed by law, and choose a new one: and the woman at that age shall be out of ward, &c. *Stephens*.

† *Per opera dierum*, alluding to the gradations almighty God was pleased to observe in the creating of the world. In this paragraph Sir *Francis Bacon* insinuates, what he expressly declares Vol. III. Essay xlviii. p. 369. that in all negotiations of difficulty, a man must first prepare business, and so ripen it by degrees. *Stephens*.

before

before he would examine this great affront and disgrace offered to his chancery and chancellor, he would first inform himself whether the chancery or chancellor were in fault; and whether the former precedents of chancery did warrant the proceedings there after judgment passed at common law, (which was the thing in question;) and thereupon his Majesty called his learned counsel to him, and commanded them to examine the precedents of chancery, and to certify what they found: which they did; and by their certificate it appeareth, that the precedents of that kind were many and precise in the point, and constant, and in good times, and allowed many times by the judges themselves.

THAT after this his Majesty received from the Lord Chancellor a case, whereby the question was clearly set down and contained within the proper bounds of the present doubt; being, Whether upon apparent matter of equity, which the judges of the law by their place and oath cannot meddle with or relieve, (if a judgment be once passed at common law) the subject shall perish, or that the chancery shall relieve him; and whether there be any statute of *Praemunire* or other, to restrain this power in the Chancellor; which case upon the request of the Lord Chancellor, his Majesty likewise referred to his learned council, (and the Prince's Attorney Mr. *Walter* was joined with them:) who, upon great advice and view of the original records themselves, certified the chancery was not restrained by any statute in that case.

THAT his Majesty again required his learned counsel to call the clerks of the King's-bench to them, and to receive from them any precedents of indictments in the King's-bench against the chancery for proceeding in the like case; who produced only two precedents, being but indictments offered or found, upon which there was no other proceeding; and the clerks said, they had used diligence and could find no more.

THAT his Majesty, after he had received this satisfaction that there was ground for that the chancery had done, and that the chancery was not in fault, he thought then it was time to question the misdemeanor and contempt in scandalizing and dishonouring his justice in that high court of chancery in so odious a manner; and commanded his Attorney-General, with the advice of the rest of his learned counsel, to prosecute the offenders in the star-chamber, which is done; and some of them are fled, and others stand out and will not answer.

THAT there resteth only one part more towards his Majesty's complete information in this cause: which is to examine that which was done in open court the said last day of *Hilary* term, and whether the judges of the King's-bench did commit any excess of authority; or did animate the offenders otherwise, than according to their duty and place; which enquiry, because it concerneth the judges of a court to keep order and decorum, his Majesty thinketh not so convenient to use his learned counsel therein, but will commit the same to some of the council-table, and his learned counsel to attend them.

THIS declared, or what else his Majesty in his own high wisdom shall think good; it will be fit time to have the certificate of the learned counsel openly read.

HIS Majesty may, if he please, forbear to publish at this time at the table the committees; but signify his pleasure to themselves afterwards.

THE committees named by his Majesty, were the Archbishop of *Canterbury*, Secretary *Lake*, the Chancellor of the Exchequer, and the Master of the Rolls.

THIS Report is to be prefixed, to be given in by *Wednesday* at night, that his Majesty may communicate it with his council, and take farther order on *Thursday* thereupon, if his Majesty be so pleased.

AT this declaration, it is his Majesty's direction, (to the end things may appear to be the more evenly carried) that neither my Lord Chancellor nor my Lord Chief Justice be present.

BUT then when his Majesty entereth into the second declarative, my Lord Chancellor is to be called for : but my Lord Chief Justice not ; because it concerneth him.

FOR the second declarative, that his Majesty hath reason to be offended and grieved, in that which passed touching the *Commendams*, both in matter and manner : For the matter, that his Majesty's religious care of the church and of the prelacy, and namely of his lords spiritual the bishops, may well appear ; first, in that he hath utterly expelled those sectaries or inconformable persons that spurned at the government ; secondly, that by a statute made in the first year of his reign, he hath preserved their livings from being wasted and dilapidated by long leases ; and therein bound himself and his crown and succession : And lastly, that they see two bishops privy counsellors at the table, which hath not been of late years.

THAT agreeably to this his Majesty's care and good affection, hearing that there was a case of the Bishop of *Lincoln's*, wherein his Majesty's supreme power of granting *Commendams* (which in respect of the exility of bishopricks is sometimes necessary) was questioned to be overthrown or weakened ; he commanded his Attorney-General, not only to have care to maintain it according to his place, but also that he should relate to his Majesty how things passed ; and did also command the Bishop of *Winchester* to be present at the publick argument of the case ; and to report to his Majesty the true state of that question, and how far it extended.

THIS being accordingly done ; then upon report of the Bishop of *Winchester* in presence of the Lord Chancellor, his Majesty thought it necessary, that before the judges proceeded to declare their opinion they should have conference with his Majesty, to the end to settle some course, that justice might be done, and his regal power (whereof his crown had been so long vested) not touched nor diminished : And thereupon commanded his attorney (who by his place ought properly to signify his Majesty's pleasure to his judges, as his secretary doth to his privy council) in the presence of the Lord Chancellor and the Bishop, to signify his pleasure to the judges, that because his Majesty thought it needful to consult with them in that case before they proceeded to judgment ; and that his Majesty's business (as they all knew) was very great, and *Midsummer* term so near at hand, and the cause argued by his attorney so lately, they should put off the day till they might advise with his Majesty at his next coming to town. That his Majesty's attorney signified so much by his letters (the next day after he had received his commandment) to all the judges, and that in no imperious manner, but alledging the circumstances aforesaid, that the case was lately argued, his Majesty's business great, another term at hand, &c.

Now followeth the manner that was held in this, which his Majesty conceiveth was not only indiscreet, but presumptuous and contemptuous.

FOR first, they disobeyed this his Majesty's commandment, and proceeded to publick argument notwithstanding the same ; and thought it enough to certify only their mind to his Majesty.

SECONDLY,

SECONDLY, in a general letter under all their hands (howsoever it may be upon divided opinion) they alledge unto his Majesty their oath; and that his Majesty's commandment (for the attorney's letter was but the case that it was wrapped in) was against law; as if maturity and a deliberate proceeding were a delay, or that commandment of stay in respect of so high a question of state and prerogative, were like a commandment gotten by importunity, or in favour of a suitor.

THIRDLY, above all, it is to be noted and justly doubted, that upon the contrary, in this that they have done, they have broken their oath; for their oath is to counsel the King when they shall be called; and if when the King calleth them to counsel, they will do the deed first, and give him counsel after, this is more than a simple refusal.

LASTLY, it is no new thing upon divers particular occasions, of a far higher nature than the consulting with their Sovereign about a cause of great moment, to put off days, and yet no breach of oath. And there was another fair passage well known to my Lord Coke, that he might have used if it had pleased him; for that very day was appointed for the King's great cause in the chancery, both for my Lord Hobart and him; which cause ought to have had precedence afore any private cause, as they would have this seem to be.

To this letter his Majesty made a most princely and prudent answer, which I leave to itself.

UPON this declaration his Majesty will be pleased to have the judges letter and his own letter read.

THEN his Majesty (for his part as I conceive) will be pleased to ask the advice of his council as well for the stay of the new day which is *Saturday* next, as for the censure and reproof of the contempt passed: for though the judges are a reverend body, yet they are (as all subjects are) corrigible.

CXLIII. To Sir GEORGE VILLIERS.

S I R,

THE King giveth me a noble choice; and you are the man my heart ever told me you were. Ambition would draw me to the latter part of the choice; but in respect of my hearty wishes, that my Lord Chancellor may live long; and the small hopes I have, that I shall live long myself; and above all, because I see his Majesty's service daily and instantly bleedeth; towards which, I persuade myself (vainly perhaps, but yet in mine own thoughts firmly and constantly) that I shall give, when I am of the table, some effectual furtherance, (as a poor thread of the labyrinth, which hath no other virtue, but an united continuance, without interruption or distraction;) I do accept of the former to be counsellor for the present, and to give over pleading at bar; let the other matter rest upon my proof, and his Majesty's pleasure, and the accidents of time. For to speak plainly, I would be loth that my Lord Chancellor, to whom I owe most after the King and your self, should be locked to his successor, for any advancement or gracing of me. So I ever remain

Your true and most devoted, and most obliged servant,

June 3. 1616.

FR. BACON

CXLIV.

CXLIV. To Sir GEORGE VILLIERS.

S I R,

I SEND his Majesty a draught of the act of council concerning the judges letter, penned as near as I could to his Majesty's instructions received in your presence. I then told his Majesty my memory was not able to keep way with his; and therefore his Majesty will pardon me for any omissions or errors, and be pleased to supply and reform the same. I am preparing some other materials for his Majesty's excellent hand, concerning business that is coming on: For since his Majesty hath renewed my heart within me, methinks I should double my endeavours. God ever preserve and prosper you. I rest,

Your most devoted and bounden servant,

June 12. 1616.

FR. BACON.

CXLV. Touching the *Commendams*.† At *Whitehall* the sixth of June, Anno 1616.

Present the KING's MAJESTY.

Lord Archbishop of *Cant*.
 Lord Chancellor.
 Lord Treasurer.
 Lord Privy Seal.
 Lord Chamberlain.
 Duke of *Lenox*.
 Lord *Zouche*.
 Bishop of *Winton*.
 Lord *Knollys*.

Lord *Wotton*.
 Lord *Stanbope*.
 Lord *Fenton*.
 Mr. Vice-Chamberlain.
 Mr. Secretary *Winwood*.
 Mr. Secretary *Lake*.
 Mr. Chancellor of the Exchequer.
 Master of the Rolls.

HIS Majesty having this day given order for meeting of the council, and that all the judges (being twelve in number) should be sent for to be present; when the lords were sat, and the judges ready attending, his Majesty came himself in person to council, and opened to them the cause of that assembly; which was, that he had called them together concerning a question that had relation to no private person, but concerned God and the King, the power of his crown, and the state of this church, whereof he was protector; and that there was no fitter place to handle it, than at the head of his council-table: that there had been a question pleaded and argued concerning *Commendams*; the proceedings wherein had either been misreported or mishandled; for his Majesty a year since had receiv'd advertisements concerning the cause in two entrances, by some that intrenched into his prerogative royal, in the general power of granting *Commendams*; and by others, that the doubt rested only upon a special nature of a *Commendam*, such as in respect of the incongruity and exorbitant form thereof, might be questioned without impeaching or weakening the general power of all.

WHEREUPON his Majesty willing to know the true state thereof, commanded the Lord *Bishop of *Winchester*, and Mr. Secretary *Winwood* to be

* D. Bilson,
 who died
 June 18.
 1616.

† This is the act of council referred to in the preceding letter, and drawn up by Sir Fr. Bacon; which, being written in a fair manner, I accidentally bought, and have corrected. If any errors remain, as I believe the reader will think there doth; it is because I had no opportunity to peruse the council-books. *Stephens* present

present at the next argument, and to report the state of the question and proceeding to his Majesty. But Mr. Secretary *Winwood* being absent by occasion, the Lord of *Winchester* only was present, and made information to his Majesty of the particulars thereof, which his Majesty commanded him to report to the board. Whereupon the Lord of *Winchester* stood up and said, that Serjeant *Cliborne*, who argued the cause against the *Commendams*, had maintained divers positions and assertions very prejudicial to his Majesty's prerogative royal; as first, that the translation of bishops was against the canon law; and for authority vouched the canons of the council of *Sardis*; that the King had not power to grant *Commendams*, but in case of necessity; that there could be no necessity, because there could be no need, for augmentation of living: for no man was bound to keep hospitality above his means; besides many other parts of his argument tending to the overthrow of his Majesty's prerogative in case of *Commendams*.

THE Lord of *Winchester* having made his report, his Majesty resumed his former narrative, letting the lords know, that after the Lord of *Winton* had made unto his Majesty a report of that which passed at the argument of the cause, like in substance unto that which now had been made; his Majesty apprehending the matter to be of so high a nature, commanded his attorney-general to signify his Majesty's pleasure unto the Lord Chief Justice; that in regard of his Majesty's most weighty occasions, and for that his Majesty held it necessary upon the Lord of *Winton's* report, that his Majesty be first consulted with, before the judges proceed to argue it; therefore the day appointed for the judges argument, should be put off till they might speak with his Majesty, and this letter of his Majesty's Attorney was, by his Majesty's commandment, openly read as followeth, *in haec verba*.

MY LORD,

" IT is the King's express pleasure, that because his Majesty's time would
 " not serve to have conference with your lordship and his judges, touch-
 " ing the cause of *Commendams*, at his last being in town; in regard of his
 " Majesty's other most weighty occasions; and for that his Majesty holdeth
 " it necessary, upon the report which my Lord of *Winchester*, (who was pre-
 " sent at the last arguments by his Majesty's royal commandment) made to
 " his Majesty, that his Majesty be first consulted with, ere there be any far-
 " ther proceedings by arguments by any of the judges, or otherwise; there-
 " fore that the day appointed for the farther proceedings by arguments of
 " the judges in that case, be put off till his Majesty's farther pleasure be known,
 " upon consulting with him. And to that end that your lordship forthwith
 " signify his commandment to the rest of the judges, whereof your lord-
 " ship may not fail: and so I leave your lordship to God's goodness.

This Thursday afternoon,
 April 25, 1616.

Your loving friend to command,

FR. BACON.

THAT upon this letter received, the Lord Chief Justice returned word to his Majesty's said attorney by his servant; that it was fit the rest of his brethren should understand his Majesty's pleasure immediately by letters from his said attorney to the judges of the several benches, and accordingly it was done; whereupon all the said judges assembled, and by their letter under their hands certified his Majesty, that they held those letters, importing the signification aforesaid to be contrary to law, and such as they could not yield to the same

by their oath; and that thereupon they had proceeded at the day, and did now certify his Majesty thereof; which letter of the judges his Majesty also commanded to be openly read, the tenor whereof followeth, *in eadem verba*.

Most dread and most gracious Sovereign,

“IT may please your most excellent Majesty to be advertised, that this letter here inclosed was delivered unto me your Chief Justice on *Thursday* last in the afternoon, by a servant of your Majesty's Attorney-General; and letters of like effect were on the day following sent from him by his servant to us your Majesty's justices of every of the courts at *Westminster*. We are and ever will be ready with all faithful and true hearts, according to our bounden duties, to serve and obey your Majesty, and think our selves most happy to spend our times and abilities to do your Majesty true and faithful service in this present case mentioned in this letter. What information hath been made unto you, whereupon Mr. Attorney doth ground his letter from the report of the Bishop of *Winton*, we know not; this we know, that the true substance of the cause summarily is thus; it consisteth principally upon the construction of two acts of parliament, the one of the twenty fifth year of K. *Edw. III.* and the other of the twenty fifth year of K. *Hen. VIII.* whereof your Majesty's judges upon their oaths, and according to their best knowledge and learning, are bound to deliver their true understanding faithfully and uprightly; and the case between two for private interest and inheritance earnestly called on for justice and expedition. We hold it our duty to inform your Majesty, that our oath is in these expresse words, that in case any letters come unto us contrary to law, that we do nothing by such letters but certify your Majesty thereof, and go forth to do the law, notwithstanding the same letters: we have advisedly considered of the said letter of Mr. Attorney, and with one consent do hold the same to be contrary to law, and such as we could not yield to the same by our oath, assuredly persuading our selves that your Majesty being truly informed, that it standeth not with your royal and just pleasure to give way to them: And knowing your Majesty's zeal to justice to be most renowned, therefore we have according to our oaths and duties, at the very day prefixed the last term, proceeded, and thereof certified your Majesty; and shall ever pray to the Almighty for your Majesty in all honour, health and happiness long to reign over us.

Serjeant's Inn,
25 Ap. 1616.

Edw. Coke, Henry Hobart, Laur. Tansfield, Pet. Warburton, George Snigge, Ja. Albam, Ed. Beomley, John Croke, Humphry Winche, John Dodderidge, Augustine Nicolls, Robert Houghton.

HIS Majesty having considered of this letter, by his princely letters returned answer, reporting himself to their own knowledge and experience what princely care he hath ever had since his coming to the crown, to have justice duly administer'd to his subjects, with all possible expedition; and how far he was from crossing or delaying of justice, when the interest of any private person was questioned: But on the other side expressing himself, that where the case concerned the high powers and prerogatives of his crown, he would not endure to have them wounded through the sides of a private person; admonishing them also, lastly, of a custom lately entertained, of a greater boldness to dispute the high points of his Majesty's prerogative in a popular

and unlawful liberty of argument more than in former times : And making them perceive also how weak and impertinent the pretence of allegation of their oath was in a case of this nature, and how well it might have been spared; with many other weighty points in the said letter contained : Which letter also by his Majesty's appointment and commandment was publicly read *in haec verba*.

James Rex.

“ **T**RUSTY and well-beloved counsellors, and trusty and well-beloved, we greet you well. We perceive by your letter, that you conceive the commandment given you by our Attorney-General in our name to have proceeded upon wrong information : But if you list to remember what princely care we have ever had since our coming to this crown, to see justice duly administer'd to our subjects, with all possible expedition ; and how far we have ever been from urging the delay thereof in any sort, you may safely persuade yourselves that it was no small reason that moved us to send you that direction : You might very well have spared your labour in informing us of the nature of your oath ; for altho' we never studied the common law of *England*, yet are we not ignorant of any points which belong to a King to know : We are therefore to inform you hereby, that we are far from crossing or delaying any thing which may belong to the interest of any private party in this case ; but we cannot be contented to suffer the prerogative royal of our crown to be wounded through the sides of a private person : We have no care at all which of the parties shall win his process in this case, so that right prevail, and that justice be truly administer'd. But on the other side, we have reason to foresee that nothing be done in this case which may wound our prerogative in general ; and therefore so that we may be sure that nothing shall be debated amongst you which may concern our general power of giving *Commandments*, we desire not the parties to have one hour's delay of justice ; but that our prerogative should not be wounded in that regard for all times hereafter upon pretext of private persons interest, we sent you that direction ; which we account as well to be wounded if it be publicly disputed upon, as if any sentence were given against it : We are therefore to admonish you, that since the prerogative of our crown hath been more boldly dealt withal in *Westminster-hall*, during the time of our reign, than ever it was before in the reigns of divers princes immediately preceding us, that we will no longer endure that popular and unlawful liberty ; and therefore we were justly moved to send you that direction to forbear to meddle in a cause of so tender a nature, till we had farther thought upon it. We have cause indeed to rejoice of your zeal for your speedy execution of justice ; but we would be glad that all our subjects might so find the fruits thereof, as that no pleas before you were of older date than this is. But as to your argument, which you found upon your oath, you give our predecessors, who first founded the oath, a very charitable meaning, in perverting their intention and zeal to justice, to make a weapon of it to use against their successors : For although your oath be, that you shall not delay justice between any private persons or parties, yet was it not meant that the King should thereby receive harm, before he be forewarned thereof ; neither can you deny, but that every term you will out of your own discretions, for reasons known unto you, put off either the hearing or determining of any ordinary cause betwixt private persons till the next term

“ following.

“ following. Our pleasure therefore is, who are the head and fountain of
 “ justice under God in our dominions, and we out of our absolute power
 “ and authority royal do command you, that you forbear to meddle any far-
 “ ther in this plea till our coming to town, and that out of our own mouth
 “ you hear our pleasure in this business; which we do out of the care we
 “ have, that our prerogative may not receive an unwitting and indirect blow;
 “ and not to hinder justice to be administer'd to any private parties, which
 “ no importunities shall persuade us to move you in. Like as, only for the
 “ avoiding of the unreasonable importunity of suitors in their own particular,
 “ that oath was by our predecessors ordained to be minister'd unto you: so
 “ we wish you heartily well to fare.

Postscript. You shall upon the receipt of this letter call our Attorney-Ge-
 neral unto you, who will inform you of the particular points which we are
 unwilling to be disputed of in this case.

THIS letter being read, his Majesty resolv'd to take into his consideration
 the parts of the judges letter and other their proceedings in that cause, and
 the errors therein contained and committed; which errors his Majesty did
 set forth to be both in matter and manner: In matter, as well by way of
 omission as commission; for omission, that it was a fault in the judges, that
 when they heard a counsellor at the bar presume to argue against his Ma-
 jesty's prerogative, which in this case was in effect his supremacy, they did
 not interrupt and reprove sharply that base and bold course of defaming or
 impeaching things of so high a nature by discourse; especially since his Ma-
 jesty hath observed, that ever since his coming to the crown, the popular
 sort of lawyers have been the men, that most affrontedly in all parliaments
 have trodden upon his prerogative; which being most contrary to their vo-
 cation of any men, since the law or lawyers can never be respected, if the
 King be not revered. It doth therefore best become the judges of any,
 to check and bridle such impudent lawyers, and in their several benches to
 disgrace them that bear so little respect to their King's authority and prero-
 gative: That his Majesty had a double prerogative, whereof the one was
 ordinary and had relation to his private interest, which might be, and was
 every day, disputed in *Westminster-hall*; the other was of an higher nature,
 referring to his supreme and imperial power and sovereignty, which ought
 not to be disputed or handled in vulgar argument: But that of late the courts
 of the common law are grown so vast and transcendent, as they did both
 meddle with the King's prerogative, and had incroached upon all other
 courts of justice; as the high commission, the councils established in *Wales*
 and at *York*, the court of requests.

CONCERNING that which might be termed commission, his Majesty took
 exception at the judges letter both in matter and form: For matter, his Ma-
 jesty plainly demonstrated, that whereas it was contained in the judges let-
 ter, that the signification of his Majesty's letter as aforesaid was contrary to
 law; and not agreeable to the oath of a judge, that could not be: First,
 for that the putting off any hearing or proceeding upon any just or necessary
 cause, is no denying or delaying of justice, but wisdom and maturity of pro-
 ceeding; and that there cannot be a more just and necessary cause of stay,
 than the consulting with the King, where the cause concerns the crown;
 and that the judges did daily put off causes upon lighter occasions; and like-
 wise his Majesty did desire to know of the judges, how his calling them to
 consult with him was contrary to law, which they could never answer unto.

SECONDLY,

SECONDLY, That it was no bare supposition or surmise, that this cause concerned the King's prerogative; for that it had been directly and plainly disputed at the bar; and the very disputing thereof in a publick audience, is both dangerous and dishonourable to his Majesty.

THIRDLY, That the manner of the putting off that which the King required, was not infinite nor long time, but grounded upon his Majesty's weighty occasions, which were notorious; by reason whereof he could not speak with the judges before the argument; and that there was a certain expectation of his Majesty's return at *Whitsuntide*: And likewise that the cause had been so lately handled and argued, and would not receive judgment by the *Easter* term next, as the judges themselves afterwards confessed.

AND afterwards, because there was another just cause of absence for the two Chief Justices, for that they ought to have assisted the Lord Chancellor the same day in a great cause of the King's, followed by the Lord *Hunsdon* against the Lord *William Howard* in chancery; which cause of the King's, especially being so worthy, ought to have had precedency before any cause betwixt party and party. Also where it was contained in the judges letter that the cause of *Commendams* was but a cause of private interest between party and party, his Majesty shewed plainly the contrary; not only by the argument of Serjeant *Chiborne*, which was before his commandment, but by the argument of the judges themselves, namely Justice *Nicolls* which was after; but especially since one of the parties is a bishop who pleaded for the *Commendams* by the virtue of his Majesty's prerogative.

ALSO whereas it was contained in the judges letter, that the parties called upon them earnestly for justice, his Majesty conceived it to be but pretence; urging them to prove that there was any sollicitation by the parties for expedition, otherwise than in an ordinary course of attendance; which they could not prove.

As for the form of the letter, his Majesty noted, that it was a new thing, and very indecent and unfit for subjects to disobey the King's commandment, but most of all to proceed in the mean time, and to return to him a bare certificate; whereas they ought to have concluded with the laying down and representing of their reasons modestly to his Majesty, why they should proceed; and so to have submitted the same to his princely judgment, expecting to hear from him whether they had given him satisfaction.

AFTER this his Majesty's declaration, all the judges fell down upon their knees, and acknowledged their error for matter and form, humbly craving his Majesty's gracious favour and pardon for the same.

BUT for the matter of the letter, the Lord Chief Justice of the King's-bench enter'd into a defence thereof; the effect whereof was, that the stay required by his Majesty was a delay of justice, and therefore contrary to law and the judge's oath; and that the judges knew well amongst themselves, that the case (as they meant to handle it) did not concern his Majesty's prerogative of granting of *Commendams*: And that if the day had not held by the not coming of the judges, the suit had been discontinued, which had been a failing of justice; and that they could not adjourn it, because Mr. Attorney's letter mentioned no day certain, and that an adjournment must always be to a day certain.

UNTO which answer of the Chief Justice, his Majesty did reply; that for the last conceit it was mere sophistry, for that they might in their discretions have prefixed a convenient day, such as there might have been time for them to

consult with his Majesty before, and that his Majesty left that point of form to themselves.

AND for that other point, that they should take upon them peremptorily to discern whether the plea concerned the King's prerogative, without consulting with his Majesty first, and informing his princely judgment, was a thing preposterous; for that they ought first to have made that appear to his Majesty, and so to have given him assurance thereof upon consulting with him.

AND for the matter, that it should be against the law and against their oath, his Majesty said he had spoken enough before; unto which the Lord Chief Justice in effect had made no answer, but only insisted upon the former opinion; and therefore the King required the Lord Chancellor to deliver his opinion upon that point, whether the stay that had been required by his Majesty were contrary to law, or against the judges oath.

THE Chancellor stood up and moved his Majesty, that because this question had relation to matter of law, his Majesty would be informed by his learned counsel first, and they first to deliver their opinions, which his Majesty commanded them to do.

WHEREUPON his Majesty's Attorney-General gave his opinion, that the putting off of the day in manner as was required by his Majesty, to his understanding was without all scruple no delay of justice, nor danger of the judges oath; insisting upon some of the reasons which his Majesty had formerly opened, and adding that the letter he had formerly written by his Majesty's command, was no imperious letter; as to say his Majesty for certain causes, or for causes known to himself, would have them put off the day, but fairly and plainly expressed the causes unto them; for that the King conceived upon my Lord of *Winton's* report, that the cause concerned him; and that his Majesty would have willingly spoken with them before, but by reason of his important business could not; and therefore required a stay till they might conveniently speak with him, which they knew could not be long. And in conclusion of his speech wished the judges to consider seriously with themselves, whether they were not in greater danger of breach of their oaths by the proceedings than they would have been by their stay; for that it is part of their oath to counsel his Majesty when they are called; and if they will proceed first in a business whereupon they are called to counsel, and will counsel him when the matter is past, it is more than a simple refusal to give him counsel; and so concluded his speech, and the rest of the learned counsel consented to his opinion.

WHEREUPON the Lord Chief Justice of the King's bench answering nothing to the matter, took exception that the King's counsel learned should plead or dispute with the Judges; for he said they were to plead before Judges, and not to dispute with them. Whereunto the King's Attorney replied, that he found that exception strange; for that the King's learned counsel were by oath and office, and much more when they had the King's express commandment, without fear of any man's face, to proceed or declare against any the greatest peer or subject of the kingdom; and not only any subject in particular, but any body of subjects or persons, were they judges, or were they of an upper and lower house of parliament, in case they exceed the limits of their authority, or took any thing from his Majesty's royal power or prerogative; and so concluded, that this challenge, and that in his Majesty's presence, was a wrong to their places, for which he and his fellows did appeal to his Majesty for reparation. And thereupon his Majesty did affirm,

affirm, that it was their duty so to do, and that he would maintain them therein, and took occasion afterward again to speak of it; for when the Lord Chief Justice said he would not dispute with his Majesty, the King replied, that the Judges would not dispute with him, nor his learned counsel might not dispute with them; so whether they did well or ill, it must not be disputed.

AFTER this the Lord Chancellor declared his mind plainly and clearly, that the stay that had been by his Majesty required, was not against the law, nor a breach of the judges oath, and required that the judges oath itself might be read out of the statute, which was done by the King's Solicitor, and all the words thereof weighed and considered.

THEREUPON his Majesty and the lords thought good to ask the judges severally their opinions; the question being put in this manner: Whether if at any time, in a case depending before the judges his Majesty conceived it to concern him either in power or profit, and thereupon required to consult with them, and that they should stay proceedings in the mean time, they ought not to stay accordingly? They all (the Lord Chief Justice only excepted) yielded that they would, and acknowledged it to be their duties so to do; only the Lord Chief Justice of the King's-bench said for answer, that when the case should be, he would do that which should be fit for a judge to do. And the Lord Chief Justice of the Common-pleas, who had assented with the rest, added, that he would ever trust the justice of his Majesty's commandment. After this was put to a point, his Majesty thought fit, in respect of the farther day of argument, appointed the Saturday following for the *Commendams*, to know from his judges what he might expect from them concerning the same. Whereupon the Lord of *Canterbury* breaking the case into some questions, his Majesty did require his judges to deal plainly with him, whether they meant in their argument to touch the general power of granting *Commendams*, yea or no? Whereupon all the said judges did promise and assure his Majesty, that in the argument of the said case of *Commendams*, they would speak nothing which should weaken or draw into doubt his Majesty's prerogative for granting of them; but intended particularly to insist upon the points of *lapse* and other judicial points of this case, which they conceived to be of a form differing from all other *Commendams* which have been practised.

THE judges also went farther, and did promise his Majesty, that they would not only abstain from speaking any thing to weaken his Majesty's prerogative of *Commendams*, but would directly and in plain terms affirm the same, and correct the erroneous and bold speeches which had been used at the bar in derogation thereof.

ALSO the judges did in general acknowledge and profess with great forwardness, that it was their duty, if any counsellor at the law presumed at any time to call in question his Majesty's high prerogative, that they ought to reprehend them and silence them, and all promised so to do hereafter.

LASTLY, the two judges that were then next to argue, Mr. Justice *Dodderidge*, and Mr. Justice *Winch* opened themselves unto his Majesty thus far; that they would insist chiefly upon the *lapse*, and some points of uncertainty, repugnancy, and absurdity, being peculiar to this *Commendam*; and that they would shew their dislike of that which had been said at the bar, for the weakening of the general power; and Mr. Justice *Dodderidge* said he would conclude for the King, that the church was void and in his Majesty's gift; he also said that the King might give a *Commendam* to a bishop either before
or

or after his consecration, and that he might give it him during his life, or for a certain number of years.

THE judges having thus far submitted and declared themselves, his Majesty commanded them to keep the bounds and limits of their several courts, not to suffer his prerogative to be wounded by rash and unadvised pleading before them, or by new invention of law: for as he well knew the true and ancient common law is the most favourable for Kings of any law in the world; so he advised them to apply their studies to that ancient and best law, and not to extend the power of any other of their courts beyond their due limits; following the precedents of the best ancient judges in the times of the best government; and that then they might assure themselves that he for his part in his protection of them, and expediting of justice, would walk in the steps of ancient and best Kings. Whereupon he gave them leave to proceed in their argument.

WHEN the judges were removed, his Majesty that had forbore to ask the voices and opinions of his council before the judges, because he would not prejudicate the freedom of the judges opinion, concerning whether the stay of proceedings that had been by his Majesty required, could by any construction be thought to be within the compass of the judges oath (which they had heard read unto them) did then put the question to his council; who all with one consent did give opinion, that it was far from any colour or shadow of such interpretation, and that it was against common sense to think the contrary, especially since there is no mention made in their oath of delay of justice, but only that they should not deny justice, nor be moved by any of the King's letters, to do any thing contrary to law or justice.

G. Cant. Tho. Ellesmere, Canc. Tb. Suffolk, E. Worcester, Pembroke, Nottingham, Lenox, W. Knollys, John Digby, Ralph Winwood, Tho. Lake, Fulke Greville, Jul. Caesar, Fra. Bacon.

CXLVI. To Sir GEORGE VILLIERS.

S I R,

I DO think you may do your self honour, and that which is more, do a good work; if you will assist and perfect a motion begun, (and that upon a good ground, both of submission and conformity,) for the restoring of Doctor *Burges* to preach*; and I wish likewise, that if *Grays-Inn* should think good (after he is free from the state,) to choose him for their preacher, his Majesty should not be against it: for certainly we should watch him well if he should fly forth; so as he cannot be placed in a more safe auditory. This may seem a trifle, but I do assure you I do scarce know a particular, wherein you may open more honest mouths to speak honour of you, than this. And I do extremely desire there may be a full cry from all sorts of people, (especially the best,) to speak, and to trumpet out your commendations. I pray you take it to heart, and do somewhat in it. I rest,

Your devoted and bounden servant,

FR. BACON.

June 12. 1616.

* Soon after this date Doctor *Burges* was presented to the parsonage of *Sutton-Colfield* in *Warwickshire*. In 1620 he attended Sir *Horace Vere* into the *Palatinate*, where that noble general conducted thither a gallant regiment, the largest for number, and greatest for quality, (being much composed of gentlemen) that had been seen. *Stephens.*

CXLVII. To Sir GEORGE VILLIERS.

S I R,

THERE is a particular wherein I think you may do your self honour, which as I am informed hath been laboured by my Lady of *Bedford* ||, and put in good way by the Bishop of *Bath and Wells* †, concerning restoring to preach of a famous preacher, one Doctor *Burgefs*; who, though he hath been silenced a great time, yet he hath now made such a submission touching his conformity, as giveth satisfaction. It is much desired also by *Grays-Inn* (if he shall be free from the state,) to chuse him for their preacher: and certainly it is safer to place him there, than in another auditory, because he will be well watched, if he should any ways fly forth in his sermons beyond duty. This may seem a trifle, but I do assure you, in opening this man's mouth to preach, you shall open very many mouths to speak honour of you; and I confess I would have a full cry of puritans, of papists, of all the world to speak well of you; and besides I am persuaded, (which is above all earthly glory) you shall do God good service in it. I pray deal with his Majesty in it. I rest,

Your devoted and bounden servant,

FR. BACON.

