

Tenenda non Tollenda,

OR

The Necessity of Preserving
TENURES IN CAPITE and
by *KNIGHT-SERVICE*, Vvhich
according to their first Institution
were, and are yet, a great part of the
Salus Populi, and the Safety and Defence
of the King, as well as of his People.

TOGETHER

With a Prospect of the very many *Mis-*
chiefs and *Inconveniencies*, which by the ta-
king away or altering of those Te-
nures, will inevitably happen
to the K I N G and his
K I N G D O M E S.

By Fabian Philipps, Esq;

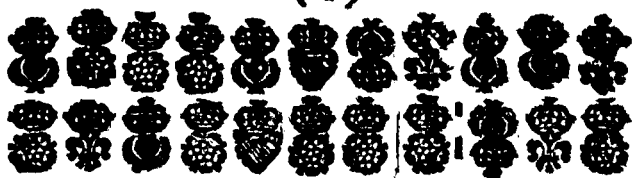
Claudian
Lib. 2.

*Ne pereat tam priscus Honos qui portus
honorum.*

Semper erat, nullo Sarciri Consule Damnum.

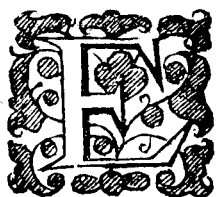
L O N D O N ,

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be sold by *Abel Roper* at the Sign of the *Sun* in
Fleetstreet, 1660.



To the Right Honourable Sir
Edward Hyde Knight, Ba-
 ron of *Hindon*, and
 Lord Chancellor
 of *England*.

My Lord,



Very man who bath not been
 out of his *Wits* or his own
 Country, or like the Poet
Epimenides, who is said
 to have slept more
 than *Twenty* years.

And bath but understood or experimented
 the many *Miseryes* and *Confusions* which our
 new Reformers and Modellers of Go-
 vernment, (who like unskilful Architects,
 cannot amend a part of an house without over-
 turning the whole *Fabrick* upon the heads of
 A the

The Epistle Dedicatory.

*the Owners) have treated the Faction-
and Ignorance of too many of the seduced peo-
ple of this Kingdom withal; And sitting by
the Waters of Babylon had not forgot Je-
rusalem, or but remembred the happi-
nesse of the Condition we before enjoyed under
a gracious and pious Prince in an Antient,
and for many ages past, most happy Monar-
chy, and with Tears of Joy we'commed it
again in the Return of his sacred Majesty,
and all our peace and plenty from a sad and
long oppressing Captivity, must needs think
himself obliged not only to pray for the Peace
of our Syon but to endeavour all he can to
uphold the Kings Rights and Jurisdictions.*

*Who being our Lex viva, and guarding Him-
self, us and our Laws, is with them the
sure support of us and all that is or can be
of any Concernment to us and our Poster-
ities; And therefore when we are taught
by our Laws, and the sage Interpreters and
Expounders thereof, That every Subject
hath an Interest in the King as the Head
of the Weale Publick, and as the in-
ferior Members cannot estrange them
selves*

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selves from the Actions or Passions of
 the head, no lesse can any Subject
 make himself a Stranger to any thing
 which toucheth the King or their su-
 preme Head, *And that not a few but very*
 many knowing and able men are of opinion
 not ushered in by Fancy or first Notions, but
 well weighed and built with Reason and
 good Authorities that the exchanging of the
 Tenures in Capite and by Knight Service,
 for a constant yearly payment of 100000 l.
 will level the Regality, and turn the Sove-
 raignty into a dangerous popularity, and take
 away or blunt the Edge of the Sword, by
 which his Majesty is to defend his people; I
 could not but conceive it to be my Duty (and
 a failer of my Duty and Oaths of Allegiance
 and Supremacy not to do it) to offer to
 consideration the antiquity and right use of
 Tenures in this and other Kingdoms, that they
 are no Slavery nor Grievance, how from a
 project in the beginning of the Reign of King
 James, it came to trouble several Par-
 liaments, the small benefits will come to the
 Subjects by altering those Tenures, and the

Hollands
Case in Cokes
& Reports.

The Epistle Dedicatory.

many Inconveniences and Mischiefes which will inevitably follow, and that it is such a flower of the Crown, as the power of an Act of Parliament, and consent of the King and his Nobility, and people cannot take away, wherein, though I may well say it is a matter, as Livy said of his undertaking to write the Roman History Immensi Operis, and that the disquisition of it requiring greater Abilities than I can lay any claim unto; and the excellent Order heretofore used, that all Books of the Law, or very much concerning it, should be perused and allowed by the Reverend Judges of the Law, before they should be Printed and published, might have been enough to have made me either to desist, or have attended their approbation; Yet when the good intentions of many Parliament men of the House of Commons to make the King a constant Revenue were so busy to prepare an Act of Parliament to dissolve those more useful and honourable Tenures into a Socage, which will never arrive to the Salus Populi they aim at. I have like some well-wishing Roman to his Countries good, in my Cares,
and

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and fear least any thing should hurt, dislocate, or disturb, that well ordered and constituted Government, under which our Progenitors enjoyed so much Honor, Peace and Plenty, basted *Currente Calamo*, to a modest inquiry into the grounds and motives, for the dissolution of them, and the Court of Wards, and an examination of that to be prepared *Act* in the General (for as to the Preamble, Clauses or Provisoes, they are not permitted to be seen before the *Act* passeth) the *Rogatio Legum* as it was amongst the Romans, being not here in use, in some cases as it may be wished it were, and when none else would publicly endeavour to rescue them, have without any Byasse or partiality as well as I could, represented what hath been the right use of them, and what may be the Inconveniencies if they should be changed or altered, and that they are not guilty of the charge which is supposed, but never will be proved against them.

And confesse that it deserved a better Advocate than my self, who having attempted to do it *horis Succisivis & interturbationes rerum*, am Conscious to my self that much
more

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more might have been said for it, and that the matter was capable of a better form, and might have appeared in a better dresse, if my care to do something as fast as I could, had not for want of time hindred me from doing what I might.

But I hope that your Lordship who hath trod the Pathes of Affliction, and in the attendance and care of a persecuted Monarchy, and an Afflicted most Gracious Prince, who hath born the burthen of His own Sorrows & Troubles, as well as of a Loyal party that Suffered with & for Him and His Royal Father, have in Your Travails and residence in many Kingdoms and parts beyond the Seas, viewed and seen the Fundamentals and Order of other Kingdoms, the Policies and good Reiglements of some, and the Errors and Infirmities of others, will with your learned Predecessor the Chancellor Portelcue in the Reign of King Henry the 6th: the more admire and love the Laws and excellent Constitution of England, which as a Quintessence of right reason, may seem to have been Limbecked and drawn out of the best of Laws, and choice
of

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of all which might be learned out of other Nations, or the Records or Treasury of Time, and find reason enough to be of the opinion of that well knowing Statesman, that non minime *Fortescue de laudibus Legum Angliæ.*
erit regno accommodum, ut Incolæ ejus in artibus sint experti, & quod domus regia sit tanquam gymnasium supremum nobilitatis regni schola quoque Strenuitatis probitatis & morum quibus regnum honoretur, & floret ac contra Irruentes securatur, & hoc revera bonum accidisse non potuisset regno illi, Si nobilium filii Orphani & Pupilli per pauperes amicos parentum suorum nutritentur,
and greatly approve as he did of our Tenures in Capite, and by Knight Service (which have been since better ordered, and more deserve that, and a better commendation) and to put forth your hand to rescue them, who have hitherto as great Beams, peices of Tymber, or Pillars, helped to bear up and sustein the Fabrick of our Antient and Monarchical Governement,
and have no other fault, but that they are misunderstood and misrepresented to the vulgar, who by making causelesse complaints & multiplying

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plying them, have done of late by our Laws and best Constitutions, as the Boys are used to do when they hunt Squirrels with Drums, shouts and Noyses; And that your Lordship who is able to say much more for that Institution and Right use of Tenures, will be pleased to accept of my good Intentions, and pardon the Imperfections of

London 23.
November
1660.

Your Lordships most
Humble Servant

Fabian Philipps.



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ERRATA.

Errata's, or Faults escaped in Printing, by the haft of the Presse.

PAge 1 line 1 leave out and, p. 1 l. 28 for ~~be read by~~, p. 6 l. 12 for or Knights, r and Knights, p. 8 l. 16 leave out that, ib. r in Capite and Knight service, p. 9 l. 25 for where r were, p. 17 in the margent leave out the quotation note, p. 21 l. 18 r. his infant, p. 23 l. 23 r. be the lesse free, p. 24. l. 26. for was r. were, p. 36. l. 12, r them, 20 H. 3. 6. p. 38 l. 3 for E r r. E 3. p. ib. l. 6. r person, 42 E 3. 5. p. 40. l. 31. for of, r, or p. 43. l. 18. r thought to, p. 54 l. 16. leave out and, p. 68 l. 14 leave out was, p. 81 l. 12 for at r. in p. 82 l. 15 for E. 3 r E 1. p. 100 l. 7 for 1648 r. 1643. p. 111 l. 2 leave out his, p. 125 l. 1 for Episcopium, r *Episcopum*, ib. l. 18. r hold by, ib. l. 23, r nor could, 126. l. 12 for be r. to, p. 131 l. 32. r For it, p. 132 l. 1 leave out *Laves* after the, ib. l. 2 leave out *the*, ib. l. 15 for and r. for, p. 135 l. 6. r or by p. 136 l. 14 for and r which, p. 138 in the margent leave out Littletons quotation, p. 140 l. 13 leave out an, p. 154 l. 10 r. Grand and Petit, p. 159. in the margent for XI r II. p. 162. against l. 12 in the margent put V. ib. against l. 33. put VI. p. 163. l. 4. for Protections, r *Portions*, ib. in the margent against l. 8, put VII. ib. against l. 20, put VIII. p. 164 l. 4. for and, r *shall*, ib. in the margent against l. 15, put IX. p. 165 against l. 33. put X. p. 166 against l. 5. put XI. ib. against l. 10 put XII. ib. against l. 14, put XIII. ib. against l. 26. put XIV. p. 171 l. 15 for *amore* r. *more*, p. 174 in the margent, for Olbertus r. Oberus, p. 183 in margent for Lovelaces r. Lones, p. 184 l. 16. leave out in, p. 185 l. 32. leave out they, p. 187 l. 9. for *enernate*, r *enervate*, ib. l. 24. for displaced r. displayed, p. 192 l. 15. leave out if not recompensed by some Annual payment, p. 194 l. 8. r. under the penalties of, *ibib*, l. 9. leave out under the penalties, p. 212, l. 22. r be a Baron, *ibib*, leave out of Holt, p. 217 l. 2. for derived r. deemed, p. 222 in the margent against l. 15 put L. p. 241 in the margent against l. 6. put LXXIV. p. 242 against l. 4 put LXXV. p. 246. against 26, put LXXXII. p. 247. l. 4. for know r knowing, p. 254. l. 20, r which is, ib. 28, r and the, p. 255 l. 24, r or that, p. 259 l. 18. for it r *them*, ib. l. 23 leave out *upon all*, p. 268. l. 4. leave out and, p. 269. l. 15, r or so, p. 274. l. 33 for of, r if, p. 275. l. 11, leave out *would ruined* ib. l. 13, r *Baronies would be ruined*.

CAP. I.

Of the Antiquity and use of
 Tenures *in capite* and by
 Knight service in *Eng-*
land and other Nations.



The Law of Nature, that secret
 and great *Director* under God,
 and his Holy Spirit of all mens
 Actions, for their safety, and
 self preservation, by the Rules
 or Intir& of Right Reason, and the Beams
 of Divine Light and Irradiations; (So far as
 those Laws of Nature are not contrary to
 positive and Humane Laws which are al-
 wayes either actively or passively to be o-
 beyed) having in the beginning of time, and
 its delivery out of the *Chaos*, made and allow-
 ed Orders, and distinctions of man-kind, as
 they have been found to be more Rich, Wise,
 Virtuous, Powerful, and Able, than others, &
 therefore the fitter to Protect, Defend, and
 do good unto such as wanted those Abilities
 & Endowments, and constituted & ordained
 the faith and just performances also of Con-
 tracts. Promises, and Agreements, and the
 B
 acknow-

acknowledgements of benefits and favours received , being no strangers to those early dayes ; when the Patriarch *Abraham* had leave given him by *Abimelech* King of *Gerar* to dwell in the Land where it pleased him , and that *Abimelech* in the presence of *Phicol* the chief Captain of his Host , who took himself to have some concernment in it , required an Oath of him , *That he would not deal falsely with him , nor with his Sons Son , but (a) according to the kindnesse that he had done unto him . and to the Land in which he had Sojourned ;* And that *Abraham* thereupon swore (which somewhat resembles our Oath of *Fealty* or *Fidelity*) and took Sheep and Oxen (for then *Pecus* was instead of *pecunia* , which is derived a *Pecude*) and gave unto *Abimelech* , and both of them made a *Covenant*.

(a) *Genes.*
21. 23.

It will (though as in many other matters not tending to mans Salvation , which are not expressed in the sacred Story ; there is not so full and clear a light & evidence , as to intitle the holding of Land by the service of going to War to so great a Warrant or Original , as that of a Scripture direction or example .) Notwithstanding by no wild or improbable conjecture , that some such , or the like obligations , more than the affections , & good will , of the people , did lye upon them , or their Estates , not to forsake their King and Country in time of Wars and di-

distresse, the Law of Nature teaching the necessity of the Members readinesse and combination to preserve the head & its well being, as well as their own Estates and well beings, in that of their King or Supreme Governour, and every mans particular in the General, when as the antient Inhabitants of the Earth, or some of them at least, as appears by *Jacobs* blessing to his Sons upon his Death-bed, became Servants to Tribute, and *Moses* by the advice of *Iethro* his Father-in-law, did choose able men out of all *Israel*, and made them Heads over the people, and Rulers, which were afterwards called Captains of thousands, Rulers of hundreds, fifties, and tens, to be as a standing and certain Militia, and all the people young and old that had not rebelled with *Absalom*, went out with *David*, *Rehoboham* his Grandchild out of the two Tribes of *Judah* and *Benjamin*, could muster *an hundred and fourscore thousand chosen men which were warriors*, to preserve their Prince in War, and defend his, as well as their own Estates, and that some such, or the like obligations, passed betwixt *Solomon* and *Hiram* King of *Tyre*, when he gave him the twenty Cities in the Land of *Gallilee*.

And that from thence either by Tradition, or Travel of Philosophers or wise men into those more

knowing Countries and Regions of *Palestine* or *Egypt*, where Gods chosen and peculiar people of *Israel*, had a nearer communication with him, and his Divine Illuminations, or by those secret dictates, and the Edicts Statutes and Decrees of the Law of Nature, whereby as the Judicious and Learned *Hooker* saith, (b) *Humane Actions* are framed, and the *Chincks* and *Crannyes*, by which the wisdom of the Almighty, that intellectual worker as *Plato* and *Anaxagoras* stilled him, is wont imperceptibly to diffuse & impart its impressions, into the Customs and manners of men.

(b) *Hooker*
Ecclesiastic.
Polit. lib. 1.

That custom now about 2293 years agoe, used by *Romulus* in his new established City or Empire of *Rome*, took its rise or beginning of appointing the *Plebeian* or common people, to make choyce of whom they could out of the *Patricij*, Senators, or Eminent men, to protect them in their causes or concernments, in recompence or lieu whereof, the *Clyents* were to contribute, if need were, to the marriages of their Daughters, redeem them or their Sons, when they were taken (c) *Captives* in War, as bearing a reverence or respect to their Lords, or *Patroni*; (d) to the end, that they might be defended by them, & that they should reciprocally *propter beneficium*, the help & favour received from them, maintain and defend their dignity, and that duty or *Clientela* was therefore not altogether improperly called *Homagium* or *Homage*, as

(c) *Gellius*
lib. 1. cap. 13.

(d) *Budæus*
in Annotat. ad
Pandect.

a Service *pro beneficio præstandum*, for a benefit had, or to be enjoyed, & *accipitur pro patrocinio & protectione*, and taken to be as a patronage and protection, insomuch as upon the Conquest or reducing of any province into their obedience, they did in *Clientelam se dare Romanis*, acknowledge a Duty or Homage, either to the Senate, or certain of the Nobility, or great men to be their *Patroni* or Protectors, *quæ necessitudo*, or near relations, which were betwixt them, *id ferebat* saith Oldendorpius^(e) *ut Clientes perpetua Patronorum protectione defenderentur, ac vicissim eos omni obsequio colerent*, brought it so to pass that the Clients enjoyed a constant protection of their Patrons, or great men, and exhibited for it a duty and obedience unto them.

From which kind of Customes, and usages, *Tutandæ vitæ ac fortunarum omnium*, for the defence of life and estate,^(f) *veluti scintillis quibusdam cæpit initium beneficiariæ consuetudinis quæ aucta est multum propter continuam bellorum molestiam*, as from increasing sparkes or small beginnings that *beneficial* Custom taking its original, which by continuance of wars and troubles was much increased; another kind of *Clientela* was introduced, (though there be as Craig saith; a ^(g) great difference betwixt *Clientela* and *Vassalagium*), *qua vel dignitas vel prædium aliquod, alicui datur, ut et ipse istius posterius, et hæredes beneficii auctorem perpetuo agnoscant, et quasi pro Patrono colant, ejusque caput existimationem et fortunas tueantur*; where-

^(e) Oldendorpius.

^(f) Oldendorpius.

^(g) Craig. de Fendis.

by either some dignity or lands were given to any one, to the end that he and his heirs should always acknowledge the giver to be the Author of that benefit, reverence and esteem him as their *Patron* and defend him, and his life reputation and fortunes. In resemblance whereof, or from the common principle of Reason, that private or particular men, or their estates cannot be safe or in any good condition, where the publick is either afflicted, or ruined, was the use or way of Tenures *in Capite*, ~~or~~ Knights Service, found out and approved by Kings and Emperours, *ut cum delectus edici-*

(b) Cujacius *de feudis. lib. I.* *tur in (h) militiam eant vel vicarium mittant, vel certum censum domini arario inferant,* that when a muster was to be made, or a going to War, they should either go in person, or send one in their stead, or pay a certain rate in mony, and was so antient and universal, as whilst the Germans would intitle themselves to be the first of Nations, introducing it, the Gaules or French were so unwilling to come behind them, as they indeavour out of *Cæsars Commentaries*, to make themselves the right owners of it, where he saith, that *Eos qui opibus inter Gallos valebant multos habuisse devotos quos secum ducerunt in bello Soldarios sua lingua nuncupatos quorum hæc erat conditio, ut omnibus in vita commodis cum ijs fruerentur quorum amicitia se dedissent, quod si quid per vim accidisset, aut eundem casum ferrent ipsi, aut mortem sibi consciscerent;* the Gauls which were

were rich or had good Estates, had some which were devoted unto them, which followed them in the War, & in their language were called Souldiers, and injoyed a livelihood under them, and if any evil happened unto them, either endured it with them, or willingly ventured their lives with them, others attribute it to the Saxons, *ubi jus antiquissimum feudorum semper viguit et adhuc*, saith the learned *Craig. religiose observatur*, where the feudal Laws were, and are yet most religiously observed, and *Clients* and *Vasallus*, in matters of Feuds and Tenures, are not seldom in the Civil Law, and very good Authors become to be as Synonimes, and used one for the other.

And the later *Grecians* since the Raign of *Constantine (i) Porphyrogenneta* in the East, and the *Roman Emperors* in the West, before, & since the Raign of *Charlemain*, or *Charles the great*, were not without those necessary defences of themselves, and their people; And such a general benefit, and ready and certain way of ayd and help, upon all emergencies in the like usage of other Nations, making it to be as a Law of Nations.

There hath been in all or most Kingdoms and Monarchies of the World, as well Heathen, as Christian, a dependency of the Subject upon the Prince or Sovereign, and some duties to be performed by reason of their Lands and Estates, which they held under their Protection, and in many of them, as

(i) Craig. de
origine feudo-
rum, dig. 4.

amongst the *Germans, Saxons, Franks, and Longobards*, and several other Nations descending from them; *Tenures in capite*, and Knight service, were esteemed as a foundation and subsistency of the right and power of Sovereignty and Government, and being at the first (i) *precariæ ex domini solius arbitrio*, upon courtesie at the will only of the Prince or Lord, were afterwards *Annales* from year to year, after that *feuda ceperunt esse vitalia*, their Estates or Fees became to be for life, and after for Inheritance.

(k) Coke. 1.
parte Inst. t.
fo. 1. b.

So as by the Law of *England*, we have not properly *Allodium* (k) (saith Coke) that is, any Subjects Land which is not holden of some Superior, and ~~that~~ ^{and Knight service} *Tenures in capite*, appear not to be of any new institution in the book of *Doomsday*, or in *Edward the Confessors* dayes, an. 1060. in King *Athelstans*, an. 903. in King *Canutus* his Raign, in King *Kenulphus* his Raign, an. 821. or in King *Ina's* Raign, an. 720. In Imitation whereof and the *Norman* (no slavish) Laws, and usages which as to *Tenures*, by the opinion of *William Rorille of Alenzon*, in his Preface to the grand Customier of *Normandy*, were first brought into *Normandy* out of *England*, by our *Edward the Confessor*, & the Customs & Policies of other People and Kingdoms, prudent Antiquity having in that manner so well provided by reservation of *Tenures*, for the defence of the Realm. *William the Conquerour* found no better means to continue and sup-

support the Frame and Government of this Kingdom, then upon many of his gifts and grants of Land, (the most part of *England* being then by conquest in his Demeasne) to reserve the Tenures and Service of those, and their Heirs; to whom he gave it *in Capite*, and by Knight Service; and if *Thomas Sprot* (l) (l) *Spelman's gloss. p. 258.* mistake not in the number of them (m) (for (m) *Selden tit. Hon. p. 692, 693.* that there were very many is agreed by the *Red Book* in the *Exchequer*, and divers Authentiques) created 60215 Knights Fees, which with their Homage, incidents, and obligations, to serve in Wars with the addition of those many other Tenures by Knights service, which the Nobility, great men, and others, (besides those great quantities of Lands and Tenements, which they and many as well as the King, and others our succeeding Princes, gave *Colonis & Homini- bus inferioris notæ*, to the ordinary and inferior sort of people to hold in Socage, Bur- gage, and *Petit Serjeantie*) reserved upon their gifts, and grants to their Friends, Follow- ers, and Tenants, who were to attend also their *mesne* Lords in the service of their Prince, could not be otherwise then a safety and constant kind of defence for ever after to this Kingdom; And by the Lear- ned (n) *Sir Henry Spelman* said to be due, *non* (x) *Spelman's gloss.* *solum jure positivo sed & gentium & quodammodo* *natura*, not only by positive Law, but the Law of Nations, and in some sorts by the

Law of Nature.

Especially when it was not to arise from any compulsory or incertain way, or involuntary contribution, or out of any personal or moveable estate, but to fix and go along with the Land, as an easy and beneficial tie, and perpetuity upon it, and is so incorporate and inherent with it, as it hath upon the matter a co-existence, or being with it; and *Glanvil* and *Bracton* are of opinion, that the King must have Arms, as well as Laws to Govern by, and not depend *ex aliorum Arbitrio*, it being a Rule of Law, that *quando Lex aliquid concedit, id concedit, sine quo res ipsa esse non potest*, when the Law granteth any thing, it granteth that also which is necessary and requisite to it.

And therefore the old oath of Fealty, which by *Edward* the Confessors Laws was (o) *LL. Ed. Con.* to be administred in the *Folcmotes*, (o) or *Cap. 35.* assemblies of the People once in every year, *Fide et Sacramento non fracto ad defendendum regnum contra Alienigenas, et Inimicos cum Domino suo, Rege, et terras, et honores, illius omni fidelitate cum eo servare, et quod illi ut, Domino suo Regi intra et extra regnum Britannie fideles esse volunt*, by faith and oath, inviolable to defend the Kingdome against all strangers, and the Kings Enemies, and the Lands and dignity of the King, to preserve, and be faithful to him, as to their Lord, as well within, as without the Kingdom of *Britain*, which was not then also held to be enough

enough; unlesse also there were a tye and obligation upon the Land, and therefore enacted that, *debant universi liberi homines secundum feodum suum, & secundum tenementa sua arma habere, & illa semper prompta conservare ad tuitionem Regni, & servicium Dominorum suorum juxta preceptum Domini Regis explendum & peragendum*; every free man according to the proportion of his Fee and Lands, should have his Arms in readinesse for the defence of the Kingdom, and Service of their Lords, as the King should command; And it was by *William* the Conqueror ordained, *quod omnes liberi homines fide et Sacramento* (q) *affirmant, quod intra & extra universum Regnum* (q) *Willielmo Regi Domino suo fideles esse volunt* *terras & honores suos omni fidelitate ubique servare cum eo & contra Inimicos & Alienginas defendere*, that all Free-men should take an Oath, that as well within as without the Realm of *England*, they should be faithful to their King and Lord, and defend every where him and his Lands, Dignity, and Estate, with all faithfulness against his Enemies and Foreiners; *Et Statuit & firmiter precepit, ut omnes, Comites, Barones, Milites, & Servientes, Teneant se semper in Armis & in Equis ut decet & oportet, & quod sint semper prompti & parati ad servicium suum integrum explendum & peragendum cum semper opus adfuerit secundum quod debent de feodis & tenementis suis de jure facere*, Appointed and commanded, that all Earls, Barons, Knights,

(p) Lamb
bert fo. 135.

(q) Spelman:
gloss in verbo
fidelitatis.

and their Servants , should be ready with their Horſe and Arms , as they ought, to do, their Service which they owed, and were to do for their Fees and Lands when need ſhould require , and was beneficial to the Vaſſal or Tenant.

C A P. II.

The holding of Lands in Capite, and by Knight Service, is no Slavery or Bondage to the Tenant or Vaſſal,

FOR his lands were a ſufficient recompence for the ſervice which he performed for them, and his Lord beſides the lands which he gave the Tenant, gave him alſo a protection and help in lieu of the ſervice which he received from him ; For though as (r) Bodin obſerveth, *vaffallus dat fidem nec tamen accipit* ; The Tenant makes fealty to his Lord, but receiveth none from him, there is betwixt them, *mutua fides et tuenda ſalutis, et dignitatis utriusque obligatio contracta*, a mutual and reciprocal obligation to defend one another.

(r) Bodin
cap. 7.

And when the Donee had lands freely conferred upon him and his Heires, upon that conſideration, (*omnia feoda*, as well in Capite and Knights ſervice tenure, as Copyhold

hold and more inferior Tenures, being at first, *ad arbitrium Domini*) no man can rightly suppose that he would refuse the reservation of Tenure and incidents unto it, or imagine it to be a servitude, or any thing else but an Act of extraordinary favour arising from the Donor, which by the Civil Law and Customes of Nations, chalenged such an hereditary gratitude and return of thankfulness as amongst many other priviledges thereupon accrued to the Donor, if any of the Heires of the Lord of the Fee happened to fall into distresse, the Heires of the Tenant, though never so many ages and descents after, were to releive them, (f) *Domini utilitatem proferre et incommoda Propellere, et si cum poterit non liberaverit eum a morte feudo sive beneficio suo privabitur*, such a Donee or Tenant was to advance the good of his Lord, or Benefactor, and hinder any damage might happen unto him and forfeit and be deprived of those lands, if he did not when he could rescue him from death, for *Feudum ut habeat, et Dominum non juvet rationis non est*, it is no reason that he should enjoy that land or benefit, and not help or assist him which gave it, and by our Law, if such a Tenant ceased to do his service (if not hindred by any legal impediment) by the space of two years upon a *Cessavit per Biennium*. brought by the Lord, the land if no sufficient distresse was to be had was forfeited, if he appeared not upon

(f) Besoldus discurs. Polit. p. 742. Spelman gloss. p. 254, 256. Alber. Gentilis p. 696.

upon the distresse, and paid the arrears.