June 13. 1616.

|| My Lady of *Bedford*, so much celebrated by Doctor *Donne*, and Sir *William Temple*, for the admirable disposition of her garden at *Moor-Park*, was sister and co-heir to the last Lord *Harrington of Exton*; who dying in the entrance of the year 1614, and the 22d of his age, revived in the nation the sense it had of the loss of Prince *Henry*, as being a young nobleman of great hopes and piety. This lady disposed of much of the estate she had from her brother; selling *Barley* upon the hill in the county of *Rutland*, to the then Marquis of *Buckingham*, where he afterwards adorned the seat with noble structures, which were destroy'd in the time of our civil wars. But this place has now recover'd its ancient splendour at the expence, and by the direction of its present Lord the Earl of *Nottingham*. *Stephens.*

† This bishop was fifth son to Sir *Edward Montague*, and brother to *Edward* the first Lord *Montague of Boughton*, a prelate of great learning and eloquence, and very munificent; and by some called King *James's* ecclesiastical favourite. In 1616 he was translated to *Winchester*, and dying in two years time, he was buried in the body of the Abbey-Church of *Bath*, which with great cost and care he had preserved from the ruins, which time and neglect were bringing upon it. *Stephens.*

From the Original.

CXLVIII. To Sir GEORGE VILLIERS.*

S I R,

I SEND you inclosed a warrant for my Lady of *Somerset's* pardon, reformed in that main and material point, of inserting a clause [that she was not a principal, but an accessary before the fact, by the instigation of base persons.] Her friends think long to have it dispatched, which I marvel not at, for that in matter of life, moments are numbred †.

I do more and more take contentment in his Majesty's choice of Sir *Oliver St. John*, for his Deputy of *Ireland*, finding, upon divers conferences with him, his great sufficiency; and I hope the good intelligence which he purposeth to hold with me, by advertisements from time to time, shall work a good effect for his Majesty's service.

† Of the trial and conviction of the Countess of *Somerset*, for being accessary to the murder of Sir *Thomas Overbury*, an account may be seen in the Introduction to Sir *Francis Bacon's* letters and memoirs; but the Lord High Steward, and the Peers, observing that there had been satisfaction made to justice, that she had been seduced by base persons, and that she had freely confessed her crime, interceded with the King for her pardon.

I am wonderful desirous to see that kingdom flourish, because it is the proper work and glory of his Majesty and his times. And his Majesty may be pleased to call to mind, that a good while since, when the great rent and divisions were in the parliament of *Ireland*, I was no unfortunate remembrancer to his Majesty's princely wisdom in that business. God ever keep you and prosper you.

Your true and most devoted and bounden Servant,

1 July 1616.

FR. BACON.

From the Original.

CXLIX. To Sir GEORGE VILLIERS.*

S I R,

I THINK I cannot do better service towards the good estate of the kingdom of *Ireland*, than to procure the King to be well served in the eminent places of law and justice: I shall therefore name unto you for the Attorney's place there, or for the Solicitor's place, if the new Solicitor shall go up, a Gentleman of mine own breeding and framing, Mr. *Edward Wyrthington* of *Grays-Inn*; he is born to eight hundred pounds a year; he is the eldest son of a most severe justicer, amongst the recusants of *Lancashire*, and a man most able for law and speech, and by me trained in the King's causes. My Lord Deputy, by my description, is much in love with the man. I hear my Lord of *Canterbury*, and Sir *Thomas Laque*, should name one Sir *John Beare*, and some other mean men. This man I commend upon my credit, for the good of his Majesty's service. God ever preserve and prosper you. I rest,

Your most devoted, and most bounden servant,

2 July 1616.

FR. BACON.

CL. To Sir GEORGE VILLIERS, about *Irish* affairs.

S I R,

BECAUSE I am uncertain whether his Majesty will put to a point some resolutions touching *Ireland*, now at *Windsor*; I thought it my duty to attend his Majesty by my letter, (and thereby to supply my absence) for the renewing of some former commissions for *Ireland*, and the framing of a new commission for the wards and the alienations, which appertain properly to me as his Majesty's Attorney, and have been accordingly referred by the lords. I will undertake that they are prepared with a greater care, and better application to his Majesty's service in that kingdom, than heretofore they have been; and therefore of that I say no more. And for the instructions of the new deputy, they have been set down by the two secretaries, and read to the board; and being things of an ordinary nature, I do not see but they may pass.

BUT there have been three propositions and counsels which have been stirred, which seem to me of very great importance; wherein I think my self bound to deliver to his Majesty my advice and opinion, if they should now come in question.

THE first is, touching the recusant magistrates of the towns of *Ireland*, and the commonalties themselves their electors, what shall be done? Which

consul-

consultation ariseth from the late advertisements of the two Lords Justices, upon the instance of the two towns, *Limerick* and *Kilkenny*; in which advertisements they represent the danger only, without giving any light for the remedy; rather warily for themselves, than agreeably to their duties and places.

IN this point I humbly pray his Majesty to remember, that the refusal is not of the oath of allegiance, (which is not enacted in *Ireland*;) but of the oath of supremacy, which cutteth deeper into matter of conscience. Also, that his Majesty will, out of the depth of his excellent wisdom and providence, think, and, as it were, calculate with himself, whether time will make more for the cause of religion in *Ireland*, and be still more and more propitious; or whether deferring remedies will not make the case more difficult. For if time give his Majesty advantage, what needeth precipitation to extreme remedies? But if time will make the case more desperate, then his Majesty cannot begin too soon. Now, in my opinion, time will open and facilitate things for reformation of religion there, and not shut up or lock out the same. For first, the plantations going on, and being principally of protestants, cannot but mate the other party in time; also his Majesty's care in placing good bishops and divines, in amplifying the college there, and in looking to the education of wards and the like; as they are the most natural means, so are they like to be the most effectual and happy for the weeding out of popery, without using the temporal sword: so that, I think, I may truly conclude, that the ripeness of time is not yet come.

THEREFORE my advice in all humbleness is, that this hazardous course of proceeding, to tender the oath to the magistrates of towns, proceed not, but die by degrees. And yet, to preserve the authority and reputation of the former council, I would have somewhat done; which is, that there be a proceeding to seizure of liberties; but not by any act of power, but by *Quo warranto*, or *Scire facias*; which is a legal course; and will be the work of three or four terms; by which time the matter will somewhat cool.

BUT I would not (in any case) that the proceeding should be with both the towns, which stand now in contempt, but with one of them only, choosing that which shall be thought most fit. For if his Majesty proceed with both, then all the towns that are in the like case will think it a common cause; and that it is but their case to-day, and their own to-morrow. But if his Majesty proceed with one, the apprehension and terror will not be so strong; for they will think it may be their case as well to be spared as prosecuted: and this is the best advice that I can give to his Majesty in this strait; and of this opinion seemed my Lord Chancellor to be.

THE second proposition is this: it may be his Majesty will be moved to reduce the number of his council of *Ireland*, which is now almost fifty, to twenty, or the like number; in respect the greatness of the number doth both embase the authority of the council, and divulge the business. Nevertheless, I do hold this proposition to be rather specious and solemn, than needful at this time; for certainly, it will fill the state full of discontentment; which in a growing and unsettled estate ought not to be.

THIS I could wish; that his Majesty would appoint a select number of counsellors there, which might deal in the improvement of his revenue, (being a thing not fit to pass through too many hands;) and that the said selected number should have days of sitting by themselves, at which the rest of the council should not be present; which being once settled, then other principal business

business of state may be handled at those sittings, and so the rest begin to be diffused, and yet retain their countenance without murmur or disgrace.

THE third proposition, as it is wound up, seemeth to be pretty, if it can keep promise; for it is thus, that a means may be found to re-inforce his Majesty's army there by 500 or 1000 men; and that without any penny encrease of charge. And the means should be, that there should be a commandment of a local removing, and transferring some companies from one province to another; whereupon it is supposed, that many that are planted in house and lands, will rather lose their entertainment than remove; and thereby new men may have their pay, and yet the old be mingled in the country for the strength thereof.

IN this proposition two things may be feared: the one, discontent of those that shall be put off; the other, that the companies shall be stuffed with *Tirones*, instead of *Veterani*. I wish therefore that this proposition be well debated ere it be admitted. Thus having performed that which duty binds me to do, I commend you to God's best preservation.

Your most devoted and bounden servant,

FR. BACON.

Gorhambury, July 5. 1616.

From the Original.

CLI. To the KING.*

It may please your most excellent Majesty,

ACCORDING to your commandment, I send inclosed the preface to the patent of creation of Sir *George Villiers*. I have not used any glaring terms, but drawn it according to your Majesty's instructions, and the note which thereupon I framed, and your Majesty allowed, with some additions which I have inserted. But I hope your Majesty will be pleased to correct and perfect it. Your Majesty will be also pleased to remember, that if the creation shall be at *Roughford*, your pleasure and this draught be speedily returned; for it will ask a sending of the bill for your Majesty's signature, and a sending back of the same to pass the seals, and a sending thereupon the patent itself: so it must be twice sent up and down before the day. God evermore preserve your Majesty.

Your Majesty's most devoted and most bounden servant,

28 July 1616.

FR. BACON.

CLII. To Sir GEORGE VILLIERS, on sending his bill for Viscount.

S I R,

I SEND you the bill for his Majesty's signature, reformed according to his Majesty's amendments, both in the two places, (which, I assure you, were both altered with great judgment;) and in the third place, which his Majesty termed a question only. But he is an idle body that thinks his Majesty asks an idle question; and therefore his Majesty's questions are to be answered, by taking away the cause of the question, and not by replying.

FOR

FOR the name, his Majesty's will is a law in those things; and to speak truth, it is a well-sounding and noble name, both here and abroad; and being your proper name, I will take it for a good sign that you shall give honour to your dignity, and not your dignity to you. Therefore I have made it Viscount *Villiers*: and for your barony, I will keep it for an earldom; for though the other had been more orderly, yet that is as usual, and both alike good in law.

FOR *Roper's* place*, I would have it by all means dispatched: And therefore I marvel it lingereth. It were no good manners to take the business out of my Lord Treasurer's hands; and therefore I purpose to write to his lordship, if I hear not from him first by Mr. *Deccomb*. But if I hear of any delay, you will give me leave (especially since the King named me,) to deal with Sir *John Roper* my self; for neither I, nor my Lord Treasurer, can deserve any great thanks of you in this business; considering the King hath spoken to Sir *John Roper*, and he hath promised; and besides, the thing itself is so reasonable, as it ought to be as soon done as said. I am now gotten into the country to my house, where I have some little liberty to think of that I would think of, and not of that which other men hourly break my head withal, as it was at *London*. Upon this you may conclude, that most of my thoughts are of his Majesty; and then you cannot be far off. God ever keep you, and prosper you. I rest always

Your true and most devoted servant,

Aug. 5. 1616.

FR. BACON.

* Sir *John Roper*, who had for many years enjoy'd the place of the Chief Clerk for enrolling of pleas in the court of King's-bench, esteem'd to be worth about 4000 l. per ann. being grown old, was prevail'd with to surrender it upon being created Lord *Teynham*, with a reservation of the profits thereof to himself during life. Upon which surrender Sir *George Villiers* was to have the office granted to two of his trustees for their lives, as Carr Earl of *Somerſet* was to have had before. But the Lord Chief Justice *Coke* not being very forward to accept of the surrender, or make a new grant of it upon those terms, he was upon the 3d of October 1616, commanded to desist from the service of his place, and at last removed from it upon the 15th of November following. His successor Sir *Henry Montagu*, third son of Sir *Edward Montagu* of *Boughton* in *Northamptonſhire*, Recorder of *London*, and King's Serjeant, being more complaisant, Sir *John Roper* resign'd towards the latter end of the same month; and Mr. *Sbute*, and Mr. *Heath*, who was afterwards the King's Solicitor General, being the deputies and trustees of Sir *Geo. Villiers*, were admitted. *Stephens*, Introduction. p. 37.

CLIII. To Sir GEORGE VILLIERS, on sending his patent.

S I R,

I HAVE sent you now your patent of creation of Lord *Blechley*, of *Blechley*, and of Viscount *Villiers*. *Blechley* is your own; and I liked the sound of the name better than *Whaddon*; but the name will be hid, for you will be called Viscount *Villiers*. I have put them both in a patent, after the manner of the patent of arms where baronies are joined: But the chief reason was, because I would avoid double prefaces, which had not been fit; nevertheless the ceremony of robing, and otherwise, must be double: and now, because I am in the country, I will send you some of my country fruits, which with me are good meditations; which, when I am in the city, are choked with business.

AFTER that the King shall have water'd your new dignities, with his bounty of the lands which he intends you; and that some other things concerning your means, which are now likewise in intention, shall be settled upon you; I do not see but you may think your private fortunes established: And therefore it is now time, that you should refer your actions chiefly to

the good of your sovereign and your country. It is the life of an ox or a beast always to eat, and never to exercise; but men are born (especially Christian men) not to cram in their fortunes, but to exercise their virtues; and yet the other have been the unworthy, and sometimes the unlucky humour of great persons in our times; neither will your farther fortune be the farther off: For assure yourself, that fortune is of a woman's nature, that will sooner follow you by slighting than by too much wooing. And in this dedication of yourself to the publick, I recommend unto you principally, that which I think was never done since I was born; and which not done, hath bred almost a wilderness and solitude in the King's service; which is, that you countenance and encourage and advance able and virtuous men in all kinds, degrees and professions. For in the time of some late great counsellors, when they bare the sway, able men were by design and of purpose suppressed; and tho' now since choice goeth better both in church and commonwealth, yet money and turn-serving and cunning canvasses and importunity prevail too much. And in places of moment, rather make able and honest men yours, than advance those that are otherwise because they are yours. As for cunning and corrupt men, you must, I know, sometimes use them, but keep them at a distance; and let it appear, that you make use of them, rather than that they lead you. Above all, depend wholly (next to God) upon the King; and be ruled (as hitherto you have been) by his instructions; for that's best for yourself. For the King's care and thoughts concerning you are according to the thoughts of a great King; whereas your thoughts concerning yourself are, and ought to be, according to the thoughts of a modest man. But let me not weary you: The sum is, that you think goodness the best part of greatness; and that you remember whence your rising comes, and make return accordingly. God ever keep you.

Your true and most devoted servant,

FR. BACON.

Aug. 12. 1616.

The greatest trust between man and man, is the trust of giving counsel, says Sir Fr. Bacon in his *Essay of Counsel*, Vol. III. p. 329. and N^o CLV. of the following letters: which part surely no man could discharge with greater fidelity and ability than he did, in that excellent discourse printed at the end of Vol. III. Therein Sir Francis doth descend into so particular a consideration, how this great favourite ought to govern himself in relation to all degrees of men; of the good he might do, and the evils he might prevent; that whosoever in his circumstances shall observe and practise those rules, must have very hard luck, if he doth not become gracious in the eyes of the people and of the prince. *Stephens.*

CLIV. To the KING, of Sir George Villiers's patent.

It may please your most excellent Majesty,

I HAVE sent Sir George Villiers's patent, drawn again, containing also a barony; the name *Blechley*, which is his own, and to my thinking foundeth better than *Whaddon*. I have included both in one patent to avoid a double preface, and as hath been used in the patents of Earls of like nature: nevertheless the ceremony of robing and otherwise is to be double, as is also used in like case of Earls.

It resteth, that I express unto your Majesty my great joy, in your honouring and advancing this gentleman; whom to describe, not with colours, but with true lines, I may say this; your Majesty certainly hath found out and chosen a safe nature, a capable man, an honest will, generous and noble affections, and a courage well lodged, and one that I know loveth your Majesty unfeignedly, and admireth you as much as is in a man to admire

His

his Sovereign upon earth. Only your Majesty's school (wherein he hath already so well profited, as in this entrance upon the stage, being the time of greatest danger, he hath not committed any manifest error;) will add perfection to your Majesty's comfort and the great contentment of your people. God ever preserve and prosper your Majesty. I rest in all humbleness,

Your Majesty's most bounden and most devoted subject and servant,

Aug. 12. 1616.

FR. BACON.

CLV. To Sir GEORGE VILLIERS, on sending his patent sealed.

S I R,

I Took much contentment in that I perceived by your letter, that you took in so good part the freedom of my advice, and that yourself in your own nature consented therewith. Certainly no service is comparable to good counsel; and the reason is, because no man can do so much for another, as a man may do for himself: Now good counsel helpeth a man to help himself; but you have so happy a master as supplieth all. My service and good will shall not be wanting.

It was graciously and kindly done also of his Majesty towards me, to tell you that you were beholden to me: But it must be then for thinking of you as I do; for otherwise, for speaking as I think, it is but the part of an honest man. I send you your patent, whereof God give you joy; and I send you here inclosed a little note of remembrance for that part of the ceremony which concerneth the patent; for as for other ceremonies, I leave to others.

My Lord Chancellor dispatch'd your patent presently upon the receipt; and writ to me, how glad he was of it, and how well he wish'd you. If you writ to him a few words of thanks, I think, you shall do well. God keep you and prosper you. I ever rest

Your true and most devoted servant,

Aug. 20. 1616.

FR. BACON.

CLVI. To Sir GEORGE VILLIERS, acknowledging the King's favour.

S I R,

I AM more and more bound unto his Majesty, who, I think, knowing me to have other ends than ambition, is contented to make me judge of mine own desires. I am now beating my brains (among many cares of his Majesty's business) touching the redeeming the time in this business of cloth. The great question is; how to miss, or how to mate the *Flemings*; how to pass by them, or how to pass over them.

In my next letter, I shall alter your stile: but I shall never whilst I breathe alter mine own stile, in being

Your true and most devoted servant,

Aug. 22. 1616.

FR. BACON.

CLVII.

CLVII. To the KING.

It may please your most excellent Majesty,

FIRST, from the bottom of my heart I thank the God of all mercy and salvation, that he hath preserved you from receiving any hurt by your fall; and I pray his divine Majesty ever to preserve you on horseback and on foot from hurt and fear of hurt.

Now touching the clothing business; for that I perceive the cloth goeth not off as it should, and that *Wiltshire* is now come in with complaint as well as *Gloucestershire* and *Worcestershire*, so that this gangrene creepeth on; I humbly pray your Majesty to take into your Majesty's princely consideration a remedy for the present stand, which certainly will do the deed; and for any thing that I know will be honourable and convenient, tho' joined with some loss in your Majesty's customs, which I know in a business of this quality, and being but for an interim till you may negotiate, your Majesty doth not esteem: And it is this.

THAT your Majesty by your proclamation do forbid (after fourteen days, giving that time for suiting mens selves) the wearing of any stuff made wholly of silk, without mixture of wool, for the space of six months. So your Majesty shall supply outward vent with inward use, specially for the finer cloths, which are those wherein the stand principally is, and which silk-wearers are likest to buy; and you shall shew a most princely care over thousands of the poor people; and besides, your Majesty shall blow a horn, to let the *Flemings* know your Majesty will not give over the chace. Again, the winter season coming on is fittest for wearing of cloth; and there is scope enough left for bravery and vanity by lacing and embroidery, so it be upon cloth or stuffs of wool.

I thought it my duty to offer and submit this remedy, amongst others, to your Majesty's great wisdom, because it pleas'd you to lay the care of this business upon me; and indeed my care did fly to it before, as it shall always do to any knots and difficulties in your business, wherein hitherto I have been not unfortunate. God ever have you in his most precious custody.

Your Majesty's most faithful and most bounden servant,

Sept. 13. 1616.

FR. BACON.

CLVIII. To the Lord Viscount VILLIERS.

My very good Lord,

IT was my opinion from the beginning, that this company will never overcome the business of the cloth; and that the impediments are as much or more in the persons which are *instrumenta animata*, than in the dead business itself.

I have therefore sent unto the King here inclosed my reasons, which I pray your lordship to shew his Majesty.

THE new company and the old company are but the sons of *Adam* to me, and I take myself to have some credit with both; but it is upon fear rather with the old, and upon love rather with the new; and yet with both upon persuasion that I understand the business.

NEVERTHELESS I walk *in via regia*, which is not absolutely acceptable to either: For the new company would have all their demands granted,

and the old company would have the King's work given over and deserted.

MY opinion is, that the old company be drawn to succeed into the contract, (else the King's honour suffereth,) and that we all draw in one way to effect that. If time, which is the wisest of things, prove the work impossible or inconvenient, which I do not yet believe, I know his Majesty and the state will not suffer them to perish.

I wish what shall be done were done with resolution and speed, and that your lordship (because it is a gracious business) had thanks of it next the King; and that there were some commission under his Majesty's sign manual to deal with some selected persons of the old company, and to take their answers and consent under their hands; and that the procuring the commission, and the procuring of their offers to be accepted, were your lordship's work.

IN this treaty my Lord Chancellor must by no means be left out; for he will moderate well, and aimeth at his Majesty's ends.

MR. SOLLICITOR is not yet returned, but I look for him presently. I rest,

Your Lordship's true and most devoted servant,

FR. BACON.

Monday, October 14.
at 10 of the clock.

CLIX. Reasons why the new company is not to be trusted and continued with the trade of cloths.

FIRST, The company consists of a number of young men and shopkeepers, which not being bred in the trade, are fearful to meddle with any of the dear and fine cloths, but only meddle with the coarse cloths, which is every man's skill; and besides having other trades to live upon, they come in the sunshine so long as things go well, and as soon as they meet with any storm or cloud, they leave trade, and go back to shop-keeping: whereas the old company were beaten traders, and having no other means of living but that trade, were fain to ride out all accidents and difficulties, which, (being men of great ability) they were well able to do.

SECONDLY, These young men being the major part, and having a kind of dependance upon Alderman Cockain, they carry things by plurality of voices; and yet those few of the old company, which are amongst them, do drive almost three parts of the trade: and it is impossible things should go well, where one part gives the vote, and the other doth the work; so that the execution of all things lies chiefly upon them that never consented, which is merely *motus violentus*, and cannot last.

THIRDLY, The new company make continually such new springing demands, as the state can never be secure nor trust to them; neither doth it seem that they much trust themselves.

FOURTHLY, The present stand of cloth at *Blackwell-hall* (which is that that presseth the state most, and is provided for but by a temporary and weak remedy,) is supposed would be presently at an end, upon the revivor of the old; in respect that they are able men and united amongst themselves.

FIFTHLY, In these cases *opinio est veritate major*, and the very voice and expectation of revivor of the old company will comfort the clothiers, and encourage them not to lay down their looms.

SIXTHLY, The very *Flemings* themselves (in regard of the pique they have against the new company) are like to be more pliant and tractable towards his Majesty's ends and desires.

SEVENTHLY, Considering the business hath not gone on well, his Majesty must either lay the fault upon the matter itself, or upon the persons that have managed it; wherein the King shall best acquit his honour, to lay it where it is indeed; that is, upon the carriage and proceedings of the new company, which have been full of uncertainty and abuse.

LASTLY, The subjects of this kingdom generally have an ill taste and conceit of the new company, and therefore the putting of them down will discharge the state of a great deal of envy.

CLX. To the Lord Viscount VILLIERS.

My very good Lord,

NOW that the King hath received my opinion, with the judges opinion, unto whom it was referred, touching the proposition for inns in point of law; it resteth that it be moulded and carried in that sort, as it may pass with best contentment and conveniency. Wherein I that ever love good company, as I was joined with others in the legal point, so I desire not to be alone in the direction touching the conveniency. And therefore I send your Lordship a form of warrant for the King's signature, whereby the framing of the business, and that which belongeth to it, may be referred to myself with Serjeant *Montague* and Serjeant *Finch*; and tho' *Montague* should change his place, that alteration hurteth not the business, but rather helpeth it. And because the inquiry and survey touching inns, will require much attendance and charge, and the making of the licences, I shall think fit (when that question cometh to me) to be [†] to the justice of assize, and not to those that follow this business: therefore his Majesty may be pleased to consider what proportion or dividend shall be allotted to Mr. *Mompesson*, and those that shall follow it at their own charge, which useth in like cases to be a fifth *. So I ever rest,

† Here (referred) or some word of the like import is omitted.

Your Lordship's true and most devoted servant,

FR. BACON.

Nov. 13. 1616.

* I suppose after the Judges and Attorney-General had given the opinion above-mentioned, that a patent was soon granted for licensing of common inns; whence Sir *Giles Mompesson* levied several sums by fines, and annual rent; and from ale-houses also by a subsequent patent: Proceeding therein with so much rigour, that it was complained of in the parliament which began in 1627, as one of the great grievances of the nation; the patent declared illegal, and recalled by the King's proclamation; *Mompesson* and *Michel* the chief projectors of this and some other oppressions, severely censured according to their demerits: The manner of which may be seen in the journals of that parliament, and the histories of those times. *Stephens.*

CLXI. To the Lord Viscount VILLIERS.

My very good Lord,

I THINK his Majesty was not only well advised, but well inspired, to give order for this same wicked child of *Cain*, *Bertram*, to be examined before he was farther proceeded with. And I for my part, before I had received his Majesty's pleasure by my Lord Chamberlain, went thus far; that I had appointed him to be farther examined, and also had taken order with Mr. Solicitor that he should be provided to make some declaration at his trial in some solemn fashion, and not to let such a strange murder pass, as if it had been but a horse-stealing.

BUT upon his Majesty's pleasure signified, I forthwith caused the trial to be staid, and examined the party according to his Majesty's questions; and

also

also sent for the principal counsel in the cause; whereupon Sir *John Tyndal's* report was grounded, to discern the justice or iniquity of the said report as his Majesty likewise commanded.

I send therefore the case of *Bertram* truly stated and collected, and the examination taken before my self and Mr. Solicitor; whereby it will appear to his Majesty that Sir *John Tyndal* (as to this cause) is a kind of a martyr: For if ever he made a just report in his life, this was it.

BUT the event since all this is, that this *Bertram* being, as it seemeth, indurate or in despair, hath hanged himself in prison; of which accident, as I am sorry, because he is taken from example and publick justice, so yet I would not for any thing it had been before his examination; so that there may be otherwise some occasion taken either by some declaration in the King's-bench upon the return of the coroner's inquest, or by some printed book of the fact, or by some other means (whereof I purpose to advise with my Lord Chancellor) to have both his Majesty's royal care, and the truth of the fact, with the circumstances, manifested and published †.

FOR the taking a toy of my Lord Chief Justice before he was placed, it was done before your letter came; and on *Tuesday Heath* and *Shute* shall be admitted and all perfected.

MY Lord Chancellor purposeth to be at the hall to-morrow, to give my Lord Chief Justice his oath; I pray God it hurt him not this cold weather. God ever prosper you.

Your true and most devoted servant,

Sunday night, Nov. 17. 1616.

FR. BACON.

† This *Bertram*, who, according to *Camden* in his annals of King *James*, was a grave man of above 70 years of age, and of a clear reputation, pistoll'd Sir *John Tyndal* a master in chancery on the 12th of *November*, for making a report against him, in a cause where a sum contended for did not exceed 200 *l*. By his examination taken the 16th, he confessed it to be as foul a murder as ever was; under the sense of which he hanged himself the next day. *Stephens*.

From the Original.

CLXII. To Sir *Francis Bacon*, his Majesty's Attorney General. *

S I R,

I HAVE acquainted his Majesty with your letter, and the other papers inclosed, who liketh very well of the course you purpose touching the manifest to be published of *Bertram's* fact: And will have you, according to your own motion, advise with my Lord Chancellor of the manner of it. His Majesty's pleasure likewise is, that according to the declaration he made before the lords of his council at *Whitehall*, touching the review of my Lord *Coke's* reports, you draw a warrant ready for his signature, directed to those judges whom he then named to that effect, and send it speedily to him to be signed, that there may be a dispatch of that business before the end of this term. And so I rest,

Your faithful friend at command,

Newmarket, 19 Nov. 1616.

GEORGE VILLIERS.

The Case of *John Bertram*.

LEONARD CHAMBERLAYNE died intestate without issue, and left a sister married to *Bertram*, and a niece afterwards married to Sir *George Simeon*.

THE

THE niece obtained letters of administration, and did administer; but afterwards upon appeal, *Bertram* in the right of his wife (that was the sister) obtained the former administration to be repealed, and new letters of administration to be committed to *Bertram* and his wife, because the sister was nearer of kin than the niece.

THEREUPON *Bertram* brings his bill in chancery against the first administratrix, to discover the true state of the intestate, and to have it set over unto him, being the rightful administrator; and this cause coming to hearing, it did appear that there was a debt of 200 *l.* owing by one *Harris* to the intestate: Whereupon it was decreed, that the debt of *Harris* by bond should be set over to *Bertram*, and likewise that all other moneys, debts and bonds should be assigned over to him. In the penning of this decree there was an error or slip; for it was penned that a debt by *Harris* by a bond of 200 *l.* should be set over, whereas the proofs went plainly that it was but 200 *l.* *in toto* upon divers specialties and writings. Upon this pinch and advantage *Bertram* moved still that the bond of 200 *l.* should be brought in, and at last the defendant alledging that there was no such bond, the court ordered that the money itself, *viz.* 200 *l.* should be brought in; which was done accordingly, and soon after by order of the court it was paid over to *Bertram*.

WHEN *Bertram* had this 200 *l.* in his purse, he would needs surmise, that there was another 200 *l.* due by *Harris* upon accompt besides the 200 *l.* due by one singular bond, and still pressed the words of the decree which mentions a bond, and thereupon got his adversary Sir *George Simeon* committed. Afterwards it was moved upon *Simeon's* part, that there was only one debt of 200 *l.* and that the decree was mistaken in the penning of it, and so must needs be understood, because the decree must be upon the proofs, and all the proofs went but upon the 200 *l.* *in toto*, and not upon any particular bond: whereupon my Lord Chancellor referred the consideration of the proofs, and the comparing of them with the decree, to Sir *John Tyndal* and Doctor *Amye*.

THEY reported (which was the killing report) that upon the proofs there was but one 200 *l.* in all, and that had been eagerly followed by *Bertram*, and that *Simeon* had suffered by error and mistaking, and that it were time he were released (which was a most just and true report) and yet it concluded (as is used in such cases) that they referred it to the better judgment of the court; and the court upon the reading of that report gave order that the plaintiff *Bertram* should shew cause by a day why *Simeon* should not be enlarged, and the plaintiff *Bertram* dismissed. And before the day prefixed to shew cause, *Bertram* pistoled Sir *John Tyndal*.

CLXIII. To the Lord Viscount VILLIERS.

My very good Lord,

I AM glad to find your lordship mindful of your own business, and if any man put you in mind of it, I do not dislike that neither; but your lordship may assure your self in whatsoever you commit to me, your lordship's farther care shall be needless: For I desire to take nothing from my master and my friend but care; and therein I am so covetous, as I will leave them as little as may be.

Now therefore things are grown to a conclusion, touching your land and office, I will give your lordship an account of that which is passed; and acquaint your judgment (which I know to be great and capable of any thing) with your own business; that you may discern the difference between doing things substantially, and between shuffling and talking: and first for your patent.

FIRST,

FIRST, It was my counsel and care that your book should be fee-farm, and not fee-simple; whereby the rent of the crown in succession is not diminished, and yet the quantity of the land, which you have upon your value is enlarged; whereby you have both honour and profit.

SECONDLY, By the help of Sir *Lyonel Cranfield* I advanced the value of *Sherbourn* from 26000 *l.* (which was thought and admitted by my Lord Treasurer and Sir *John Deccombe*, as a value of great favour to your lordship, because it was a thousand pound more than it was valued at to *Somerſet*;) to thirty two thousand pounds; whereby there was six thousand pounds gotten, and yet juſtly.

THIRDLY, I adviſed the courſe of rating *Hartington* at a hundred years purchaſe, and the reſt at thirty five years purchaſe fee-farm, to be ſet down and expreſſed in the warrant; that it may appear and remain of record, that your lordſhip had no other rates made to you in favour, than ſuch as purchaſes upon ſale are ſeldom drawn unto; whereby you have honour.

FOURTHLY, That leaſe to the feeſſees, which was kept as a ſecret in the decke (and was not only of *Hartington*, but alſo of moſt of the other particulars in your book) I cauſed to be thoroughly looked into and provided for; without which your aſſurance had been nothing worth: and yet I handled it ſo, and made the matter ſo well underſtood, as you were not put to be a ſuitor to the Prince for his good will in it, as others ignorantly thought you muſt have done.

FIFTHLY, The annexation*, (which nobody dreamt of, and which ſome idle bold lawyer would perhaps have ſaid had been needleſs; and yet is of that weight, that there was never yet any man that would purchaſe any ſuch land from the King, except he had a declaration to diſcharge it;) I was provident to have it diſcharg'd by declaration.

SIXTHLY, Left it ſhould be ſaid that your lordſhip was the firſt (except the Queen and the Prince) that brake the annexation, upon a mere gift; for that others had it diſcharged only upon ſale, which was for the King's profit and neceſſity; I found a remedy for that alſo, becauſe I have carved it in the declaration, as that this was not gift to your lordſhip, but rather a purchaſe and exchange (as indeed it was) for *Sherbourn*.

SEVENTHLY and laſtly, I have taken order (as much as in me was) that your lordſhip in theſe things which you have paſſed be not abuſed, if you part with them; for I have taken notes in a book of their values and former offers.

Now for your office.

FIRST, Whereas my Lord *Teynham*, at the firſt, would have had your lordſhip have had but one life in it, and he another; and my Lord Treasurer and the Solicitor, and *Deccombe*, were about to give way to it; I turned utterly that courſe, telling them that you were to have two lives in it, as well as *Somerſet* had.

SECONDLY, I have accordingly in the aſſurance from your deputies, made them acknowledge the truſt, and give ſecurity not only for your lordſhip's time, but after; ſo as you may diſpoſe (if you ſhould die, which I would be ſorry to live to) the profits of the office by your will, or otherwiſe, to any of your friends for their comfort and advancement.

THIRDLY, I dealt ſo with *Whitlocke* as well as *Heath*, as there was no difficulty made of the ſurrender.

* The annexation, by which lands, &c. were united or annexed to the duchies of *Cornwall* and *Lancaster*.

LASTLY, I did cast with my self, that if your lordship's deputies had come in by Sir *Edward Coke*, who was tyed to *Somerſet*, it would have been ſubject to ſome clamour from *Somerſet*, and ſome queſtion what was forfeited by *Somerſet's* attainder (being but of felony) to the King; but now they coming in from a new Chief Juſtice, all is without queſtion or ſcruple.

THUS your lordſhip may ſee my love and care towards you, which I think infinitely too little in reſpect of the fulneſs of my mind; but I thought good to write this, to make you underſtand better the ſtate of your own buſineſs; doing by you as I do by the King; which is, to do his buſineſs ſafely and with foreſight, not only of to-morrow or next day, but afar off†; and not to come fiddling with a report to him what is done every day, but to give him up a good ſum in the end.

I PURPOSE to ſend your lordſhip a kalendar fair written of thoſe evidences which concern your eſtate, for ſo much as have paſſed my hands; which in truth are not fit to remain with ſollicitors, no nor with friends, but in ſome great cabinet to be made for that purpoſe.

ALL this while I muſt ſay plainly to your lordſhip, that you fall ſhort for your preſent charge, except you play the good huſband; for the office of *Teynham* is in reverſion, *Darcy's* land is in reverſion; all the land in your books is but in reverſion, and yields you no preſent profit, becauſe you pay the fee-farm. So as you are a ſtrange *Heteroclite* in grammar, for you want the preſent tenſe; many verbs want the praeterperfect tenſe, and ſome the future tenſe, but none want the preſent tenſe. I will hereafter write to your lordſhip, what I think of for that ſupply; to the end that you may, as you have begun to your great honour, deſpiſe money, where it croſſeth reaſon of ſtate or virtue. But I will trouble you no farther at this time. God ever preſerve and proſper your lordſhip.

Your true and moſt devoted ſervant,

Nov. 29. 1616.

FR. BACON.

† Certainly the wiſdom of foreſight and prevention, is far above the wiſdom of remedy; and yet I fear the following obſervation Sir *Francis Bacon* makes in his eſſay of empire, concerning the times in or near which he lived, hath been verified too much in others. 'This is true, that the wiſdom of all theſe later times in princes affairs, is rather fine deliveries and ſhiftings of dangers and miſchiefs when they are near, than ſolid or grounded courſes to keep them aloof. But this is but to try maſteries with fortune; and let men beware how they neglect and ſuffer matter of trouble to be prepared; for no man can forbid the ſpark, nor tell whence it may come. Vol. III. p. 327.

CLXIV. To the Lord Viſcount VILLIERS, about Duels.

My very good Lord,

I DELIVERED the proclamation for cloth to Secretary *Winwood* on *Saturday*, but he keepeth it to carry it down himſelf, and goeth down, as I take it, to-day: his Maſteſty may perceive by the docket of the proclamation, that I do not only ſtudy, but act that point touching the judges, which his Maſteſty commandeth in your laſt.

YESTERDAY was a day of great good for his Maſteſty's ſervice, and the peace of this kingdom concerning duels, by occaſion of *Darcy's* caſe. I ſpake big, and publiſhing his Maſteſty's ſtrait charge to me, ſaid it had ſtruck me blind; as in point of duels and cartels, &c. I ſhould not know a coronet from a hatband. I was bold alſo to declare how excellently his Maſteſty had expreſſed to me a contemplation of his touching duels; that is, that when he

came

came forth and saw himself princely attended with goodly nobles and gentlemen, he entered into the thought, that none of their lives were in certainty not for twenty four hours from the duel; for it was but a heat or a mistaking, and then a lye, and then a challenge, and then life: saying, that I did not marvel seeing *Xerxes* shed tears, to think none of his great army should be alive once within a hundred years, his Majesty were touched with compassion to think that not one of his attendance but might be dead within twenty four hours by the duel. This I write because his Majesty may be wary, what he saith to me (in things of this nature) I being so apt to play the blab. In this also I forgot not to prepare the judges, and wish them to profess, and as it were to denounce, that in all cases of duel capital before them, they will use equal severity towards the insolent murder by the duel, and the insidious murder; and that they will extirpate that difference out of the opinions of men, which they did excellent well.

I MUST also say, that it was the first time that I heard my Lord of *Arundel* speak in that place; and I do assure your lordship he doth excellently become the court; he speaketh wisely and weightily, and yet easily and clearly, as a great nobleman should do†.

THERE hath been a proceeding in the King's-bench against *Bertram's* keeper, for misdemeanor, and I have put a little pamphlet (prettily penn'd by one Mr. *Trotte*, that I set on work touching the whole business) to the press by my Lord Chancellor's advice.

I PRAY God direct his Majesty in the cloth business, that that thorn may be once out of our sides. His Majesty knoweth my opinion *ab antiquo*. Thanks be to God for your health, and long may you live to do us all good. I rest,

Your true and most devoted servant,

FR. BACON.

† My Lord of *Arundel* descended from the noble family of the *Howards*; his grandfather the Duke of *Norfolk* losing his life upon the account of *Mary Queen of the Scots*, and his father suffering some years imprisonment under sentence of condemnation; he was restored in blood, and to the titles of *Arundel* and *Surrey*, 1 Jac. made a privy counsellor on the 25th of July 1616. and afterwards earl marshal of *England*, and general of the army sent against the *Scots* by K. *Charles I.* But about the beginning of our civil wars he retired into *Italy*, where he had spent part of his youth, and returned to the religion he had professed, dying at *Padua* in 1646. He was a gentleman of a noble aspect, and of a noble nature, a great virtuoso and antiquary, who with much care and cost procured many valuable antiquities and inscriptions to be brought from *Asia*, *Greece*, and *Italy* into *England*, and placed them in or near his garden at *Arundel* house in the *Strand*; several of which were very generously presented by his grandson the Duke of *Norfolk* to the university of *Oxford*, where they are among others of the famous *Selden* fixed to the walls enclosing the theatre. It were to be wished, that the great number of ancient statues which adorned his house and gardens, and have since been much neglected, had met with as safe a repository. The eloquence which Sir *Francis Bacon* doth here commend in this lord, is much the same which in the beginning of his advancement of learning he doth attribute to the King, in the words of *Tacitus*, concerning *Augustus Cæsar*; *Augusto proficiens, et quæ principem deceret, eloquentia fuit.*

From the Original.

CLXV. To the Lord Viscount VILLIERS.*

It may please your Lordship,

I PRAY let his Majesty understand, that although my Lord Chancellor's answer touching the dismission of the *Farmers* cause, was full of respect and duty, yet I would be glad to avoid an express signification from his Majesty, if his Majesty may otherwise have his end. And therefore I have thought

of a course, that a motion be made in open Court, and that thereupon my lord move a compromise to some to be named on either part, with bond to stand to their award. And as I find this to be agreeable to my Lord Chancellor's disposition, so I do not find but the *Farmers* and the other party are willing enough towards it. And therefore his Majesty may be pleased to forbear any other letter or message touching that business. God ever keep your lordship.

Your Lordship's true and most devoted servant,

Jan. 23. 1616.

FR. BACON.

CLXVI. This letter was written to the Earl of BUCKINGHAM, on the same day Sir FRANCIS BACON was declared Lord Keeper of the Great Seal.

My dearest Lord,

IT is both in cares and kindness, that small ones flote up to the tongue, and great ones sink down into the heart in silence. Therefore I could speak little to your lordship to-day, neither had I fit time: but I must profess thus much, that in this day's work you are the truest and perfectest mirror and example of firm and generous friendship that ever was in court. And I shall count every day lost, wherein I shall not either study your well-doing in thought, or do your name honour in speech, or perform you service in deed. Good my lord, account and accept me,

Your most bounden and devoted friend and servant of all men living,

March 7. 1616.

FR. BACON, C. S.

From the Original.

CLXVII. To the Earl of BUCKINGHAM.*

My singular good Lord,

WHEN I heard here your lordship was dead, I thought I had lived too long. That was (to tell your lordship truly) the state of my mind upon that report. Since, I hear it was an idle mistaking of my Lord *Evers* for my Lord *Villiers*. God's name be blessed, that you are alive to do infinite good, and not so much as sick or ill disposed for any thing I now hear.

I HAVE resigned the Prince's Seal, and my Lord *Hobart* is placed. I made the Prince laugh, when I told him I resigned it with more comfort than I received it; he understanding me that I had changed for a better: But after I had given him that thought, I turned it upon this, that I left his state and business in good case, whereof I gave him a particular account.

THE QUEEN calleth upon me for the matter of her House, wherein your Lordship and my Lord Chamberlain and I dealt, and received his Majesty's direction, so that I shall prepare a warrant first to my Lord Treasurer and Mr. Chancellor (for that is the right way) to advise how to settle it by assignment, in case she survive his Majesty, which I hope in God she shall not.

HER desire was expressly and of her self, that when I had prepared a warrant to be sent to his Majesty, I should send it by your lordship's hands.

WE

WE sit in council, that is all I can yet say; Sir *John Denham* is not come, upon whose coming the King shall have account of our consultations touching *Ireland*, which we cannot conclude, till we have spoken with him; God ever preserve and prosper you.

It grieveth me much that I cannot hear enough of his Majesty's good disposition of health, and his pleasures, and other ordinary occurrences of his journey, I pray your lordship will direct Mr. *Packer* to write to me sometime of matters of that kind; I have made the like request to Sir *Edward Villiers*, by whom I write this present, to whose good affection I think myself beholden, as I do also esteem him much for his good parts, besides his nearness to your lordship, which bindeth me above all.

Your Lordship's most faithful and devoted friend and servant.

7 Apr. 1617.

FR. BACON, C. S.

CLXVIII. To the renowned University of CAMBRIDGE,
his dear and reverend Mother.

I AM debtor to you of your letters, and of the time likewise, that I have taken to answer them. But as soon as I could chuse what to think on, I thought good to let you know; that although you may err much in your valuation of me, yet you shall not be deceived in your assurance: and for the other part also, though the manner be to mend the picture by the life; yet I would be glad to mend the life by the picture, and to become, and be, as you express me to be. Your gratulations shall be no more welcome to me, than your business or occasions; which I will attend; and yet not so, but that I shall endeavour to prevent them by my care of your good. And so I commend you to God's goodness.

Your most loving and assured friend and son,

Garbambury, Apr. 12. 1617.

FR. BACON, C. S.

CLXIX. To the Earl of BUCKINGHAM.

My singular good Lord,

I AM now for five or six days retired to my house in the country: for I think all my lords are willing to do as scholars do, who though they call them holy-days, yet they mean them play-days.

WE purpose to meet again on *Easter-Monday*, and go all to the spittal sermon for that day, and therein to revive the ancient religious manner; when all the council used to attend those sermons, which some neglect in Queen *Elizabeth's* time, and his Majesty's great devotion in the due hearing of sermons himself with his council at the court, brought into desuetude. But now our attendance upon his Majesty, by reason of his absence, cannot be, it is not amiss to revive.

I PERCEIVE by a letter your lordship did write some days since to my Lord *Brackley*, that your lordship would have the King satisfied by precedents, that letters patents might be of the dignity of an earldom without delivery of the patent by the King's own hand, or without the ordinary solemnities of a creation. I find precedents somewhat tending to the same purpose, yet not matching fully. But howsoever let me, according to my faithful and free manner of dealing with your lordship, say to you, that since the King

means it, I would not have your lordship for the satisfying a little trembling or panting of the heart in my Lord or Lady *Brackley*, to expose your lordship's self, or myself (whose opinion would be thought to be rely'd upon) or the King our master to envy with the nobility of this realm; as to have these ceremonies of honour dispensed with, which in conferring honour have used to be observed, like a kind of *doctor Bullatus* without the ceremony of a commencement: The King and you know I am not ceremonious in nature, and therefore you may think (if it please you) I do it in judgment. God ever preserve you.

Your Lordship's most faithful and devoted friend and servant,

FR. BACON, C. S.

I purpose to send the precedents themselves by my Lord of *Brackley*; but I thought fit to give you some taste of my opinion before,

Gorhambury, Apr. 13. 1617.

From the Original.

CLXX. To the Earl of BUCKINGHAM.*

My singular good Lord,

I PRAY your lordship to deliver to his Majesty the inclosed.

* *Somerset-
House.*

I SEND your lordship also the warrant to my Lord Treasurer and Mr. Chancellor of the Exchequer for the † Queen's house; it is to come again to the King, when the bill is drawn for the letters patents: for this is only the warrant to be signed by his Majesty.

I ASKED the Queen whether she would write to your lordship about it; her answer was very modest and discreet, that because it proceeded wholly from his Majesty's kindness and goodness, who had referred it, it was not so fit for her to write to your lordship for the dispatch of it, but she desired me to thank your lordship for your former care of it, and to desire you to continue it: And withal she desireth your lordship not to press his Majesty in it, but to take his best times. This answer (because I like it so well) I write to you at large, for other matters I will write by the next. God ever prosper you and preserve you.

Your Lordship's most faithful and devoted friend and servant,

London, 19 Apr. 1617.

FR. BACON, C. S.

CLXXI. To Mr. MATTHEWS, in reflection upon some Astronomers in *Italy*.

S I R,

I WRITE to you chiefly now, to the end, that by the continuance of my acquaintance with you by letters, you may perceive how much I desire, and how much I do not despair of the recontinuance of our acquaintance by conversation. In the mean time, I wish you would desire the astronomers of *Italy* to amuse us less than they do with their fabulous and foolish traditions, and come nearer to the experiments of sense; and tell us, that when all the planets, except the moon, are beyond the line in the other hemisphere for six months together, we must needs have a cold winter, as we saw it was the last year. For understanding that this was general over all these parts of the world; and finding that it was cold weather with all winds, and

and namely west-wind, I imagined there was some higher cause of this effect; tho' yet I confess I thought not that ever I should have found that cause so palpable a one as it proved; which yet, when I came quickly afterwards to observe, I found also very clearly, that the summer must needs be cold too; tho' yet it were generally thought, that the year would make a shift to pay itself, and that we should be sure to have heats for our cold. You see, that tho' I be full of business, yet I can be glad rather to lay it all aside, than to say nothing to you. But I long much more to be speaking often with you, and I hope I shall not long want my wish.

CLXXII. To the KING, about the *Spanish Match*.

It may please your most excellent Majesty,

MR. Vice-Chamberlain hath acquainted myself and the rest of the commissioners for the marriage with *Spain*, which are here, with your Majesty's instructions, signed by your royal hands, touching that point of the suppressing of pirates, as it hath relation to his negotiation; whereupon we met yesterday at my Lord Admiral's at *Chelsea*, because we were loth to draw my lord into the air, being but newly upon his recovery*.

WE conceive the parts of the business are four: the charge; the confederations, and who shall be solicited or retain'd to come in; the forces and the distributions of them; and the enterprize. We had only at this time conference amongst our selves, and shall appoint (after the holy-days) times for the calling before us such as are fit, and thereupon perform all the parts of your royal commandments.

IN this conference I met with somewhat which I must confess was altogether new to me, and open'd but darkly neither; whereof I think Mr. Vice-Chamberlain will give your Majesty some light, for so we wished. By occasion whereof I hold it my duty, in respect of the great place wherein your Majesty hath set me, (being only made worthy by your grace) which maketh it decent for me to counsel you *ad summas rerum*, to intimate or represent to your Majesty thus much.

I do foresee, in my simple judgment, much inconvenience to ensue, if your Majesty proceed to this treaty with *Spain*, and that your council draw not all one way. I saw the bitter fruits of a divided council the last parliament; I saw no very pleasant fruits thereof in the matter of the cloth. This will be of equal, if not more inconvenience; for wheresoever the opinion of your people is material (as in many cases it is not) there, if your council be united, they shall be able almost to give law to opinion and rumour; but if they be divided, the infusion will not be according to the strength and virtue of the votes of your council, but according to the aptness and inclination of the popular. This I leave to your Majesty in your high wisdom to remedy: Only I could wish that when Sir *John Digby's* instructions are perfected, and that he is ready to go, your Majesty would be pleas'd to write some formal letter to the body of your council, (if it shall be in your absence) signifying to them your resolution in general, to the end, that when deliberation shall be turn'd into resolution, no man, howsoever he may retain the inwardness of his opinion, may be active *in contrarium*.

* Charles Lord Howard of Effingham and Earl of Nottingham, was, as Sir Robert Naunton observes, as goodly a gentleman for person as the times had any; which is confirmed by Mr. Osborn, although his eyes met not with him, till he was turned towards the point of eighty. He being also brave, faithful, and diligent, commanded the fleet as Lord High Admiral upon several occasions, particularly against the *Spanish Armado* 1588. But in the later end of the year 1618, he surrendered this honourable place to the King, (who conferr'd it upon the Marquis of Buckingham;) and died in the year 1624, and of his age the 85th.

THE letters of my lords of the council with your Majesty, touching the affairs of *Ireland*, written largely and articulately, and by your Majesty's direction, will much facilitate our labours here; though there will not want matter of consultation thereupon. God ever preserve your Majesty safe and happy.

Your Majesty's most devoted and obliged servant,

London, April 19. 1617.

FR. BACON, C. S.

CLXXIII. To the Earl of BUCKINGHAM.

My singular good Lord,

I SEND your lordship, according to the direction of your letter, a note of the precedents that I find in my Lord *Brackley's* business; which do rather come near the case than match it. Your lordship knoweth already my opinion, that I would rather have you constant in the matter, than instant for the time.

I SEND also inclosed an account of council business by way of remembrance to his Majesty, which it may please you to deliver to him.

THE QUEEN returneth her thanks to your lordship, for the dispatch of the warrant, touching her house: I have not yet acquainted the Lord Treasurer, and Chancellor of the Exchequer with it; but I purpose to-morrow to deliver them the warrant, and to advise them for the executing the same.

I HAVE receiv'd the King's letter with another from your lordship, touching the cause of the officers, and Sir *Arthur Ingram*, whereof I will be very careful to do them justice.

YESTERDAY I took my place in chancery, which I hold only from the King's grace and favour, and your constant friendship. There was much ado, and a great deal of the world: but this matter of pomp, which is heaven to some men, is hell to me, or purgatory at least. It is true, I was glad to see that the King's choice was so generally approved; and that I had so much interest in mens good wills and good opinions, because it maketh me the fitter instrument to do my master service, and my friend also.

AFTER I was set in chancery, I published his Majesty's charge which he gave me when he gave me the seal; and what rules and resolutions I had taken for the fulfilling his commandments. I send your lordship a * copy of that I said. My Lord *Hay* coming to take his leave of me two days before, I told him what I was meditating, and he desired me to send him some remembrance of it; and so I could not but send him another copy thereof. Men tell me it hath done the King a great deal of honour; insomuch that some of my friends that are wise men, and no vain ones, did not stick to say to me, that there was not these seven years such a preparation for a parliament; which was a commendation, I confess, pleased me well. I pray take some fit time to shew it his Majesty, because if I misunderstood him in any thing, I may amend it, because I know his judgment is higher and deeper than mine.

I TAKE infinite contentment to hear his Majesty is in great good health and vigor; I pray God preserve and continue it. Thus wishing you well above all men living, next my master and his: I rest,

Your true and devoted friend and servant,

FR. BACON, C. S.

CLXXIV.

1

* See page
271 of this
Vol.

Dorset-house, which putteth me in mind to thank your lordship, for your care of me touching *York-house*, May 8. 1617.

CLXXIV. An account of council business, and of other matters committed to me by His Majesty.

FIRST, for *May-day*; at which time there was great apprehension of tumult by prentices and loose people; there was never such a still. The remedies that did the effect were three:

FIRST, The putting in muster of the trained bands and military bands in a brave fashion that way. Next, the laying a strait charge upon the mayor and aldermen for the city, and justices of the peace for the suburbs, that the prentices and others might go abroad with their flags and other gauderies; but without weapon of shot and pike, as they formerly took liberty to do: which charge was exceeding well performed and obeyed. And the last was, that we had according to our warrant dormant, strengthen'd our commissions of the peace in *London* and *Middlesex*, with new clauses of lieutenancy; which as soon as it was known abroad all was quiet by the terror it wrought. This I write, because it maketh good my farther assurance I gave his Majesty at his first removes, that all should be quiet, for which I receiv'd his thanks.

FOR the *Irish* affairs, I received this day his Majesty's letter to the lords; which we have not yet open'd, but shall sit upon them this afternoon. I do not forget, besides the points of state, to put my Lord Treasurer in remembrance, that his Majesty laid upon him the care of the improvement of the revenue of *Ireland* by all good means, of which I find his lordship very careful; and I will help him the best I can.

THE matter of the revenue of the recusants here in *England*, I purpose to put forward by a conference with my Lord of *Canterbury*, upon whom the King laid it, and upon Secretary *Winwood*; and because it is matter of the exchequer, with my Lord Treasurer and Mr. Chancellor; and after to take the assistance of Mr. Attorney, and the learned counsel; and when we have put it in a frame, to certify his Majesty.

THE business of the pirates is, I doubt not, by this time come to his Majesty, upon the letters of us the commissioners, whereof I took special care; and I must say I find Mr. Vice-chamberlain a good able man with his pen. But to speak of the main business, which is the match with *Spain*, the King knows my mind by a former letter; that I would be glad it proceedeth with an united council; not but that votes and thoughts are to be free: but yet after a King hath resolved, all men ought to co-operate, and neither to be active nor much locutive *in oppositum*; especially in a case where a few dissenting from the rest, may hurt the business *in foro famae*.

YESTERDAY, which was my weary day, I bid all the judges to dinner, (which was not used to be,) and entertained them in a private withdrawing chamber, with the learned counsel. When the feast was passed I came amongst them, and sat me down at the end of the table, and pray'd them to think I was one of them, and but a foreman. I told them I was weary and therefore must be short, and that I would now speak to them upon two points: Whereof the one was, that I would tell them plainly, that I was firmly persuaded, that the former discords and differences between the chancery and other courts, were but flesh and blood; and that now the men were gone, the matter was gone; and that for my part as I would not suffer any the least diminution or derogation from the ancient and due power of the chancery, so if any thing should be brought to them at any time, touching the pro-

ceedings of the chancery, which did seem to them exorbitant or inordinate, that they should freely and friendly acquaint me with it, and we should soon agree; or if not, we had a master that could easily both discern and rule. At which speech of mine, besides a great deal of thanks and acknowledgment, I did see cheer and comfort in their faces, as if it were a new world.

THE second point was, that I let them know how his Majesty, at his going, gave me charge to call and receive from them the accounts of their circuits, according to his Majesty's former prescript to be set down in writing; and that I was to transmit the writings themselves to his Majesty; and accordingly as soon as I have receiv'd them I will send them to his Majesty.

SOME two days before I had a conference with some judges, (not all, but such as I did chuse) touching the high commission, and the extending of the same in some points; which I see I shall be able to dispatch by consent, without his Majesty's farther trouble.

I did call upon the committees also for the proceeding in the purging of Sir *Edward Coke's* reports, which I see they go on with seriously.*

THANKS be to God, we have not much to do for matters of council, and I see now that his Majesty is as well able by his letters to govern *England* from *Scotland*, as he was to govern *Scotland* from *England*.

* During the time that my Lord Chief Justice *Coke* lay under the displeasure of the court; some information was given to the King, that he having published eleven books of reports, had written many things against his Majesty's prerogative. And being commanded to explain some of them. my Lord Chancellor *Ellesmere* doth thereupon in his letter of 22 *Octob.* 1616, write thus to the King: 'According to your Majesty's directions signified unto me by Mr. Solicitor, I called the Lord Chief Justice before me on *Thursday* the 17th instant, in presence of Mr. Attorney, and others of your learned counsel. I did let him know your Majesty's acceptance of the few animadversions, which upon review of his own labours he had sent, tho' fewer than you expected, and his excuses other than you expected'. And did at the same time inform him, that his Majesty was dissatisfied with several other passages therein; and those not the principal points of the cases judged, but delivered by way of expatiation, and which might have been omitted without prejudice to the judgment; of which sort the Attorney and Solicitor-General did for the present only select five, which being deliver'd to the Chief Justice on the 17th of *October*, he returns his answers at large upon the 21st of the same month, the which I have seen under his own hand. 'Tis true the Lord Chancellor wished he might have been spared all service concerning the Chief Justice, as remembering the fifth petition of *dimittite nobis debita nostra, &c.* Inasmuch that though a committee of judges was appointed to consider these books, yet the matter seems to have slept, till after Sir *Fra. Bacon* was made Lord Keeper, it revived, and two judges more were added to the former. Whereupon Sir *Edward Coke* doth by his letter make his humble suit to the Earl of *Buckingham*, 1. That if his Majesty shall not be satisfied with his former offer, viz. by the advice of the judges, to explain and publish those points, so as no shadow may remain against his prerogative; that then all the judges of *England* may be called thereto. 2. That they might certify also what cases he had published for his Majesty's prerogative and benefit, for the good of the church, and quieting mens inheritances, and good of the commonwealth. But Sir *Edward* then or soon after coming into favour by the marriage of his daughter, I conceive there was no farther proceedings in this affair. It will be needless for me to declare what reputation these books have among the professors of the law; but I cannot omit upon this occasion, to take notice of a character Sir *Fr. Bacon* had some time before given them in his proposition to the King, touching the compiling and amendment of the laws of *England*. 'To give every man his due, had it not been for Sir *Edward Coke's* reports (which though they may have errors, and some peremptory and extrajudicial resolutions more than are warranted, yet they contain infinite good decisions and rulings over of cases;) the law by this time had been almost like a ship without ballast: for that the cases of modern experience, are fled from those that are adjudged and ruled in former time.' *Stephens*. See p. 3. of this Vol.

CLXXIV. A note of some precedents as come nearest the case of the Lord *Brackley*: referred to in the foregoing letter.

THE Lord *Hay* was created Baron of *Sawley*, 28 *Junii*, 13 *Regis*, without the ceremony of robing, (as I take it;) but then the patent was (as I conceive it also) delivered to the person of the said Lord *Hay* by the King's

King's own hands; and again, the dignity of a Baron hath incident to it only the ceremony of robes, and not the cincture of the sword, coronet, &c.

THE Duke of *Lenox* was created Earl of *Richmond*, 6 *Octobris* 11 *Regis*, without any of the ceremonies (as I take it;) but the patent (as I conceive it also) was deliver'd to the person of the said Duke, with the hands of the King: and again, in regard he was invested of the superiour dignity of Duke of *Scotland*, the ceremonies were not so fit to be iterated.

KING *Henry VII* created *Edward Courtenay* Knight, Earl of *Devon*, 26 *Octobris*, 1 *Regni*, *teste meipso apud Westmonasterium*, &c. Whereby it may be collected, that it was done without the solemnities; for that where the solemnities were performed, it hath used to be with a *bisce testibus*, and not *teste meipso*; and whether it were deliver'd with the King's hand or not, it appears not.

EDWARD VI created *William* Earl of *Essex*, Marquis of *Northampton*, 16 *Feb.* 1 *Edw. VI.* and it is mentioned to be *per cincturam gladii, cappam honoris, & circuli aurei impositionem*; but whether the delivery was by the King's own hand *non constat*, but it was *teste meipso*, and not *bisce testibus*.

THE same King created *John* Viscount *L'Isle*, Earl of *Warwick*, the same time, and it is mentioned to be *per cincturam gladii, &c.* but it was *teste meipso*, and not *bisce testibus*.

EDWARD VI created *Thomas* Lord *Wriotbesley*, Earl of *Southampton* in the same day, and in the same manner, with a *teste meipso*, and not *bisce testibus*. These three creations being made upon one day, and when the King was a child of about nine years old, and in the very entrance of his reign, for the patents bear date at the tower of *London*, doth make me conjecture that all the solemnities were performed; but whether the King endured to be present at the whole ceremony, and to deliver the patents with his own hand, I doubt; for that I find that the very self-same day, year, and place, the King created his uncle the Earl of *Hertford*, to be Duke of *Somerset* *per cincturam gladii, cappam honoris, & circuli aurei impositionem, & traditionem virgulae aureae*, with a *bisce testibus*, and not *teste meipso*, and with a *datum per manus nostras*: yet these things are but conjectural.

I find no precedents for a *non obstante*, or a dispensation with the solemnities, as the Lord *Brackley's* bill was penned.

From the Original.

CLXXV. To the Lord Keeper.*

My honoured Lord,

I HAVE acquainted his Majesty with your letter, and the papers that came inclosed, who is exceedingly well satisfied with that account you have given him therein, especially with the speech you made at the taking of your place in the chancery. Whereby his Majesty perceiveth that you have not only given proof how well you understand the place of a *Chancellor*, but done him much right also, in giving notice unto those that were present, that you have received such instructions from his Majesty; whose honour will be so much the greater, in that all men will acknowledge the sufficiency and worthiness of his Majesty's choice, in preferring a man of such abilities to that place, which besides cannot but be a great advancement and furtherance to his service: and I can assure your lordship, that his Majesty was never so well

well pleased, as he is with this account you have given him of this passage. Thus with the remembrance of my service, I rest,

Your Lordship's ever at command,

Edinburgh, 18 May 1617.

G. BUCKINGHAM.

From the Original.

CLXXVI. To the Earl of BUCKINGHAM. *

My very good Lord,

I KNOW your lordship hath a special care of any thing that concerneth the Queen. She was entred into dislike of her Sollicitor, this bearer Mr. *Loder*, and resolute in it. To serve, and not to please, is no man's condition. Therefore upon knowledge of her pleasure he was willing to part with his place, upon hopes not to be destituted, but to be preferred to one of the Barons places in *Ireland*. I pray move the King for him, and let his Majesty know from me that I think (howsoever he pleased not here) he is fit to do his Majesty service in that place; he is grave and formal (which is somewhat there) and sufficient enough for that place. The Queen had made Mr. *Hackwell* her Sollicitor, who hath for a long time taken much pains in her business, wherein she hath done well. He was an opposite in parliament, as *Jones* was, that the King hath made Chief Justice of *Ireland*. But I hold it no ill counsel to join, or to remove such men. God preserve and prosper you.

Your true and devoted friend and servant,

Whitehall, 25 May 1617.

FR. BACON.

CLXXVII. To the Earl of BUCKINGHAM.

My very good Lord,

I SHALL write to your lordship of a business which your lordship may think to concern my self; but I do think it concerneth your lordship much more. For as for me, as my judgment is not so weak to think it can do me any hurt, so my love to you is so strong, as I would prefer the good of you and yours, before mine own particular.

It seemeth Secretary *Winwood* hath officiously busied himself to make a match between your brother and Sir *Edward Coke's* daughter: and as we hear he doth it rather to make a faction, than out of any great affection to your lordship; it is true, he hath the consent of Sir *Edward Coke* (as we hear) upon reasonable conditions for your brother; and yet no better than without question, may be found in some other matches. But the mother's consent is not had, nor the young gentlewoman's, who expecteth a great fortune from her mother, which without her consent is endangered. This match, out of my faith and freedom towards your lordship, I hold very inconvenient both for your brother and your self.

FIRST, He shall marry into a disgraced house, which in reason of state is never held good.

NEXT, He shall marry into a troubled house of man and wife, which in religion and christian discretion is disliked.

THIRDLY, Your lordship will go near to lose all such your friends as are adverse to Sir *Edward Coke*; my self only except, who out of a pure love and thankfulness shall ever be firm to you.

AND lastly and chiefly, (believe it) it will greatly weaken and distract the King's service; for though in regard of the King's great wisdom and depth, I am persuaded those things will not follow which they imagine; yet opinion will do a great deal of harm, and cast the King back, and make him relapse into those inconveniencies which are now well on to be recovered.

THEREFORE my advice is, and your lordship shall do your self a great deal of honour, if according to religion and the law of God, your lordship will signify unto my lady your mother, that your desire is, that the marriage be not pressed or proceeded in without the consent of both parents; and so either break it altogether, or defer any farther delay in it, till your lordship's return: and this the rather, for that (besides the inconvenience of the matter it self) it hath been carried so harshly and inconsiderately by Secretary *Winwood*, as, for doubt that the father should take away the maiden by force, the mother to get the start hath convey'd her away secretly; which is ill of all sides. Thus hoping your lordship will not only accept well, but believe my faithful advice, who by my great experience in the world, must needs see farther than your lordship can; I ever rest,

Your Lordship's true and most devoted friend and servant,

FR. BACON, C. S.

I have not heard from your lordship since I sent the King my last account of council business; but I assure my self you receiv'd it, because I sent at the same time a packet to Secretary *Lake*, who hath signified to me that he hath received it.

I pray your lordship deliver to his Majesty this little note of chancery business.

July 12. 1617.

CLXXVIII. To the KING.

It may please your most excellent Majesty,

I THINK it agreeable to my duty, and the great obligation wherein I am tied to your Majesty, to be freer than other men in giving your Majesty faithful counsel, while things are in passing; and more bound than other men in doing your commandments, when your resolution is settled, and made known to me.

I shall therefore most humbly crave pardon from your Majesty, if in plainness and no less humbleness, I deliver to your Majesty my honest and disinterested opinion, in the business of the match of Sir *John Villiers*, which I take to be *magnum in parvo*: preserving always the laws and duties of a firm friendship, to my Lord of *Buckingham*, whom I will never cease to love, and to whom I have written already, but have not heard yet from his lordship.

BUT first, I have three suits to make to your Majesty, hoping well you will grant them all.

THE first is, that if there be any merit in drawing on that match, your Majesty would bestow the thanks not upon the zeal of Sir *Edward Coke* to please your Majesty, nor upon the eloquent persuasions or pragmatics of Mr. Secretary *Winwood*, but upon them, that carrying your commandments and directions with strength and justice, in the matter of the governour of

Diepe *, in the matter of Sir Robert Rich, and in the matter of protecting the lady, according to your Majesty's commandment; have so humbled Sir *Edw. Coke*, as he seeketh now that with submission, which (as your Majesty knoweth) before he rejected with scorn: for this is the true orator that hath persuaded this business; as I doubt not but your Majesty in your excellent wisdom doth easily discern.

MY second suit is, that your Majesty would not think me so pusillanimous, as that I, that when I was but Mr. *Bacon*, had ever (through your Majesty's favour) good reason at Sir *Edward Coke's* hands, when he was at the greatest, should now, that your Majesty of your great goodness hath placed me so near your chair, (being, as I hope, by God's grace, and your instructions, made a servant according to your heart and hand) fear him or take umbrage of him, in respect of mine own particular.

MY third suit is, that if your Majesty be resolved the match shall go on, after you have heard my reasons to the contrary; I may receive therein your particular will and commandments from your self, that I may conform my self thereunto; imagining with my self (though I will not wager on womens minds) that I can prevail more with the mother than any other man. For if I should be requested in it from my Lord of *Buckingham*, the answers of a true friend ought to be, that I had rather go against his mind than against his good: but your Majesty I must obey; and besides I shall conceive that your Majesty, out of your great wisdom and depth, doth see those things, which I see not.

Now therefore, not to hold your Majesty with many words, (which do but drown matter) let me most humbly desire your Majesty to take into your royal consideration, that the state is at this time not only in good quiet and obedience, but in a good affection and disposition. Your Majesty's prerogative and authority having risen some just degrees above the horizon more than heretofore, which hath dispersed vapours: your judges are in good temper; your justices of the peace (which is the body of the gentlemen of *England*) grow to be loving and obsequious, and to be weary of the humour of ruffling: All mutinous spirits grow to be a little poor, and to draw in their horns; and not the less for your Majesty's disauthorising the man I speak of. Now then I reasonably doubt, that if there be but an opinion of his coming in, with the strength of such an alliance; it will give a turn and relapse in mens minds, into the former state of things, hardly to be holpen, to the great weakening of your Majesty's service.