And such Tenure carrying along with it an end and purpose in its original institution, not only of preservation and defence of the Donor, but of the Kingdome and protection also of the Tenant, and the land which was bestowed upon him.

And being a voluntary and beneficial pactum submitted unto by the Tennant (inasmuch as *Feudum*, whether derived from the German word *Feec* or warre or a *fide prestanda*, or a *federe, inter utrosq; contracto* is not seldom in the Civil Law called *beneficium*,) may with reason enough be conceived to be cheerfully after undergone and approved of by the Tennants and their Heirs, receiving many Privileges thereby as not paying any other aydes or Tallages besides the service which their Tenures enjoined them, (wch. by a desuetude or necessity of the times is not now allowed them) not to be excommunicated by the Pope or Clergy, which (H. 2. (t) amongst other Laws and Customes observed in the time of his Grandfather, H. 1.) in the Parliament at *Clarindon*, claimed as a special priviledge belonging to him and those which held of him *in capite*, (which in those days was worthily accounted amongst the greatest of exemptions) and of creating like Tenures to be holden of themselves with services of War Wardship, Marriage, and other incidents, to have their heirs in minority

(t) Mat. Par.
ris. 100.

rity, not only protected in their persons and estates, which in tumultuous and unpeaceable Times, was no small benefit, but to be gently and vertuously educated in *Bellicis artibus*, feats and actions of arms taught to ride the great horse and manage him, and himself compleatly armed with Shield and Launce, married without disparagement in his own or a better rank and quality, his *equitatura*, or Horse and Arms could not be taken in execution unless he dishonourably absented himself when his service was required and then all that he had was subject to execution saving one horse which was to be left him *propter dignitatem militiae*, and have no usury (which in those dayes especially until the reign of E. 1. By Jews and a sort of foreiners called *Causfimi* was very oppressive and intollerable) run upon them for their fathers Debts whilst they were wardship.

Besides many other great priviledges belonging to Knights & Gentry (the original of many of whom was antiently by Arms and military service) allowed them by our Laws of *England*, as well as by the Civil Law and Law of Nations, as to bear Arms, make Images, and Statues of their Ancestors, and by the Civil Law a preheminance that more credence should be given by a Judge to the oath of ^{(u) Bartolus} *de testibus* two Gentlemen, produced as Witnesses, than to a multitude of ungentle persons, ought to be preferred to Offices before the ignoble

in aulso enim presumitur pro nobilitate ad officia regenda and honoured in the attire and apparel of their bodies as to wear Silks and purple colours and *ex consuetudine non suspenduntur sed decapitantur* are not when they are to suffer death for offences criminal, used to be hanged but beheaded, with many other privileges not here enumerated, which our common people of *England* in their abundance of freedom have too much forgotten.

Were so much respected here in the reign of *H. 2.* saith the eminently learned *Mr. Selden* as *one was fined one hundred pounds* (which in those days of more honesty and less mony, was a great sum of mony) *for striking a* (x) *Knight and another forty Marks*, because he was present when he was compelled to swear that he would not complain of the injury done unto him, the grand Assize in a writ of right which is one of the highest Trials by Jury and Oath in the Law of *England* is to be chosen by Knights and out of Knights & a Baron in a Jury for or against him, may challenge the Pannel if one Knight at the least were not returned of the Jury, if a Ribaud or Russian stroke a Knight without cause he was to loose the hand that struck him, Kings have Knighted their eldest Sols, and sometimes sent them to neighbour Kings to receive that Honour, and Barons, and Earls have taken it for an addition of Honour, and not any lessening to be knighted.

And had no cause at all to dislike such military

(x) *Mr. John Ferrie glory if generosity.* 78.

(x) *Selden tit. hon.* 783. 784. *rot. Mag.* 9 *H. 2.* 39 *E. 3* *Bracton Chap. de appell de mayhems.*

ry Tenures, which were not called vassalage, as Common People may now mistake the word, but from *vassus* or *Cliens qui pro beneficio accepto fidem suam auctori beneficii obligat* or from *Gesell*, a German word which signifieth *Socius* or *Commilito*, a fellow Souldier, the name and profession reason and cause of it being so honourable and worthy.

Or to deem them to be burthens which were at the first intended and taken to be as gifts and favours, which none of the sons of men, who are Masters of any sense or reason do use to find fault with, but may well allow them to be very far distant from Slavery, when as Servitude is properly, *quoniam quod acquiritur servo acquiritur Domino* when that which is gained or acquired by the servant is justly and properly the Lords, and a freeman is contra-distinguished by *quod acquirit, sibi acquirit*, in that which he gaineth is his own, or hath a property in it and that among the Southern Nations (a more gentle and merciful bondage being paternd by that of *Abraham* and his successors the Patriarchs and allowed by the rules and government of God,) *dura erat servitus Dominorum imperia gravia*, service or the condition of Servants was hard, and the severity of Masters great, who had *potestatem vite & necis*, power of life and death over their Servants who having nothing which they could call their own, but their misery, were put to maintain their Masters

our of their labours and enduring *vilissima et miserrima ministeria*, all manner of Slave-ries, *ab omni Militia arcebantur* were not suffered to know or have the use of Arms, *apud Boreales tamen gentes justior fuit semper servitus et clementior*, but amongst the Northern Nations there was a more just and gentle usage of their Servants for that they did divide their Lands & Conquests amongst their Souldiers and Servants *pactionibus interpolitis inter Dominum et servientem de mutua Tutela* upon certain agreements betwixt them for mutual defence.

Which made our *English* as well as other Nations abundantly contented with it as may appear by the acquiescence of them and the *Normans*, under the *Norman* and next succeeding Kings, and of *Edward* the Confessors Laws, and other *English* customs retaining them, the reckoning of it amongst their liberties, fighting for them, and adventuring their lives and all that they had at the making of (2) *Magna Charta*, and in the Barons wars, wherein those great spirits, as Mr. *Robert Hill* saith, so impatient of tyranny, did never so much as call in question that great and antient prerogative, of their Kings or except against Tenures, escheage, releifs, and other moderate and due incidents thereof.

(2) M. S.
Mr. Rob. Hill
concerning Te-
nures.

(a) 52 H. 3.
Stat. Marle-
bridge.

The care taken in the Parliament of (a) 52 H. 3. to prevent the deceiving of the Lords of their wardships by fraudulent conveyances

veyances; or Leases, of 18 E. 1. 10. in the making of the statute of *Quia* (b) *emptores terrarum*, that the Feoffees or Purchasers of Lands holden of mesne, Lords should hold by such services and Customs as the Feoffor did hold the Registering and Survey of Knights Fees by H. 2. H. 3. E. 1. E. 3. and H. 6. Escuage Aydes and Assesments in Parliament and the *Marshals* Rolls in time of War and necessity.

The esteem antiently held of the benefits and liberties accrewed by them inso- much as many have by leave of their Lords changed their Socage Tenures into Knights service, and thought themselves enfranchised thereby.

The value put upon them by the Commons of England in the Parliament of 6. H. 4. when they petitioned the King in that Parliament, that all Feoffments of Lands and Tenements holden by Knight service, and done by *Collusion* expressed in the Statute of *Marlbridge* might upon proof thereof be utterly void.

The opinion of Chief Justice *Fortescue* in the reign of H. 6. in his Book *de laudibus legum Angliæ* commending them as most necessary as well for the Common-wealth, as for those and their Heirs who held their Land by such Tenures.

The retaining of it by the Germans who did as most of the Northern Nations, saith *Bodin*, *libertatem spirare*, only busie themselves

selves to gain and keep their liberty and from the time of their greatest freedom to this present, and now also, could never tell how to find any fault with them.

Their Princes, Electors of the Empire, and the Imperial Cities, or Hanse townes, who take themselves to be as free as their name of freedom or liberty doth import, not at this day disdaining or repining at them, & the *Switzers* in their greatest thoughts of freedom, taking their holding of the Empire in *Capite* to be no abatement of it.

The use of them by the antient Earles and Governours of *Holland, Zealand, and west-friezland* who having been very successful in their Wars without the use of *Tenures in Capite* or knights service, but finding that *ipsa virtus amara alioqui per se atq; aspera præmiis excitanda videretur simul uti fisco, ac Reipublicæ consuleretur*, saith *Neostadius*, that the hardship of vertue needed to be sweetened with some rewards, & that the old custom of the *Longobards* in creating, and reserving *Tenures in Capite*, and by knights service, would be not only a saving of Charges to their Treasury, but a good, and benefit to their Provinces or Commonwealth, did create and erect such or the like *Tenures*.

And to this day by the *Scotish* Nation in a time, and at the instant of their late obtaining (if they could be thankful for them) of all manner of liberties and freedom, do sufficiently evince them to be as far from Slavery as they are always necessary.

Where-

Cornel Neostad. de Feudis
juris scripti
Hollandici,
west Frisicique
successione ca.
2. 4. et 5.

Wherein, if the primitive purpose and institution of Tenures in *capite* knight service and *Socage* be rightly considered, every man may without any violence or Argument used to his reason or Judgment, if self-conceitedness and obstinacy doe not choke or disturb his Intellectuals; Easily conclude, whether, if it were now put to his Choice, he would not rather take Land by a Service or Condition, only to go to warr with the King, or his mesne Lord, when Wars shall happen, which in a Common course of accidents may happen, but once or not at all in his life time, & then not tarry with him above forty days or less, according to his proportion of Fee or Land holden, & to have escuage of his own Tenants, if they shall refuse to go also in person with him, and to have his heir, if he chanced to die which in times of less Luxury happened not so often, & but once perhaps in three or four descents, to be left in his minority to be better educated than he could have been in his life time, married without disparagement and himself as well as his own & Childrens estates protected.

Or accept of a Mannor freely granted him, to hold of the King, by an honourable service of grand Serjeanty.

Then to hold in Socage and be tyed to do yearly and oftner some part of Husbandry, or drudgery upon his Lords Land for nothing, or pay an annual Rent, besides many other servile payments & duties as for Rent Oats, rent Timber, rent Wood, Malt, rent Hony, rent for fishing, & liberty to Plow, at certain seasons and the like.

And

(b) Rot.
Part. 1 R. 2.
n. 16.

And if they had been esteemed, or taken to be a bondage the *h* Commons of *Eng.* certainly in the Parliament of 1 R. 2. Would not by their Speaker have commended the Feats of Chivalry, & shewed to the King that thereby the people of England were of all Nations renowned, and how by the decay thereof the Honour of the Realm was, and would daily decrease. Or in (i) 9 H. 4. Petitioned the King, that upon seisure of the Lands of such as be, or should be attainted, or grants of such Lands by the King, the services therefore due to other Lords might thereupon be reserved.

(i) Rot.
Part. 9 H.
n. 46.

The good and original benefit whereof derived to the Tenant from the King, or *mesne* Lord that first gave the Lands, and the consideration, that by the taking of that away, every one was in all justice & equity to be restored to his primitive propriety and that which was his own, and so to reduce the Lands to the Heirs of those that at first gave them restraining them might be in all probability the reason that not only *Capite*, and Knight service Tenures, but Copyhold & other Tenures and estates also having as much or more preference or fancy of servitude in them, were never so much as petitioned against in Parliament to be utterly taken away.

Some instance whereof may be had in that of Villinage which being the heaviest and most servile of all kind of Tenures (though some thousand Families in this Kingdom (there being antiently some Tenants in villinage belonging almost to every Mannor) by de-

desuetude & expiration of that course of Tenures, now esteeming themselves nothing less were never in any Parliament desired to be abolished. *Brañon & Fleta*, & other antient Authors in our English Laws alleging it to be *de jure Gentium* and that *nihil detrahbat libertati* is not to be reckon'd a servitude, much less surely then are Tenures in Capite and Knight service, which the learned *Grotius* in the utmost that he could in his Book *de antiquitate reipublicæ Batavicæ*, alleage for the freedom and independency of the *Hollanders*, though he could not deny but that the *German Emperours* did claim them to hold in vassalage, or as a Feiff of the Empire, will not allow to be any derogation from their liberty, but concludes, *quod etsi optinerent non eo desinerent Hollandi esse liberi, cum ut Proculus egregie demonstrat nec Clientes liberi esse desinant, quia Patronis dignitate pares non sunt, unde liberi feudi orta est appellatio*, That if it should be granted it would make the *Hollanders* not to be free, when as *Proculus* very well demonstrateth ^{that is} Clients (or vassals) did not cease to be free because they are not equall to their *Patrons* in dignity, whence the name or Term of *franck Fee* was derived, and *Sr. Henry Spelman* saith, *quemadmodum igitur omnibus non licuit feudum dare, ita nec omnibus accipere*, as it was not lawful for every one to give lands to hold of him, so it was not allowed to every one to take, *prohibentur*

(k) Hugo Grotius de antiquitate Reipublicæ Batavicæ edit an. 1630. 53. L. non dubito ff. de Captivis.

hibentur enim ignobiles servilisq; conditionis homines (et quidem juxta morem Heroicis seculis receptum) munera subire militaria, for ignoble and men of servile condition according to the usage of Heroick times, were forbid to attempt military Offices, and Employments, as may be evidenced also in those antient Customs and usages of those grand & eminent Commonwealths of *Rome*, and *Athens*, in the latter of which notwithstanding the opinion of those who deny the use of Tenures by military service, to have been in *Greece* before the time of *Constantine Porphyrogeneta*, it appears that *Solon* had long before made a second classis or degree of such as could yearly dispend three hundred Bushels of Corn, & other liquid fruits, & were able to find a Horse of service & called them Knights, *Soli igitur* faith judicious Spelman, *nobiles feudorum susceptibiles erant quod præ-rusticis et ignobilibus longe agiliores habiti sunt ad tractanda arma regendamque militiam*. And therefore the Nobility and Gentry were only capable of such Fees or Tenures in regard that they were more agile and fitter for the use of Arms and military Government and Order, and ~~was~~^{were} therefore called by the *French* heritages *nobles*, et *liberis et ingenuis solummodo competunt*, a noble inheritance, and only belonged to men that were free born and of rank and quality.