AGAIN, your Majesty may have perceived, that as far as it was fit for me in modesty to advise, I was ever for a parliament; which seemeth to me to be *cardo rerum* or *summa summarum* for the present occasions. But this my advice was ever conditional; that your Majesty should go to a parliament with a council united, and not distracted; and that your Majesty will give me leave never to expect, if that man come in. Not for any difference of mine own, (for I am *omnibus omnia* for your Majesty's service;) but because he is by nature unfociable, and by habit popular, and too old now to take a new ply. And men begin already to collect, yea and to conclude, that he that raiseth such a smoke to get in, will set all on fire when he is in.

* All that I have seen relating to the difference between the governour of *Diepe* and Sir *Edward Coke*, is contained in a letter of Secretary *Winwood's* to my Lord *Buckingham*, dated 29 June this year, and in these words: Sir *Edward Coke* hath consigned into the hands of the Lords 2400 l. for the satisfaction of the French Ambassador, in the cause which concerneth the governour of *Diepe*. *Stephens.*

IT may please your Majesty, now I have said I have done; and as I think I have done a duty not unworthy the first year of your last high favours, I most humbly pray your Majesty to pardon me, if in any thing I have erred; for my errors shall always be supplied by obedience; and so I conclude with my prayers, for the happy preservation of your Majesty's person and estate.

Your Majesty's most humble, bounden, and most devoted servant,

Garbamby, July 25. 1617.

FR. BACON, C. S.

CLXXIX. To the Earl of BUCKINGHAM.

My very good Lord,

I Do think long to hear from your lordship, touching my last letter, wherein I gave you my opinion touching your brother's match. As I then shewed my dislike of the matter, so the carriage of it here in the manner I dislike as much. If your lordship think it is humour or interest in me that leads me, God judge my sincerity. But I must say, that in your many noble favours towards me, they ever moved and flowed from your self, and not from any of your friends whatsoever; and therefore in requital give me leave, that my counsels to you again be referred to your happiness, and not to the desires of any of your friends. I shall ever give you, as I give my master, safe counsel, and such as time will approve.

I receiv'd yesterday from Mr. Attorney the Queen's bill, which I send your lordship. The payment is not out of lands, but out of the customs, and so it can be but the rent. Your lordship remembereth, it is but in a case which I hope shall never be; that is, after his Majesty's death, if she survive. God ever bless and direct you.

Your Lordship's most faithful and devoted friend and servant,

Garbamby, July 25. 1617.

FR. BACON, C. S.

CLXXX. To the KING.

It may please your most excellent Majesty,

I DARE not presume any more to reply upon your Majesty, but I reserve my defence till I attend your Majesty at your happy return; when I hope verily to approve my self, not only a true servant to your Majesty, but a true friend to my Lord of Buckingham; and for the times also, I hope to give your Majesty a good account, though distance of place may obscure them. But there is one part of your Majesty's letter that I would be sorry to take time to answer; which is, that your Majesty conceiveth, that whereas I wrote that the height of my Lord's fortune might make him secure, I meant that he was turned proud, or unknowing of himself; surely the opinion which I have ever had of my Lord (whereof your Majesty is best witness) is far from that. But my meaning was plain and simple, that his lordship might, through his great fortune, be the less apt to cast and foresee the unfaithfulness of friends, and malignity of enemies, and accidents of times. Which is a judgment (as your Majesty knoweth better than I) that the best authors make of the best, and best tempered spirits, *ut sunt res humane*; inasmuch as Guicciardine maketh the same judgment (not of a particular person) but of the wisest state of Europe, the senate of Venice, at one time; when he saith their prosperity had made them secure, and underweighers of perils. Therefore I beseech your Majesty to deliver me in this from any the least imputation upon my dear and noble lord

lord and friend. And so expecting that that sun which when it went from us left us cold weather, and now it is returned towards us hath brought with it a blessed harvest; will, when it cometh to us, disperse all mists and mistakings.. I ever rest

Your Majesty's most humble, bounden and faithful servant,

Gorhambury, this 31 of Aug. 1617.

FR. BACON, C. S.

CLXXXI. To the Earl of BUCKINGHAM.

My very good Lord,

SINCE my last to your Lordship, I did first send for Mr. Attorney-General, and made him know, that since I heard from court, I was resolved to further the match and the conditions thereof for your lordship's brother's advancement the best I could. I did send also to my Lady *Hatton* and some other special friends, to let them know, I would in any thing declare my self for the match; which I did, to the end that if they had any apprehension of my assistance, they might not be discouraged in it. I sent also to Sir *John Butler*, and after by letter to my lady your mother, to tender my performance of any good office towards the match or the advancement from the mother. This was all I could think of for the present.

I did ever foresee, that this alliance would go near to lose me your lordship that I hold so dear; and that was the only respect particular to myself that moved me to be as I was, till I heard from you. But I will rely upon your constancy and nature and my own deserving, and the firm tie we have in respect of the King's service.

IN the mean time I must a little complain to your Lordship, that I do hear my lady your mother, and your brother Sir *John* do speak of me with some bitterness and neglect. I must bear with the one as a lady, and the other as a lover, and with both for your lordship's sake, whom I will make judge of any thing they shall have against me. But I hope, tho' I be a true servant to your lordship, you will not have me to be a vassal to their passions, specially as long as they are governed by Sir *Edward Coke* and Secretary *Winwood*, the latter of which I take to be the worst; for Sir *Edward Coke*, I think, is more modest and discreet: Therefore your lordship shall do me right; and yet I shall take it for favour, if you signify to them, that you have received satisfaction from me, and would have them use me friendly and in good manner. God keep us from these long journeys and absence, which make misunderstandings and give advantage to untruth, and God ever prosper and preserve your lordship.

Your Lordship's true and devoted friend and servant,

Gorhambury, Aug. 25. 1617.

FR. BACON, C. S.

From the Original.

CLXXXII. A Memorial for your Majesty. *

ALTHOUGH I doubt not but your Majesty's own memory and care of your affairs, will put you in mind of all things convenient, against you shall meet with your council, yet some particulars I thought it not unfit to represent unto your Majesty; because they passed the labour of your council.

I. SOME

I. SOME time before your departure, here was delivered unto you by the officers of your exchequer, a computation of your revenue and expence, wherein was expressed that your revenue ordinary, was not only equal to your expence, but did somewhat exceed it, though not much.

IN this point, because the half year will now be expired at *Michaelmas*, it shall be fit, that your Majesty call to account, whether that equality hath held for this half year; and if not, what the causes have been, and whether the course prescribed hath been kept, that the ordinary expence hath been borne out of the ordinary revenue, and the extraordinary only out of such money as hath come in by extraordinary means, or else your estate cannot clearly appear.

II. To maintain this equality, and to cause your Majesty's state to subsist in some reasonable manner till farther supply might be had, it was found to be necessary that 200,000 *l.* of your Majesty's most pregnant and pressing debts should be discharged; and after consideration of the means how to do that, two ways were resolved on. One that 100,000 *l.* should be discharged to the Farmers of your customs by 25,000 *l.* yearly, they having for their security power to defalke so much of their rent in their own hands: But because if that should be defalked, then your ordinary should want of so much, it was agreed that the Farmers should be paid the 25,000 *l.* yearly in the sale of woods.

IN this point it is fit for your Majesty to be informed what hath been done, and whether order hath been taken with the Farmers for it, and what debts were assigned to them so to discharge; for of the particulars of that course I never heard yet.

AND because it is apparent that the woodfalls this year do not amount to half that sum of 25,000 *l.* your Majesty is to give charge that consideration be had how the same shall be supplied by some other extraordinary for the present year, or else here will follow a fracture of the whole assignments.

Item, YOUR Majesty may please to call for information how that money raised upon the woods is employed, so much as is already received, and to be wary that no part hereof be suffered to go for extraordinaries, but to be employed only for the use for which it is assigned, or else a greater rupture will follow in your assignments.

Item, A special consideration is to be had what course shall be taken for the rest of the years with the wood sales for supply of this 25,000 *l.* yearly.

III. THE other hundred thousand pound was agreed to be borrowed, and an allotment made by my Lords of the Council at the table, how the same should be employed, and for what special services, whereof I deliver to your Majesty herewith a copy.

IN which point it may please your Majesty to cause your self to be informed how that allotment hath been observed, and because it is likely that a good part of it hath gone towards the charges of this your journey to *Scotland*, (at least so it is paid) your Majesty is to call for the particulars of that charge, that you may see how much of that hundred thousand it taketh up.

AND then consideration is to be had how it may be supplied with some extraordinary comings in, as namely the moneys to come from the Merchant Adventurers, that the same be allotted to none other use, but to perform

this allotment, that so the foundation laid may be maintained, or else all will be to seek; and if there be any other extraordinary means, to come to your Majesty that they may be reserved to that use.

AND because care must be had to keep your credit in *London*, for this money borrowed, your Majesty may please to call for information what is done in the matter of the forests, and what sum, and in what reasonable time, is like to be made thereof.

THE Extraordinaries which it is like will be alledged for this year.

YOUR Majesty's journey into *Scotland*.

THE Lord *Hay*'s employment into *France*.

THE Lord *Roos* into *Spain*.

THE Baron *de Tour* extraordinary from *France*.

SIR *John Bennet* to the *Archduke*.

THE enlarging of your park at *Theobalds*.

SIR *John Digby*'s sending into *Spain*.

OF all which when your Majesty hath seen an estimate what they amount unto, and what money hath been already delivered towards them, which I fear will fall to be out of the moneys borrowed at *London*; then is it to be considered what extraordinaries are any ways to come in, which may supply these extraordinaries laid out, and be employed for the uses for which the moneys borrowed were intended.

CLXXXIII. To the Earl of BUCKINGHAM.

My ever best Lord, now better than yourself,

YOUR lordship's pen or rather pencil hath pourtrayed towards me such magnanimity and nobleness and true kindness, as methinketh I see the image of some ancient virtue, and not any thing of these times. It is the line of my life, and not the lines of my letter, that must express my thankfulness: Wherein if I fail, then God fail me, and make me as miserable as I think myself at this time happy by this reviver, through his Majesty's singular clemency, and your incomparable love and favour. God preserve you, prosper you, and reward you for your kindness to

Your raised and infinitely obliged friend and servant,

Sept. 22. 1617.

FR. BACON, C. S.

CLXXXIV. To the Earl of BUCKINGHAM.

My very good Lord,

I SEND your lordship the certificate touching the inrollment of prentices. We can find no ground for it by law. Myself shall ever be ready to further things that your lordship commendeth; but where the matter will not bear it, your lordship, I know, will think not the worse, but the better of me, if I signify the true state of things to your lordship; resting ever

Your Lordship's true friend and devoted servant,

York-house, Octob. 29. 1617.

FR. BACON, C. S.

The

The Certificate.

ACCORDING to his Majesty's command signified by your lordship's letters, we have advisedly consider'd of the petition touching the inrollment of apprentices indentures, and heard the petitioners counsel, and do find as followeth:

1. THAT the act of parliament 5 *Eliz.* doth not warrant the erecting of an office to inroll such indentures in cities, towns corporate, or market towns; but if any such inrollment should be, it must be by the officers there, who are assigned to perform sundry other things touching apprentices and servants.

2. THAT in country villages (for which the suit carries most colour) we cannot give the suitors hope, that any profit will be there made, warrantable by law.

THUS we have (according to our duties) certified our opinions of this petition, submitting the same nevertheless to his Majesty's great wisdom; and rest,

At your Lordship's command,

Octob. 25. 1617.

Fr. Bacon, C. S. H. Montague, Tho. Coventry.

CLXXXV. To the Earl of BUCKINGHAM.

My very good Lord,

THE liking which his Majesty hath of our proceeding concerning his household, telleth me that his Majesty cannot but dislike the declining and tergiversation of the inferior officers; which by this time he understandeth.

THERE be but four kinds of retrenchments. 1. The union of tables. 2. The putting down of tables. 3. The abatement of dishes to tables. 4. The cutting off new diets and allowance lately raised; and yet perhaps such as are more necessary than some of the old.

IN my opinion, the first is the best and most feasible. The Lord Chamberlain's table is the principal table of state. The Lord Steward's table, I think, is much frequented by *Scotish* gentlemen. Your Lordship's table hath a great attendance; and the Groom of the Stole's table is much resorted to by the bedchamber. These would not be touched. But for the rest, (his Majesty's case consider'd) I think they may well be united into one.

THESE things are out of my element, but my care runneth where the King's state most laboureth: *Sir *Lionel Cranfield* is yet sick, for which I am very sorry; for methinks his Majesty, upon these tossings over of his business from one to others, hath an apt occasion to go on with subcommittees. God ever preserve and prosper you.

Your Lordship's true friend and devoted servant,

York-house, Nov. 19. 1617.

FR. BACON, C. S.

* Sir *Lionel Cranfield* was a man of so much note in these times, and so often named in these papers, that I cannot omit taking some notice of his good and bad fortunes. He was bred a merchant, yet by his great abilities in, and application to business, and the relation he had to my Lord of *Buckingham* by marriage, he was raised to be Master of the Court of Requests, then of the Wardrobe, and after the Court of Wards, created Lord *Cranfield*, and Earl of *Middlesex*: missing the Lord Keeper's place, he was constituted Lord High Treasurer, which being an office he understood as well as any; we may conclude his integrity fell short of his ability, from the severe judgment given against him by the house of Lords in 1624. *Stephens.*

From the Original.

CLXXXVI. To the Lord Keeper.*

My Honourable Lord,

HIS Majesty commandeth me to write to your lordship, that he wonders your hand being at that letter of the Lords of the Council, which he saith is a very blunt one, you have not besides sent him some advice of your own, his Majesty having only intrusted you to speak with Sir Lionel Cranfield about his estate.

Your Lordship's faithful friend and servant,

G. BUCKINGHAM.

Newmarket, 19 Nov. 1617.

CLXXXVII. To the Earl of BUCKINGHAM.

My very good Lord,

YESTERDAY at afternoon were read at the table his Majesty's † two letters, written with his own hand, the matter worthy the hand. For they were written *ex arte imperandi*, if I can judge; and I hope they and the like will disinchant us of the opinion, which yet sticks with us; that to-day will be as yesterday, and to-morrow as to-day, so as there will be (as he saith) *Acribus initiis, sine incurioso*.

I HOLD my opinion given in my former letter, that the uniting of some tables is the most passable way. But that is not all: For when that is done, the King may save greatly in that which remaineth. For if it be set down, what tables shall be fixed, and what diet allowed to them, my steward (as ill a *Mesnager* as I am) or my Lord Mayor's steward can go near to tell, what charge will go near to maintain the proportion. Then add to that some large allowance for waste, (because the King shall not lose his prerogative to be deceived more than other men) and yet no question there will be a

† One of these letters of K. James, as it contains a specimen of the frugality and good oeconomy of his court, and relates to the subject we are upon, I have borrowed from the *Cabala*, p. 258. in terms following.

A letter read at the council-board 21 Nov. 1617. touching the abatement of his Majesty's household charges.

My Lords:

NO worldly thing is so precious as time: ye know what task I gave you to work upon, during my absence; and what time was limited unto you, for the performance thereof. This same Chancellor of Scotland was wont to tell me twenty four years ago, that my house could not be kept upon *epigrams*; long discourses and fair tales will never repair my estate. *Omnis virtus in actione consistit*. Remember, that I told you, the shoe must be made for the foot, and let that be the square of all your proceeding in this business. Abate superfluities in all things; and multitudes of unnecessary officers, wherever they be placed. But for the household, wardrobe, and pensions, cut and carve as many as may agree with the possibility of my means. Exceed not your own rule of 50,000*l.* for the household. If you can make it less, I will account it for good service. And that you may see I will not spare mine own person, I have sent, with this beaver, a note of the superfluous charges concerning my mouth, having had the happy opportunities of this messenger, in an errand so nearly concerning his place. In this I expect no answer in word or writing, but only the real performance, for a beginning to relieve me out of my miseries. For now the ball is at your feet, and the world shall bear me witness, that I have put you fairly to it; and so praying God to bless your labours, I bid you heartily farewell.

Your own,

JAMES R.

Mr. Stephens says, In the other I suppose his Majesty apprehends that the vigor the council at first shew'd in reducing the charge of his household, would not be of long continuance: It being observ'd by Tacitus, in the words here cited, to be a thing not unusual in publick affairs, that violent beginnings had negligent conclusions.

great retrenchment. But against this last abatement will be fronted the payment of arrears. But I confess I would be glad that I might see, or rather, that a parliament may see, and chiefly that the King (for his own quiet) may see, that upon such a sum paid, such an annual retrenchment will follow: For things will never be done in act, except they be first done in conceit.

I KNOW these things do not pertain to me; for my part is to acquit the King's office towards God by administration of justice, and to oblige the hearts of his people to him by the same, and to maintain his prerogative. But yet because it is *in hoc*, that the King's case laboureth, I cannot but yield my care and my strength too in council, such as it is; which cannot be so much as it was between our *Lady-day* and *Michaelmas* last. But whatsoever it is, it is wholly his Majesty's, without any deflexion.

As soon as I find any possibility of health in Sir *Lionel Cranfield*, to execute a sub-commission, I will by conference with him frame a draught of a letter from his Majesty, for which there is the fairest occasion in the world. And the King hath prepared it as well as possible. God ever preserve and prosper you.

Your Lordship's true friend and devoted servant,

York-house, Nov. 22. 1617.

FR. BACON, C. S.

From the Original.

CLXXXVIII. To the Earl of BUCKINGHAM.*

My Lord,

HOW well I wish to Sir *Gilbert Haughton*, himself I dare say doth not doubt, partly out of mine own affection, and chiefly for your lordship's affection towards him, which to me is more than mine own. That the King should make bargains of hope, when his treasure sufficeth not for his own charge, I may not advise for my dearest friends; for I am nailed to the King's estate. But two things I shall assent unto; the one, that if the King can redeem his works without charge of officers, I shall be glad of it, both for the gentleman's sake, and because I perceive the uniting of the allom-works in the King's hand is best; the other, that if his Majesty be pleased to signify his pleasure to my Lord Treasurer and me, that there be no forfeiture taken by *Banister* till the King shall advise of this bargain, we will hold him to it. God preserve and prosper your lordship; your lordship I think perceiveth both by scribbling and cursory inditing, that I write in straits of business.

Your Lordship's true friend and devoted servant,

York-house, this 24th of Nov. 1617.

FR. BACON, C. S.

CLXXXIX. To the Earl of BUCKINGHAM.

My very good Lord,

I SEND your lordship a draught of a letter touching the sub-commission, written in wide lines, because it may be the better amended by his Majesty. I think it is so penn'd as none can except to it, no nor imagine any thing of it. For the household-business there was given a fortnight's day: for the pensions, the course which I first propounded of abating of a third throughout, and some wholly seemeth well enter'd into. These be no ill

beginnings. But this course of the sub-commission threds all the King's business. God ever preserve and prosper you.

Your Lordship's true friend and devoted servant,
Tork-hause, Nov. 27. 1617. FR. BACON, C. S.

SIR *Lionel Cranfield* is now reasonably well recover'd.

Draught of the Sub-commission.

My Lords,

IN this first and greatest branch of our charge concerning our house, we do find what difficulties are made, and what time is lost, in disputing of and devising upon the manner of doing it; whereof the matter must be, and is so fully resolved. Neither can we but see in this, as in a glass, the like event to follow in the rest upon like reason. For the inferior officers in every kind, who are best able for skill to propound the retrenchments, will out of interest or fearfulness make dainty to do service; and that which is done with an ill-will, will never be well done. Again, to make it the act of the whole table, for the particular propositions and reckonings, will be too tedious for you, and will draw the business it self into length; and to make any particular committees of your selves, were to impose that upon a few, which requireth to be carried indifferently as the act of you all. For since the great officers themselves think it too heavy for them, as our state now is, to deal in it, without bringing it to the table; with much more reason may any particular persons of you be loth to meddle in it, but at the board. In all which respects we have thought fit, (neither do we see any other way) that you send unto us the names of the officers of our exchequer, and our custom-house, and auditors, out of which we will make choice of some few, best qualified to be sub-committees, for the better ease, and the speeding of the business by their continual travails and meetings; whose part and employment we incline to be to attend the principal officers in their several charges, and join themselves to some of the inferior officers, and so take upon them the mechanick and laborious part of every business, thereby to facilitate and prepare it for your consultations, according to the directions and instructions they shall receive from you from time to time.

From the Original.

CXC. To the KING.*

May it please your Majesty,

BEING yesterday assembled in council to proceed in the course we had begun for retrenchment of your Majesty's expences; we received your princely letters, whereby we are directed to send to your Majesty the names of the officers of the exchequer, custom-house and auditors, out of which you purpose to make choice of some to be subcommitted to handle the mechanick and laborious part of that which your Majesty had appointed to our care; we have according to our duty sent unto your Majesty the names of the several officers of your Majesty in those places, to be ordered as your wisdom shall think best to direct. But withal, we thought it appertenant

pertenant to our duties to inform your Majesty how far we have proceeded in the severall heads of retrenchments by your Majesty at your departure committed unto us, that when you know in what estate our labours are, your judgment may the better direct any further course as shall be meet.

THE matter of the household, was by us some days since, committed peremptorily to the officers of the house, as matter of commandment from your Majesty, and of duty in them, to reduce the expence of your house to a limited charge of fifty thousand pounds by the year, besides the benefit of the compositions: and they have ever sithence painfully (as we are informed) travailed in it, and will be ready on *Sunday* next, which was the day given them, to present some models of retrenchments of divers kinds, all aiming at your Majesty's service.

IN the point of pensions we have made a beginning, by suspending some wholly for a time, and of others of a third part; in which course we are still going on, until we make it fit to be presented to your Majesty; in like manner the Lord Chamberlain, and the Lord *Hay* did yesterday report unto us, what their travail had ordered in the wardrobe: and although some doubt did arise unto us whether your Majesty's letters intended a stay of our labours, until you had made choice of the subcommittee intended by you; yet presuming that such a course by subcommittee was purposed rather for a furtherance, than lett to that work, we did resolve to go on still till your Majesty's further directions shall come unto us; and then according to our duty we will proceed, as we shall be by your Majesty commanded. In the mean time, we thought it our duty to inform your Majesty of what we have done, that neither your Majesty may conceive that we have been negligent in those things which were committed unto us, nor your directions by your late letters hinder or cast back that, which is already so far proceeded in. And so humbly kissing your royal hands, and praying to the Almighty for your long and happy reign over us, we rest,

Your Majesty's most humble and obedient subjects and servants,

5 Dec. 1617.

G. Cant.	Lenox.	Pembroke.
E. Worcester.	W. Wallingford.	L. Elie ^r .
T. Arundel.	James Hay.	T. Edmonds.
E. Wotton.	Jul. Caesar.	Edw. Coke.
T. Lake.	T. Suffolk.	C. Edmonds.
Fr. Bacon, C. S.		

From the Original.

CXCI. To the Marquis of BUCKINGHAM.*

My very good Lord,

I WRITE now only, rather in a kind of continuance and fresh suit, upon the King's business, than that the same is yet ripe, either for advertisement or advice.

THE subcommissioners meet forenoon and afternoon, with great diligence, and without distraction or running several ways, which if it be no more than necessary, what would less have done? that is, if there had been no subcommissioners, or they not well chosen?

I SPEAK with Sir *Lionel Cranfield*, as cause requireth either for account or direction, and as far as I can, by the taste I have from him, discern, probably their service will attain, and may exceed his Majesty's expectation.

I do well like the course they take, which is in every kind to set down (as in beer, in wine, in beef, in muttons, in corn, &c.) what cometh to the King's use, and then what is spent, and lastly what may be saved. This way though it be not so accusative, yet it is demonstrative. *Nam rectum est index sui & obliqui*, and the false manner of accompting, and where the gain cleaveth, will appear after by consequence. I humbly pray his Majesty to pardon me for troubling him with these imperfect glances, which I do, both because I know his Majesty thinketh long to understand somewhat, and lest his Majesty should conceive, that he multiplying honours and favours upon me, I should not also increase and redouble my endeavours and cares for his service. God ever bless, preserve and prosper his Majesty and your lordship, to whom I ever remain,

Your true friend and most devoted servant,

16 Jan. 1617.

FR. BACON, C. S.

CXCII. To Mr. MATTHEWS, about reading and giving judgment upon his writings.

S I R,

BECAUSE you shall not lose your labour this afternoon, which now I must needs spend with * my Lord Chancellor, I send my desire to you in this letter, that you will take care not to leave the writing, which I left with you last, with any man, so long, as that he may be able to take a copy of it; because, first, it must be censured by you, and then considered again by me. The thing which I expect most from you is, that you would read it carefully over by your self, and to make some little note in writing, where you think (to speak like a critick) that I do perhaps *indormiscere*; or where I do *indulgere genio*; or where, in fine, I give any manner of disadvantage to my self. This, *super totam materiam*, you must not fail to note; besides, all such words and phrases as you cannot like; for you know in how high account I have your judgment.

* This seems to be spoken pleasantly of himself; and to refer to Jan. 15. 1617. on which day the Lord *Verulam* was by special warrant made Lord Chancellor. *Rymer* XVII p. 55. and at which time probably some affairs that required privacy and retirement might occur.

CXCIII. To the Marquis of BUCKINGHAM.

My very good Lord,

I THOUGHT fit by this my private letter to your lordship, to give you an account of such business as your lordship hath recommended unto me, that you may perceive that I have taken that care of them I ought, and ever shall in those things you recommend or remit to me.

For the suit of the alehouses which concerneth your brother Mr. *Christopher Villiers*, and Mr. *Patrick Maw*, I have conferr'd with my Lord Chief Justice, and Mr. Solicitor thereupon, and there is a scruple in it, that it should be one of the grievances put down in parliament; which if it be, I may not in my duty and love to you advise you to deal in it; if it be not, I will mould it in the best manner and help it forward. The stay is upon the search of the clerk of the parliament, who is out of town; but we have already found, that the last grievance *in septimo*, is not the same with this suit; but we doubt yet of another *in tertio*.

For

FOR the business of *Mr. Leviston*, for your lordship's sake (who I perceive keeps your noble course with me, in acquainting me with these things) I shall apply my self unto you; though in my nature I do desire that those that serve in the court where I sit, though they be not in places of my gift, and so concerns not me nor my place in profit; yet I wish, I say, I might leave them in as good case as I find them. And this suit concerneth the main profit of the six clerks; who though they be of the master of the rolls his gift, yet they serve in my court. But my greatest doubt is, that the grant cannot be good in law; and that it is not like those other precedents, whereof I have receiv'd a note. For the difference is, where things have been written by all the clerks indifferently and loosely, (in which case the King may draw them into an office,) and where they have appertained to one especial office; in which case the King can no more take away the profits of a man's office, than he can the profits of his land. Therefore I think your lordship may do well to write to **Mr. Solicitor and Serjeant † Finch*, or some other lawyers* *Sir Tho: Coventry.* that you trust, or such as *Mr. Leviston* trusteth, being persons of account, to inform you of the point in law, before you proceed any farther: for without that all is in vain.

FOR the business of *Hawkins* touching the register for the commission of bankrupts; I am not yet satisfied likewise for the law, nor for the convenience: but I rather incline to think it may pass, and I have set it in a course by which it may be thoroughly informed.

FOR *Sir Rowland Egerton's* cause, and his lady's, the parties have submitted themselves unto me, and are content to do it by bond; and therefore I will undoubtedly make an end of it according to justice and conscience.

FOR *Sir Gilbert Houghton's* business, I am in very good hope to effect your lordship's desire for his good.

FOR *Moor's* business, concerning the printing of books, after hearing all parties, I have sealed his patent; but for his former patent of salt I dare not do it, without acquainting the council therewith, which I am ready to do, if he require that course to be taken.

IF his Majesty at any time ask touching the Lord *Clifton's* business, I pray your lordship represent to his Majesty thus much: that whatsoever hath passed, I thank God I neither fear him nor hate him; but I am wonderful careful of the seat of justice, that they may still be well munit, being principal sinews of his Majesty's authority. Therefore the course will be (as I am advised) that for this heinous misprision (that the party without all colour or shadow of cause, should threaten the life of his judge, and of the highest judge of the kingdom next his Majesty) he be first examin'd, and if he confess it, then an *ore tenus*; if he confess it not, then an information in the star-chamber, and he to remain where he is till the hearing. But I do purposely forbear yet to have him examin'd, till the decree or agreement between him and my Lord *Aubigny* (which is now ready) be perfected, lest it should seem an oppression, by the terrour of the one, to beat him down in the other. Thus I ever rest,

Your Lordship's true friend, and devoted servant,

FR. BACON, *Canc.*

York-house, Jan. 25. 1617.

† *Sir Henry Finch* Serjeant at law, being the first of his name that made a considerable figure in that profession, I shall give a short account of him. He was younger brother to *Sir Moyle Finch* of *Eastwell* in the county of *Kent*, and father of *John Lord Finch*, Keeper of the Great Seal in the reign of King *Charles I.* He died in 1625, leaving to posterity a sufficient testimony of his learning in the law, as well as the sciences, in his book intitled, *A description of the common laws of England according to the rules of art, &c.* His son's good parts and elocution were acknowledged by the greatest of his enemies; which accomplishments, though he died without issue, have eminently appear'd in some other descendants from his honourable family. *Stephens.*

I pray your lordship to pardon me, if in respect of a little watering in one of mine eyes, I have written this letter, being long and private business, in my secretary's hand.

From the Original.

CXCIV. To the Lord Chancellor. *

My honourable Lord,

I HAVE received your lordship's letters, wherein I see the continuance of your love and respect to me, in any thing I write to you of, for which I give your lordship many thanks, desiring nothing for any man but what you shall find just and convenient to pass; I am very glad to understand that there is so good hope of Sir Gilbert Houghton's business, which I must needs ascribe to your lordship's great favour toward him for my sake, which I will ever acknowledge. If his Majesty at any time speak of the Lord Clifton's business, I will answer according to that your lordship hath written, &c.

Your Lordship's faithful servant,

Newmarket, the last of Jan. 1617.

G. BUCKINGHAM.

CXCV. To the KING.

It may please your most excellent Majesty,

FINDING as well by your Majesty's dispatches and directions to your council, as now by speech with Mr. Secretary Lake, that your Majesty is content to be troubled with business of sundry natures; I thought good, according to the duty of my place, and the necessity of the occasion, to put your Majesty in mind, that on this day seven-night, being Friday in the morning, I am, according to custom, to give a charge and admonition to the judges and justices of peace now before the circuits, wherein I am humbly to crave your Majesty's pleasure and directions.

I have for your Majesty's better ease set down the heads, which by the prescript of your book, and out of the consideration of the present times, I have thought fittest to be remembered. I have also sent your Majesty the last account of the judges circuits, not to trouble you with the reading of them all; but to the end that if upon my memorial, or otherwise out of your Majesty's own memory, which is above memorials, you should have occasion to resort to those accounts, the papers may be by you.

THE point of greatest weight, in my opinion, is the carrying of a balance'd hand at this time in the matter of recusants, in regard of the treaty with Spain. For it were good, in respect of your people, that there were no note made, that the string is relaxed, and in respect of the treaty, that it is not strained; and therefore that the proceeding in those causes be rather diligent than severe.

I am wonderful glad to hear that this extremity of weather, which I think the Muscovite hath brought with him, hath not touched your Majesty, whose health and ease is far dearer to me than my life with all the appurtenances. God ever preserve and prosper you.

Your Majesty's most faithful and most obliged servant,

Friday morning, Feb. 6. 1617.

FR. BACON, Canc.

YOUR Majesty will be pleased your answer be with me on Thursday at noon, or soon after.

From

From the Original.

CXCVI. To the Lord Chancellor. *

My honourable Lord,

I HAVE acquainted his Majesty with your letter to me, and delivered likewise to him the letter and other things directed to his Majesty, who hath commanded me to return this answer to them all.

FIRST, For your memorial of your Charge to the judges, he liketh it so well, that he findeth nothing either to be added or diminished, and was so well satisfied therewith, that he accounteth it needless to read the other papers, but sealed them up again, and sendeth them back to your lordship without reading them. Only in the point of recusants his Majesty is of the quite contrary opinion to you; for though he would not by any means have a more severe course held, than his laws appoint in that case, yet sith the many reasons why, there should be no mitigation above that which his laws have enacted, and his own conscience telleth him to be fit. As first, the Papists in his kingdom have taken such heart upon the commission given to Sir *John Digby* touching the match with *Spain*, that they have sent copies thereof privately up and down, and are so lifted up in their hopes of what they desire, that his Majesty cannot but take a more severe course (as far as by his laws he may) than hitherto he hath done. Besides, when they shall see a harder hand carried toward them than hath been accustomed, his Majesty assureth himself they will employ all their means to further the match, in hope of mitigating of that severity when it shall be accomplished. And though these reasons were not, his Majesty would account it a baseness in a Prince to shew such a desire of the match, as to slack any thing in his course of government, much more in propagation of the religion he professeth, for fear of giving hindrance to the match thereby. And so with many thanks for your favours to my brother in his business, I rest,

Your Lordship's faithful servant,

G. BUCKINGHAM.

Newmarket, 8 Feb. 1617.

CXCVII. To the Marquis of BUCKINGHAM.

My very good Lord,

MR. CHANCELLOR of the exchequer hath signified to me this day, that yesterday his Majesty called him to his coach, and said to him, that one that had used ill speech of me should be called before me, and make his submission to me; and thereupon be called before the council, and receive a sharp reprehension, and so be enlarged. And Mr. Chancellor could not tell me who the person was, but after by some letter he received from my Lord *Clifton*, and speech with a man of his, he perceived it was he.

I pray your lordship in humbleness to let his Majesty know, that I little fear the Lord *Clifton*, but I much fear the example, that it will animate ruffians and *rodomonti* extremely against the seats of justice, (which are his Majesty's own seats) yea and against all authority and greatness, if this pass without publick censure and example; it having gone already so far as that the person of a baron hath been committed to the tower. The punishment it may please his Majesty to remit, and I shall not formally but heartily intercede for him:

him: but an example (setting my self aside) I wish for terror of persons, that may be more dangerous than he, towards the least judge of the kingdom.

THEREFORE it may please his Majesty to speak of it with my self and my lords, when he cometh next, and in the mean time I will command from his Majesty, the Master of the Rolls, and Mr. Attorney, who were appointed by the table to examine him, to stay. God ever prosper you. †

Your Lordship's true friend and devoted servant,

March 17. 1617.

FR. BACON, *Canc.*

† I know not whether there was any prosecution against the Lord Clifton, or whether it was prevented by the laying of violent hands upon himself, in the year ensuing. *Stephens.*

From the Original.

CXCVIII. To the Marquis of BUCKINGHAM.*

My very good Lord,

WE have sat once upon the commission of Treasure to no ill purpose, as may appear by the account inclosed; wherein his Majesty will find no preposterous issue of treasure: Mr. Chancellor imagines well, Coke seeks and beats over, as well where it is not, as where it is; Secretary Naunton forgets nothing. I will look to bow things to the true ends. God bless and prosper his Majesty and your self.

Your Lordship's most obliged friend and faithful servant,

25 July 1617.

FR. VERULAM, *Canc.*

CXCIX. To the Marquis of BUCKINGHAM.

My very good Lord,

I PRAY your lordship to signify to his Majesty, that I thought it my duty to stay at the seal, a book of Sir Francis Steward's, and Sir James Austerlony, &c. of 200 l. land in charge in fee-simple: my reasons,

FIRST, It is a perpetuity, and so much rent in diminution of revenue certain.

SECONDLY, The warrant (as is acknowledg'd) came only from my Lord of Suffolk, and not from Mr. Chancellor. And yet my lord was wont to boast, that since he was treasurer, all commissions and contracts for sale of King's land were broken off and ceased.

THIRDLY, The rate of the monies paid by the gentlemen, amounteth but to thirteen years purchase; which is a plain gift of a good proportion of value.

IF his Majesty, now informed, iterate his mandate, it is done, and I excused; but I could wish his Majesty would refer it to the commissioners of the treasury, how the gentlemen may be otherwise satisfied.

I received yester-night a brave account of the commission of the wards in Ireland, which this one year is advanced from 200 l. per annum to 4000 l. which is twenty fold multiplied. This I write for two reasons. First, Because I glory in it, because it was my work wholly: Next, because his Majesty may take occasion by this to look better to the improvement of his wards in England in due time. God ever preserve and prosper you.

Your Lordship's most obliged friend and faithful servant,

York-house, July 27. 1618.

FR. VERULAM, *Canc.*

CC. To

CC. To the Marquis of BUCKINGHAM.

My very good Lord,

I AM very glad to hear of the honour his Majesty intendeth to my noble lady your lordship's * mother. This, amongst many other things, sheweth in your lordship good-nature, which is the root of all virtues, next religion. Besides, it doth sort well in states, when place and power do meet, and stand not too far at distance.

FOR the passing of it by direction without bill signed, it cannot be in law. So is Mr. Attorney's opinion, and so is mine; and therefore there is presently a bill sent with an indorsement of passing it by immediate warrant, and this antedate.

FOR the antedate, I must present his Majesty with my caution, and with^{18 H. VI. cap. 1.} my obedience.

FOR the statute tieth me from antedates; and indeed the mischief is infinite: for by that means the King may grant any land, &c. and take it away a month hence, and grant it another by an antedate. And surely were it land or the like, I would not say *absit*, or your Majesty cannot do it, for a world; or your Majesty is sworn and I am sworn; or such brave phrases: but surely (I say) I would in humbleness represent it to his Majesty †.

BUT the case of honour differeth; for therein his Majesty's prerogative and declaration is absolute, and he may make him that is last to be first. And therefore upon his Majesty's signification of his pleasure upon the indorsement of the bill signed, I take it I may lawfully do it.

I am here rejoicing with my neighbours the towns-men of *St. Albans*, for this happy day the ‡ fifth of *August*, 1618.

*Your Lordship's most obliged friend and faithful servant,*FR. VERULAM, *Canc.**Gorbambury.*

* The advancement of this Lady to the title of the Countess of *Buckingham*, was, notwithstanding the reasons here alledged, so ill resented by the house of commons in 1626, that in article XI of their impeachment of the Duke her son, it was objected against him as one of his offences. *Stephens.*

† By this and the preceding letter it appears, that as my Lord Chancellor thought it his duty to offer to the King his reasons against passing of a patent; yet if then the King, who was judge of the inconvenience, was pleased to command it, he was obliged to allow the same. But in those things which were contrary to law, as it is to be presumed, that after an humble representation thereof, no prince would exact, so no minister in such a case would yield an obedience. *Stephens.*

‡ The fifth of *August*, being the anniversary of the King's deliverance from the Earl of *Grey's* conspiracy, was by some called the Court-holy-day, and ridiculed as a fiction; tho' the truth thereof being delivered down by Archbishop *Spotswood*, and other good historians, I see no great reason to call it into question. *Stephens.*

CCI. To the Marquis of BUCKINGHAM.

My very good Lord,

I THANK your lordship for your last loving letter. I now write to give the King an account of a patent I have stayed at the seal. It is of licence to give in mortmain eight hundred pound land, though it be of tenure in chief to † *Allen* that was the player, for an hospital.

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† That *Allen* the player, who founded an hospital at *Dulwich* in *Surrey*, had been an excellent actor of the comical and serious part; will appear evident to any one that shall thoroughly consider the following epigram made by that admirable dramatick Poet *Ben Jonson*.

To

I like well that *Allen* playeth the last act of his life so well; but if his Majesty give way thus to amortize his tenures, his courts of wards will decay; which I had well hoped should improve.

BUT that which moved me chiefly is, that his Majesty now lately did absolutely deny Sir *Henry Savile* for 200 *l.* and Sir *Edward Sandys* for 100 *l.* to the perpetuating of two lectures, the one in *Oxford*, the other in *Cambridge*, foundations of singular honour to his Majesty (the best learned of Kings) and of which there is great want; whereas hospitals abound, and beggars † abound never a whit the less.

IF his Majesty do like to pass the book at all; yet if he would be pleas'd to abridge the 800 *l.* to 500 *l.* and then give way to the other two books for the university, it were a princely work. And I would make an humble suit to the King, and desire your lordship to join in it, that it might be so. God ever preserve and prosper you.

Your Lordship's most obliged friend and faithful servant,

York-house, Aug. 18. 1618.

FR. VERULAM, *Canc.*

I have written to my Lord Chamberlain, being Chancellor of *Oxford*, to help in the business.

TO MR. EDWARD ALLEN.

If *Rome* so great, and in her wisest age,
Fear'd not to boast the glories of her stage:
As skilful *Rescius*, and grave *Aescop*, men
Yet crown'd with honours, as with riches then;
Who had no less a trumpet of their name,
Than *Cicero*, whose every breath was fame:
How can so great example die in me?
That, *Allen*, I should pause to publish thee;
Who both their graces in thy self hast more
Outstript, than they did all that went before:
And present worth in all dost so contract
As others speak, but only thou dost act.
Wear this renown. 'Tis just that who did give
So many poets life, by one should live.

† It were to be wished this observation did not hold true to this day: for tho' the foundations of hospitals are to be commended, which Sir *Fr. Bacon* hath done both in this letter, and other his writings; yet it shews that some more adequate remedy for supporting the poor, than what arises from these charities, or even from the laws enacted for their relief, was then, and yet is to be desired. And as the defect thereof is no small reproach to the government of a country, happy in its natural product, and enrich'd by commerce; so it would be an act of the greatest humanity, to provide for the poor, and that idleness and beggary, the successive nursery of rogues, might as far as possible be extirpated. Upon this occasion I cannot but take notice of a story which has been spread abroad to the defamation of Sir *Fr. Bacon* (tho' upon no good ground, as far as I can judge) as if in the accomplishment of the foundation of the *Chartreux* hospital, begun by Mr. *Sutton*, and carried on by his executors, Sir *Francis*, who was then the King's Solicitor, had, for some ill designs of gain to himself, or others, endeavoured to have defeated the same. The fact was, that the heir at law supposing, notwithstanding what Mr. *Sutton* had done in procuring acts of parliament, and patents from the King, in order to establish this noble charity, that the greatest part of his estate was descended to him; as it was argued on his behalf by the Solicitor-General, by Mr. *Henry Yelverton*, and Mr. *Walter*, men of great reputation in those times: And whatever ill intentions some of the court might have, my request to the reader is, that before he pass any censure upon Sir *Fr. Bacon* relating, hereunto he would please to peruse his advice (printed p. 449. of this Vol.) given to the King touching Mr. *Sutton's* estate. *Stephens.*

From the Original.

CCII. To the Marquis of BUCKINGHAM.*

My very good Lord,

WHAT passed in your lordship's presence, your lordship can tell, touching the navy. The morrow following we concluded in approbation of

of the books, save in one point, touching the number convenient for manning the ships, wherein the number allowed by the Commissioners, had in my judgment a little of the Merchant; for to measure by so many as were above dead pays, is no good argument. For the abuse of dead pays is to be amended, and not the necessary number abated. In this his Majesty may fall upon a middle proportion between that of the Commissioners and that of the Officers.

If were good, now the three books which we have appointed to be ingrossed into one ledger-book are affirmed, there were a short book of his Majesty's royal directions, and orders thereupon, extracted.

For the commission of the Treasury, I persuade my self, they are of the first hours that have been well spent in that kind. We have put those particulars whereof his Majesty gave us charge into a way.

BINGLEY's information will be to good purpose, and we find another of like nature revealed to Mr. Secretary and my self. God ever prosper you.

Your Lordship's most obliged friend and faithful servant,

9 October, 1618.

FR. VERULAM, Canc.

CCIII. To the Marquis of BUCKINGHAM.

My very good Lord,

LOOKING for matter of service, I have found out a suit for my self; and it is proper for me more than all men, because it is within the account of the hamper. But I have made a law to my self, that I will never beg any thing which shall not bring gain to the King. Therefore my suit is to farm the profits of the alienations, yielding a thousand pound a year more to the King than hath been yielded *communibus annis*, by a medium of seven years. If the King be pleased to grant me this, it will a little warm the honour he hath given me; and I shall have a new occasion to be, as I ever have been, and shall be,

Your Lordship's obliged friend and faithful servant,

Terk-houfe, Octob. 9. 1618.

FR. VERULAM, Canc.

CCIV. To the Marquis of BUCKINGHAM.

My very good Lord,

THIS morning Mr. Attorney came to me, and desired of me many writs of *ne exeat regnum* against most of the Dutch merchants*, and withal

* The affair of these Dutch merchants is in some measure represented in this letter, and those of Octob. 9. and Nov. 9. 1619. But Mr. Stephens in his *Introduction*, p. 45, 46 gives us, by the assistance of some authentick papers, the following account of the affair: Upon the 10th of Octob. 1618, the Attorney-General having applied to the Lord Chancellor for writs *ne exeat Regnum*, against these merchants, afterwards exhibited an *Information* against about one hundred and eighty of them, for transporting beyond the seas vast quantities of gold and silver in money, plate, and bullion, since the beginning of King James I's reign. The Attorney at first brought the cause to an hearing against about twenty of them, who were supposed the greatest offenders, and most able to make restitution. Their fines amounting in the whole to 150000 l. of which Mr. William Courteen, and two others, were condemned in 20000 l. each; the advice which the Lord Chancellor gave the King, not to grant away the fines of such ten of them as Sir Thomas Vasafor the discoverer should choose, and which it seems he had in a manner been promised, was a piece of service worthy the place he enjoy'd, and the trust he had with the King. Upon the 12th of Octob. 1619, Mr. Courteen was censured to pay 2000 l. more, and others, smaller sums, for endeavouring to corrupt the King's evidence. And the 19th of November following was appointed for the trial of between twenty and thirty more; but by reason of some neglect or mismanagement in the prosecution, which gave the court a great deal of trouble,

withal let me understand that there was a discovery of an infinite transportation of gold and silver out of this realm by the said *Dutch* merchants, amounting to millions; and that Sir *John Brittain* had made a book thereof, and presented the same to his Majesty: and farther, that his Majesty had directed him to prosecute the same; and had also given Sir *Thomas Vavasor* the forfeiture of such ten of them as he should chuse.

HEREUPON I thought it my duty, as in a matter of great weight, to signify to his Majesty by your lordship what I conceive.

THE discovery I think very happy. For if it be true, it will be a great benefit to his Majesty: it will also content his people much, and it will demonstrate also that *Scotland* is not the leech (as some discourters say) but the *Netherlanders*, that suck the realm of treasure. So that the thing is very good.

BUT two things I must represent to his Majesty; the first, that if I stay merchants from their trading by this writ, I must do it either *ex officio*, or by special warrant from his Majesty.

IF *ex officio*, then I must have more than a bare surmise to grant the writ upon, so as I must be acquainted with the grounds, or at least appearance of proofs. If by special warrant, then I desire to receive the same. The other is, that I humbly beseech his Majesty that these royal boughs of forfeiture may not be vintaged, or crop'd by private suitors (considering his Majesty's state as it is;) but that Sir *Thomas Vavasor*, or Sir *John Brittain* may have a bountiful and gracious reward for their discovery; but not the prime, or without stint.

IN sum, I would wish his Majesty to refer the whole business and carriage of the same for his honour and profit to the commissioners of treasury; or because it is a legal forfeiture, to my self, Mr. Chancellor, Sir *Edward Coke*, and my Lord Chief Justice of *England*: and by us his Majesty shall be assured to know the best course for his justice, honour, and profit, and that he may dispose what bounty he will. God ever preserve and prosper you.

Your Lordship's most obliged friend and faithful servant,

Tork-houfe, Octob. 19. 1618.

FR. VERULAM, Canc.

trouble, and the defendants some advantage, the cause was not heard till the 7th of December, tho' most of them were then found guilty. Of the large fines imposed upon the delinquents, it is supposed that they paid but a third part; for during the prosecution, the States General did by a letter desire the Marquis of *Buckingham* to endeavour to moderate the heat thereof, as Sir *Noel Carjon* their Ambassador did the next day after sentence, to mitigate the severity.

From the Original.

CCV. To the Lord Chancellor.*

My Lord,

I HAVE acquainted his Majesty with your letter, who giveth you thanks for your advice to communicate the business of the *Dutchmen* to the commissioners of the Treasury, which his Majesty was before purposed to refer to them, as it concerns his treasure, for the carriage of it; and to your lordship and the rest named in your letter, for the relation it hath to the law. For the proposers of the suit, his Majesty intendeth only to reward their pains as may stand with his service and his princely disposition, but to preserve the main benefit himself: all that his Majesty would have your lordship to do for the present, is to take order about the writ of *Ne exeant regnum*; to advise with

with his learned counsel what course is to be taken, and if by a warrant from his Majesty, that your lordship send him a warrant to be signed, which shall be returned with all speed. Of other things his Majesty thinketh it will be time enough to speak at his return to *London*. In the mean time I rest,

Your Lordship's faithful friend and servant,

Hinchenbroke, 21 Octob. 1618.

G. BUCKINGHAM.

From the Original.

CCVI. To the Marquis of BUCKINGHAM.*

My very good Lord,

I HAVE this morning received the petty roll for the Sheriffs. I received also the papers exhibited by Sir Miles Fleetwood, which I will use to his Majesty's best service, and thereupon give account to his Majesty when time serveth.

My care which is not dormant touching his Majesty's service, especially that of treasure (which is now *summa summarum*) maketh me propound to his Majesty a matter, which (God is my witness) I do without contemplation of friend or end, but *animo recto*.

If Sir Edward Coke continue sick, or keep in, I fear his Majesty's service will languish too, in those things which touch upon law; as the calling in debts, recusants, alienations, defalcations, &c. And this is most certain, that in these new diligences, if the first beginning cool, all will go back to the old byas. Therefore it may please his Majesty to think of it, whether there will not be a kind of necessity to add my Lord Chief Justice of *England* to the commissioners of treasure. This I move only to the King and your lordship, otherwise it is a thing *ex non entibus*. God preserve and prosper you.

Your Lordship's most faithful servant,

*From the Star-Chamber,
25 Nov. 1618.*

FR. VERULAM, *Canc.*

P. S. I forget not *Tuiston's* cause. All things stay, and precedents are in search.

CCVII. To the Marquis of BUCKINGHAM.

My very good Lord,

THIS long book which I send for his Majesty's signature, was upon a conference and consult yesternight (at which time I was assisted by the two Chief Justices, and attended by the surveyor, attorney, and receiver of the court of wards *Fleetwood*) framed and allowed.

It is long, because we all thought fit not to piece new instructions with old instructions, but to reduce both old and new into one body of instructions. I do not see that of the articles, which are many, any could have been spared. They are plain, but they have a good property, that they will take fast hold. I may not trouble his Majesty with chusing some of them in particular, when all are good: only I think fit to let his Majesty know of one, which is that according to his own directions: the oath of making no private unlawful profit, is now as well translated to the master and officers that may take, as to the parties and suitors that may give.

It little becometh me to possess his Majesty that this will be to his Majesty's benefit ten thousands yearly, or fifteen thousands or twenty thousands: for

these rattles are fitter for mountebanks of service, than grave counsellors. But my advices (as far as I am able to discern) tend or extend but to thus much: this is his Majesty's surest and easiest way for his most good.

SIR *Miles Fleetwood*, who both now and heretofore hath done very good service in this, meriteth to be particularly from your lordship encouraged; which I beseech your lordship not to forget. God ever prosper you.

Your Lordship's most faithful bounden friend and servant,

Dec. 4. 1618.

FR. VERULAM, *Canc.*

CCVIII. To the KING.*

May it please your most excellent Majesty,

ACCORDING to your Majesty's pleasure signified to us by the Lord Marquis *Buckingham*, we have considered of the fitness and convenience of the gold and silver thread business, as also the profit that may accrue unto your Majesty.

WE are all of opinion that it is convenient that the same should be settled, having been brought hither at the great charge of your Majesty's now agents, and being a means to set many of your poor subjects on work, and to this purpose there was a former certificate to your Majesty from some of us with others.

AND for the profit that will arise, we see no cause to doubt; but do conceive apparent likelihood, that it will redound much to your Majesty's profit, which we esteem may be at the least 10,000 *l.* by the year; and therefore in a business of such benefit to your Majesty, it were good it were settled with all convenient speed, by all lawful means that may be thought of, which notwithstanding, we most humbly leave to your Majesty's highest wisdom.

Your Majesty's most humble and faithful servants,

Fr. Verulam, *Canc.* H. Montagu. Henry Yelverton.

* O³ 1618. The Marquis of *Buckingham* writes from *Theobalds* to the Lord Chancellor, that the King being desirous to be satisfied of the gold and silver thread business, would have his Lordship consult the Lord Chief Justice, and the Attorney and Solicitor-General therein.

CCIX. To the KING.

It may please your most excellent Majesty,

I Do many times with gladness, and for a remedy of my other labours, revolve in my mind the great happiness which God (of his singular goodness) hath accumulated upon your Majesty every way; and how compleat the same would be, if the state of your means were once rectified, and well ordered: your people military and obedient, fit for war, used to peace; your church illightened with good preachers, as an heaven of stars; your judges learned, and learning from you, just, and just by your example; your nobility in a right distance between crown and people, no oppressors of the people, no over-shadowers of the crown; your council full of tribunes of care, faith, and freedom; your gentlemen and justices of the peace willing to apply your royal mandates to the nature of their several counties, but ready to obey; your servants in awe of your wisdom, in hope of your goodness; the fields growing every day, by the improvement and recovery of grounds from the desert to the garden; the city grown from wood to brick, your sea-walls or

pomoerium of your island surveyed, and in edifying; your merchants embracing the whole compass of the world, east, west, north, and south; the times give you peace, and yet offer you opportunities of action abroad: and lastly, your excellent royal issue entaileth these blessings and favours of God to descend to all posterity. It resteth therefore, that God having done so great things for your Majesty, and you for others; you would do so much for your self, as to go through (according to your good beginnings) with the rectifying and settling of your estate and means, which only is wanting; *hoc rebus defuit unum*. I therefore whom only love and duty to your Majesty, and your royal line, hath made a *financier*, do intend to present unto your Majesty a perfect book of your estate like a perspective glass, to draw your estate nearer to your sight; beseeching your Majesty to conceive, that if I have not attained to do that that I would do, in this which is not proper for me; in my element, I shall make your Majesty amends in some other thing, in which I am better bred. God ever preserve, &c.

Jan. 2. 1618.

From the Original.

CCX. To the Marquis of BUCKINGHAM.*

My very good Lord,

IF I should use the Count *de Gondomar's* action, I should first lay your last letter to my mouth, in token of thanks, and then to my heart in token of contentment, and then to my forehead in token of a perpetual remembrance.

I SEND NOW to know how his Majesty doth after his remove, and to give you account, that yesterday was a day of motions in the Chancery. This day was a day of motions in the Star-Chamber, and it was my hap to clear the bar, that no man was left to move any thing, which my Lords were pleased to note they never saw before. To-morrow is a sealing day; *Thursday* is the funeral day; so that I pray your lordship to direct me whether I shall attend his Majesty *Friday* or *Saturday*. *Friday* hath some reliques of business, and the commissioners of treasure have appointed to meet; but to see his Majesty, is to me above all.

I have set down *de bene esse*, *Suffolk's* cause, the third sitting next Term; if the wind suffer the commission of *Ireland* to be sped. I ever more and more rest,

Your Lordship's most obliged friend and faithful servant,

This 11th of May 1619.

FR. VERULAM, *Canc.*

From the Original.

CCXI. To the Lord Chancellor.*

My most honourable Lord,

I ACQUAINTED his Majesty with your letter, at the first opportunity after I received it, who was very well pleased with that account of your careful and speedy dispatch of businesses, &c.

Yours, &c.

Greenwich, 13 May 1619.

G. BUCKINGHAM

P. S. YOUR business had been done before this, but I knew not whether you would have the attorney or solicitor to draw it.

From

From the Original.

CCXII. To the Lord Chancellor.*

My noble Lord,

I SHEWED your letter of thanks to his Majesty, who says there are too many in it for so small a favour, which he holdeth too little to encourage so well a deserving servant. For my self I shall ever rejoice at the manifestation of his Majesty's favour towards you, and will contribute all that is in me to the encreasing his good opinion; ever resting,

Your Lordship's faithful friend and servant,

G. BUCKINGHAM.

From an Original in the Earl of Oxford's Library, never before printed.

CCXIII. To my very loving friends Sir Thomas Leigh and Sir Thomas Puckeringe, Knights and Baronets.*

AFTER my hearty commendations; being informed by the petition of one *Thomas Porten*, a poor *Yorkshireman*, of a heavy accident by fire, whereby his house, his wife, and a child, together with all his goods, were utterly burnt and consumed; which misfortune the petitioner suggests (with much eagerness) was occasioned by the wicked practices and conjurations of one *John Clarkson* of *Rowington* in the county of *Warwick*, and his daughter, (persons of a wandering condition) affirming, for instance, that one *Mr. Hailes* of *Warwick* did take from the said *Clarkson* certain books of conjuration and witchcraft: That the truth of the matter may be rightly known, and that *Clarkson* and his daughter (if there be ground for it) may answer the law according to the merit of so heinous a fact, I have thought good to wish and desire you to send for *Clarkson*, and his daughter, and as upon due examination you shall find cause, to take order for their forthcoming, and answering of the matter at the next assize for the county of *York*; and also to confer with *Mr. Hailes*, whether he took from the said *Clarkson* any such book of conjuration, as the petitioner pretends he did, and to see them in safe custody. Whereupon I desire to be certified how you find the matter; and your doing thereupon. So not doubting of your special care and diligence herein, I bid you heartily farewell, and rest,

Your very loving friend,

FR. VERULAM, Canc.

York-house, 15 May 1619.

CCXIV. To the Marquis of BUCKINGHAM.

My very good Lord,

I SEND his Majesty a volume of my Lord of *Bangor's* and my Lord *Sheffield*, whereof I spake when I left his Majesty at *Theobalds*. His Majesty may be pleas'd, at his own good time and pleasure, to cast his eye upon it. I purpose at my coming to *London* to confer with the Chief Justice as his Majesty appointed; and to put the business of the pursuivants in a way, which I think will be best by a commission of *Oyer and Terminer*; for the star-chamber

ber (without confession) is long seas. I should advise that this point of the pursuivants were not single, but that it be coupled in the commission with the offences of keepers of prisons hereabouts: it hath a great affinity; for pursuivants are but ambulatory keepers, and it works upon the same party, (of the papists:) and it is that wherein many of his Majesty's and the council's severe charges, have been hitherto unfruitful; and it doth a great deal of mischief. I have some other reasons for it. But of this it will be fittest to advertise more particularly, what I have resolved of on advice, upon conference with the Chief Justice. I am wonderful glad to hear of the King's good health. God preserve his Majesty and your lordship. I ever rest,

Your Lordship's most obliged friend and faithful servant,
Garbambury, this last of July 1619. FR. VERULAM, Canc.

From the Original.

CCXV. To the Lord Chancellor.*

My honourable Lord,

YOUR lordship hath sent so good news to his Majesty, that I could have wished you had been the reporter of it your self; but seeing you came not, I cannot but give you thanks for employing me in the delivering of that which pleased his Majesty so well, whereof he will put your lordship in mind, when he seeth you. I am glad we are come so near together, and hoping to see you at *Windsor*, I rest,

29 Aug. 1619.

Your Lordship's faithful friend and servant,
 G. BUCKINGHAM.

From the Original.

CCXVI. To the Lord Chancellor.*

My honourable Lord,

AS I was reading your lordship's letter, his Majesty came, and took it of my hands, when he knew from whom it came, before I could read the paper inclosed; and told me that you had done like a wise counsellor: first setting down the state of the question, and then propounding the difficulties, the rest being to be done in its own time.

I am glad of this occasion of writing to your lordship, that I may now let your lordship understand his Majesty's good conceit and acceptance of your service, upon your discourse with him at *Windsor*, which though I heard not my self, yet I heard his Majesty much commend it both for the method and the affection you shewed therein to his affairs, in such earnest manner, as if you made it your only study and care to advance his Majesty's service. And so I rest,

Wanstead, 9 Sept. 1619.

Your Lordship's faithful friend and servant,
 G. BUCKINGHAM.

CCXVII. To the Marquis of BUCKINGHAM.

My very good Lord,

I THINK it my duty to let his Majesty know what I find in this cause of the *ore tenus*. For as his Majesty hath good experience, that when his

business comes upon the stage, I carry it with strength and resolution; so in the proceedings I love to be wary and considerate.

I WROTE to your lordship by my last, that I hoped by the care I had taken, the business would go well, but without that care I was sure it would not go well. This I meant because I had had conference with the two Chief Justices, Sir *Edward Coke* being present, and handled the matter so, that not without much ado I left both the Chief Justices firm to the cause and satisfied.

BUT calling to mind that in the main business, notwithstanding I and the Chief Justices went one way, yet the day was not good (and I should be loth to see more of such days) I am not without some apprehension. For though we have Sir *Edward Coke* earnest and forward, inasmuch as he advised the *ore tenus*, before I knew it at *Wanshead*, and now bound the *Dutchmen* over to the star-chamber, before I was made privy; unto both which proceedings I did nevertheless give approbation: yet if there should be either the major part of the votes the other way, or any main distraction, though we bear it through, I should think it a matter full of inconvenience. But that which gives me most to think, is the carriage of Mr. Attorney, which setteth neither with the business, nor with himself: for as I hear from divers, and partly perceive, he is fallen from earnest, to be cool and faint: which weakness, if it should make the like alteration at the bar, it might overthrow the cause. All the remedy which is in my power, is by the advice of the judges to draw some other of the learned counsel to his help; which he, I know, is unwilling with, but that is all one.

THIS I thought it necessary to write, lest the King should think me asleep, and because I know that his Majesty's judgment is far better than mine. But I, for my part, mean to go on roundly; and so I ever rest,

Your Lordship's most obliged friend and faithful servant,

Oct. 9. 1619.

FR. VERULAM, Canc.

IF the King in his great wisdom should any ways incline to have the *ore tenus* put off, then the way were to command, that the matter of the *ore tenus* should be given in evidence, by way of aggravation in the main cause. And it is true, that if this precursory matter goeth well, it giveth great entrance into the main cause; if ill, contrariwise, it will do hurt and disadvantage to the main.

From the Original.

CCXVIII. To the Lord Chancellor.*

My honourable Lord,

THE news of this victory hath so well pleased his Majesty, that he giveth thanks to all; and I among the rest, who had no other part, but the delivering of your letter, had my part of his good acceptance, which he would have rewarded after the *Roman* fashion with every man a garland, if it had been now in use; but after the fashion of his gracious goodness, he giveth your lordship thanks: and would have you deliver the like in his Majesty's name to Sir *Edward Coke* and the judges. Your news which came the first, gave his Majesty a very good breakfast, and I hope his health will be the better after it.

Your Lordship's faithful friend and servant,

14 Oct. 1619.

G. BUCKINGHAM.

This letter was indorsed,

Thanks on the success in the ore tenus against the Dutch.

1

CCXIX.

CCXIX. To the Marquis of BUCKINGHAM.

My very good Lord,

THESE things which I write now and heretofore in this cause, I do not write, so as any can take knowledge that I write, but I dispatch thing *ex officio* here, and yet think it fit inwardly to advertise the King what doth occur. And I do assure your lordship, that if I did serve any King whom I did not think far away wiser than my self, I would not write in the midst of business, but go on of my self.

THIS morning, notwithstanding my speech yesterday with the † Duke, he † Of Lenox, delivered this letter inclosed, and I having cleared the room of all save the court, and learned counsel (whom I required to stay,) the letter was read a little before our hour of sitting. When it was read, Mr. Attorney began to move, that my lord should not acknowledge his offences as he conceived he had committed them, but as they were charged; and some of the lords speaking to that point, I thought fit to interrupt and divert that kind of question; and said, before we consider'd of the extent of my lord's submission, we were first to consider of the extent of our own duty and power; for that I conceived it was neither fit for us to stay proceeding; nor to move his Majesty in that which was before us in course of justice: Unto which (being once propounded by me) all the lords and the rest *una voce* assented. I would not so much as ask the question, whether though we proceeded, I should send the letter to his Majesty; because I would not straiten his Majesty in any thing.

THE evidence went well (I will not say I sometime help it, as far as was fit for a judge;) and at the rising of the court, I moved their lordships openly, whether they would not continue this cause from day to day till it were ended; which they thought not fit, in regard of the general justice which would be delayed in all courts. Yet afterwards within I prevailed so far, as we have appointed to sit *Wednesday, Thursday and Friday*, and to sit by eight of the clock, and so to dispatch it before the King come, if we can. God preserve and prosper you. I ever rest,

Your Lordship's most obliged friend and faithful servant,

This 22 October, Friday at
4 of the clock, 1619.

FR. VERULAM, Cancr.

From the Original.

CCXX. To the Lord Chancellor.*

My honourable Lord,

I HAVE received your letters by both your servants, and have acquainted his Majesty with them, who is exceedingly pleased with the course you have held in the Earl of *Suffolk's* business, and holdeth himself so much the more beholden to you, because you sent the letter of your own motion, without order or consent of the Lords, whereby his Majesty is not tyed to an answer. His Majesty hath understood by many, how worthily your lordship hath carried yourself both in this and the *Dutch* business; for which he hath commanded me to give you thanks in his name, and seeth your care to be so great in all things that concern his service, that he cannot but

but much rejoice in the trust of such a servant, which is no less comfort to,

Your Lordship's faithful friend and servant,

Reyffon, 23 Oct. 1619.

G. BUCKINGHAM.

Indorsed thus,

On my Lord of Bucks inclosing a letter of submission from my Lord of Suffolk.

CCXXI. To the Marquis of BUCKINGHAM.

My very good Lord,

MY Lord of Suffolk's cause is this day sentenced. My lord and his lady fined together at 30,000 *l.* with imprisonment in the tower at their own charge. Bingley at 2000 *l.* and committed to the fleet. Sir Edward Coke did his part, I have not heard him do better, and began with a fine of an 100,000 *l.* but the judges first, and most of the rest, reduced it as before. I do not dislike that things passed moderately, and all things considered it is not amiss, and might easily have been worse.

THERE was much speaking of interceding for the King's mercy, which in my opinion, was not so proper for a sentence. I said in conclusion, that mercy was to come *ex mero motu*, and so left it: I took some other occasion pertinent to do the King honour, by shewing how happy he was in all other parts of his government, save only in the manage of his treasure by his officers.

I have sent the King a new bill for *Suffex*; for my Lord of Nottingham's certificate was true, and I told the judges of it before; but they neglected it. I conceive the first man, which is newly set down, is the fittest. God ever preserve and prosper you.

Your Lordship's most obliged friend and faithful servant,

Nov. 13. 1619.

FR. VERULAM. Canc.

CCXXII. To the Marquis of BUCKINGHAM.

My very good Lord,

I Do not love to interlope by writing in the midst of business: but because his Majesty commanded me to acquaint him with any occurrence which might cross the way, I have thought fit to let his Majesty know what hath passed this day.

THIS day (which was the day set down) the great cause of the *Dutchmen* was enter'd into. The pleading being open'd, and the case stated by the counsel; the counsel of the defendants made a motion to have certain examinations taken concerning the old defendants suppressed, because they were taken since the last hearing.

I SET the business in a good way, and shewed they were but supplemental, and that at the last hearing there were some things extrajudicial alledged *ad informandum conscientiam judicis*, and therefore there was more reason these should be used *ad informandum conscientiam judicis*, and that there was order for it. The order was read, and approved both by the court, and the defendant's own council; but it was alledged, that the order was not enter'd time enough, whereby the defendants might likewise examine: wherein certainly there

there was some slip or forgetfulness in Mr. Attorney or *Brittain* that followed it, which I wish had been otherwise; yet it went fair out of the court.

BUT after dinner my lords were troubled about it, and after much dispute, we have agreed to confer silently, and *sine strepitu* to-morrow; and set all strait, calling the judges, and the learned counsel, with whom I have spoken this evening, I think, to good purpose. For in good faith I am fain to be *omnibus omnia*, as St. Paul saith, to set forward his Majesty's service.

I DISCERN a kind of inclination to take hold of all accidents to put off the cause, whereunto neither I shall give way, nor I hope his Majesty; to-morrow, if cause be, I shall write more, but I hope all shall be well. I ever rest,

Your Lordship's most obliged friend and faithful servant,

Friday night, Nov. 19. 1619.

FR. VERULAM, *Canc.*

CCXXIII. To the Marquis of BUCKINGHAM.

My very good Lord,

I HAVE conferred with Sir *Lionel Cranfield* according to his Majesty's special commandment, touching two points of value, for the advancement (the one present, the other speedy) of his Majesty's revenue.

THE first is of the currants, to restore the imposition of five shillings six pence, laid in the late Queen's time, and drawn down unduly to serve private turns to three shillings four pence; which will amount to above three thousand pounds yearly increase.