And were no longer ago than in *Anno Dom. 1637*. in the argument of the case of the Ship-mony in the *Exchequer* Chamber,
so

(1) Sigonius
de antiquo ju-
re Civium Rom.
54. 97. et de
Repub. Athen.
47. 4. Plu-
tarch in vita
Solonis.
(m) Perionius
de Rom. et
Græc. Magi-
strat.

so little thought to be a Slavery to the people, or any unjust or illegal prerogative of the Kings, as Mr, *Oliver*, *St. John*, (none of the reverend and learned Judges of *England* then contradicting it) alleaged them to be for the defence of the *Realm*, and that they were not *ex prohibitione hominis*, not of mans provision, but *ex provisione legis*, ordained by Law, and that the King was to have the benefit that accrued by them with *Wardships* *primæ seisin* *Licences of Alienation* and *Reliefs*, as well to defend his Kingdom, as to educate his *Wards*.

Nor can they be accounted to be a Bondage or Slavery; unless we should fancy (which would like a dream also vanish , when men shall awake into their better senses and reason) that those ornaments in peace and strength in time of war, which have been for so many ages and Centuries since King *Inas* time, which was in an. 721 now above 940 years agoe (and may have beene long before that) ever accounted to be harmlesse and unblameable, and in King *Edgars* Time, by a Charter made by him unto *Oswald* Bishop of *Worcester* , said to be *constitutione antiquorum temporum* , of antient time before the date of that Charter , were an oppression, that all rankes and sorts of the People should endure a slavery and not know nor feel it, nor any of the contemporary writers, antient or modern take notice of it, that the Peers of this Kingdom should be in Slavery, and not know or believe it ; The

(n) Ockam
cap. que per
solam consue-
tudinem &c.
& Coke 1 part.
instit. cap. 5.
Sect. 117.

The gentry of the Kingdom should be as worshipful Slaves, and not understand or perceive it; And the Commons of the Kingdom what kind of Slaves it should please any, without any cause, to stile them; That Honours, Gifts, and Rewards, Protection, Liberties, Privileges, and Favours, to live well and happily of free gift and without any money paid for the purchase, should be called a Bondage, when as a Tenure in Socage, *ut (n) in condemnatos ultrices manus mittant, ut alios suspendio alios membrorum detruncatione, vel alijs modis juxta quantitatem delicti puniat*; To be an Hangman or Executioner of such as were condemned to suffer death or any loss of Members according to the nature of their offences, could neither be parted with, or taken to be any thing but a benefit.

And that a claim was made by one that held Lands in the Isle of Silly, to be the Executioner of Felons which there was then usually done by letting every one of them down in a Basket, from a steep Rock, with the provision only of two Loaves of Barly bread, and a pot of water to expect as they hung the mercy of the Sea, when the Tide should bring it in.

And that those which held by the easy and no dishonourable Tenures of being Tenants in Capite, and Knight-service, should as Mr. Robert Hill a learned and judicious Antiquary in the beginning of the Reign of King James well observeth, rack and lease their

their Lands to their under Tenants, at the highest Rents and Rates, and neither they nor their Tenants call that a slavery which (though none at all) may seem to be a far greater burden than any Tenant in Capite, and by Knight service which holdeth of the King, or any Tenant that holdeth by knight service of a *mesne* Lord endureth when as the one is always more like to have the bag and burden, which he must pay for, laid upon him in his Bargain, then the other who is only to welcom a gift or favour, for which he payeth but a grateful acknowledgment.

Nor is there in that which is now so much complained of, and supposed to be a Grievance, which, (whatever it be, except that which may as to some particular cases happen to the best and most refined Constitutions, and the management thereof) hath only been by the fault of some people, who to be unfaithful, and deceive the King in his Wardships, or other Duties, have some times cast themselves into the trouble and extremities which were justly put upon them for concealments of Wardships, or making fraudulent conveyances to defeat the just Rights of the King, or their superiour Lords, or by some exorbitances, or multiplications of Fees since the erecting of the Court of *wards* and *Liveries* by an Act of Parliament in 32 H. 8. any *malum in se*, original innate or intrinsical cause of evil or inconvenience in them, *Active* or *Proxime* merely arising from the Nature or Constitution

of Tenures in Capite and Knight Service.
To be found upon the most severe examinations and inquiries which may be made of them, nor are they so large in their number as to extend or spread themselves into an universality of grievances, nor were or are any publick or extraordinary Grievance.

CHAP.



CHAP. III.

Tenures of Lands in Capite and by Knight service, are not so many in number as is supposed, nor were, or are any publick or general grievance.

FOR the Number of Knights Fees which were holden in Capite and by Knight service of the King, have by tract of time Alienations Purprestures, Assarts, incroachments, deafforestations, and concealments, been exceedingly lessened and decreased. 28015 which were said to be parcel of the 60215 knights Fees created by *william* the Conquerour, being granted afterwards by him or his successors to Monasteries Abbyes, Priories, and religious houses, or parcelled into Glebes or other endowments belonging to, Cathedrals, Churches, and Chantries, or given away in *Mortmain*, and very many quillets and parcels of Land after the dissolution of the Abbyes, and religious houses, not exceeding the yearly value of forty shillings. And now far exceeding that value granted in Socage by King *Henry* the eighth, besides many

many other great quantities of dissolved Abbeys and religious Lands granted to be holden in Socage. Much of the Abbye Lands retained in the Crown or Kings hands, as part of the Royal Patrimony, and many Mannors and great quantities of Land granted to divers of the Nobility, gentry, and others, with reservations many times of Tenures of but half a knights Fee, when that which was granted would after the old rate or proportion of knights Fees have been three or four knights Fees or more, and sometimes as much or more then that (no rule at all as touching the proportions of Lands or Tenures, being then in such an abundance of Land and Revenue as by the dissolution of the Abbeys came into the Kings hands or disposing at all kept) which might have made many knights Fees were not seldom granted with a Tenure, only of a twentieth or fortieth, and sometimes an hundredth part of a knights Fee, whereby the knights Fees which were granted to the Religious houses being almost half of the number which *William* the Conquerour is said at the first to have created, might well decrease into a smaller number and many of those which diverse of the Nobility and great men held of the King, as those of *Ferrers*, Earl of *Darby* and the Earls of *Chester*, those that came by marriage as by one of the Daughters and Heirs of *Bohun* Earl of *Hereford*, and *Essex*, by escheat, as the Earldome of *Clare*, or by Resumptions, Dissolution of Priors, Aliens, Knights, of
 St.

St. *John of Hierusalem* Attainders, Escheats or Forfeitures, which in the Barons Wars were very many, or holden as of honors &c. Merging and devolving into the Royal Revenue, did take of very many of the number, especially since the making of the Act of Parliament in 1 E. 6. cap. 4. that there should be no Tenure in Capite of the King by reason of Lands coming to the hands of him or any of his Progenitors, Heirs, or Successors, by Attainders of Treason, misprision of Treason Premunires, dissolution or surrender of Religious Houses, And not a few of the *Mesne* Lords and those which held also of the King did make as great an abatement in their Tenures, by releasing and discharging their services before the making of the Statute of *Quia emptores terrarum*, granting Lands in Socage, Franck Almoigne, or by copy of Court Roll, and casting out a great part of their Lands, as well as the Kings of *England* did, into Forrests, Chases, & many vast Commons which they laid out in Charity, for the good of the poorer sort of people, infranchising of a great number of Copyholders, selling & giving away many and great parcels of their demesne Lands, disparking of many of their Parks, & deviding them into many Tenements to be holden in Socage, endowing of Churches, Chantries, religious houses, & the like, the forrests, Chases and Commons of the Kingdom making
 very

very near a tenth part in ten of the Lands of the Kingdom, and the Socage Lands, Burgage, Franck Almoigne, and Copyholds more than two parts in three of all the remainder of the Lands of the Kingdom. So as it is not therefore improbable but that there are now not above ten thousand, or at most, a fourth part of those 62015. Knights Fees to be found.

And that in antient and former times either by reason that great quantities of Mannors and Lands, as much sometimes as amounted to a third part of a Shire or County were in the Nobilities or great mens possessions, some of whom held of the King a 100 or more Mannors, and had as many Knights Fees holden of them, besides some Castles, Forrests, Parks, and Chases, or that the two *Escheators* which were many times all that were in *England*, the one on this side, the other beyond *Trent*, did not nor could not so carefully look to the death of the Kings Tenants, which the Statute of 14 E. 3. ca. 8. complaineth of or that the smaller sort of Lands *in Capite*, or mean mens estates were not so much looked after (And yet the old Records of the Kingdome do speak a great deal of care, and looking after every part of the Kings Revenew,) the not mentioning in deeds or conveyances of whom or how the Land was holden, the more frequent use of *Escoffements* with

with Livery & seisin in former times (which being not Inrolled, hindred or obstructed, the vigilance of the *Escheators* and *Feodaries*, their sleepiness in permitting where any one Mannor or parcel was holden *in Capite*, many other Mannors or Lands of the same Tenure to be found in the same Inquisition by an *Ignoramus* of the Tenure & services & the craft & industry of many, if not most men to evade and elude, as much as they can, the Law or any Acts of Parliament, though when they are sometimes caught they dearly pay for it. Or by some other cause or reason not yet appearing many of the said Knights Fees are lost and never to be discovered, the Offices *post mortem* now extant in the Tower of *London*, being in the last year of the reign of King *H. 3.* in the beginning of whose reign they first began to be regularly found, and recorded but --- 187. *in an. 35. E. 1. --- 153. in an. 20 E. 2. --- 52.* & of the succeeding Kings untill the end of *E. 4.* when such Tenures were most valued and respected, are in every year but few in number, sometimes less than 200, and many times not above 300, in the most plentiful years of those times. And of the Knights Fees & Lands holden *in Capite* and by Knight service which are now to be discovered in the greatest diligence of *Escheators* & their better looking unto them in this last Century of years, where there hath been an *Escheator* for the most part in every County

to look to the Tenures and Wardships, there will not upon exact search thereof appear to be *in an. 21 Jac. Regis* any more than 71, 22 *Jac. 73* -- in 2 *Car. Regis primi* -- 112 in 3 *Car. Regis primi* -- 85. Custodies & wardships granted, under the great Seal of England which in Wardships of any Bulk or concernment doe most commonly pass that way leaving those of ordinary and lesser value to passe only under the Seal, of the Court of Wards and Liveries & *in an. 10 Car. primi.* not above --- 450 offices *post mortem* some of which did only entitle the King to a Livery, are to be found filed & returned; & *in an. 11 Car. Regis* not above; 580 which may give us some estimate of the small number which now remains of that huge number which former ages & writers talked of, & that after that rate if there be 10000 Knights Fees holden *in Capite* there is scarce a twentieth part falls one year with another to make any profit or advantage to the King, by Wardships, Marriage, Reliefs, primer seisin &c.

Nor are there unless by some unluckiness or accidents commonly above one in every three or four discent in a Family, holding *in Capite*, which do die and leave their Heirs in minority. & then also it is either more or less chargeable to the Family, as the Males shall be nearer unto, or more remote from their full age of 21, or the Females to their age of 16, some of the supposed Inconveniences being prevented by an earlier marriage of the
Inhe-

Inheritrixes, or the Kings giving the honour of Knighthood to some of the Males in their minoritie, which dispenseth with the value of their marriages.

And yet those Tenures: Wardships, and incidents thereunto, though so anient, legal, and innocent in their use and institution, were not without the watchful eye and care of Parliaments, to prevent or pluck up any Grievances, which like weeds in the best of Gardens, or *per accidens*, might annoy or blemish those fair flowers of the Crown Imperial, as that of 9 H. 3---that the Tenant, by Knight Service, *being at his full age when his Ancestor dyeth shall have his inheritance by the old relief according to the old custom of the Fees the Statute of Merton in anno 9 H. 3 ca---2. and 3 E. 1 ca--21. the Kings Tenant being at full age shall pay according to the old custom that is to say five pounds for a Knights Fee or less according to proportion ca--4 and 5. The Keeper of the Lands of the Heir within age shall not take of the Lands of the Heir but reasonable issues customs and services, without distruction and wast of his men and goods, shall keep up the Houses, Parks, Warrens, Ponds, Mills, and other things pertaining to the Lands, with the issues of the Lands, and deliver the Lands to the Heir when he cometh of full age stored with Plowes and all other things, at least as he recieved them ca--7. A widdow shall have her Marriage inheritance and tarry in the chief house of her Husband forty days after her Husbands death with reasonable Estovers within which*

time her Dowry shall be assigned, if it were not assigned before,

The Wards shall not be married to Villains or other, as Burgeses where they be disparaged or within the age of fourteen years or such age as they cannot consent to mariage, and if they do and their Friends complain thereof, the Lord shall loose the Wardship, and all the profits that thereof shall be taken, and they shall be converted to the use of the Heirs, being within age after the disposition and provision of their Friends for the shame done unto them, ^{25 H. 3. 6.} a Writ of Mortd' auncester shall be allowed to the Heir with dammages against the Lord that keepeth his Lands after he is of full age. Heirs within age shall not loose their Inheritance by the neglect or wilfulnesse of their Guardians, 52 H. 3. cap 7 and 16. The Lord shall not after the age of fourteen years keep a Female unmarried more than two years after, and if he do not by that time marry her she shall have an Action to recover her Inheritance, without giving any thing for her Wardship or Inheritance, 3 E. 1 ca. 22. A Writ of Novel disseisin shall be awarded against any Escheator that by colour of his Office shall disseise any of his freehold with double dammages, and to be grievously amerced Westmr. 1. 3. E. 1 cap. 24. In aid to make the Son of the Lord a Knight or to marry the Daughter, there shall be taken but twenty shillings for a whole Knights Fee, and after that rate proportionably ibm. 35. If the Guardian maketh a Feoffment of the Wards Lands, he shall have a Writ of Novel disseisin, and upon recovery the Seisin shall be delivered to the next friend, and the
Guardi-