THE other is of the tobacco, for which there is offer'd 2000*l.* increase yearly, to begin at *Michaelmas* next, as it now is, and 3000*l.* increase, if the plantations of tobacco here within land be restrained.

I APPROVE, in mine own judgment, both propositions, with these cautions: That for the first the farmers of the currants do by instrument under their seals relinquish to the King all their claim thereto, by any general words of their patent. And for the second, that the bargain be concluded and made before the proclamation go forth; wherein perhaps there will occur some doubt in law, because it restraineth the subject in the employment of his freehold at his liberty. But being so many ways *pro bono publico*, I think it good enough.

HIS Majesty may therefore be pleased to write his letter to the commissioners of the treasury, signifying his Majesty's pleasure directly in both points to have them done, and leaving to us the consideration *de modo*. God ever prosper you. I rest,

Your Lordship's most obliged friend and faithful servant,

Nov. 22. 1619.

FR. VERULAM, *Canc.*

From the Original.

CCXXIV. To the Marquis of BUCKINGHAM.*

My very good Lord,

I SEND the submission of Sir *Thomas Lake* drawn in such form as upon a meeting with me, of the chief justices, and the learned counsel, was conceived agreeable to his Majesty's meaning and directions; yet lest we should err, we thought good to send it to his Majesty. It is to be returned with

speed, or else there will be no day in Court to make it. God blefs and prosper you. I rest,

Your Lordship's most obliged friend and faithful servant,

28 Nov. 1619.

FR. VERULAM, *Canc.*

From the Original.

CCXXV. To the Lord Chancellor.*

My honourable Lord,

I HAVE acquainted his Majesty with your lordship's letter, and with the submission you sent drawn for Sir *Thomas Lake*, which his Majesty liketh well, and because he served him in so honourable a place, is graciously pleased that he maketh submission in writing, so that my Lady of *Exeter* be contented and the lords, whom his Majesty would have you acquaint therewith. And so I rest,

Your Lordship's faithful friend and servant,

Newmarket, 29 Nov. 1619.

G. BUCKINGHAM.

From the Original.

CCXXVI. To the Marquis of BUCKINGHAM.*

My very good Lord,

WE sentence to-morrow, but I write to-day, because I would not leave the King in suspense.

I SHALL write, not so good news as I would, but better than I expected.

WE met amongst our selves to-day, which I find was necessary, more than convenient. I gave aim that the meeting was not to give a privy verdict, or to determine what was a good proof or not a good proof, nor who was guilty or not guilty, but only to think of some fit proportion of the fines, that there mought be less distraction in the sentence, in a cause so scattered; some would have entered into the matter it self, but I made it good and kept them from it.

I PERCEIVE the old defendants will be censured as well as the new, (which was the goale) and I am persuaded the King will have a great deal of honour of the cause. Their fines will be moderate, but far from contemptible. The attorney did very well to-day; I perceive he is a better pleader than a director, and more eloquent than confederate.

LITTLE thinks the King what ado I have here, but I am sure I acquit my trust. To-morrow I will write particularly. God ever preserve you.

Your Lordship's most obliged friend and faithful servant,

*Tuesday afternoon, this
7th Dec. 1619.*

FR. VERULAM, *Canc.*

The Marquis of *Buckingham* writes that he had acquainted his Majesty with this letter, who commanded him to give the Lord Chancellor thanks for his speed in advertising those things that pass, and for the great care he ever seeth his lordship has in his service.

From

From the Original.

CCXXVII. To the Lord Chancellor.*

My Lord,

HIS Majesty having seen in this great business your exceeding care and diligence in his service by the effect which hath followed thereupon; hath commanded me to give you many thanks in his name, and to tell you that he seeth you play the part of all in all, &c.

*Newmarket, 10 Dec. 1619.**Yours, &c.*

G. BUCKINGHAM.

*Endorsed, In the Dutch Cause.**From the Original.*

CCXXVIII. To the Marquis of BUCKINGHAM.*

My very good Lord,

TO keep form, I have written immediately to his Majesty of Justice Croke's death, and send your lordship the letter open, wishing time were not lost. God preserve and prosper you.

*24 Jan. 1619.**Your Lordship's ever,*

FR. VERULAM, Canc.

From the Original.

CCXXIX. To the Marquis of BUCKINGHAM.*

My very good Lord,

I DOUBT not but Sir Giles Montpeyson advertiseth your lordship how our revenue business proceeds. I would his Majesty had rested upon the first names; for the additional, specially the exchequer man, doth not only weaken the matter, but weakeneth my forces in it, he being thought to have been brought in across. But I go on and hope good service will be done.

For the Commissions to be published in the star-chamber, for which it pleaseth his Majesty to give me special thanks, I will have special care of them in time. God ever prosper you.

*10th Feb. 1619.**Your Lordship's most obliged friend and faithful servant,*

FR. VERULAM, Canc.

CCXXX. To the KING.

May it please your most excellent Majesty,

ACCORDING to your commandment, we met together yesterday at Whitehall, and there consulted what course were fittest to be taken now in this business of your Majesty's Attorney-General, both for the satisfying your own honour, as also for calling in the late exorbitant charter of the city; which are the two ends, as we conceive, that your Majesty propos'd unto your self.

To

To effect both which, we humbly presume to present thus much unto your Majesty as our opinion. First, that an information be put into the star-chamber, as we formerly advised, against your attorney as delinquent, against the mayor, &c. as interested, and against the recorder also, mixtly with some touch of charge.

THAT the submission by letter offer'd by Mr. Attorney is no way satisfactory for your Majesty's honour; but is to be of record by way of answer, and deduced to more particulars.

THAT any submission or surrender of the patents by the city, should be also of record in their answer; and no other can be receiv'd with your Majesty's honour, but by answer in court: the same to come merely of themselves, without any motion on your Majesty's behalf, directly or indirectly; which being done in this form, it will be afterwards in your Majesty's choice and pleasure to use mercy, and to suspend any farther proceedings against your attorney.

THAT it is of necessity as well for the putting in of this information, as for your Majesty's other urgent and publick services in that and other courts, to have a sequestration presently of your attorney, and a provisional commission to some other during your Majesty's pleasure to execute that charge. For both which, instruments legal shall be provided as soon as your Majesty's pleasure is known. To which we humbly and dutifully submit our advice and opinion, beseeching God to bless your Majesty's sacred person with continuance and encrease of much health and happiness: wherewith humbly kissing your royal hands, we rest,

Your Majesty's most humble, and faithful subjects and servants,

At your Majesty's Palace of
Whitehall, June 16. 1620.

Fr. Verulam. Canc. T. Arundel, Robert Naunton,
Geo. Calvert, Jul. Caesar, Edw. Coke.

CCXXXI. To the Marquis of BUCKINGHAM.

My very good Lord,

I HAVE lately certified his Majesty on the behalf of Sir George Chaworth, by Secretary Calvert, touching the place of a remembrancer in the chancery for setting down of causes. And because the gentleman telleth me, the King thought my certificate a little doubtful; he desired me to write to your lordship, touching my approbation more plainly. It is true, that I conceive it to be a good business, and will be for the service of the court, and ease of the subject; I will look it shall be accompanied with good cautions.

WE ruffle over business here in council apace, and I think to reasonable good purpose. By my next I will write of some fit particulars. I ever rest,

Your most obliged friend and faithful servant,

June 21. 1620.

FR. VERULAM, Canc.

CCXXXII. To the Marquis of BUCKINGHAM.

My very good Lord,

THE tobacco business is well settled in all points. For the coals, they that brought the offer to Secretary Calvert, do very basely shrink from their words; but we are casting about to piece it and perfect it. The two goose-quills Maxwell and Alured have been pulled, and they have made submissions

missions in that kind which the board thought fit: for we would not do them the honour to require a recantation of their opinion, but an acknowledgment of their presumption.

His Majesty doth very wisely (not shewing much care or regard to it) yet really to suppress their licentious course of talking and writing. My old Lord *Burghley* was wont to say, that the *Frenchman* when he hath talked, he hath done; but the *Englishman* when he hath talked, he begins. It evaporateth malice and discontent in the one, and kindleth it in the other. And therefore upon some fit occasion I wish a more publick example. The King's state, if I should now die and were opened, would be found at my heart, as *Queen Mary* said of *Calais*; we find additional still, but the consumption goeth on. I pray God give his Majesty resolution, passing by at once all impediments and less respects, to do that which may help it, before it be irremediable. God ever preserve and prosper your lordship.

Your Lordship's most obliged friend and faithful servant,

23 July 1620.

FR. VERULAM, *Canc.*

I have staid the thousand pounds set upon *Englefield* for his Majesty, and given order for levying it.

From the Original.

CCXXXIII. To the Marquis of BUCKINGHAM.*

My very good Lord,

ONE gave me a very good precept for the stone; that I should think of it most when I feel it least. This I apply to the King's business, which surely I revolve most when I am least in action, whereof at my attendance I will give his Majesty such account as can proceed from my poor and mean abilities, which as his Majesty out of grace may think to be more than they are, so I out of desire may think sometime they can effect more than they can. But still it must be remembered, that the stringing of the harp, nor the tuning of it will not serve, except it be well play'd on from time to time.

If his Majesty's business or commandments require it, I will attend him at *Windsor*, though I would be glad to be spared, because quick airs at this time of the year do affect me. At *London*, and so at *Theobalds* and *Hampton-Court*, I will not fail God willing to wait upon his Majesty. Mean while I am exceeding glad to hear his Majesty hath been lusty and well this progress. Thus, much desiring to see your lordship, *cujus amor tantum mihi crescit in horas* (as the poet saith) I ever remain.

Your Lordship's most obliged friend and faithful servant,

Gorbamby, this 30th
of Aug. 1620.

FR. VERULAM, *Canc.*

From the Original.

CCXXXIV. To the Marquis of BUCKINGHAM.*

My very good Lord,

I WRITE now only a letter of thanks to his Majesty, for that I hear, in my absence he was pleased to express towards me (though unworthy) a great

great deal of grace and good opinion before his lords; which is much to my comfort, whereunto I must ever impute your lordship as accessary. I have also written to him what signification I received from Secretary Naunton of his Majesty's will and pleasure, lest in so great a business there should be any mistaking.

THE pain of my foot is gone, but the weakness doth a little remain, so as I hope within a day or two to have full use of it. I ever remain

Your Lordship's most obliged friend and faithful servant,

2 Octob. 1620.

FR. VERULAM, Canc.

From the Original.

CCXXXV. To the KING. *

It may please your Majesty,

I THOUGHT my self an unfortunate Man that I could not attend you at Theobalds. But I hear that your Majesty hath done, as God Almighty useth to do, which is to turn evil into good, in that your Majesty hath been pleased upon that occasion to expresse before your lords your gracious opinion and favour towards me, which I most humbly thank your Majesty for, and will aspire to deserve.

Secretary Naunton this day brought me your pleasure in certain notes: that I should advise with the two Chief Justices (old parliament men) and Sir Edward Coke (who is also their senior in that school) and Sir Randall Crewe the last speaker, and such other judges as we should think fit touching that which mought in true policy, without packing or degenerate arts, prepare to a parliament, in case your Majesty should resolve of one to be held, and withal he signified to me some particular points, which your Majesty very wisely had deduced.

ALL your Majesty's business is *super cor meum*, for I lay it to heart, but this is a business *secundum cor meum*; and yet, as I will do your Majesty all possible good services in it, so I am far from seeking to improprieate to my self the thanks, but shall become *omnibus omnia* (as St. Paul saith) to attain your Majesty's ends.

As soon as I have occasion, I will write to your Majesty touching the same, and will have special care to communicate with my lords, in some principal points, though all things are not at first fit for the whole table. I ever rest,

Your Majesty's most bounden and most devoted servant,

2 October 1620.

FR. VERULAM, Canc.

YOUR Majesty needeth not to doubt but that I shall carry the business with that secrecy which appertaineth.

CCXXXVI. To the Marquis of BUCKINGHAM.

My very good Lord,

YESTERDAY I called unto us the two Chief Justices, and Sergeant Crewe, about the parliament business. To call more judges, I thought not good. It would be little to assistance, much to secrecy: the distribution of the business we made was into four parts.

I. THE

I. THE perusing of the former grievance, and of things of like nature which have come since.

II. THE consideration of a proclamation with the clauses thereof, especially touching elections; which clauses nevertheless we are of opinion should be rather monitory than exclusive.

III. THE inclusive: that is to say, what persons were fit to be of the house, tending to make a sufficient and well-composed house of the ablest men of the kingdom, fit to be advised with *circa ardua regni*, as the style of the writs goeth, according to the pure and true institution of a parliament; and of the means to place such persons without novelty or much observation. For this purpose we made some lists of names of the prime counsellors, and principal statesmen or courtiers; of the gravest or wisest lawyers; of the most respected and best-temper'd knights and gentlemen of the county. And here *obiter* we did not forget to consider who were the *boutefeus* of the last session, how many of them are dead, how many reduced, and how many remain, and what were fit to be done concerning them.

IV. THE having ready of some commonwealth bills, that may add respect and acknowledgment of the King's care; not wooing bills to make the King and his graces cheap; but good matter to set them on work, that an empty stomach do not feed upon humour.

OF these four points, that which concerneth persons is not so fit to be communicated with the council-table, but to be kept within fewer hands. The other three may when they are ripe.

MEAN while I thought good to give his Majesty an account what is done, and in doing, humbly craving his direction if any thing be to be alter'd or added; though it may be our selves shall have second thoughts, this being but the result of our first meeting.

THE state of his Majesty's treasure still maketh me sad, and I am sorry I was not at *Theobalds* to report it, or that it was done by my fellows: it is most necessarily we do it faithfully and freely: For to flatter in this, were to betray his Majesty with a kiss. I humbly pray his Majesty to think of my former counsel; and this I will promise, that whomsoever his Majesty shall make Treasurer, if his Majesty shall direct him to have relation to my advice, I will continue the same care and advice I do now, and much more chearfully when I shall perceive, that my propositions shall not be *literae scriptae in glacie*.

MEAN while to keep the commission in doing of somewhat worth the doing; it may please his Majesty to take knowledge, that upon our report we had agreed to make remonstrance to him, that we thought *Ireland* might (if his Majesty leave it to our care) be brought by divers good expedients to bear their own charge; and therefore his Majesty may be pleas'd by his commandment to set us in hand with it out of hand. God ever prosper you.

Your Lordship's most obliged friend and faithful servant,

October 7. 1620.

FR. VERULAM, *Canc.*

From the Original.

CCXXXVII. To the Lord Chancellor. *

My Lord,

I HAVE acquainted his Majesty with your letter, and labour in his service, for which he commandeth me to give you thanks, and to let your lordship know, that he liketh exceeding well your method held by the judges, which

which could not be amended, and concurrcth with you in your opinions. *First*, touching the proclamation, that it should be monitory and persuasive rather than compulsive: and, *secondly*, that the point concerning the persons, who should be admitted, and who avoided, is fit to be kept from the knowledge of the council-table, and to be carried with all secrecy.

For the business of *Ireland*, his Majesty had heard of it before, and gave commandment to the master of the wards, that it should be hastened and set in hand with all speed, which his Majesty doubteth not but is done by this time. Touching your advice for a Treasurer, his Majesty is very mindful of it, and will let you know as much at his return, when he will speak further with your lordship of it. And so I rest,

Yours, &c.

Reydon, 9 Oct. 1620.

G. BUCKINGHAM.

CCXXXVIII. This letter was written with the KING's own hand, to my Lord Chancellor VERULAM, upon his Lordship's sending to his MAJESTY his *Novum Organum*.

My Lord,

I HAVE received your letter, and your book, than the which, you could not have sent a more acceptable present unto me. How thankful I am for it, cannot better be expressed by me, than by a firm resolution I have taken; first to read it through with care and attention, though I should steal some hours from my sleep: having otherwise, as little spare time to read it, as you had to write it. And then to use the liberty of a true friend, in not sparing to ask you the question in any point whereof I shall stand in doubt: *nam ejus est explicare, ejus est condere*: as, on the other part, I will willingly give a due commendation to such places as, in my opinion, shall deserve it. In the mean time I can with comfort assure you, that you could not have made choice of a subject more befitting your place, and your universal and methodical knowledge; and in the general, I have alarady observed, that you jump with me, in keeping the mid-way between the two extremes; as also in some particulars, I have found that you agree fully with my opinion. And so praying God to give your work as good success as your heart can wish, and your labours deserve, I bid you heartily farewell.

Octob. 16. 1620.

JAMES R.

CCXXXIX. To the Marquis of BUCKINGHAM.

My very good Lord,

I SEND his Majesty a form of a proclamation for the parliament, which I thought fit to offer first to his Majesty's perusal, before I acquainted the council.

For that part which concerneth the foreign business, his Majesty will graciously consider, how easy it is for me to mistake, or not to attain; which his Majesty in his wisdom will pardon, correct, and direct.

For that part touching the elections, I have communicated it with my colleagues, Sir *Edward Coke*, the two Chief Justices, and Serjeant *Crow*, who approve it well; and we are all of opinion, that it is not good to have it more peremptory, more particular, nor more sharp.

WE

WE are thinking of some commonwealth laws, amongst which I would have one special for the maintenance of the navy, as well to give occasion to publish (to his Majesty's honour) what hath been already done; as, to speak plainly, to do your lordship honour in the second place; and besides, it is agreeable to the times. God ever prosper you.

Your Lordship's most obliged friend and faithful servant,

October 18. 1620.

FR. VERULAM, *Canc.*

CCXL. Draught of a Proclamation for a Parliament, referred to in the preceding letter.

AS in our princely judgment we hold nothing more worthy of a christian monarch, than the conservation of peace at home and abroad; where-by effusion of christian blood, and other calamities of war are avoided; trade is kept open, laws and justice retain their due vigor and play, arts and sciences flourish, subjects are less burthened with taxes and tallages, and infinite other benefits redound to the state of a common-weal: so in our own practice we suppose there hath been seldom any King, that hath given more expresse testimonies and real pledges of this desire to have peace conserved, than we have done in the whole course of our regiment.

FOR neither have we, for that which concerns our selves, been ready to apprehend or embrace any occasions or opportunities of making war upon our neighbours; neither have we omitted, for that which may concern the states abroad, any good office or royal endeavour, for the quenching of the sparks of troubles and discords in foreign parts. Wherein, as we have been always ready and willing, so we wish that we had been always as happy and prevailing in our advices and counsels that tended to that end.

AND yet do we not forget, that God hath put into our hands a sceptre over populous and warlike nations, which might have moved us to second the affection and disposition of our people, and to have wrought upon it for our own ambition, if we had been so minded. But it hath sufficed unto us to seek a true and not swelling greatness, in the plantations and improvements of such parts of our dominions, as have, in former times, been more desolate or uncivil, and in the maintaining of all our loving subjects in general in tranquillity and security, and the other conditions of good government, and happy times. But amongst other demonstrations of our constant purpose, and provident care to maintain peace, there was never such a trial, nor so apparent to the world (as in a theatre) as our persisting in the same resolution, since the time that our dear son-in-law was elected and accepted King of *Bohemia*; by how much the motives tending to shake and assail our said resolution were the more forcible. For neither did the glory of having our dearest daughter and son-in-law to wear a crown; nor the extreme alacrity of our people devoted to that cause; nor the representations, which might be set before us of dangers, (if we should suffer a party in Christendom, held commonly adverse and ill affected to our state and government, to gather farther reputation and strength) transport us to enter into an auxiliary war, in prosecution of that quarrel: but contrariwise, finding the justice of the cause not so clear, as that we could be presently therein satisfied; and weighing with our selves likewise, that if the kingdom of *Bohemia* had continued in the house of *Austria*, yet nevertheless, the balance of Christendom had stood in no other sort than it had done for many years before, without increase of party; and chiefly

fearing that the wars in those parts of *Germany*, which have been hitherto the bulwark of Christendom, against the approaches of the *Turk*, might by the intestine dissensions, allure and let in the common enemy; we did abstain to declare or engage our selves in that war, and were contented only to give permission to the ambassador of our son-in-law, to draw some voluntary helps of men and money from our subjects, being a matter that violated no treaty, and could not be denied in case of so near a conjunction.

BUT while we contained our selves in this moderation, we find the event of war hath much altered the case, by the late invasion of the *Palatinate*, whereby (howsoever under the pretence of a diversion) we find our son in fact expelled in part, and in danger to be totally dispossessed of his ancient inheritance and patrimony, so long continued in that noble line; whereof we cannot but highly resent, if it should be alienated and ravished from him in our times, and to the prejudice of our grand-children and line-royal. Neither can we think it safe for us in reason of state, that the county *Palatine*, carrying with it self an electorate, and having been so long in the hands of princes of our religion, and no way depending upon the house of *Austria*, should now become at the disposing of that house; being a matter, that indeed might alter the balance of Christendom importantly, to the weakening of our estate, and the estate of our best friends and confederates.

WHEREFORE, finding a concurrence of reasons and respects of religion, nature, honour, and estate; all of them inducing us in no wise to indure so great an alteration; we are resolved to imploy the uttermost of our forces and means, to recover and resettle the said *Palatinate* to our son and our descendants, purposing nevertheless, according to our former inclination so well grounded, not altogether to intermit (if the occasions give us leave) the treaties of peace and accord, which we have already begun, and whereof the coming on of the winter, and the counterpoise of the actions of war, hitherto may give us as yet some appearance of hope.

I pray God
this hold.

BUT forasmuch as it were great improvidence to depend upon the success of such treaties, and therefore good policy requires that we should be prepared for a war, which we intend for the recovery and assuring of the said *Palatinate*, with the dependences, (a design of no small charge and difficulty, the strength and conjunctures of the adverse party considered) we have thought good to take into our princely and serious consideration (and that with speed) all things that may have relation to such a designment; amongst which, we hold nothing more necessary, than to confer and advise with the common-council of our kingdom, upon this so important a subject.

FOR although the making of war or peace be a secret of empire, and a thing properly belonging to our high prerogative royal, and imperial power; yet nevertheless, in causes of that nature, which we shall think fit not to reserve, but to communicate; we shall ever think our selves much assisted and strengthened by the faithful advice, and general assent of our loving subjects.

MOREOVER, no man is so ignorant, as to expect that we should be any ways able (moneys being the sinews of war) to enter into the list against so great potentates, without some large and bountiful help of treasure from our people; as well towards the maintenance of the war, as towards the relief of our crown and estate. And this the rather, for that we have now, by the space of full ten years, (a thing unheard of in late times) subsisted by our own means, without being chargeable to our people, otherwise than by some voluntary gifts of some particulars, which though in total amounted to no great matter, we thankfully acknowledge at their hands: but, as while the af-

fairs

fairs abroad were in greater calm, we did content our selves to recover our wants by provident retrenchment of charge, and honourable improvement of our own, thinking to wear them out without troubling our people; so in such a state of Christendom as seemeth now to hang over our heads, we durst no longer rely upon those slow remedies, but thought necessary (according to the ancient course of our progenitors) to resort to the good affections and aids of our loving subjects.

UPON these considerations, and for that also in respect of so long intermission of a parliament, the times may have introduced some things fit to be reformed, either by new laws, or by the moderate desires of our loving subjects, dutifully intimated unto us, (wherein we shall ever be no less ready to give them all gracious satisfaction, than their own hearts can desire) we have resolved, by the advice of our privy-council, to hold a parliament at our city of *Westminster*.

AND because as well this great cause (there to be handled amongst the rest, and to be weighed by the beam of the kingdom) as also the true and ancient institution of parliament, do require the lower-house (at this time if ever) to be compounded of the gravest, ablest, and worthiest members that may be found: we do hereby, out of the care of the common good, wherein themselves are participant (without all prejudice to the freedom of elections) admonish all our loving subjects (that have votes in the elections of knights and burgeses) of these few points following.

FIRST, That they cast their eyes upon the worthiest men of all sorts, knights and gentlemen, that are lights and guides in their countries, experienced parliament-men, wise and discreet statesmen, that have been practised in publick affairs, whether at home or abroad; grave and eminent lawyers, substantial citizens and burgeses, and generally such as are interested and have portion in the estate.

SECONDLY, That they make choice of such as are well affected in religion, without declining either one the one hand to blindness and superstition, or on the other hand to schism or turbulent disposition.

THIRDLY, and lastly, That they be truly sensible, not to disvalue or disparage the house with bankrupts and necessitous persons, that may desire long parliaments only for protection; lawyers of mean account and estimation; young men that are not ripe for grave consultations; mean dependents upon great persons, that may be thought to have their voices under command, and such like obscure and inferiour persons: so that to conclude, we may have the comfort to see before us the very face of a sufficient and well composed house, such as may be worthy to be a representative of the third estate of our kingdom, fit to nourish a loving and comfortable meeting between us and our people, and fit to be a noble instrument, under the blessing of Almighty God, and our princely care and power, and with the loving conjunction of our prelates and peers, for the settling of so great affairs as are before expressed.

From the Original.

CCXLI. To the Lord Chancellor.*

My honourable Lord,

I HAVE shewed your letter and the proclamation to his Majesty, who expecting only, according as his meaning was, directions therein for the well ordering of the elections of the burgeses, findeth a great deal more,

containing matter of state, and the reasons of calling the parliament; whereof neither the people are capable, nor is it fit for his Majesty to open unto them, but to reserve to the time of their assembling, according to the course of his predecessors, which his Majesty intendeth to follow. The declaring whereof in the proclamation, would cut off the ground of his Majesty's, and your lordship's speech, at the proper time; his Majesty hath therefore extracted somewhat of the latter part of the draught you have sent, purposing to take a few days space to set down himself what he thinketh fit, and to make it ready against his return hither, or to *Theobalds* at the furthest, and then to communicate it to your lordship, and the rest of the lords. And so I rest,

Yours, &c.

Roxton, 19 Octob. 1620.

G. BUCKINGHAM.

CCXLII. To Sir † HENRY WOTTON.

My very good cousin,

THE letter which I receiv'd from your lordship upon your going to sea, was more than a compensation for any former omission; and I shall be very glad to entertain a correspondence with you in both kinds which you write of: for the latter, I am now ready for you, having sent you some ore of that mine. I thank you for your favours to Mr. *Meautys*, and I pray continue the same. So wishing you out of your honourable exile, and placed in a better orb, I rest,

Your Lordship's affectionate kinsman, and assured friend,

York-house, Oct. 20. 1620.

FR. VERULAM, *Canc.*

† Mr. *Stephens* observes, when this letter was written upon the occasion of my Lord Chancellor's publishing his *Novum Organum*: Sir *Henry Wotton*, so eminent for his many embassies, great learning, candor, and other accomplishments, was resident at *Vienna*, endeavouring to quench that fire which began to blaze in *Germany*, upon the proclaiming the Elector *Palatine* King of *Bohemia*. How grateful a present this book was to Sir *Henry*, cannot better be expressed than by his answer to this letter; which, though it may be found in his remains, the reader will not be displeas'd to see part of it transcribed in this place.

Right honourable and my very good Lord,

I HAVE your lordship's letters dated *Octob. 20.* and I have withal, by the care of my cousin *Meautys*, and by your own special favour, three copies of that work, wherewith your lordship hath done a great and ever-living benefit to all the children of nature, and to nature her self, in her uttermost extent and latitude; who never before had so noble nor so true an interpreter, or (as I am ready to style your lordship) never so inward a secretary of her cabinet. But of your said work (which came but this week to my hands) I shall find occasion to speak more hereafter; having yet read only the first book thereof, and a few aphorisms of the second. For it is not a banquet that men may superficially taste, and put up the rest in their pockets; but in truth a solid feast, which requireth due mastication — and so on.

But I am gone farther than I meant in speaking of this excellent labour, while the delight yet I feel, and even the pride that I take in a certain congeniality (as I may term it) with your lordship's studies, will scant let me cease. And indeed I owe your lordship, even by promise, (which you are pleas'd to remember, and thereby doubly binding me) some trouble this way; I mean by the commerce of philosophical experiments, which surely, of all other, is the most ingenious traffick.

CCXLIII. Lord of St. ALBANS to Mr. MATTHEWS.

S I R,

THE report of this act, which I hope will prove the last of this business, will probably, by the weight it carries, fall and seize on me. And therefore, not now at will, but upon necessity it will become me, to call

call to mind what passed; and (my head being then wholly employed about invention) I may the worse put things, upon the account of mine own memory. I shall take physick to-day, upon this change of weather, and vantage of leisure; and I pray you not to allow your self so much business, but that you may have time to bring me your friendly aid before night, &c.

CCXLIV. To Mr. MATTHEWS, believing his danger less than he found it.

S I R,

I SAY to you, upon the occasion which you give me in your last, *modicae fidei, quare dubitasti?* I would not have my friends (though I know it be out of love) too apprehensive either of me, or for me; for, I thank God, my ways are sound and good, and I hope God will bless me in them. When once my master, and afterwards my self, were both of us in extremity of sickness, (which was no time to dissemble) I never had so great pledges and certainties of his love and favour: and that which I knew then, such as took a little poor advantage of these later times, know since. As for the nobleman who passed that way by you, I think he is fallen out with me for his pleasure, or else, perhaps, to make good some of his own mistakings. For he cannot in his heart but think worthily of my affection and well-deserving towards him; and as for me, I am very sure that I love his nature and parts.

CCXLV. To Mr. MATTHEWS, expressing great acknowledgment and kindness.

S I R,

I HAVE been too long a debtor to you for a letter, and especially for such a letter, the words whereof were delivered by your hand, as if it had been in old gold: For it was not possible for intire affection to be more generously and effectually expressed. I can but return thanks to you; or rather indeed such an answer, as may better be of thoughts than words. As for that which may concern my self, I hope God hath ordained me some small time, whereby I may redeem the loss of much. Your company was ever of contentment to me, and your absence of grief; but now it is of grief upon grief. I beseech you therefore make haste hither, where you shall meet with as good a welcome as your own heart can wish.

CCXLVI. To Mr. MATTHEWS, owning his impatient attention to do him service.

S I R,

IT is not for nothing that I have differed my essay *De amicitia*, whereby it hath expected the proof of your great friendship towards me: whatsoever the event be (wherein I depend upon God who ordains the effects, the instrument, all) yet your incessant thinking of me, without loss of a moment of time, or a hint of occasion, or a circumstance of endeavour, or the stroke of a pulse, in demonstration of your affection to me, doth infinitely tie me to you. Commend my service to my friend. The rest to-morrow, for I hope to lodge at London this night, &c.

SECRECY I need not recommend, otherwise than that you may recommend it over to our friend; both because it prevents opposition, and because

it is both the King's and my Lord Marquis's nature, to love to do things unexpected.

From the Original.

CCXLVII. To the Marquis of BUCKINGHAM.*

Our very good Lord,

WE thought it our duty to impart to his Majesty by your lordship, one particular of parliament business, which we hold it our part to relate, though it be too high for us to give our opinion of it.

THE officers that make out the writs of parliament addressed themselves to me the Chancellor to know, whether they should make such a writ of summons to the Prince, giving me to understand, that there were some precedents of it; which I the Chancellor communicated with the rest of the committees for parliament business, in whose assistance I find so much strength that I am not willing to do any thing without them: Whereupon we (according to his Majesty's prudent and constant rule, for observing in what reigns the precedents were) upon diligent search have found as followeth.

THAT King *Edward I.* called his eldest son Prince *Edward* to his parliament in the thirtieth year of his reign, the Prince then being about the age of eighteen years; and to another parliament in the four and thirtieth year of his reign.

EDWARD III. called the *Black Prince* his eldest son to his parliament in the five and twentieth, eight and twentieth, and two and fortieth years of his reign.

HENRY IV. called Prince *Henry* to his parliaments in the first, third, eighth and eleventh years of his reign, the Prince being under age in the three first parliaments; and we find in particular, that the eighth year, the Prince sat in the upper-house in days of business, and recommended a bill to the Lords.

KING *Edward IV.* called Prince *Edward* his son to his parliament, in anno 22 of his reign, being within age.

KING *Henry VII.* called Prince *Arthur* to his parliament in the seventh year of his reign, being within age.

OF King *Edward VI.* we find nothing, his years were tender, and he was not created Prince of *Wales*.

AND for Prince *Henry*, he was created Prince of *Wales*, during the last parliament at which he lived.

WE have thought it our duty to relate to his Majesty what we have found, and withal that the writs of summons to the Prince are not much differing from the writs to the Peers; for they run *in fide & ligeancia*, and sometime *in fide & homagio in quibus nobis tenemini*, and after, *consilium nobis impensuri circa ardua regni*. Whereby it should seem that Princes came to parliament not only the days of solemnity, when they came without writ, but also on the days of sitting. And if it should be so, then the Prince may vote, and likewise may be of a committee of the upper house, and consequently may be of a conference with the lower house, and the like.

THIS might have been made more manifest as to the presence, and acts of the Prince in days of sitting, if through the negligence of officers, the

journal-books of the upper house before the reign of King *Henry VIII.* were not all missing.

ALL which we thought it appertained to our care to look through, and faithfully to represent to his Majesty: And having agreed secrecy amongst our selves, and injoined it to the inferior Officers, we humbly desire to know his Majesty's pleasure, whether he will silence the question altogether, or make use of it for his service, or refer it to his council, or what other course he will be pleased to take according to his great wisdom and good pleasure.

THIS we have dispatched the sooner, because the writs of summons must have forty days distance from the first days of the parliament. And for the other parts of our accounts, his Majesty shall hear from us, by the grace of God, within few days; evermore praying for his Majesty's prosperity, and wishing your lordship much happiness.

Your Lordship's to be commanded,

York-house, 21 Nov. 1620.

Fr. Verulam, *Canc.* Edw. Coke, H. Montagu,
Henry Hobarte, Ran. Crew.

CCXLVIII. To the Marquis of BUCKINGHAM.

My very good Lord,

WE have these two days past, made report to the board of our parliament committee, upon relation whereof, for some things we provide, for some things we arm.

THE King by my Lord Treasurer's signification, did wisely put it upon a consult, whether the patents which we mentioned in our joint letters, were at this time to be removed, by act of council before parliament. I opined (but yet somewhat like *Ovid's* mistress that strove, but yet as one that would be overcome) that yes. My reasons:

THAT men would go better and faster to the main errand.

THAT these things should not be staged, nor talked of, and so the less fuel to the fire.

THAT in things of this nature, wherein the council had done the like in former particulars, (which I enumerated) before parliament, near parliament, during parliament, the council were to keep their wonted centinel, as if they thought not of a parliament, to destroy in other patents, as concealments.

THE reasons on the other side were,

THAT it would be thought but an humouring of the parliament (being now in the calends of a parliament) and that after parliament they would come up again.

THAT offered graces, by reason, and experience, lose their thanks.

THAT they are to be suffered to play upon some thing, since they can do nothing of themselves.

THAT the chusing out of some things, when perhaps their minds might be more upon other things, would do no great effect.

THAT former patents taken away by act of council, were upon the complaints of particular persons; whereas now it should seem to be done *tanquam ex officio*.

To this I yielded, though I confess I am yet a little doubtful to the point of *suavibus modis*. But it is true that the speech of these, though in the lower

lower house, may be contemned; and if way be given to them (as I writ to your lordship of some of them in my last) it will fort to your honour. For other things, the Lords have put them in a very good way, of which I will give exprefs account when I see his Majesty, as also of other observations concerning parliament. For if his Majesty said well that when he knew the men and the elections, he would guess at the success; the prognosticks are not so good as I expected, occasioned by the late occurrents abroad, and the general licentious speaking of state matters, of which I wrote in my last. God ever keep you.

Your Lordship's most obliged friend and faithful servant,

16 Dec. 1620.

FR. VERULAM, Canc.

From the Original.

CCXLIX. To the Lord Chancellor.*

My honourable Lord,

AS soon as his Majesty's convenience would permit, I have acquainted him with the draught of the proclamation your lordship sent me by his Majesty's direction; his Majesty liketh it in every point so well, both in matter and form, that he findeth no cause to alter a word in it, and would have your lordship acquaint the lords of the council with it (though he assureth himself, no man can find any thing in it to be changed) and to take order for the speedy setting it forth. And so I rest,

Yours, &c.

Theobalds, 21 Dec. 1620.

G. BUCKINGHAM.

From the Original.

CCL. To the Lord Chancellor.*

I HAVE acquainted his Majesty with your letter and the inclosed: the matter which his Majesty hath been thinking upon for his speech, concerneth both the points of the institution of a parliament, and of the end for which this is called; yet his Majesty thinketh it fit that some extract be made out of it which needeth to be but very short, as he will shew you at his return.

Yours, &c.

Theobalds, 19 Jan. 1620.

G. BUCKINGHAM.

From the Journal of the House of Lords.

CCLI. To the Right Honourable his very good Lords, the Lords Spiritual and Temporal in the Upper-House of Parliament assembled.

My very good Lord,

† I HUMBLY pray your lordships all to make a favourable and true construction of my absence. It is no feigning or fainting, but sickness both of my heart and of my back, though joined with that comfort of mind,

† Deliver'd to the House of Lords by the Marquis of Buckingham. *Camd. Ann.*

that

that persuadeth me that I am not far from heaven, whereof I feel the first fruits.

AND because, whether I live or die, I would be glad to preserve my honour and fame, so far as I am worthy; hearing that some complaints of base bribery are coming before your lordships: My requests unto your lordships are;

FIRST, That you will maintain me in your good opinion, without prejudice, until my cause be heard.

SECONDLY, That in regard I have sequestred my mind at this time in great part from worldly matters, thinking of my account and answers in a higher court; your lordships will give me convenient time, according to the course of other courts, to advise with my counsel, and to make my answer: wherein, nevertheless, my counsel's part will be the least; for I shall not, by the grace of God, trick up an innocency with cavillations, but plainly and ingenuously (as your lordships know my manner is) declare what I know or remember.

THIRDLY, That according to the course of justice, I may be allowed to except to the witnesses brought against me, and to move questions to your lordships for their cross examinations, and likewise to produce my own witnesses for the discovery of the truth.

AND lastly, That if there be any more petitions of like nature, that your lordships would be pleased not to take any prejudice or apprehension of any number or muster of them, especially against a judge that makes 2000 orders and decrees in a year, (not to speak of the courses that have been taken for hunting out complaints against me;) but that I may answer them according to the rules of justice, severally and respectively.

THESE requests I hope appear to your lordships no other than just. And so thinking my self happy to have so noble peers and reverend prelates to discern of my cause, and desiring no privilege of greatness for subterfuge of guiltiness, but meaning, as I said, to deal fairly and plainly with your lordships, and to put my self upon your honours and favours. I pray God to bless your counsels and persons; and rest,

Your Lordship's humble servant,

March 19. 1620.

FR. ST. ALBAN, *Canc.*

CCLII. To the Marquis of BUCKINGHAM.

My very good Lord,

YESTERDAY I know was no day; now I hope I shall hear from your lordship, who are my anchor in these floods. Mean while to ease my heart, I have written to his Majesty the inclosed; which I pray your lordship to read advisedly, and to deliver it, or not to deliver it, as you think good. God ever prosper your lordship.

Yours ever, &c.

March 25. 1621.

FR. ST. ALBAN, *Canc.*

CCLIII. To the KING.

It may please your most excellent Majesty,

TIME hath been when I have brought unto you *gemitum columbae* from others, now I bring it from my self. I fly unto your Majesty with the wings of a dove, which once within these seven days I thought would have carried me a higher flight. When I enter into my self, I find not the materials of such a tempest as is come upon me; I have been (as your Majesty knoweth best) never author of any immoderate counsel, but always desired to have things carried *suavibus modis*. I have been no avaricious oppressor of the people. I have been no haughty, or intolerable, or hateful man, in my conversation or earriage: I have inherited no hatred from my father, but am a good patriot born. Whence should this be? For these are the things that use to raise dislikes abroad.

For the house of commons, I began my credit there, and now it must be the place of the sepulture thereof; and yet this parliament, upon the message touching religion, the old love revived, and they said, I was the same man still, only honesty was turned into honour.

For the upper house, even within these days, before these troubles, they seemed as to take me into their arms, finding in me ingenuity, which they took to be the true strait line of nobleness, without any crooks or angles.

AND for the briberies and gifts, wherewith I am charged, when the books of hearts shall be opened, I hope I shall not be found to have the troubled fountain of a corrupt heart, in a depraved habit of taking rewards to pervert justice; howsoever I may be frail, and partake of the abuses of the times.

AND therefore I am resolved, when I come to my answer, not to trick up my innocency (as I writ to the lords) by cavillations, or voidances; but to speak to them the language that my heart speaketh to me, in excusing, extenuating, or ingenuously confessing; praying to God to give me the grace to see the bottom of my faults, and that no hardness of heart do steal upon me, under shew of more neatness of conscience, than is cause. But not to trouble your Majesty any longer, craving pardon for this long mourning letter; that which I thirst after, as the hart after the streams, is, that I may know, by my matchless friend that presenteth to you this letter, your Majesty's heart (which is an *abyssus* of goodness, as I am an *abyssus* of misery) towards me. I have been ever your man, and counted my self but an usufructuary of my self, the property being yours. And now making my self an oblation to do with me as may best conduce to the honour of your justice, the honour of your mercy, and the use of your service, resting as clay in your Majesty's gracious hands,

March 25. 1621.

FR. ST. ALBAN, *Canc.*

From the Register.

CCLIV. To the KING.

It may please your most excellent Majesty,

I THINK my self infinitely bounden to your Majesty, for vouchsafing me access to your Royal Person, and to touch the hem of your garment. I see your Majesty imitateth him that would not break the broken reed, nor quench

quench the smoking flax; and as your Majesty imitateth Christ, so I hope assuredly my lords of the upper house will imitate you, and unto your Majesty's grace and mercy, and next to my lords I recommend my self. It is not possible, nor it were not safe, for me to answer particulars till I have my charge; which when I shall receive, I shall without fig-leaves or disguise excuse what I can excuse, extenuate what I can extenuate, and ingenuously confess what I can neither clear nor extenuate. And if there be any thing which I mought conceive to be no offence, and yet is, I desire to be informed, that I may be twice penitent, once for my fault, and the second time for my error. And so submitting all that I am to your Majesty's Grace, I rest,

20 April 1621.

CCLV. To the KING's most Excellent Majesty.

It may please your Majesty,

IT hath pleased God for these three days past, to visit me with such extremity of head-ach, upon the hinder part of my head, fixed in one place, that I thought verily it had been some imposthumation. And then the little physick that I have, told me, that either it must grow to a congelation, and so to a lethargy; or to break, and so to a mortal fever and sudden death: Which apprehension (and chiefly the anguish of the pain) made me unable to think of any business. But now that the pain itself is assuaged to be tolerable, I resume the care of my business, and therein prostrate myself again, by my letter, at your Majesty's feet.

YOUR Majesty can bear me witness, that at my last so comfortable access, I did not so much as move your Majesty, (by your absolute power of pardon, or otherwise) to take my cause into your hands, and to interpose between the sentence of the house; and according to my own desire, your Majesty left it to the sentence of the house, and it was reported by my Lord Treasurer.

BUT now, if not *per omnipotentiam* (as the divines speak) but *per potestatem suavitèr disponentem*, your Majesty will graciously save me from a sentence, with the good liking of the house, and that cup may pass from me, it is the utmost of my desires.

THIS I move with the more belief, because I assure myself, that if it be reformation that is sought, the very taking away the seal, upon my general submission, will be as much in example, for this four hundred years, as any farther severities.

THE means of this I most humbly leave unto your Majesty. But surely I conceive, that your Majesty opening yourself in this kind to the lords counsellors, and a motion from the prince, after my submission, and my Lord Marquis using his interest with his friends in the house, may effect the sparing of a sentence, I making my humble suit to the house for that purpose, joined with the delivery of the seal into your Majesty's hands.

THIS is the last suit I shall make to your Majesty in this business, prostrating myself at your mercy-seat, after fifteen years service, wherein I have served your Majesty in my poor endeavours with an entire heart, and as I presumed to say unto your Majesty am still a virgin for matters which concern your person or crown; and now only craving that after eight steps of honour, I be not precipitated altogether.

BUT

BUT because he that hath taken bribes is apt to give bribes, I will go farther and present your Majesty with a bribe. For if your Majesty give me peace and leisure, and God give me life, I will present your Majesty with a good history of *England*, and a better digest of your laws. And to concluding with my prayers, I rest

Your Majesty's afflicted, but ever devoted servant,

21 Apr. 1621.

FR. ST. ALBAN, *Canc.*

From the Journal of the House of Lords.

CCLVI. To the Right Honourable the Lords of the Parliament in the Upper-House assembled, the humble submission and supplication of the Lord Chancellor.

It may please your Lordships,

I SHALL humbly crave at your lordship's hands a benign interpretation of that which I shall now write; for words that come from wasted spirits, and an oppressed mind, are more safe in being deposited in a noble construction, than in being circled with any reserved caution.

THIS being moved, and, as I hope, obtain'd, in the nature of a protection for all that I shall say; I shall now make into the rest of that where-with I shall at this time trouble your lordships, a very strange entrance: for in the midst of a state of as great affliction as I think a mortal man can endure, (honour being above life) I shall begin with the professing of gladness in some things.

THE first is, that hereafter the greatness of a judge or magistrate, shall be no sanctuary or protection of guiltiness; which, in few words, is the beginning of a golden world.

THE next, That after this example, it is like that judges will fly from any thing that is in the likeness of corruption, (though it were at a great distance,) as from a serpent; which tendeth to the purging of the courts of justice, and the reducing them to their true honour and splendour.

AND in these two points, (God is my witness) that though it be my fortune to be the anvil, whereupon those good effects are beaten and wrought, I take no small comfort.

BUT to pass from the motions of my heart, whereof God is only judge, to the merits of my cause, whereof your lordships are judges, under God and his lieutenant: I do understand there hath been heretofore expected from me some justification; and therefore I have chosen one only justification instead of all others, out of the justification of *Job*. For after the clear submission and confession which I shall now make unto your lordships, I hope I may say and justify with *Job* in these words, *I have not hid my sin, as did Adam, nor concealed my faults in my bosom.* This is the only justification which I will use.

IT resteth therefore, that without fig-leaves I do ingenuously confess and acknowledge, that having understood the particulars of the charge, not formally from the house, but enough to inform my conscience and my memory; I find matters sufficient and full, both to move me to desert my defence, and to move your lordships to condemn and censure me.

NEITHER will I trouble your lordships by singling those particulars which I think might fall off, *Quid te exempta juvat spinis de pluribus una?* Neither

ther will I prompt your lordships to observe upon the proofs, where they come not home, or the scruple touching the credit of the witnesses. Neither will I represent to your lordships, how far a defence in divers things might extenuate the offence in respect of the time and manner of the gift, or the like circumstances. But only leave these things to spring out of your own noble thoughts, and observations of the evidence and examinations themselves; and charitably to wind about the particulars of the charge, here and there as God shall put into your minds, and so submit my self wholly to your piety and grace.

AND now I have spoken to your lordships as judges, I shall say a few words to you as peers and prelates; humbly commending my cause to your noble minds, and magnanimous affections.

YOUR lordships are not simply judges, but parliamentary judges; you have a farther extent of arbitrary power than other courts: and if your lordships be not tied by ordinary courses of courts, or precedents in points of strictness and severity; much more in points of mercy and mitigation.

AND yet if any thing which I shall move might be contrary to your worthy ends to introduce a reformation, I should not seek it; but herein I beseech your lordships to give me leave to tell you a story. *Titus Manlius* took his son's life for giving battle against the prohibition of his general: Not many years after the like severity was pursued by *Papirius Cursor* the dictator, against *Quintus Maximus*; who being upon the point to be sentenc'd, by the intercession of some principal persons of the senate, was spared: whereupon *Livy* maketh this grave and gracious observation; *neque minus firmata est disciplina militaris periculo Quinti Maximi, quam miserabili supplicio Titi Manlii*; the discipline of war was no less established by the questioning of *Quintus Maximus*, than by the punishing of *Titus Manlius*. And the same reason is of the reformation of justice; for the questioning of men of eminent places hath the same terrour, though not the same rigour with the punishment.

BUT my case standeth not there; for my humble desire is, that his Majesty would take the seal into his hands, which is a great downfall, and may serve, I hope, in it self for an expiation of my faults.

THEREFORE, if mercy and mitigation be in your power, and do no ways cross your noble ends, why should I not hope of your lordships favour and commiseration?

YOUR lordships will be pleased to behold your chief pattern the King our Sovereign, a King of incomparable clemency, and whose heart is inscrutable for wisdom and goodness. Your lordships will remember that there sat not these hundred years before a Prince in your house, and never such a Prince, whose presence deserves to be made memorable by records and acts mixed of mercy and justice. Your lordships are either nobles, (and compassion ever beateth in the veins of noble blood) or reverend prelates, who are the servants of him, who would not break the bruised reed, nor quench the smoking flax. You all sit upon one high stage, and therefore cannot but be more sensible of the changes of the world, and of the fall of any high place.

NEITHER will your lordships forget that there are *vitia temporis*, as well as *vitia hominis*; and that the beginning of reformations hath the contrary power of the pool of *Bethesda*; for that had strength to cure him only that was first cast in, and this hath commonly strength to hurt him only that is first cast in. And for my part, I wish it may stay there and go no farther.

LASTLY, I assure my self your lordships have a noble feeling of me, as a member of your own body, and one that in this very session had some taste of your loving affections; which I hope was not a lightening before the death of them, but rather a spark of that grace, which now in the conclusion will more appear.

AND therefore my humble suit to your lordships is, that my penitent submission may be my sentence, and the loss of the seal my punishment; and that your lordships will spare any farther sentence, but recommend me to his Majesty's grace and pardon for all that is past. God's Holy Spirit be among you.

Your Lordships humble servant and suppliant,

FR. ST. ALBAN, Canc.

April 22. 1621.

From the Register.

CCLVII. To the Prince of WALES.*

It may please your Highness,

WHEN I call to mind, how infinitely I am bound to your Highness, that stretched forth your arm to save me from a sentence; that took hold of me to keep me from being plunged deep in a sentence; that hath kept me alive in your gracious memory and mention since the sentence; pitying me as (I hope) I deserve, and valuing me far above that I can deserve: I find my words almost as barren as my fortunes, to express unto your Highness the thankfulness I owe. Therefore I can but resort to prayers to Almighty God to clothe you with his most rich and precious blessings, and likewise joyfully to meditate upon those he hath conferred upon you already; in that he hath made you to the King your father, a principal part of his safety, contentment and continuance: in your self so judicious, accomplished and graceful in all your doings, with more virtues in the buds (which are the sweetest) than have been known in a young Prince, of long time: with the realm so well beloved, so much honoured, as it is men's daily observation how nearly you approach to his Majesty's perfections; how every day you exceed your self; how compared with other Princes, which God hath ordained to be young at this time, you shine amongst them; they rather setting off your religious, moral, and natural excellencies, than matching them, though you be but a second person. These and such like meditations I feed upon, since I can yield your Highness no other retribution. And for my self, I hope by the assistance of God above (of whose grace and favour I have had extraordinary signs and effects during my afflictions) to lead such a life in the last acts thereof, as whether his Majesty employ me, or whether I live to my self, I shall make the world say that I was not unworthy such a patron.

I am much beholden to your Highness's worthy servant Sir John Vaughan, the sweet air, and loving usage of whose house hath already much revived my languishing spirits; I beseech your Highness, thank him for me. God ever preserve and prosper your Highness.

Your Highness's most humble and most bounden servant,

FR. ST. ALBAN.

1 June 1621.

From

From the Register.

CCLVIII. To the KING.*

It may please your most excellent Majesty,

I HUMBLY thank your Majesty for my liberty, without which timely grant, any farther grace would have come too late. But your Majesty that did shed tears in the beginning of my trouble, will, I hope, shed the dew of your grace and goodness upon me in the end. Let me live to serve you, else life is but the shadow of death, to

Your Majesty's most devoted servant,

4 June, 1621.

FR. ST. ALBAN.

From the Register.

CCLIX. To the Marquis of BUCKINGHAM.*

My very good Lord,

I HEARTILY thank your lordship for getting me out of prison, and now my body is out, my mind nevertheless will be still in prison, till I may be on my feet to do his Majesty and your lordship faithful service. Wherein your lordship, by the grace of God, shall find that my adversity hath neither spent, nor pent my spirits. God prosper you.

Your Lordship's most obliged friend and faithful servant,

4 June 1621.

FR. ST. ALBAN.

From the Register.

CCLX. A Memorial for his MAJESTY'S Service.*

FOR that your Majesty is pleased to call for my opinion, concerning the sacred intention you have to go on with the reformation of your courts of justice, and relieving the grievances of your people, which the parliament hath entred into; I shall never be a recusant, though I be confined to do you service.

YOUR Majesty's star-chamber next your court of parliament, is your highest chair. You never came upon that mount, but your garments did shine before you went off. It is the supreme court of judicature ordinary, it is an open Council; nothing I would think can be more seasonable (if your other appointments permit it) than if your Majesty will be pleased to come thither in person, the morrow after this term, (which is the time anniversary, before the circuits and the long vacation) and there make an open declaration, that you purpose to pursue the reformation, which the parliament hath begun.

THAT all things go well, in all affairs, when the ordinary and extraordinary are well mingled, and tempered together. That in matters of your treasure, you did rely upon your parliament for the extraordinary, but you were ever desirous to do what you could by improvements, retrenchments, and the like, to set the ordinary in good frame, and establishment. That you are in the same mind in matter of reformation of justice, and grievance, to assist your self with the advice, and authority of parliament at times,

but

but mean while to go on with the same intentions, by your own regal power and care. That it doth well in Church-musick when the greatest part of the hymn is sung by one voice, and then the choir at all times falls in sweetly and solemnly, and that the same harmony forteth well in monarchy, between the King and his parliament.

THAT all great reformatiōns are best brought to perfection by a good correspondence between the King and his parliament, and by well sorting the matters and the times; for in that which the King doth in his ordinary administration, and proceedings, neither can the information be so universal, nor the complaint so well encouraged, nor the references so many times free from private affection, as when the King proceedeth by parliament; on the other side, that the parliament wanteth time to go through with many things; besides, some things are of that nature, as they are better discerned, and resolved by a few, than by many.

AGAIN, some things are so merely regal, as it is not fit to transfer them; and many things, whereof it is fit for the King to have the principal honour and thanks.

THEREFORE, that according to these differences and distributions, your Majesty meaneth to go on, where the parliament hath left, and to call for the memorials, and inchoations of those things, which have passed in both houses, and to have them pass the file of your council, and such other assistance as shall be thought fit to be called respectively, according to the nature of the business, and to have your learned counsel search precedents what the King hath done for matter of reformation, as the parliament hath informed themselves by precedents what the parliament hath done: and thereupon that the clock be set, and resolutions taken; what is to be holpen by commission, what by act of council, what by proclamation, what to be prepared for parliament, what to be left wholly for parliament?

THAT if your Majesty had done this before a parliament, it might have been thought to be done to prevent a parliament, whereas, now it is to pursue a parliament, and that by this means, many grievances shall be answered by deed, and not by word; and your Majesty's care shall be better than any standing committee in this interim between the meetings of parliament.

FOR the particulars, your Majesty in your grace and wisdom, will consider, how improper and how unwarranted a thing it is, for me, as I now stand, to send for entries of parliament, or for searches for precedents, whereupon to ground an advice, and besides what I should now say, may be thought by your Majesty (how good an opinion soever you have of me) much more by others, to be busy or officious, or relating to my present fortunes.

From the Register.

CCLXI. To the Marquis of BUCKINGHAM.*

My very good Lord,

YOUR lordship I know, and the King both, might think me very unworthy of that I have been, or that I am, if I should not by all means desire to be freed from the restraint which debarreth me from approach to his Majesty's person, which I ever so much loved, and admired; and severeth me likewise from all conference with your lordship, which is my

my second comfort. Nevertheless, if it be conceived that it may be matter of inconvenience, or envy, my particular respects must give place, only in regard of my present urgent occasions, to take some present order for the debts that press me most. I have petitioned his Majesty to give me leave to stay at *London* till the last of *July*, and then I will dispose of my abode according to the sentence. I have sent to the Prince to join with you in it, for though the matter seem small, yet it importeth me much. God prosper you.

Your Lordship's true servant,

20 June 1621.

FR. ST. ALBAN.

From the Register,

CCLXII. To the Marquis of BUCKINGHAM.*

My very good Lord,

I HUMBLY thank your lordship for the grace and favour you did both to the message, and messenger, in bringing Mr. *Meautys* to kiss his Majesty's hands, and to receive his pleasure from himself. My riches in my adversity have been, that I have had a good master, a good friend, and a good servant.

I perceive by Mr. *Meautys* his Majesty's inclination, that I should go first to *Gorbambury*; and his Majesty's inclinations have ever been with me instead of directions. Wherefore I purpose, God willing, to go thither forthwith, humbly thanking his Majesty, nevertheless, that he meant to have put my desire in my petition contained, into a way, if I had insisted upon it; but I will accommodate my present occasions as I may, and leave the times, and seasons, and ways, to his Majesty's grace and choice.

ONLY I desire his Majesty to bear with me if I have pressed unseasonably. My letters out of the tower were *de profundis*, and the world is a prison, if I may not approach his Majesty, finding in my heart as I do. God preserve and prosper his Majesty and your lordship.

Your Lordship's faithful and bounden servant,

22 June 1621.

FR. ST. ALBAN.

From the Register.

CCLXIII. To the Marquis of BUCKINGHAM.*

My very good Lord,

I THANK God I am come very well to *Gorbambury*, whereof I thought your lordship would be glad to hear sometimes; my lord, I wish myself by you in this stirring world, not for any love to place or business, for that is almost gone with me, but for my love to your self, which can never cease in

Your Lordship's most obliged friend and true servant,

FR. ST. ALBAN.

BEING now out of use and out of sight, I recommend my self to your lordship's love and favour, to maintain me in his Majesty's grace and good intention.

CCLXIV. To the KING. *

It may please your most excellent Majesty,

IPERCEIVE by my noble and constant friend the Marquis, that your Majesty hath a gracious inclination towards me, and taketh care of me, for fifteen years the subject of your favour, now of your compassion, for which I most humbly thank your Majesty. This same *nova creatura* is the work of God's pardon and the King's; and since I have the inward seal of the one, I hope well of the other.

Utar, saith *Seneca* to his Master, *magnis exemplis; nec meae fortunae, sed tuae*. *Demosthenes* was banished for bribery of the highest nature, yet was recalled with honour; *Marcus Livius* was condemned for exactions, yet afterwards made consul and censor. *Seneca* banished for divers corruptions, yet was afterwards restored, and an instrument of that memorable *Quinquennium Neronis*. Many more. This, if it please your Majesty, I do not say for appetite of employment, but for hope that if I do by my self as is fit, your Majesty will never suffer me to die in want or dishonour. I do now feed myself upon remembrance, how when your Majesty used to go a progress, what loving and confident charges you were wont to give me touching your business. For as *Aristotle* saith, young men may be happy by hope, so why should not old men, and sequestered men, by remembrance. God ever prosper and preserve your Majesty.

Your Majesty's most bounden and devoted servant,

FR. ST. ALBAN.

16 July 1621.

From the Original.

CCLXV. To the Lord ST. ALBAN. *

My honourable Lord,

IHAVE delivered your lordship's letter of thanks to his Majesty, who accepted it very graciously, and will be glad to see your book, which you promised to send very shortly, as soon as it cometh. I send your lordship his Majesty's warrant for your pardon, as you desired it, but am sorry, that in the current of my service to your lordship, there should be the least stop of any thing; yet having moved his Majesty, upon your servant's intimation, for your stay in London till *Christmas*, I found his Majesty, who hath in all other occasions, and even in that particular already, to the dislike of many of your own friends, shewed with great forwardness his gracious favour towards you, very unwilling to grant you any longer liberty to abide there; which being but a small advantage to you, would be a great and general distaste, as you cannot but easily conceive, to the whole state. And I am the more sorry for this refusal of his Majesty's, falling in a time when I was a suitor to your lordship in a particular concerning my self, wherein though your servant insisted further than, I am sure, would ever enter into your thoughts, I cannot but take it as a part of a faithful servant in him. But if your lordship, or your lady, find it inconvenient for you, to part with the house, I would rather provide my self otherwise, than any way incommode you, but will never slack any thing of my affection to do you service; whereof, if I have not yet given good proof, I will desire nothing more, than the fittest occasion to shew how much I am

Your Lordship's faithful servant,

G. BUCKINGHAM.

CCLXVI.

Octob. 1621.

From the Original.

CCLXVI. To the Marquis of BUCKINGHAM.*

My very good Lord,

AN unexpected accident maketh me hasten this letter to your lordship, before I could dispatch Mr. Meautys; it is that my Lord Keeper hath stayed my pardon at the seal. But it is with good respect; for he saith it shall be private, and then he would forthwith write to your lordship, and would pass it if he received your pleasure; and doth also shew his reason of stay, which is, that he doubteth the exception of the sentence of parliament is not well drawn, nor strong enough, which if it be doubtful, my lord hath great reason. But sure I am, both my self, and the King, and your lordship, and Mr. Attorney, meant clearly, and I think Mr. Attorney's pen hath gone well. My humble request to your lordship is, that for my lord's satisfaction Mr. Solicitor may be joined with Mr. Attorney, and if it be safe enough, it may go on; if not, it may be amended. I ever rest,

Your Lordship's most obliged friend and faithful servant,

18 October 1621.

FR. ST. ALBAN.

From the Original.

CCLXVII. To the Lord ST. ALBAN.*

My honourable Lord,

IHAVE brought your servant along to this place, in expectation of the letter from the Lord Keeper, which your lordship mentioneth in yours; but having not yet received it, I cannot make answer to the business you write of. And therefore thought fit not to detain your man here any longer, having nothing else to write, but that I always rest,

Your Lordship's faithful friend and servant,

Hinschenbrook, 20 Oct. 1621.

G. BUCKINGHAM.

From the Original.

CCLXVIII. To the Lord ST. ALBAN.*

My noble Lord,

NOW that I am provided of a house, I have thought it congruous to give your lordship notice thereof, that you may no longer hang upon the treaty, which hath been between your lordship and me, touching *York-house*; in which I assure your lordship, I never desired to put you to the least inconvenience. So I rest

Your Lordship's servant,

G. BUCKINGHAM.

From

From the Original.

CCLXIX. To the Lord St. ALBAN.*

My Lord,

I AM glad your lordship understands me so rightly in my last letter, I continue still in the same mind, for I thank God, I am settled to my contentment; and so I hope you shall enjoy yours, with the more, because I am so well pleased in mine. And, my lord, I shall be very far from taking it ill, if you part with it to any else, judging it alike unreasonable, to desire that which is another man's, and to bind him by promise or otherwise not to let it to another.

My lord, I will move his Majesty to take commiseration of your long imprisonment, which in some respects both you and I have reason to think harder, than the tower; you for the help of physick, your parley with your creditors, your conference for your writings, and studies, dealing with friends about your business, and I for this advantage to be sometimes happy in visiting and conversing with your lordship, whose company I am much desirous to enjoy, as being tied by ancient acquaintance, to rest,

Your Lordship's faithful friend and servant,

G. BUCKINGHAM.

† Refraining from coming within the verge of the court.

CCLXX. To the KING's most excellent MAJESTY.

It may please your Majesty,

I ACKNOWLEDGE my self in all humbleness infinitely bounden to your Majesty's grace and goodness, for that at the intercession of my noble and constant friend, my Lord Marquis, your Majesty hath been pleased to grant me that which the civilians say is *res inaeestimabilis*, my liberty. So that now whenever God calleth me, I shall not die a prisoner. Nay, farther, your Majesty hath vouchsafed to cast a second and iterate aspect of your eye of compassion upon me, in referring the consideration of my broken estate to my good Lord the Treasurer, which as it is a singular bounty in your Majesty, so I have yet so much left of a late commissioner of your treasure, as I would be sorry to sue for any thing that might seem immodest. These your Majesty's great benefits, in casting your bread upon the waters, (as the scripture saith) because my thanks cannot any ways be sufficient to attain, I have raised your progenitor, of famous memory, (and now, I hope, of more famous memory than before) King Henry VII, to give your Majesty thanks for me; which work, most humbly kissing your Majesty's hands, I do present. And because in the beginning of my trouble, when in the midst of the tempest, I had a kenning of the harbour, which I hope now by your Majesty's favour I am entering into, I made a tender to your Majesty of two works, An history of England, and A digest of your laws; as I have (by a figure of *pars pro toto*) performed the one; so I have herewith sent your Majesty, by way of an epistle, a new offer of the other. But my desire is farther, if it stand with your Majesty's good pleasure, since now my study is my exchange, and my pen my factor, for the use of my talent; that your Majesty (who is a great master in these things) would be pleased to appoint me some task to write, and that I shall take for an oracle.

oracle. And because my Instauration (which I esteem my great work, and do still go on with silence) was dedicated to your Majesty; and this history of King *Henry VII.* to your lively and excellent image the Prince: if now your Majesty will be pleased to give a theme to dedicate to my Lord of *Buckingham*, whom I have so much reason to honour, I should with more alacrity embrace your Majesty's direction than my own choice. Your Majesty will pardon me for troubling you thus long. God evermore preserve and prosper you.

Your Majesty's poor beadsman most devoted,

Gorbambury, 20 Mar. 1621.

FR. ST. ALBAN.

CCLXXI. To the Right Honourable his very good Lord, the Lord Marquis of *BUCKINGHAM*, High Admiral of *England*.

My very good Lord,

THESE main and real favours which I have lately received from your good lordship, in procuring my liberty, and a reference of the consideration of my release, are such, as I now find that in building upon your lordship's noble nature and friendship, I have built upon the rock, where neither winds or waves can cause overthrow. I humbly pray your lordship to accept from me such thanks as ought to come from him whom you have much comforted in fortune, and much more comforted in shewing your love and affection to him; of which also I have heard by my Lord of *Falkland*, Sir *Edward Sackville*, Mr. *Matthews*, and otherwise.

I HAVE written, as my duty was, to his Majesty thanks touching the same, by the letter I here put into your noble hands.

I HAVE made also, in that letter, an offer to his Majesty of my service, for bringing into better order and frame the laws of *England*: The declaration whereof I have left with Sir *Edward Sackville*, because it were no good manners to clog his Majesty, at this time of triumph and recreation, with a business of this nature; so as your lordship may be pleased to call for it to Sir *Ed. Sackville* when you think the time seasonable.

I AM bold likewise to present your lordship with a book of my history of King *Henry* the seventh. And now that in summer was twelve months, I dedicated a book to his Majesty; and this last summer, this book to the Prince; your lordship's turn is next, and this summer that cometh (if I live to it) shall be your's. I have desired his Majesty to appoint me the task, otherwise I shall use my own choice; for this is the best retribution I can make to your lordship. God prosper you. I rest,

Your Lordship's most obliged friend and faithful servant,

Gorbambury, this 20th of March 1621.

FR. ST. ALBAN.

CCLXXII. To the KING.

It may please your most excellent Majesty,

IN the midst of my misery, which is rather assuaged by remembrance, than by hope; my chiefest worldly comfort is, to think that since the time I had the first vote of the commons house of parliament for commissioner of the union, until the time that I was this last parliament chosen by both houses for their messenger to your Majesty in the petition of religion, (which

two were my first and last services) I was evermore so happy as to have my poor services graciously accepted by your Majesty, and likewise not to have had any of them miscarry in my hands. Neither of which points I can any ways take to my self, but ascribe the former to your Majesty's goodness, and the later to your prudent directions; which I was ever careful to have and keep. For as I have often said to your Majesty, I was towards you but as a bucket and a cistern, to draw forth and conserve, whereas your self was the fountain. Unto this comfort of nineteen years prosperity, there succeeded a comfort even in my greatest adversity, somewhat of the same nature; which is, that in those offences wherewith I was charged, there was not any one that had special relation to your Majesty, or any your particular commandments. For as towards Almighty God, there are offences against the first and second table, and yet all against God; so with the servants of Kings there are offences more immediate against the Sovereign; although all offences against law are also against the King. Unto which comfort there is added this circumstance, that as my faults were not against your Majesty, otherwise than as all faults are; so my fall was not your Majesty's act, otherwise than as all acts of justice are yours. This I write not to insinuate with your Majesty, but as a most humble appeal to your Majesty's gracious remembrance, how honest and direct you have ever found me in your service; whereby I have an assured belief, that there is in your Majesty's own princely thoughts, a great deal of serenity and clearness towards me your Majesty's now prostrate and cast down servant.