Guardian shall loose the Wardship 3. E. 1. ca. 47. *U-*
surpation of a Church during the minority of the
Heir shall not prejudice him, 13 E. 1. 5. *Ad-*
measurement of Dower shall be granted to a Guar-
dian, and the Heir shall not be barred by the suite
of the Guardian, if there be collusion, 13 E. 1. 7.
Next Friends shall be permitted to sue if the Heir
be eloynd, 13 E. 1. 15. *If part of the Lands be sold*
the services shall be apportioned Westmr. 3. 2.
Escheators shall commit no waste in Wards Lands,
 28 E. 1. 18. *If Lands without cause be seised by the*
Escheator, the Issues and Mesne profits shall be re-
stored, 21 E. 1. 19. *where it is found by Inquest*
that Lands are not holden of the King, the Eschea-
tor shall without delay return the possession Stat
de Escheatoribus 29 E. 1. *Escheators shall have*
sufficient in the places where they Minister, to an-
swer the King and his People if any shall complain,
 4 E. 3. 9. 5 E. 3. 4. *Shall be chosen by the Chance-*
lour, Treasurer, and chief Baron taking unto them
the chief Justices of the one bench and the other if
they be present and no Escheator shall tarry in his
office above a year 14 E. 3. 8. *A Ward shall have*
an action of waste against his Guardian, and Eschea-
tors shall make no waste in the Lands of the Kings
wards 14 E. 3. 13. *Aid to make the Kings Son*
a Knight or to marry his Daughter, shall be in no
other manner then according to the Statute thereof
formerly made 25 E. 3. 11. *Traverses of offices*
found before Escheators upon dyings seised or alien-
ations without licence shall be tried in the Kings
Bench 34 E. 3. 14. *An Escheator shall have no*
Fee of wood, fish, or venison, out of the wards
Lands

Lands 38 E. 3 13. *An Idempnitate nominis*
shall be granted of another mans Lands seised by an
Escheator 37 E 3. 2. *No Escheator shall be made*
unless he haue twenty pounds Land per annum or
more in Fee and they shall execute their offices in
proper person, ^{42 E. 3.} *the Chancellor shall make Escheators*
without any Gift or Brokage and shall make them
of the most lawful men and sufficient 12 R. 2. 2.
An Escheator or Commissioner shall take no Inquest,
but by such persons as shall be returned by the Sher-
iff they shall return the offices found before them and
the Lands shall be let to farm to him that tendereth
a Traverse to the office 8 H. 6 16. *Inquisitions*
shall be taken by Escheators in good Towns and open
places and they shall not take above forty Shillings
for finding an office under the penalty of forty
pounds 23 H. 6. 17. *Women at the age of fourteen*
years at the time of the death of their Ancestors
without question or difficulty shall have Livery of
their Lands 39 H. 6. 2. *No office shall be returned*
into any of the Kings Courts by any Escheator, or
Commissioner, but which is found by a Jury, and
none to be an Escheator who hath not forty markes
per annum, above all reprises, the Jurors to
have Land of the yearly value of forty Shillings
within the Shire. the Forman of the Jury shall keep
the Counter part of the Inquisition and the Eschea-
tor must receive the Inquisition found by the Jury as
also the offices or Inquisitions shall be received in
the Chancery and Exchequer 1 H. 8 ca. 8. *Lands*
shall be let to farm to him that offereth to traverse
the office before the offices or Inquests returned, or
within three Months after 1 H. 8 ca. 10. *the re-*
spite of Homage of Lands not exceeding five
pounds

pounds per Annum, to be but eight pence the yearly value of Lands not exceeding twenty pounds per annum to be taken as it is found in the Inquisition, except it by examination otherwise appear to the Master of the wards, Surveyer, Attourney, or Receiver General, or three of them, or that it shall otherwise appear and be declared in any of the Kings Courts, No Escheator shall sit virtute officii where the Lands be five pounds per annum or above, the Escheator shall take for finding of an office not exceeding five pounds per annum but six Shillings, eight pence for his Fee, and for the writing of the office three Shillings four pence, for the charges of the Jury three Shillings and for the officers and Ministers of any Court that shall receive the same Record two Shillings upon pain of five pounds to the Escheator for every time so offending, the Master and Court shall have power to moderate any Fines or Recognisances 33 H. 8.

22. The Heir of Lands not exceeding five pounds per annum may sue his General Livery by warrant only out of the Court of wards although there be no Inquisition or office found or certified. The Interest of every lesser Tenant for Term of years Copyholder or other person having interest in any Lands found in any office or Inquisition shall be saved though they be not found by office. The Heir upon an estate probanda shall have an ouster le maines and the profits of his Lands from the time that he comes to age and if any office be untruely found, a Traverse shall be allowed or a Monstrans de Droit without being driven to any petition of right though the King be entitled by a double mat-

ter of Record. A Traverse to an office shall be allowed where a wrong Tenure is found, an ignoramus found of a Tenure shall not be taken to be any Tenure in Capite and upon a Traverse a Scire facias shall be awarded against the Kings Patentee 2 and 3 E 6. ca. 8.

And if there had been any certain or common grievances or so much as a likelihood of any to have risen or happened by such Tenures and benefits which many were the better for, and had no reason at all to find fault with & w^{ch}. many more were striving to deserve of the Kings of *England* & the Nobility & great men of this Kingdom, the Parliaments that have been ever since the 8th. year of the reign of *H.* 3. would not have made so many Acts of Parliament for their establishment, or tending to their preservation, & if we should believe (as it cannot be well denied) that Parliaments have been sometimes mistaken and enacted that, which they have afterwards thought fit to repeal. Yet it comes not within the virge or compass of any probability, that Parliaments where all grievances are most commonly represented, should for almost four hundred years together in a succession of many Kings & Parliaments, enact or continue grievances instead of remedies, & neither find those Tenures to be inconvenient, or not fit to be continued, or so much as complain of them, but as if they were blessings ^{or} a part of the well being of the Nation, not at once but at several times, in several ages, and several Generations,

rations, support and uphold them by after Laws, & constitutions, as, That no Freeman should from thence give nor sell any more of his lands, but so that of the residue of the lands the Lord of the fee may have the services due unto him which belong-
 ed to the Fee, Lands aliened in mortmaine shall ac-
 crew to the Lord of the Fee 9 H. 3. ca. 32. & 36. the
 Ward shall pay to the Lord of the Fee the value of
 his marriage, if he will not marry at the request of his
 Lord for the marriage of him that is within age, say
 the Statute & the makers thereof, of meer right
 pertaineth to the Lord of the Fee, 20. H. 3, cap.
 7. The Lord shall not pay a Fine for distraining
 his Tenant for Services and Customes, 52. H. 3,
 cap. 3. A fraudulent conveyance to defeat the
 Lord of his ward shall be void, cap. 6. The King
 shall have primer seisin, neither the heir nor any o-
 ther shall intrude into their Inheritance before he
 hath received it out of the Kings hands, as the same
 Inheritance was wont to be taken out of his hands,
 and his Ancestors in times past, if the lands be ac-
 customed to be in the Kings hands by Knight ser-
 vice, or Serjeanty, or right of Patronage, 52. H.
 3. cap. 16. If an heir marry within age without
 the consent of his Guardian before he be past the age
 of fourteen years it shall be done according as is con-
 tained in the statute of Merton, and of them that
 marry after that age without the consent of their
 Guardian, the Guardian shall have the double va-
 lue of their marriage, such as have withdrawn their
 marriage shall pay the full value to the Guardian
 for the trespass, and nevertheless the King shall

have like amends; And if the wards of malice or by evil council will not be married by their chief Lords where they shall not be disparaged, then the Lords may hold their lands and Inheritance until they have accomplished the age of an heir male, that is to wit, of twenty one years and further until they have taken the value of the marriage, 3 E. 1. 22.

A Tenant shall have a writ of mesne to acquit him of his services, and if the mesne come not he shall loose the service of his Tenant, 13 E. 1. 9. Priority of Feoffment shall make a title for wardship, cap. 16. the chief Lord shall have a Cessavit against the Tenant if he cease for two years to do his service writs of Ravishment de gard allowed to the Lord, and the Party offending, though he restore the ward unmarried, or pay for the marriage, shall nevertheless be punished by two years Imprisonment, 13 E. 1. 35.

The Feoffee shall hold his lands of the chief Lord and not of the Feoffor, 18 E. 1. Quia emptores

terrarum, A saving to the King of the ancient aydes due and accustomed, 25. E. 1. 6. The King

shall have the wardship of his Tenant which holdeth in chief & the marriage of the heir, primer seisin as-

signement of dower to the widdow, marriage of the women Tenants deviding their lands in Coparcene-

ry holden of him, and they which hold of him in Serjeanty shall pay a Fine at the Alienation, 17. E. 2. A

Free-man shall doe his homage to his Lord, 17. E. 2.

Knights Fees shall not pass in the Kings grants without special words 17 E. 2. 16. he shall be answered the mesne rates of Lands coming to him

by his Tenants death. 28. E. 3. 4. & where fundry of the Kings Tenants holding

of him immediately, as of his **Dutchy of Lancaster**, did by sundry Recoveries, Fines, and Feoffments in use, defeat the King of Wardships of Body and Lands. *It was Enacted that the King, and his Heirs, shall have the wardship and Custody of the Body and Lands of cestui que use, and if they be of full age, shall have relief, notwithstanding any such conveyance, and an exact provision made for writs to be granted upon the imbeciling of any such Heir, Rot. Parl. 22 E. 4. N. 16. & 17. The Lord of Cestui que use, now will being declared &c. shall have a writ of Right of ward for the Body and Land, and the Heir of Cestuique use being of full Age at the Death of his Auncestor shall pay a relief, 4 H. 7. 17. Avowry may be made by the Lord upon the land holden of him without naming his Tenant 21 H. 8. 19. And no grievance was thought to be in them at the time of the making of the Act of Parliament of 27 H. 8, 2. when as it was expressly provided by that Act, that Tenures in Capite should be reserved to the King of all mannors, lands, and hereditaments belonging to Monasteries & religious houses, which had lands, Tenements, and hereditaments not exceeding the clear yearly value of two hundred pounds, which he should afterwards grant for an estate of Inheritance; nor did the Parliament in the 31 year of the reign of that King, retract that good opinion which was formerly had of them, when enacting that the King and his heirs and Successors should be put in actual possession of all mannors, lands and hereditaments of any yearly value whatsoever belonging*

to *Monasteries*, they saved to the King, his heirs and Successors, all rents, services, and other duties, as if that Act had never been made; Nor in the Act of Parliament of 32 H. 8. cap. 46. For erection of the Court of wards and Liveries wherein it is acknowledged that *Tenures in Capite and wardships, with their incidents, did of right belong to the King in the right of the Imperial Crown* of this Realm; In the Act of Parliament of 32.H.8. And an explanation thereof in 34 and 35 H. 8. 5. giving power to those that held lands in Capite and by Knights service, to devise two parts thereof reserving to the King wardship, primer seisin, and Fines for alienation of the third part, and Fines for alienations of the Freehold, or Inheritance of the two parts. The Crown being secured of the Tenure of the two parts by the statute of Quia emptores terrarum. Nor at the making of the statutes of 35 H.8. 14. & 37 H.8.2. Whereby the King might reserve *Tenures in Socage or Capite at his will and pleasure upon grants of lands not exceeding the value of forty shillings per annum, belonging to religious houses. And that the Kings former right shall be saved notwithstanding any Traverse, & a remedy for the rents of the mesne Lords where the King hath the wardships*, 2 and 3 E. 6. cap. 8,

And those that held by such Tenures besides the care of so many Acts of Parliament, were not unhappy also in that provision of the Common Law, where it was an Article or inquiry in the Eyre if any Lord *novas levavit consuetudines*, had charged his Tenant
with

with any new Customes, if any Escheators or Subescheators had made any wast in the Wards Lands, or seised Lands which ought not to be seised. *Et omnes illi qui sentiunt se super hiis gravatos, & inde conqueri voluerint audiantur & fiat eis Justitia.* All that were grieved, were to be heard, (o) and have Justice done them and the Tenant had his remedy by a (p) writ of *ne injuste vexes*, where his Lord did *Indebita exigere servitia.*

(o) *Capita itineris in vet. magn. Charta 157. 158. & Coke 4. part institutes tit. Cur. Ward.*
(p) *Glanvil lib. 12. cap. 9 & 10 Register 4 & 59 Coke magna Charta cap. 10.*

And least any thing should but come within the suspicion of a Grievance, or that the power of the Court of Wards and Liveries, and the latitude which the Act of Parliament of 32 H. 8. had given it, (which was to be as fixed as the trust which was committed to it, should in the intervalls of Parliaments or seldomest Cases be any thing like to a burden or Inconvenience, the disposing and granting of wardships was by King James his Commission and instructions, under the great Seal of England in (q) an. 1622. *to the end that the people might stand assured, that he desired nothing more, than that their Children and their Lands which should fall unto him by reason of wardships might after their decease be committed to their nearest and truest friends, or to such as they by will or otherwise commit the charge unto upon such valuable considerations as are just and reasonable, that the Parents and Ancestors may depart in greater peace in hope of his*

(q) *instructions
ons King James
in Anno 1622.*

gra-

gracious favour ; their friends may see their children brought up in piety and learning , and may take such care as is fit for the preservation of their inheritance, if they will seek the same in time.

Ordered that no direction for the finding of any Office be given for the wardship of the body and lands of any Ward until the end of one moneth next after the death of the Wards Ancestor , but to the nearest and truest friends of the ward, or other person nominated by the Ancestor in the wards behalf , who may in the mean time become Suiters for the same , among whom choice may be made of the best and fittest.

No composition, agreement, or promise of any wardship or lease of Lands be made until the office be found, and then such of the friends to have preferment as tendred their Petitions within the moneth , they yeilding a reasonable composition.

The Master Attorney Surveyor, and other the Officers of the Court of Wards were to inform themselves as particularly as they might of the truth of the Wards estate, as well of his Inheritance, as of his Goods and Chattels, the estate of the deceased Ancestors, and of all other due circumstances considerable, to the end the Compositions might be such as might stand with (the Kings) reasonable profit, and the Ability of the Heirs estate.

No Escheator shall inforce any man to shew his evidence.

That all Leases of Wards lands (except in cases of concealment) be made with litle or no Fine,
and

and for the best improved yearly rent that shall be offered, consideration being had of the cautions aforesaid, that no recusant be admitted to compound or be assignee of any wardship.

That where it shall appear, that neither the King nor his progenitors, within the space of three-score years last past, enjoyed any benefit by Wardship, Livery, Primer seizin, Relief, Respect of Homage, Fines, or mesne rates of any lands, the Master and Council of the said Court, were authorized to remit and release all benefit and profit that might accrew to the King thereby; And in all cases where covenants were performed to deliver bonds, which were taken concerning the same.

And that upon consideration of circumstances, which may happen in assessing of Fines for the marriages, of the Wards and renting of their lands, either by reason of the broken estate of the deceased, want of provision for his wife, his great charge of Children unprovided for, infirmity or tenderneſſe of the heir, incertainty of the title, or greatneſſe of incumbrance upon the lands, they shall have liberty, as those or any other the like considerations shall offer themselves, to use that good discretion, and Conscience which shall be fit in mitigating or abating Fines or Rents to the relief of such necessities.

In pursuance whereof, and the course and usage of that Court as well be fore as after the said Instructions, Wardships, nor any Custody or Lease of the Wards or their Lands were not granted,

in any surprising or misinforming way; but by the care and deliberation of the Master and Council of the Court of Wards and Liveries, upon a full hearing and examination of all parties and pretend-ers, they to whom they were granted Covenanting by Indenture under their Hands and Seals with Bonds of great penalties to perform the same, *to educate the ward according to his degree and quality, preserve his lands and houses from waste, fell no Coppice, woods, grant no Copy-hold estates for lives, nor appoint any Steward to keep the Courts without licence, and to permit the feodary of the County where the land lieth yearly to survey, and superintend, the care thereof and had reasonable times of payment allowed them.*

And could not likely produce any grievances in the rates or assessing of Fines for marriages, or for rents reserved during the minority of the wards, or for primer seisin or any other Compositions, when as the Kings of *England* since the Raign of the unhappy R. 2. and the intermission of the Eyres and those strict enquiries which were formerly made of the frauds, or concealment of the Escheators or their Deputies in the businesse of Tenures, and Wardships, and their neglect or not improving of them, (most of those former Officers and those that trucked with them not doing that right which they ought to their Consciences and their Kings and Benefactors.

And

Have for some ages past been so willing to ease their people, or comply with their desires, as they have not regarded at all their own profit, or taken such a care as they might to retain those just powers which were incident or necessary to their Royal Government; but by leaving their bounty and kindness open to all the requests or designs of the people, have like tenderhearted parents given away much of their own support and sustenance, to gratify the blandishments, or necessities, of their Children, and not only emaciated, but dismembred, and quitted many of their Regal powers and just Prerogatives in their grants of Lands and Liberties, and thereby too much exhausted and abandoned the care of their own Revenue and Treasure, as may easily appear to any that shall take but a view of those many Regalities, Franchises, and Liberties, which (being to be as a *Sacrum patrimonium*, unalienable) have heretofore either been too liberally granted by the Kings Progenitors, of which *H. 3.* was very sensible in his answer to the Prior or Master of the Hospital of *St. Johns at Jerusalem*, (q) or not well looked after (q) *Daniel* in those Inroachments, and Usurpations, 168. which have been made upon them.

Or consider the very great cares and providence, as well as prudence, of former ages, in the Managing, Collecting, and Improving of the Kings Revenue in *England*, whe-

ther certain or casual. The strict Inquiries, & Orders, and the care of every thing which might make a profit, or prevent a damage which made some of the Kings of *England* to be so little wanting money, as King *Canutus*, as the Abby Book of *Ramsay* hath recorded it, (r) was able out of his *Hamper* or travelling Trunk, when he lodged at *Wesfington* in *Northamptonshire*, to lend the Bishop *Etherus* (who *sabita pulsus occasione*, had a great occasion to use it) good store of money.

And that in *William the Conquerors* time, and in the height of his plenty and prosperity, no repairs of Castles and Houses were made but upon account by Oath.

Inquiries were made by some of the succeeding Kings and (s) their Officers after windfallen trees & a few trees were not given, nor *Cheverons* nor Rasters allowed towards the repairing of a Grange, or Farm, without the warrant of the great Seal of *England*. Judges commanded to look to the Fines imposed in the *Eyres* or Circuits, and in all the *Eyres* & (t) Circuits, a Clark who kept particular Rolles or Duplicates of the Judges Rolles, or Records of their Proceedings was for the King especially appointed, and attended, and as smal a sum as 2*d.* accompted for a *Deodand*.

Nor was any thing as far as Humane vigilance, Industry, or Providence, might foresee, prevent,

(r) Lib. Ca-
nobii de Ram-
sey 2. B. 114.
et Spelmanus
glossar. in ver-
bo *Fiscus*.

(s) claus.
31. H. 3.

(t) Placit. co-
rone 3 E. 3.
Rot. 58.

prevent, or remedy, suffered to be done or continue, that might endamage or lessen the Royal Revenue, which King *Henry* the 3^d. could so watch over as the Court of *Exchequer* hath sometimes seen him there sitting, and taking his own accompts.

Which kinds of wariness, and care, have been so much disused or neglected by many of his Successors, as though by time and the course thereof, the alteration of the value of mony & Coyne from twenty pence the ounce to five shillings & a peny, the ounce, of Silver, the prizes & rates of Provision and Commodities to be bought with it almost yearly raised and inhaunced, and the more chargeable way of living which followed thereupon; might have put them in mind to have given lesse, or demanded more, for what was justly their own, when as in the 14th. year of the Reign of King *Edward* the 3^d. 40 shillings *per diem*, was thought by the King and his Council to be a royal and sufficient expence for *Edward Baliol* King of Scots & his train, whilst he tarried (u) at *London*, and 6s. (u) 46 E. 3
par. Parl. 2 in
20 & 34.
per diem when he travailed. And in the reign of King *H. 6*. Meadow-ground in (w) *Leicester-*
shire was valued but at eight pence an Acre (w) 23 H. 6.
Escaet,
and that as appears by a Remonstrance made in Parliament in or about the 11th. year of the reign of that King, who was King in possession of *France*, as well as of *England*, now not above 227 years agoe, he did right worshipfully as the Record saith, maintain
H 2 the

the charge of his household with *sixteen thousand pounds Sterling per annum*, and could not then defray it with less than Twenty four thousand pounds *per annum*, which now cannot well be done under ten times as much, when an Annuity or Pension of ten pounds or twenty marks *per annum*, which was then sufficient for the Kings better sort of Servants, is now scarce enough for a Foot-man and the most ordinary sort of inferior Servants.

Did notwithstanding not lessen their bounty, or raise the Rents or Rates of their Revenues, but permitted their Escheators in matters of Tenures and Wardships, to adhere unto their former courses, and find the value of the Lands in their Offices or Inquisitions, at the old or small yearly values, the rule which the Escheators took for the finding of the values of the Lands upon Inquisitions, being at the highest but the tenth part of the true yearly value (which was the guide also for the rate of the primer seissins where they were to be taken) & as much lower as the unwarrantable kindness of too many of those which were trusted, and should have looked better unto it could perswade them. The *Feodaries* also upon their Surveys seldom raising the yearly value to more than about a third part of such a gentle value as ne should be entreated to adde to that which the Jurors and Escheators had friendly found it.

So

So as sometimes a Mannor of above one hundred pounds *per annum* was found but at thirteen shillings four pence *per annum*, and other times if mingled with other lands, of a great yearly value at no more than forty shillings *per annum*.

And no longer agoe than in the reign of King *Charles* the first, above one thousand pounds *per annum*, hath been found to be but of the yearly value of twenty Marks. And an Estate ---- consisting of very few Mannors, and as few Coppyholders, but mit in Farms and demesnes upon an improved and almost racked Rent worth six thousand pounds *per annum*, found at no greater yearly value than one hundred eighty three pounds eleven shillings, which is lesse than the thirtieth part, though the Escheators with Knights and Gentlemen, and sometimes men of greater mark and quality were Commissioners, the Jurors made up sometimes of Gentlemen, and most commonly of substantial Freeholders, and all of them, such as might better have understood an Oath, who taking an ill custom to be warrant enough for a bad Conscience, did when they were by the Writto enquire upon their Oaths *de vero Anno valore*, of the true yearly value of the Lands, think that they did honestly and well enough to find it at a very small or low yearly value, because they were sure it was well worth so much.

Neither were the payments of respite of
Homage

Homage so troublesome, as to make a complaint of when as by an Order made in 13 *Eliz.* by virtue of her privy Seal by the Lord *Burghley* Lord Treasurer and the Chancellour and Barons of the Exchequer, which the Lords and Commons of *England in primo Jacobi*, did pray and procure to be enacted by Parliament. It was after such an easy and old fashioned rate or value of the Lands, as it was but in every fifth Term to be paid in the Exchequer by a rate and apportionment, and might have been saved by an actual doing of Homage as was antiently used to be done upon their Livery, and first coming to their Lands and their respit of Homage ~~and~~ howsoever may as well be taken to be a favour as they do of their mesne Lords or one to another, in paying three shillings four pence *per annum* as a quit Rent for respit of suit of Court.

And that it was therein and thereupon also enacted, that no proceſſe *ad faciendum Homagium*, or *fidelitatem*, *seire facias Capias* or *distresse*, should issue out of the Exchequer, but upon a good ground.

And that the Clerks of the Treasurers Remembrancer in the Exchequer, shall pay all issues that any shall loose after he hath paid ordinary Fine for respit of Homage, and so may be proved by any of their Acquittances.

Neither were the Rates for Licences of Alienations

alienations burdensome when they were paid by the rich and improving and most commonly advantage taking purchasers or by the gainers by the settlement or alteration of Lands or Estates, and are in passing Fines not usually above a thirtieth part, and so after an antient & un-improved small yearly value, at *six thousand pounds per annum*, hath with in three years last past paid but a little above one hundred and twenty pounds for a Composition or Licence of Alienation.

Which with other of the Kings casual profits by a long remissness and usage of some ages past whilst the people to save their own Purses, and favour one another choosing the open Rode and track and following the precedents and too common use of under valuations, which hath ever been; and is the great obstructor and diminisher of royal Revenues, would as much as they could never forsake or go much out of it as is visible enough in the Escuages upon Knights Fees and valuations in several ages & Kings reigns in that of a tenth in 36 H. 3. demanded in Parliament to be paid out of all the Ecclesiastical Revenues after the full yearly value, where *ad jun-* (x) *Mat. Paris*
De magna rebo offensionis, as (x) *Mathew* 842.
Paris tells us it was taken the worse in regard it was required to be taxed *non secundum estimationem pristinam sed secundum, estimationem novam ad inquisitionem strictissimam* not according to the former estimation or rates

(y) *Mat. Paris*
1002

rates, but a new and most severe valuation, & was not at all granted. And in a Parliament at *Bury*, in 5 *H. 3.* the Clergy denyed to be rated by the Laity or *Justa & alta taxatione* By a just & high valuation. (y) *Sed tantum ut taxatio staret antiqua*, But only that the old taxation might stand, nor was it much otherwise in the rates of fifteens and other proportions of taxes granted by Parliaments, though sometimes ordered to be assessed upon oath the greatest tye and obligations that can be laid upon men and their Consciences, wherein litle or more then a tenth or smal part was paid or collected of the true yearly value.

(z) *Parl. 4*
Car. primi.

But like a numerous family of Children spending much, wanting much, and drawing all that they can from the kind and self-denying common parent, together with the bounty and munificence which Kings and Princes are not seldom necessitated unto in the way of Government and care of the generality, would never be brought to any just valuation or improvement no more than that of customs for goods exported or imported at the rate of twelve pence in the pound, and for the subsidies given by Parliament, whereupon no more was used to be paid than two (z) shillings, or two shillings eight pence in the pound, for Moveables, Debts, defalked and 4s. in the pound, and most commonly not so much according to the yearly value of Lands, Rents, Annuities
or

Or other yearly profits , after an easy and accustomed great undervaluation , no more than that of Tenth and first Fruits, or of Taxations or Valuations of Benefices in the Kings Books at the tenth or fifth of the true yearly value, though every age , of one or two ages last past, and every thirty or twenty years in the age or Century, in which we now live , have hugely raised the yearly value of Lands every one striving who shall do it most in their own particular Estates.

And if there were not (as there are) so very many plain and evident Demonstrations of it , may well be believed to be possible, when the publick, though made up of the private, is dayly gnawed, and preyed upon by the private , and every one lurches , and takes what he can from the Publique , to add to his private, when the numberlesse Number of the Private , is more than the Head or Monarch , when the people are to asseſſe themselves, and will ease one another, when interest and partiality are the Loadstones that attracts , and the Cards and Compasses which the most of men do sail by , every man is a well-wisher to the Publique , but very few well-doers , every one pretends good unto it , but intend, if not all, yet a great deal more unto themselves , and do make it their businesse to be the Kings Cozens , though they are not of the blood-Royal, and by the help of bad Consciences,

I

and

and no good affection to the publique, or Common-weale, do think no more evil to be in such purloinings, than to fetch or take water from a great River, or stones, or gravel, from a vast and high Mountain.

And the Nobility and Gentry, and most of the Land-Lords in *England*, have for many years last past in the publick Assessements, which were made to maintain the miseries and iniquities of our latter times to their cost and grievance experimented, that where the Tenants were to pay for their *stock*, they could so order it, as to lay the most of the Burden upon the Land-Lords, upon pretences, that they had but a small Stock of Cattle when it was in their power not only to undervalue what they had, but to lessen or make it more, any Fair or Market-day before or after.