NEITHER (my most gracious Sovereign) do I by this mention of my services, lay claim to your princely grace and bounty, though the privilege of calamity doth bear that form of petition. I know well, had they been much more, they had been but my bounden duty. Nay, I must also confess, that they were from time to time far above my merit, over and super-rewarded by your Majesty's benefits which you heaped upon me. Your Majesty was and is that master to me, that raised and advanced me nine times; thrice in dignity, and six times in office. The places indeed were the painfullest of all your services; but then they had both honour and profits. And the then profits might have maintained my now honour, if I had been wise: neither was your Majesty's immediate liberality wanting towards me in some gifts, if I may hold them. All this I do most thankfully acknowledge, and do herewith conclude, that for any thing arising from my self to move your eye of pity towards me, there is much more in my present misery, than in my past services; save that the same your Majesty's goodness, that may give relief to the one, may give value to the other.

AND indeed, if it may please your Majesty, this theme of my misery is so plentiful, as it need not be coupled with any thing else. I have been somebody by your Majesty's singular and undeserved favour, even the prime officer of your kingdom; your Majesty's arm hath been often laid over mine in council, when you presided at the table; so near I was. I have born your Majesty's image in metal, much more in heart; I was never in nineteen years service chidden by your Majesty, but contrariwise often over-joyed, when your Majesty would sometimes say, I was a good husband for you, though none for my self: sometimes, that I had a way to deal in business, *suavis modis*, which was the way which was most according to your own heart; and other most gracious speeches of affection and trust, which I feed on to this day. But why should I speak of these things which are now vanished, but only the better to express the downfall?

For

FOR now it is thus with me; I am a *year and half old in misery; though I must ever acknowledge, not without some mixture of your Majesty's grace and mercy; for I do not think it possible, that any one whom you once loved should be totally miserable. Mine own means, through my own providence, are poor and weak, little better than my father left me. The poor things that I have had from your Majesty, are either in question, or at courtesy. My dignities remain marks of your past favour, but burdens of my present fortune. The poor remnants which I had of my former fortunes, in plate or jewels, I have spread upon poor men unto whom I owed, scarce leaving my self a convenient subsistence. So as to conclude, I must pour out my misery before your Majesty, so far as to say, *si deseris tu, perimus*.

* Therefore this was wrote near the middle of 1622.

BUT as I can offer to your Majesty's compassion little arising from my self to move you, except it be my extreme misery, which I have truly laid open; so looking up to your Majesty's own self, I should think I committed Cain's fault, if I should despair. Your Majesty is a King whose heart is as unscrutable for secret motions of goodness, as for depth of wisdom. You are creator like, factive and not destructive. You are the prince in whom hath been ever noted an aversation against any thing that favoured of an hard heart; as, on the other side, your princely eye was wont to meet with any motion that was made on the relieving part. Therefore as one that hath had the happiness to know your Majesty near hand, I have (most gracious Sovereign) faith enough for a miracle, and much more for a grace, that your Majesty will not suffer your poor creature to be utterly defaced, nor blot that name quite out of your book, upon which your sacred hand hath been so oft for the giving him new ornaments and additions.

UNTO this degree of compassion, I hope God above (of whose mercy towards me, both in my prosperity and adversity, I have had great testimonies and pledges, though my own manifold and wretched unthankfulness might have averted them) will dispose your princely heart, already prepared to all piety. And why should I not think, but that that thrice noble prince, who would have pulled me out of the fire of a sentence, will help to pull me (if I may use that homely phrase) out of the mire of an abject and sordid condition in my last days: and that excellent favourite of yours, (the goodness of whose nature contendeth with the greatness of his fortune; and who counteth it a prize, a second prize, to be a good friend, after that prize which he carrieth to be a good servant) will kiss your hands with joy for any work of piety you shall † do for me. And as all commiserable persons (especially such as find their hearts void of all malice) are apt to think that all men pity them, so I assure my self that the lords of your council, who out of their wisdom and nobleness, cannot but be sensible of human events, will in this way which I go, for the relief of my estate, further and advance your Majesty's goodness towards me. For there is, as I conceive, a kind of fraternity between great men that are, and those that have been, being but the several tenses of one verb; nay, I do farther presume, that both houses of parliament will love their justice the better, if it end not in my ruin: For I have been often told, by many of my lords, as it were in the way of excusing the severity of the sentence, that they knew they left me in good hands. And your Majesty knoweth well, I have been all my life long acceptable to those assemblies, not by flattery, but by moderation, and by honest expressing of a desire to have all things go fairly and well.

† Vouchsafe to express towards me. *Matth.*

BUT, if it may please your Majesty (for saints I shall give them reverence, but no adoration, my address is to your Majesty, the fountain of goodness;) your

your Majesty shall by the grace of God, not feel that in gift, which I shall extremely feel in help; for my desires are moderate, and my courses measured to a life orderly and reserved, hoping still to do your Majesty honour in my way. Only I most humbly beseech your Majesty to give me leave to conclude with those words which necessity speaketh: help me, (dear sovereign lord and master) and pity me so far, as that I that have born a bag, be not now in my age forced in effect to bear a wallet; nor that I that desire to live to study, may not be driven to study to live†. I most humbly crave pardon of a long letter, after a long silence. God of heaven ever bless, preserve, and prosper your Majesty.

Your Majesty's poor ancient servant and beadsman,

FR. ST. ALBAN.

† Altho' the subject matter of this and some other letters of the like nature, hath given me occasion to make some remarks thereon already; yet I cannot omit taking notice in this place, of what the learned Monsieur *Le Clerc* hath observed in the twelfth chapter of his *Reflections* upon good and bad fortune. Where, in his discourse of liberality, and the obligations that are upon princes, &c. to extend their bounty to learned men, in respect of the benefit the world receives from them; he expresses his sense of the honour which was due to the memory of those who assisted *Erasmus* and *Grotius*, and his resentment of the neglect of *K. James*, for deserting the *Lord Bacon*: One cannot read, saith he, without indignation, that which is reported of the famous Chancellor of England, *Francis Bacon*, whom the King suffer'd to languish in poverty, whilst he prefer'd worthless persons to his dishonour. A little before his death this learned man writ to that Prince a bemoaning letter; and then cites this moving conclusion out of *Howell's* letters; which though that author thought it argued a little abjection of spirit in my *Lord Bacon*; yet Monsieur *Le Clerc* thinks it shew'd a much lower in the King, to permit so able a man to lie under the necessity of making so sad a request, and yet withal to afford no relief. *Stephens.*

CCLXXIII. To Mr. MATTHEWS, employing him to do a good office with a great man.

S I R,

I HAVE received your letter, wherein you mention some passages at large, concerning the lord you know of. You touched also that point in a letter which you wrote upon my lord's going over, which I answered, and am a little doubtful, whether mine ever came to your hands. It is true, that I wrote a little sullenly therein; how I conceived that my lord was a wise man in his own way; and perhaps thought it fit for him to be out with me; for at least I found no cause thereof in my self. As for the latter of these points, I am of the same judgment still; but for the former, I perceive by what you write, that it is merely some misunderstanding of his: and I do a little marvel at the instance, which had relation to that other crabbed man; for I conceived that both, in passing that book, and (as I remember) two more, immediately after my lord's going over, I had shewed more readiness than many times I use in like cases. But to conclude, no man hath thought better of my lord than I have done. I know his virtues, and namely, that he hath much greatness of mind, which is a thing almost lost amongst men: Nor can any body be more sensible and remembering than I am of his former favours; so that I shall be most glad of his friendship. Neither are the past occasions in my opinion, such as need either reparation or declaration; but may well go under the title of nothing. Now I had rather you dealt between us than any body else, because you are no way drenched in any man's humour. Of other things at another time; but this I was forward to write in the midst of more business than ever I had.

CCLXXIV.

CCLXXIV. To the Lord DIGBY, on his going to *Spain*.

My very good Lord,

I Now only send my best wishes to follow you at sea and land, with due thanks for your late great favours. God knows whether the length of your voyage will not exceed the size of my hour-glass: But whilst I live, my affection to do your lordship service shall remain quick under the ashes of my fortune.

CCLXXV.

S I R,

I N this solitude of friends, which is the base court of adversity, where no body almost will be seen stirring, I have often remembred this *Spanish* saying, *amor fin fin, no tiene fin*†. This bids me make choice of your friend and mine, for his noble succours; not now towards the aspiring, but only the respiring of my fortunes. I, who am a man of books, have observed, that he hath both the magnanimity of the old *Romans*, and the cordiality of the old *English*; and withal, I believe, he hath the wit of both: sure I am, that for my self I have found him in both my fortunes, to esteem me so much above my just value, and to love me so much above the possibility of deserving, or obliging on my part, as if he were a friend created and reserved for such a time as this. You know what I have to say to the great lord, and I conceive it cannot pass so fitly to him by the mouth of any, as of this gentleman; and therefore do your best (which I know will be of power enough) to engage him both in the substance and to the secrecy of it: for I can think of no man but your self, to be used by me in this, who are so private, so faithful, and so discreet a friend to us both; as on the other side, I dare swear he is, and know my self to be as true to you as your own heart.

† Love without ends hath no end, was a saying of *Gondomar* the *Spanish* Ambassador; meaning thereby, that if it were begun not upon particular ends, it would last. *Bacon's Apoph.* 67, Vol. III. p. 269.

CCLXXVI. An Expostulation to the Marquis of BUCKINGHAM.

My very good Lord,

Y OUR lordship will pardon me, if partly in the freedom of adversity, and partly of former friendship, (the sparks whereof cannot but continue) I open my self to your lordship, and desire also your lordship to open your self to me. The two last acts which you did for me, in procuring the releasement of my fine, and my *quietus est*, I acknowledge were effects real and material of your love and favour; which, as to my knowledge, it never failed in my prosperity, so in these two things it seems not to have turned with the wheel. But the extent of these two favours is not much more than to keep me from persecution. For any thing farther, which might tend to my comfort and assistance, as I cannot say to my self, that your lordship hath forsaken me; so I see not the effects of your undeserved, yea undesired professions and promises; which being made to a person in affliction, hath the nature, after a sort, of vows. But that which most of all makes me doubt of a change or cooling in your lordship's affection towards me, is, that be-

ing twice now at *London*, your lordship did not vouchsafe to see me; though by messages you gave me hope thereof, and the later time I had begg'd it of your lordship.

THE cause of change may either be in my self or your lordship. I ought first to examine my self, which I have done; and God is my witness, I find all well, and that I have approved my self to your lordship a true friend, both in the watery trial of prosperity, and in the fiery trial of adversity. If your lordship take any insatisfaction touching the house, I humbly pray you think better of it. For that motion to me was a second sentence more grievous than the first, as things then stood, and do yet stand: for it sentenced me to have lost both in my own opinion, and much more in the opinion of others, that which was saved to me, almost only, in the former sentence; and which was more dear to me than all that which was taken from me, which is your lordship's love and favour. For had it not been for that bitter circumstance, your lordship knows, that you might have commanded my life, and all that is mine. But surely it could not be that, nor any thing in me, which wrought the change. It is likely on the other part, that though your lordship in your nature I know to be generous and constant, yet I being now become out of sight, and out of use, your lordship having a flood of new friends, and your ears possessed perhaps by such as would not leave room for an old; your lordship may, even by course of the world, and the over-bearing of others, be turned from me; and it were almost a miracle if it should be otherwise. But yet, because your lordship may still have so heroidal a spirit, as to stand out in all these violent assaults, which might have alienated you from your friend; my humble suit to your lordship is, that remembring our former friendship, which began with your beginnings, and since that time hath never failed on my part, your lordship would deal clearly with me, and let me know, whether I continue in your favour or no; and whether in those poor requests, which I may yet make to his Majesty (whose true servant I ever was and am) for the tempering of my misery, I may presume to use your lordship's favour and help, as I have done; for otherwise it were a kind of stupidity in me, and a great trouble also to your lordship, for me not to discern the change, for your lordship to have an importuner, instead of a friend and a suitor. Though howsoever, if your lordship should never think of me more, yet in respect of your former favours, which cannot altogether be made void, I must remain, &c.

From the Original.

CCLXXVII. To the Lord ST. ALBAN.*

My Lord,

I HAVE dispatched the business your lordship recommended to me, which I send your lordship here inclosed, signed by his Majesty, and have likewise moved him for your coming to kiss his hand, which he is pleased you should do at *Whitehall* when he returneth next thither. In the mean time I rest,

Your Lordship's faithful friend and servant,

Newmarket, 13 Nov. 1622.

G. BUCKINGHAM.

I WILL give order to my secretary to wait upon Sir *John Suckling* about your other business.

Endorsed by the Lord *St. Alban's* hand.

My Lord of Bucks touching my warrant and access.

CCLXXVIII. To the Marquis of BUCKINGHAM.

Excellent Lord,

THOUGH I have troubled your lordship with many letters, oftner than I think I should, (save that affection keepeth no account) yet upon the repair of Mr. *Matthew*, a gentleman so much your lordship's servant, and to me another my self, as your lordship best knoweth, you would not have thought me a man alive, except I had put a letter into his hand, and withal, by so faithful and approved a man, commended my fortunes afresh unto your lordship.

My lord, to speak my heart to your lordship, I never felt my misfortunes so much as now: not for that part which may concern my self, who profit (I thank God for it) both in patience, and in settling mine own courses; but when I look abroad and see the times so stirring, and so much dissimulation and falshood, baseness and envy in the world, and so many idle clocks going in men's heads, then it grieveth me much, that I am not sometimes at your lordship's elbow, that I might give you some of the fruits of the careful advice, modest liberty, and true information of a friend that loveth your lordship as I do. For though your lordship's fortunes be above the thunder and storms of inferiour regions; yet nevertheless, to hear the wind and not to feel it, will make one sleep the better.

My good lord, somewhat I have been, and much I have read; so that few things that concern states or greatness, are new cases unto me: and therefore I hope I may be no unprofitable servant to your lordship. I remember the King was wont to make a character of me, far above my worth, *that I was not made for small matters*; and your lordship would sometimes bring me from his Majesty that *Latin* sentence *de minimis non curat lex*: and it hath so fallen out, that since my retiring, times have been fuller of great matters than before; wherein perhaps if I had continued near his Majesty, he might have found more use of my service, if my gift lay that way: but that is but a vain imagination of mine. True it is, that as I do not aspire to use my talent in the King's great affairs; yet for that which may concern your lordship, and your fortune, no man living shall give you a better account of faith, industry, and affection, than I shall. I must conclude with that which gave me occasion of this letter, which is Mr. *Matthew's* employment to your lordship in those parts, wherein I am verily persuaded your lordship shall find him a wise and able gentleman, and one that will bend his knowledge of the world (which is great) to serve his Majesty, and the Prince, and in especial your lordship. So I rest,

Your Lordship's most obliged and faithful servant,

Gray's-Inn, this 18 April, 1623.

FR. ST. ALBAN.

CCLXXIX. To

CCLXXIX. To the Marquis of BUCKINGHAM.

My very good Lord,

THOUGH I returned an answer to your lordship's last honourable and kind letter, by the same way by which I received it; yet I humbly pray your lordship to give me leave to add these few lines. My lord, as God above is my witness, that I ever have loved and honoured your lordship, as much, I think, as any son of *Adam* can love or honour any thing that is a subject; and do still continue in as hearty and strong wishes of felicity to be heaped and fixed upon you as ever: so yet I protest, that at this time, as low as I am, I had rather sojourn the rest of my life in a college in *Cambridge*, than recover a good fortune by any other than your self. But now to recover your self to me (if I have you not already) or to ease your lordship in any business of mine, wherein your lordship would not so fully appear, or to be made partaker of your favours, in the way that you like best; I would use any man who were your lordship's friend. *Secondly*, If in any thing of my former letters I have given your lordship any distaste, either by the style of them, or any particular passage in them, I humbly pray your lordship's benign construction and pardon. I confess it is my fault, though yet it be some happiness to me withal, that I many times forget my adversity; but I shall never forget to be, &c.

From the Original.

CCLXXX. To the Duke of BUCKINGHAM.*

Excellent Lord,

HOW much I rejoice in your grace's safe return, you will easily believe, knowing how well I love you, and how much I need you. There be many things in this journey both in the felicity and in the carriage thereof, that I do not a little admire, and wish your grace may reap more and more fruits in continuance answerable to the beginnings. My self have ridden at anchor all your grace's absence, and my cables are now quite worn. I had from Sir *Toby Mathew* out of *Spain*, a very comfortable message, that your grace had said, I should be the first that you would remember in any great favour after your return; and now coming from court, he telleth me he had commission from your lordship to confirm it: for which I humbly kiss your hands.

My lord, do some good work upon me, that I may end my days in comfort, which nevertheless cannot be complete except you put me in some way to do your noble self service; for I must ever rest,

Your Grace's most obliged and faithful servant,

12 Oct. 1623.

FR. ST. ALBAN.

I HAVE written to his Highness, and had presented my duty to his Highness to kiss his hands at *York-house*, but that my health is scarce yet confirmed.

From

From the Original.

CCLXXXI. To the Lord ST. ALBAN.*

My Lord,

THE assurance of your love makes me easily believe your joy at my return; and if I may be so happy as by the credit of my place, to supply the decay of your cables, I shall account it one of the special fruits thereof. What Sir *Toby Mathew* hath delivered on my behalf, I will be ready to make good, and omit no opportunity that may serve for the endeavours of,

*Your Lordship's faithful friend and servant,**Royston, 14 Oct. 1623.*

G. BUCKINGHAM.

From the Original.

CCLXXXII. To the Duke of BUCKINGHAM.*

Excellent Lord,

I SEND your Grace for a *parabien*, a book of mine, written first and dedicated to his Majesty in *English*, and now translated into *Latin* and enriched. After his Majesty and his Highness, your Grace is ever to have the third turn with me. Vouchsafe of your wonted favour to present also the King's book to his Majesty. The Prince's I have sent to Mr. *Endimion Porter*. I hope your Grace (because you are wont to disable your *Latin*) will not send your book to the *Conde d'Olivares*, because he was a deacon; for I understand by one (that your Grace may guess whom I mean) that the *Conde* is not rational, and I hold this book to be very rational. Your Grace will pardon me to be merry, however the world goeth with me. I ever rest,

*Your Grace's most faithful and obliged servant,**Gray's Inn, this 22d
October 1623.*

FR. ST. ALBAN.

I have added a begging postscript in the King's letter; for, as I writ before, my cables are worn out, my hope of tackling is by your lordship's means. For me and mine, I pray command.

From the Original.

CCLXXXIII. To the Lord ST. ALBAN.*

My Lord,

I GIVE your lordship many thanks for the *parabien* you have sent me; which is so welcome unto me, both for the author's sake and for the worth of it self, that I cannot spare a work, of so much pains to your lordship and value to me, unto a man of so little reason and less art; who, if his skill in languages be no greater than I found it in argument, may, perhaps, have as much need of an interpreter (for all his deaconry) as my self; and whatsoever mine ignorance is in the tongue, yet this much I understand in the book, that it is a noble monument of your love, which I will entail to my posterity, who, I hope, will both reap the fruit of the work, and honour the memory of

the author. The other book I delivered to his Majesty, who is tied here by the feet longer than he purposed to stay.

FOR the business your lordship wrote of in your other letters, I am sorry I can do you no service, having engaged my self to Sir *William Becker* before my going into *Spain*, so that I cannot free my self, unless there were means to give him satisfaction. But I will ever continue

Your Lordship's assured friend and servant,

Hinchenbrook, 27 Oct. 1623.

G. BUCKINGHAM.

From the Original.

CCLXXXIV. To the Lord ST. ALBAN. *

My honourable Lord,

I HAVE deliver'd your lordship's letter and your book to his Majesty, who hath promised to read it over: I wish I could promise as much for that which you sent me, that my understanding of that language might make me capable of those good fruits, which I assure my self by an implicit faith proceed from your pen. But I will tell you in good *English*, with my thanks for your book, that I ever rest,

Your Lordship's faithful friend and servant,

Hinchenbrook, 29 Oct. 1623.

G. BUCKINGHAM.

From the Original.

CCLXXXV. To the Duke of BUCKINGHAM. *

Excellent Lord,

I SEND Mr. *Parker* to have ready, according to the speech I had with your Grace, my two suits to his Majesty, the one for a full pardon, that I may die out of a cloud; the other for the translation of my honours after my decease. I hope his Majesty will have compassion on me, as he promised me he would. My heart telleth me that no man hath loved his Majesty and his service more entirely, and love is the law and the prophets. I ever rest,

Your Grace's most obliged and faithful servant,

25 Nov. 1623.

FR. ST. ALBAN.

From the Original.

CCLXXXVI. To the Lord ST. ALBAN. *

My honourable Lord,

I HAVE received your lordship's letter, and have been long thinking upon it, and the longer the less able to make answer unto it. Therefore if your lordship would be pleased to send any understanding man unto me, to whom I may in discourse open my self, I will by that means so discover my heart with all freedom (which were too long to do by letter, especially in this time of parliament business) that your lordship shall receive satisfaction. In the mean time I rest,

Your Lordship's faithful servant,

Rushen, 16 December.

G. BUCKINGHAM.

From

From the Original.

CCLXXXVII. To the Lord St. ALBAN.*

My Lord,

I HAVE moved his Majesty in your suit, and find him very gracious inclined to grant it; but he desireth first to know from my Lord Treasurer his opinion and the value of it: to whom I have written to that purpose this inclosed letter, and would wish your lordship to speak with him your self for his favour and furtherance therein; and for my part I will omit nothing that appertaineth to

Your Lordship's faithful friend and servant,

Newmarket, 28th of
January 1623.

G. BUCKINGHAM.

From the Original.

CCLXXXVIII. To the Duke of BUCKINGHAM.*

Excellent Lord,

I HAVE received the warrant, not for land but for the money, which if it may be speedily served, is sure the better; for this I humbly kiss your Grace's hands. But because the exchequer is thought to be somewhat barren, although I have good affiance of Mr. Chancellor, yet I hold it very essential (and therein I most humbly pray your Grace's favour) that you would be pleased by your letter to recommend to Mr. Chancellor the speedy issuing of the money by this warrant, as a business whereof your Grace hath an especial care; the rather for that I understand from him, there be some other warrants for money to private suitors at this time on foot. But your Grace may be pleased to remember this difference: That the other are mere gifts; this of mine is a bargain, with an advance only.

I most humbly pray your Grace likewise to present my most humble thanks to his Majesty. God ever guide you by the hand. I always rest,

Your faithful and more and more obliged servant,

Gray's-Inn, this 17th of
November, 1624.

FR. ST. ALBAN.

I most humbly thank your Grace for your Grace's favour to my honest deserving servant.

From the Original.

CCLXXXIX. To the Lord St. ALBAN.*

My noble Lord,

THE hearty affection I have borne to your person and service, hath made me ever ambitious to be a messenger of good news to you, and an eschewer of ill; this hath been the true reason why I have been thus long in answering you, not any negligence in your discreet modest servant, you sent with your letter, nor his who now returns you this answer, oftentimes given me by your master and mine; who though by this may seem not to satisfy your desert and expectation, yet take the word of a friend who will never fail you, hath a tender care of you, full of a fresh memory of your by-past service.

service. His Majesty is but for the present, he says, able to yield unto the three years advance, which if you please to accept, you are not hereafter the farther off from obtaining some better testimony of his favour worthier both of him and you, though it can never be answerable to what my heart wishes you, as

Your Lordship's humble servant,

G. BUCKINGHAM.

CCXC. To the Lord † Treasurer MARLBOROUGH, expostulating about his unkindness and injustice.

My Lord,

I HUMBLY entreat your lordship, and (if I may use the word) advise you to make me a better answer. Your lordship is interested in honour, in the opinion of all them who hear how I am dealt with; if your lordship malice me for such a cause, surely it was one of the justest businesses that ever was in chancery. I will avouch it; and how deeply I was tempted therein, your lordship knows best. Your lordship may do well, in this great age of yours, to think of your grave, as I do of mine; and to beware of hardness of heart. And as for fair words, it is a wind, by which neither your lordship, nor any man else, can sail long. Howsoever, I am the man who will give all due respects and reverence to your great place, &c.

† The Lord Marlborough was made Treasurer 22 Dec. 1624. 22 Jan.

CCXCI. To the KING.

Most gracious and dread Sovereign,

BEFORE I make my petition to your Majesty, I make my prayers to God above, *pectore ab imo*, that if I have held any thing so dear as your Majesty's service; nay, your heart's ease, and your honour's, I may be repulsed with a denial: But if that hath been the principal with me, that God, who knoweth my heart, would move your Majesty's royal heart to take compassion of me, and to grant my desire.

I prostrate my self at your Majesty's feet, I, your ancient servant, now sixty-four years old in age, and three years five months old in misery. I desire not from your Majesty, means, nor place, nor employment, but only after so long a time of expiation, a complete and total remission of the sentence of the upper house, to the end that blot of ignominy may be removed from me, and from my memory with posterity; that I die not a condemned man, but may be to your Majesty, as I am to God, *nova creatura*. Your Majesty hath pardoned the like to Sir John Bennet, between whose case and mine, (not being partial with my self, but speaking out of the general opinion) there was as much difference, I will not say as between black and white, but as between black and grey, or ash-coloured*; look therefore down, dear Sovereign, upon me also in pity. I know your Majesty's heart is inscrutable for goodness; and my Lord of Buckingham was wont to tell me, you were the best natured man in the world; and it's God's property, that those he

* Sir John Bennet, judge of the prerogative court, was in the year 1621 accused, convicted, and censured in parliament for taking of bribes, and committing several misdemeanors relating to his office.

hath loved, he loveth to the end. Let your Majesty's grace, in this my desire, stream down upon me, and let it be out of the fountain and spring-head, and *ex mero motu*, that living or dying, the print of the goodness of King *James* may be in my heart, and his praises in my mouth. This my most humble request granted, may make me live a year or two happily; and denied, will kill me quickly. But yet the last thing that will die in me, will be the heart and affection of

Your Majesty's most humble, and true devoted servant,

July 30. 1624.

FR. ST. ALBAN.

CCXCII. In Answer to the foregoing, by King JAMES.

To our trusty and well-beloved, Thomas Coventry, our Attorney-General.

Trusty and Well-beloved, we greet you well:

WHEREAS our right trusty and right well-beloved cousin, the Viscount of *St. Alban*, upon a sentence given in the upper house of parliament full three years since, and more, hath endured loss of his place, imprisonment, and \dagger confinement also for a great time; which may suffice for the satisfaction of justice, and example to others: We being always graciously inclined to temper mercy with justice, and calling to mind his former good services, and how well and profitably he hath spent his time since his troubles; are pleased to remove from him that blot of ignominy which yet remaineth upon him, of incapacity and disablement; and to remit to him all penalties whatsoever inflicted by that sentence. Having therefore formerly pardoned his fine, and released his confinement; these are to will and require you to prepare, for our signature, a bill containing a pardon in due form of law, of the whole sentence: for which this shall be your sufficient warrant. *Cabala p. 270. Edition of 1663.*

\dagger His sentence forbid his coming within the verge of the court. [In consequence of this letter, my Lord Bacon was summoned to parliament in the first year of King Charles.]

CCXCIII. The Lord Viscount ST. ALBAN to || Dr. WILLIAMS, Bishop of *Lincoln*, concerning his speeches, &c.

My very good Lord,

I AM much bound to your lordship for your honourable promise to Dr. *Rawley*: he chuseth rather to depend upon the same in general, than to pitch upon any particular; which modesty of choice I commend.

I FIND that the ancients (as *Cicero*, *Demosthenes*, *Plinius Secundus*, and others) have preserved both their orations and their epistles. In imitation of whom I have done the like to my own; which nevertheless I will not publish while I live: but I have been bold to bequeath them to your lordship, and Mr. Chancellor of the duchy. My speeches (perhaps) you will think fit to publish: the letters, many of them, touch too much upon late matters of state, to be published; yet I was willing they should not be lost. I have also by my will erected two lectures in perpetuity, in either university one, with

|| This title seems to imply that the date of this letter was after the bishop was remov'd from being lord keeper.

an endowment of 200 *l. per annum* apiece: they to be for natural philosophy, and the sciences thereupon depending; which foundations I have required my executors to order, by the advice and direction of your lordship, and my Lord Bishop of *Coventry and Lichfield*. These be my thoughts now. I rest

Your Lordship's most affectionate to do you service.

CCXCIV. The Bishop's Answer to the preceding Letter.*

Right honourable and my very noble Lord,

MR. Doctor *Rawley*, by his modest choice, hath much obliged me to be careful of him, when God shall send any opportunity. And if his Majesty shall remove me from this see, before any such occasion be offered, not to change my intentions with my bishoprick.

It is true that those antients *Cicero*, *Demosthenes*, and *Plinius secundus*, have preserved their orations (the heads and effects of them at the least) and their epistles; and I have ever been of opinion, that those two pieces are the principal pieces of our antiquities: Those orations discovering the form of administering justice, and the letters the carriage of the affairs in those times. For our histories (or rather lives of men) borrow as much from the affections and phantasies of the writers, as from the truth itself, and are for the most of them built altogether upon unwritten relations and traditions. But letters written *è re nata*, and bearing a synchronism or equality of time *cum rebus gestis*, have no other fault, than that which was imputed unto *Virgil*, *nihil peccat nisi, quod nihil peccet*; they speak the truth too plainly, and cast too glaring a light for that age, wherein they were, or are written.

Your lordship doth most worthily therefore in preserving those two pieces, amongst the rest of those matchless monuments you shall leave behind you; considering that, as one age hath not bred your experience, so is it not fit it should be confined to one age, and not imparted to the times to come. For my part therein, I do imbrace the honour with all thankfulness, and the trust imposed upon me, with all religion and devotion. For those two Lectures in *natural Philosophy*, and the sciences woven and involved with the same; it is a great and a noble foundation both for the use, and the salary, and a foot that will teach the age to come, to guess in part at the greatness of that *Herculean* mind, which gave them their existence. Only your lordship may be advised for the seats of this foundation. The two universities are the two eyes of this land, and fittest to contemplate the lustre of this bounty; these two lectures, are as the two apples of these eyes. An apple when it is single is an ornament, when double a pearl, or a blemish in the eye. Your lordship may therefore inform yourself if one *Sidley* of *Kent* hath not already founded in *Oxford* a lecture of this nature and condition. But if *Oxford* in this kind be an *Argus*, I am sure poor *Cambridge* is a right *Polyphemus*, it hath but one eye, and that not so steadily or artificially placed, but, *bonum est facile sui diffusivum*; your lordship being so full of goodness, will quickly find an object to pour it on. That which made me say thus much, I will say in verse, that your lordship may remember it the better;

*Sola ruinosis stat Cantabrigia pannis
Atque inopi linguâ disertas invocat Artes.*

I will conclude with this vow : *Deus, qui animum istum tibi, animo isti tempus quam longissimum tribuat.* It is the most affectionate prayer of

Your Lordship's most humble servant,

Buckden the last of
December, 1625.

JO. LINCOLN.

CCXCV. To the † QUEEN of BOHEMIA. 1625.

It may please your Majesty,

I HAVE received your Majesty's gracious letter from Mr. Secretary Moreton, who is now a saint in heaven. It was at a time when the great desolation of the plague was in the city, and when my self was ill of a dangerous and tedious sickness. The first time that I found any degree of health, nothing came sooner to my mind, than to acknowledge your Majesty's great favour, by my most humble thanks : and because I see your Majesty taketh delight in my writings, (and to say the truth, they are the best fruits I now yield,) I presume to send your Majesty a little discourse of mine, touching ‡ a war with *Spain*, which I writ about two† See Vol. III. years since ; which the King your brother liked well. It is written with- P. 513. out bitterness or invective, as Kings affairs ought to be carried ; but if I be not deceived, it hath edge enough. I have yet some spirits left, and remnant of experience, which I consecrate to the King's service, and your Majesty's ; for whom I pour out my daily prayers to God, that he would give your Majesty a fortune worthy your rare virtues ; which some good spirit tells me will be in the end. I do in all reverence kiss your Majesty's hands, ever resting

Your Majesty's most humble and devoted servant,

FR. ST. ALBAN.

† The Princess *Elizabeth*, eldest daughter of King *James*, was married to *Frederick V.* Elector *Palatine*, who by accepting the crown of *Bohemia*, was soon deprived both of that and his ancient principality. Under all her afflictions she had the happiness of being mother of many fine children, and at length of seeing her son restored to the *Palatinate*, and her nephew to his kingdom. To her, who had been so much injur'd by *Spain*, my Lord *St. Alban* presents his discourse, touching a war with *Spain*, in acknowledgment of the favour of her Majesty's letter, sent by her Secretary *Sir Albertus Moreton* ; in which quality he had serv'd his uncle *Sir Henry Wotton*, in some of his embassies : and as he was tenderly beloved by him in his life, and much lamented in his death : so *Sir Harry* professed no less admiration of this Queen, and the splendor of her virtues under the darkness of her fortunes. *Stephens.*

CCXCVI. A letter of the Lord BACON's, in *French*, to the Marquis FIAT, relating to his Essays.

Monsieur l'Ambassadeur mon File,

VOYANT que vostre Excellence faict & traite mariages, non seulement entre les Princes d'*Angleterre* & de *France*, mais aussi entre les langues (puis que faictes traduire non livre de l'avancement des sciences en *Francois*) i' ai bien voulu vous envoyer mon livre dernièrement imprimé, que i' avois pourveu pour vous, mais i' estois en doubte, de le vous envoyer, pour ce qu' il estoit escrit en *Anglois*. Mais a' cest' heure pour la raison susdicte ie le vous envoie. C'est un Recompillement de mes *Essays Morales*

Morales & Civiles; mais tellement enlargiés & enrichiés, tant de nombre que de poix, que c' est de fait un oeuvre nouveau. Je vous baise les mains, & reste,

Vostre tres affectionnée ami, & tres humble serviteur.

CCXCVII. To the Earl of ARUNDEL and SURREY: just before his death, being the last letter he ever wrote.

My very good Lord,

I WAS likely to have had the fortune of *Caius Plinius* the elder, who lost his life by trying an experiment about the burning of the mountain *Vesuvius*: for I was also desirous to try an experiment or two, touching the conservation and induration of bodies. As for the experiment it self, it succeeded excellently well; but in the journey (between *London* and *Highgate*) I was taken with such a fit of casting, as I knew not whether it were the stone, or some surfeit, or cold, or indeed a touch of them all three. But when I came to your lordship's house, I was not able to go back, and therefore was forced to take up my lodging here, where your house-keeper is very careful and diligent about me; which I assure my self your lordship will not only pardon towards him, but think the better of him for it. For indeed your lordship's house was happy to me; and I kiss your noble hands for the welcome which I am sure you give me to it, &c.

I KNOW how unfit it is for me to write to your lordship with any other hand than my own; but by my troth my fingers are so disjointed with this fit of sickness, that I cannot steadily hold a pen.



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