Wherby, and the effects which best discovers the truth and intention of all men, and their matters be their pretences never so plausible, much coloured or varnished over, the Conclusion will necessarily follow the Premises, that the outcries and noyse of great ayds and Subsidyes, have been always a great deal more than the reality of them; that the Kings and Queens of *England* have always had in their Revenues fair blossoming or *blomes*, but little more than the Tenth of it hath come to be fruits or gatherings
into

into their Treasuries, witnesse, if there were nothing else to prove it, the great and more than treble or a better *Improvement* which hath been lately made of them, since they came to be wrongfully possessed by private men; and that the Revenues of the Kings and Princes of *England* could never yet arrive to the Fate of great Rivers, which fertilizing all the Neighbouring shores, and carrying many a great Burden and Vessel, which dayly sail to and fro upon them, are notwithstanding so farre from emptying or impairing themselves, as the further they run, they are sure enough to be made greater by an Addition of many little Brooks, and great Rivers which fall into them.

But by a continual emptying and deflux, must of necessity sink it self into a great decay and deficiency, when as that which was accounted Providence, and good Husbandry in King *H. 2.* (or *H. 1.* if ^(a) *Samuel Daniel*, ^{(a) Daniels History,} and others be not mistaken) to change his Rent, Provisions of Corn & Victuals, which in every County was paid *in Specie*, into yearly Rents or Sums of money, because *confluebat ad Regis Curiam, Multitudo Colomorum oblatis vomeribus, in signum deficientis Agriculturae*, A Multitude of Plow-men and Husband-men, (occasioned probably by the many vast Demeasns, Commons, Woods, and Forrests which then took up much of

(b) in lib. ni-
gro Scaccarij
& Spelmans
glossar in verbo
firma.

the Lands of the Kingdom) came with their Plow-shares to the Court, to shew the King the decay of Husbandry, saith the *Black Book (b)* of the *Exchequer*; when as a little before a measure of Wheat, for bread for a hundred men, was valued by the Kings Officers but at one shilling, the Carcasse of a fat Oxe one shilling, of a Sheep four pence, and for Provender for twenty Horses but four pence.

And thought himself to have been on the surer side when he ordered six pence in every pound to be taken overplus or *D'avantage*, least the rate and value of money should diminish, is now not the hundreth part of the value of the old kind of Rents and Provisions; and reducing also many incertain Customs into a certainty of yearly Rents, which being then some thing proportionable unto it, is not now the 50th. or 100th. part of what was then the value in the intention and estimation, aswell of the Kings, which were to receive it, as of the Tenants who were to pay it; And therefore notwithstanding the great Estates and Revenues of some Rebellious Subjects which have sometimes been forfeited, & came as an accession & supplement to the wasting and decaying Crown Lands, much of them being either in mercy or policy restored afterwards to the Heirs of those which justly forfeited them. The languishing Condition of the Royal Revenues were so
little

little remedied, as the Royal Expences in defraying the more expencefull Charges of their houthold, Family, and princely Retinue. After the new enhaunced Rates and Prizes, whilst they received their Rents and other Profits after the old, carrying so great a difference and disproportion.

As there is betwixt one hundred four pounds seventeen shillings and six pence, paid by *Thomas Earl of Lancaster*, in the reign of *King E. 2.* for 184 Tuns of Clarret-Wine, and one Tunne of White, but little exceeding cleaven shillings *per* Tunn, and that which is now the price of the like quantity & between one hundred forty seven pounds seventeen shillings and eight pence for seven Furies of variable Miniver, or powdered Ermin; seven hoods of Purple, three hundred ninety five Furies of Budge for the Liveries of Barons, Knights, and Clerks. 123 Furs of Lamb for Esquires bought at *Christmas* as appears by the accompt of *Henry Leiceſter* the said Earls Cofferer.

Twenty four shillings for a fat stalled Oxe, twenty pence for a Mutton, two pence half penny for a Goose, two pence for a Capon, a penny for a Hen, and twenty four Eggs for a penny, which were the prizes assessed by the Magistrates, and then thought to be equal for the Buyer, as well as the Seller, between the price of Cloath, for two Gowns for the Clarks of the Chamber,

to the Lord Mayor of *London* now, and that which in the raign of *H. 6.* cost but two shillings *per* yard, and betwixt the price of a Capon in the middle of the reign of Queen *Elizabeth* at six pence, and the rate of 2 s 6 d. or 3 s. which is now the least will be taken for one.

And that by reason of the Gentry and all private mens racking and inhauncing the Rents of their Lands, letting it too often by the Acre, and the strictest measure, and the most that will be bid for it, and the plenty of pride to an extremity of excess, rather than a plenty of money in the Nation, the rates of Victuals and Provisions and manner of living, are increased to almost a third part more than what they were within this 20 years last past.

There must needs follow that *Taxes* or Consumption which is so apparent and visible in the Royal Revenue, which will be as little for the peoples good, who (unless they can think it to be either Goodness or Wisdom in the Members to make or suffer the head to be sick and languish) are by Subsidies & Assessments to support it in its sicknesse or languishing condition, as it will be for the King to presse or perswade them to it.

But least it should be objected, that as the well ordering, right use, and manage of the best things, is that only which blesteth and crowneth the Intention, and first Institution of them, and the ill is that
which

which corrupteth and blasteth all that was hoped for, or expected by it, and that the Innocency and necessary use of Tenures *in Capite* and Knight service may amount unto a grievance if the Court of Wards should either by the wickednesse, extortion, or avarice of the Judges, or their ignorance, which is as bad as either, or their lenity or connivance to the Officers, or those which are employed under them. intend more their own profit than the Kings, and in stead of being a protection to Wards, pillage and ruine them and their estates, or be like (as they were not) an Assembly or Congregation of men met together in the formality of a Court where rapine, avarice, and injustice, under the vizard or Hypocrisie of doing justice, strives who shall most advance their ends by a propension to what is unjust, and an aversion from all that may relieve the oppressed.

It may be necessary to shew by whom or what manner of persons that Court of wards and Liveries was governed, and guided.

Which was not like that Court of Civil Law, upon whose Bench and Tribunal in our late times of *delirium* and confusion, sate as Judges two common Lawyers *Hugh Peters* a Traytor to his King and Country, sometimes a *Prompter* at a Play-house, and afterwards an *extemporary* Preacher, together with an Attorney at common Law, a Tradesman, & a Country Gentleman, who would not at any time.

time think it safe, or becoming them in that their never the like practised in any age or time before *Antipodes* or contrarieties, to right reason, or the way of understanding, or doing Justice, to mention any Text or part of the Civil Law, though it was daily and learnedly pleaded before them by the Advocates, but when any Books or Authorities of the Civil Law, were cited and urged, which their capacities could not reach, some of them like the Woman in *Seneca*, which did not complain of her own want of sight, but found fault with the darknesse of the House, could to throw by the trouble or any further consideration of what they did not understand, find no better a way than causelessly to rail at, and reproach the Common Law as well as the Civil, and unadvisedly and publickly declare them to be but Inventions to get mony.

Was not like the Court to remove *Obstructions* in the Godly as they called it, but ungodly Purchasers, where all the Kings grants after 1636. or thereabouts were adjudged as null, and not to be allowed, and all manner of obstructions laid in the way of Loyal and Distressed men, to clear and make an open passage for their own Partie and such kind Purchasers.

Not like that of *Haberdashers-Hall*, where the Just and Innocent were Sequesterd (by the tender Conscienced Party as they stiled themselves) for their Allegiance to their King,

King, following of the Scripture, their Conſciences, and the known Laws of the Land were notwithstanding their many Petitions, and Importunities ſeveral years whiſt their eſtates were Sequeſtered and taken from them, kept in a ſtarving Condition, before they could be heard, to little purpoſe, where Sons and too well deſcended to be ſo unworthy, were invited to accuſe their Loyal & Aged Parents, whom the *Jemes* would have rent their Clothes to have ſeen, encouraged, and made to be ſharers in the ſpoil of their Father.

Not like the Committee (or Court improperly called) at *Salters-Hall* for relief of Creditors againſt their imprifoned Debtors, where ſome of thoſe Judges and Committees, if not wronged by printed Complaints, were in good hopes to have made ſome preparations to ſell the Debtors Lands to their Friends or Kindred at good Penniworths.

Nor like the Committee for *Plundring*, rather than *Plundered* Miniſters, who to take away all the Benefices of *England* and *Wales*, from the Tribe of *Levi*; and confer them upon the Tribe of *Iſſachar*, and their Faction, and Mechanique guiſted Brethren, and keep out the Orthodox and learned Clergy, could make their coſtly orders for the trial of them that were more Learned then themſelves, concerning the *Grace of God*, and their utterance for Preaching of the Goſpel with private and deceitful marks, and little cloſe

couched or interposed Letters; hid or put under or over some other Letters, whereby to intimate to their *Subcommittees* in the Countries, that howsoever the men were without exception, and found to be so upon Certificates and Examination, they were to be delayed, and sent from Post to Pillar, and tired both in their Bodies and Purfes, and be sure never to be instituted and inducted.

But was a Court compos'd of grave, learned, knowing, and worthy Masters of the Wards, such as *William* Marquesse of *Winchester*, *William* Lord *Burghley*, and his Son the Earl of *Salisbury*, and many other who made not the Court, or any of the business thereof, to *Lacuy* after their own Interest.

Had for Attorney Generalls of that Court, who sate as men of Law and Judges therein, and assistants to the Masters of the Wards *Richard Onslow* Esq; afterwards Speaker of the House of Commons, *Sr. Nicholas Bacon* Knight, afterwards a most learned Lord keeper of the great Seal of *England*, and a great Councillor of Estate to Queen *Elizabeth*, *Sr. Henry Hibart* afterwards Lord cheif Justice of the Court of Common-pleas, *Sr. James Ley* Knight and Baronet, afterwards Lord cheif Justice of the Court of Kings Bench, after that Earl of *Marleborough*, and Lord Treasurer of *England*, *Sr. Henry Calthrop* Knight, *Sr. Rowland*

Roland Mandesford Knight, and Sr. Orlando Bridgeman Kt. now Lord Chief Justice of the Court of Common pleas, all very eminently learned Lawyers, and of great estates, honour, honesty, and worth in their several generations, who upon any difficult or weighty matter of Law, to be discussed in that Court, did usually intreat the presence, and had the assistance of the Lord chief Justices, Lord chief Baron, or of any of the other learned Judges of the Land, whom they should please to invite unto them, where a variety of learning, grave deliberations, a great care of Justice, and right reason most lively and clearly represented, have left to posterity as guides and directions for after ages; those conclusions and resolutions, of cases of great learning and weight in that Court, reported by the Lord Dier, Cook, and other learned Sages of the Law.

Nor were the Masters of the Wards Attorneys, Auditors or Escheators loosely tied by Oaths, as some of the Committee Jurisdctions were, when they did swear only in general, *faithfully according to their best skill and knowledge, to discharge the trust committed to them, and would not for favour or affection on reward, or gift, or hopes of reward, or gift, break the same.*

Or as little restraining them from Acts of Oppression or Injustice, as the

Oath of the Controlers for the sale of the Kings and Queens lands, ordered by that which called it self a Parliament 17. July 1649. The Oath of the Commissioners for managing the estates of Delinquents & Sequestrations at *Haberdaßers-Hall*; Ordered by no better an Authority the 15 of April 1650. or that, which by that, which would be called an Act of Parliament, of the 10 of December 1650. for establishing an high Court of Justice within the Counties of *Norffolk*, *Suffolk*, *Cambridge*, and *Huntington*, for the Tryal of Delinquents was only ordered ~~was~~ to be taken by those that were to be the Judges, that they should well and truly according to the best of their skill and knowledge execute the severall powers given unto them; Which bound them not from doing wrong, to those whom they made to bear the burdens of all the cruelties which they could possibly lay upon them.

(c) Master
of the Wards
Oath.

(d) 32 H.
46.

(c) Attor-
ney of the
Wards Oath.

But were compassed and hedged in by Oaths, as warily restraining, as they were legal, for the Master of the Wards was by Act of Parliament enjoined to swear to minister Justice to Rich and Poor, to the best of his cunning and power, to take no gift or reward in any Case depending before him, and to deliver with speed such as shall have to do before him. The Attorney was sworn truly to counsel the King, and the Master of the Court, and with all speed and diligence to endeavour the hearing and determination;

mination; indifferently of such matters and causes as shall depend before the Master of the wards, and shall not take any gift or reward, in any matter or cause depending in the same Court. The Auditors sworn to make a true allowance in their Offices to every person, which shall be accomptant before them, and not to take or receive of Poor or Rich any gift or reward in any matter or cause depending, or to be discussed in the Court but such as shall be ordinarily appertaining to their Offices, and the Escheators to treat all the people in their Bayliwicks, truly and righteously to do right to every man as well to poor as to rich, do no wrong to any man, neither for promise, love, nor hate, nor no mans right disturb, do nothing whereby right may be disturbed, letted, or delayed, and shall take their Enquests, in open places, and not privy.

And might better content the people, Then when in former ages the Wardships and their disposing were left to the care and order of the Chancellour, as to Thomas Becket in H. 2. time, or to Hubert de Burgh Chief Justice and Earl of Kent, in the Reign of H. 3. sometimes to the Treasurers or Chamberlains & most comonly, let to farm by Escheators, & sometimes by under-Sherifs or when the next Wardships or Escheats that should happen were before hand assigned towards the payment of some of the Kings Debts, as to William de Valence Earl of Pembroke in the Reign of E. 1. or that the Wardships

(t) Auditors Oath.

(g) Escheators Oath.

(h) Math Paris 101.

ships and Escheats which should happen in 6, or 7. Counties were before hand granted to some particular man.

And can never be so good or for the ease of the people as when the King by a constant and well ordered Court shall be rescued from the importunities and necessities of great men, and preserved from the Errors which an indulgence or munificence to so many *Cravers*, *Petitioners*, and *Pretenders*, as do usually throng the Courts, and presence of Princes, might draw or perswade them unto and the Wards and their Friends, not put to seek Remedies or just Defences in their Suits or Concernments in other Courts amongst a multitude and intermixture of Causes of another nature, nor to procure an access for their Petitions to their Kings, or at their Courts or Residences, where a continual assembly of all the weighty cares and emergencies in Government, will inevitably inforce or necessitate delays, and notwithstanding the help of some costly Mediators and intercessors, cannot nor ever could be easily got through, but may in such a fixed and peculiar Court as that of the *wards* & *Liveries* with a small expence of time, or attendance, and the assistance of certain allowed Fees to proper and appointed offices, which cannot be any grievance where they shall be any thing within the bounds of Reason or Moderation, know
how

how to find out and go to their proper Remedies as readily as an *Apothecary* can to his Boxes of Medicaments, or the Physician to the experimented directions of his Books or *Recipes*, and were sure to be heard and have redresse in a Court of Justice, guided and governed by wise, and good men, who being as great as they were good, were fenced and compassed about with comprehensive and restraining Oaths, enjoyning all manner of right, and forbidding the least of Injustice, and wrong to be done unto the People.

Preserved the estates, inheritance, and evidences of the Wards, guarded, and rescued the estates of Lunatiques, and Ideots, from those that would deceive them, helped the Wards in the discovery, and recovery of their debts, and rights, rescued them from all wrongs, enjoined, and prohibited other Courts from any cognizance, or determination of their concernments, except when a Will was to be proved, or an Administration granted, or the like, to, or for the use, and benefit, of a Ward, and committed the education of such, whose Fathers dyed Papists, so to Protestants, as many, and amongst them some Earls, and Nobility, have by the direction of the King, and the care of that Court, been put under the Tuition of some Bishops, and thereby become Protestants, and their Posterities fastened in that Religion,

gion, most of which cares of that Court, and benefits received by the people, could not be at all, or not so well had and enjoyed, when there was no Court, which besides the preventing and punishing of stoln marriages, and many other benefits not here mentioned, may notwithstanding some deviations, and irregularities, which have been committed by some Officers, and Clerks, which may easily be remedied, be as useful as other of the great Courts in *Westminster-Hall*, which were not dissolved or put down in the reign of King E. 1. because all the Judges of the Kings Bench, common Pleas, and Exchequer, except *John de Mettingham*, and *Elias de Beekingham* were by judgment of Parliament, found guilty and grievously Fined for Briberies, extortions, oppressions, and other great misdemeanors, but to the great good and comfort of the people and nation, have as before those offences committed by some of their Judges in the absence of the King in *Gascogne*, ever since continued as great Magazines of Justice, and the *Asylums* or Sanctuaries of all that are distressed.

(i) Spelmans
glossar 416. et
Daniel 189.

So as no Serpent, for ought ever appears, lurked under that green grasse, nor any *Crocodile* nourished, or bathed himself in those wholesome waters, laid not his eggs in the Sand of our Estates or Properties, assaulted not the innocent Passenger, nor spoiled our Flocks of Sheep, or herds of Cattle:

and a Marvail or wonder it may therefore be, that so good, so necessary, and so beneficial an Institution, should have any Innate, or original evil or grievance in it, and the quarrelous humour of the vulgar, who, like a herd of Swine, do too often cry, when one of many of them is but justly pinched or wrung by the ear for his unjust Trespassings, or as those irrational Guards of the night do use to howl or bark because one of their kind half a mile off, torments himself in a Moon-light night in barking at his own or any other shadow, should never stuffe out, or enlarge their complaints, against that which was accounted to be no grievance in *Edward* the Confessors time, whose memory was, and is yet like the Nard, or Spices of the East, and his Laws so venerable, as our English fore-fathers could in the loss and ruines of their Country, hide them under his shrine at *Westminster*, and thought themselves happy, when as with Tears and Importunities they obtained of *William* the Conquerour to be restored to them, and left them as rich *Heir-looms*, and a precious Legacy to their Posterity, who got the care and observation of them to be afterwards inserted into the Coronation-Oath of the succeeding Kings of *England*.

And could no way be suspected not to be
 L highly

(k) *Chronie*
Leichfedenfe.

highly contented with them, when as they were *Leges propria*, Laws of their own Country, & *consuetudines antiquæ in quibus vixerant Patres eorum* (k) & *ipsi in eis nati, & nutriti fuerunt*; and the antient Customs in which their fore-fathers were born or bred up in, not collected or put together by incertain reports partial or doubtful, upon reasonlesse traditions, or hear-says of an afflicted trembling, or affrighted degenerate people, under the sense and miseries of a late Forreign Conquest, but *per præceptum Regis Wilielmi electi sunt de singulis totius Angliæ Comitatus 12 viri sapientiores quibus iurejurando injunctum fuit coram Rege Gulielmo ut quoad possent tramite neque ad dextram, neque ad sinistram, declinantes legum suarum & consuetudinum sancita patefacerent, nil prætermittentes nil addentes, nil prævaricando mutantes*, orderly and judicially inquired and sought out by a fair and just election of twelve of the wisest men of every County in *England*, by virtue of King *William* the Conquerours Writs or Commission to whom being brought into the Kings presence, they were enjoined by oath, that as much as possibly they could, they should have a care to do right, and neither incline to the right hand, nor to the left, & without any omission, addition, collusion, or deceit should certifie their legal Customs, which being done, and written out by the Kings command,

mand, by the proper hand-writing of *Alde-
red* Arch-Bishop of *York*, and *Hugh* Bishop
of *London*, were by the King ratified by his
Proclamation, and made perpetual, *per to-
tum Regnum Angliæ inviolabiliter tenendas sub
penis gravissimis*, Throughout all *England*
under grievous penalties to be observed and
kept ; And so approved by the people,
as about 70 years after, the Citizens of *Lon-
don*, (as the continuation of *Florence Wigorn-
ensis* mentioned by that learned Knight *Sr.
Roger Twisden* in his preface to the *Laws* of
William the Conquerour, published by the
eminently learned *Mr. Selden* informs us) (1) (2) did importune *Maud* the Empreſſe, *ut eis Ed-
wardi Regis Leges observare liceret quia optima
erant*, That the *Laws* of King *Edward* might
be observed, because they were the best.

(1) Continu-
ation Floren.
wigorn et Sr.
Roger Twisden
in præfat. ad
leges willielmi
1.

And when *William* the Conquerour order-
ed the Rents, and Revenues of such as held of
him, to be paid into the Exchequer, it was *non
simpliciter nec hæres ab hereditate, (m) nec ut ab
ipso hæreditas tollitur, sed simul cum hereditate sub
Regis custodia constitutus tempore pupillaris æta-
tis*, Not to take away the Inheritance, but to
keep and educate him during his Minority.

(m) M. S. Cor-
toniana.

For It could be no inconvenience to
the publick welfare of the Nation, to
have the Children of the best rank and qua-
lity (for such were then the Tenants *in Ca-
pite* and by Knight service) virtuously and

nobly educated in Arts and Arms, whereby to be enabled to do their Prince and Country service, and their Lands and Estates in the *interim*, to be protected and defended from Neighbour or other injuries.

(n) *York & Vincent Catalogue of English Nobility.*

Nor to be married to their own degree or a nobler quality, when as by the means of intermarriages betwixt the Saxons & Normans, as between (n) *Lucia* the Sister of *Morchar* Earl of *Northumberland*, a Saxon, and *Juo Talbois* a great Norman Baron, and betwixt *Ralph de walet* a Saxon, by a *British* or *welch* Woman, & *Emme* the Daughter of *William Fitz Osbern* Earl of *Hereford*, by which he was by the Conquerour made Earl of the *East-Angles*. And many more which might be instanced, their mutual discontents and animosities calming into reconciliations and friendships, had the like effect, as the tye and kindness of the intermarriages had not long before in King *Ina's* time, who himself marrying with *Guala* a (o) *British* woman, & his Lords and great men intermarrying with the *welch*, & *Scots*, & their Sons also marrying with their Daughters, the Nation became to be as *Gens una*, one people, in a near confociation, and relation, and the *Norman H. I.* afterwards found it to be not unsuccessfull in his own marriage with *Matilda* the Daughter of *Malcolm* King of *Scots*, by the Sister or Niece of *Edgar Atheling* of the *Saxon* Royal line.

(o) *M. S. inter L. L. Regis Edwardi.*

It was no grievance when the Charter of Liberties (which was the original of a great part of our after *Magna Charta*,) was granted to the people of *England* by K. H. 1. who is therein said *omnes malas consuetudines quibus Anglia opprimebatur auferre*, to abolish all the evil customs with which *England* was oppressed, when it would have been strange that Tenures *in Capite*, and by Knight service should remain as a part of the Kings just prerogative, and be so well liked of, and approved, *consilio & consensu Baronum*, By advice and consent of the Barons, if there had been any grievance originally or naturally in them.

Nor so much as a Semblance of it in the reign of H. 2. (p) when a general Inquisition was made *per Angliam cui quis in servitio seculari de jure obnoxius teneretur*, thorough *England* What secular or temporal services due by Law were not performed. (p) Mat. Paris 99. & 100.

And as little in the Parliament at *Clarendon* in the same Kings reign, where in the presence of the King, Bishops, Earls, Barons, and Nobility, (q) *facta fuit recognitio, sive recordatio, cujusdam partis consuetudinum, & libertatum Antecessorum suorum, Regis viz. Henrici Avi sui & aliorum quæ observari debebant in Regno & ab omnibus teneri*, A recapitulation and rehearsal was made of some of the Customs and Liberties of their Ancestors, and of the King, that is to say of King H. 1. and others which ought (q) Mat. Paris 100.

ought of all to be observed and kept in the Kingdom, in which there was nothing against the *Feudal Laws* or *Tenures in Capite*, and by Knights service, but many expressions, and allowances of them.

And if otherwise it would have been something strange that the issue and posterity of those Barons, should in King *John's* time adventure all that could be dear, or near unto them, to gain the Liberties granted by *H. 1.* with some addition, and never grudge that King the same Prerogative, when as hazarding the forfeiture of their own *Magna Charta* of Heaven, to gain a *Magna Charta* on Earth for their posterities. They had greatly overpowered their King, at *Running Mede* where their Armies stood in *procinſu & acie*, Facing one another, & *Pila* (r) *minantia pilis*, Threatning death and destruction to each other, or would so willingly have hung up their Shields, and Launces, and returned to their peace and obedience, by accepting of that *Magna Charta*, if they had not taken it to be as much for their own defence, & the good of the Kingdom, as it was for his, nor so willingly afterwards in the reign of King *Henry* the 3^d. his Son have clad themselves in Steel, made a Combination, and bound themselves by oath one to another never to submit to a peace, until they had a just performance of what his Father had granted them, endured the Popes then direful Fulminations, and never rested until the King

(r) *Mat. Paris.*

King himself had confirmed that *Magna Charta* by a most solemn oath, in procession with the Bishops who with lighted Tapers in their hands; anathematiz'd all the infringers thereof, if Tenures *in Capite* and the enabling their Prince to defend them, had not been a part of their own Liberties, nor could they be imagined to be otherwise, when as by an Act of Parliament also of that King the great Charter was to be duely read in all Counties of *England*, and Writs, and Letters were sent to all the Sheriffs of *England*, commanding them by the oaths of twelve Knights of every County, to enquire what were the antient Rights and Liberties of the People, no return was ever made that Tenures *in Capite*, and by Knight service, either were or could be any obstructions to them or that, so often bloodily contested and too dearly purchased, *Magna Charta*, nor was it any publique grievance, when as in the Parliament of 26 *H. 3* in a great contest betwixt him and the Baronage and great men of *England*, touching his ill Government, and diverse exactions, and oppressions, the profits which he had by his Tenures and Escheats were said to have been sufficient to have kept him from a want of mony, and oppressing his Subjects.

Nor in *Anno 42. H. 3.* when the King upon those great complaints and stirres betwixt him, and the then Robustious and sturdy

(r) *Mat. Paris*
977.

sturdy *Barons* of *England* occasioned by his misgovernment, which busied the people with *Catalogues* of grievances, he by his Writs or Commissions appointed in every County of *England*; (r) *Quatnour milites qui considerarent quot et quantis granaminibus simpliciores a fortioribus opprimuntur et inquirent diligenter de singulis querelis et injurijs a quocunque factis; vel quibuscunque illatis a multis retroactis temporibus, et omnia inquisita sub sigillis suis inclusa secum coram Baronagio ad tempus sibi per breve præfixum; Four Knights, men of known worth and wisdom, loving and beloved of their Countreyes, to enquire what grievances or oppressions the smaller sort of people suffered by the greater, and also of all injuries and wrongs done by any person whatsoever, either lately or formerly, and to certifie it under their Seals to the Barronage, which what ever they were, or if ever or never recorded, (for they have not for ought appears, been certified or recorded,) no Record or Historian of that, or the after times, have said that Tenures in Capite and by Knights service, were thereupon returned to be oppressive, or so much as inconvenient.*

Neither are to be found amongst any of those huge heaps of evils which *Mathew Paris* that sower and honest Monk of *St. Albons* (who lived in those times and especially remarked them) hath delivered to posterity.
The

The 24 *Reformers* or *Conservators* of the Kingdom, in that Kings Reign, appointed by the *Baronage*, never intimated any thing of their dislike of that honourable institution.

It was not complained of upon the refusal of *Roger Bigod* Earl of *Norfolk*, *Marshall* of *England*, *Humphry Bohun* Earl of *Hereford* and *Essex*, *Constable* of *England* and *Gilbert de Clare* Earl of *Glocester*, and *Hertford*, great and mighty men and of Princely Estates, to go at the Command of King *E. 1.* (f) unto his Wars ⁱⁿ *Gascony*, upon pretence that the warning was to short, whereby the Kings displeasure was so much incurred, (t) as *Bohun* and *Clare*, to escape the Seifure and forfeiture of their Lands and to purchase his favour again were glad each of them to marry one of his Daughters, without any Dowry, and surrender their Earldoms, Honors, Offices, and Lands unto him, & take back Estates thereof in Tayle to them, and the Heirs of their Bodies upon their wives to be severally begotten, and *Bigot* surrendring also to him his Earledom, and Marshals rod together with all his Lands, (u) and taking Back a grant of an Estate for life in his honors and Lands, the reversion to the King if he should not have any Issue of his Body begotten the King in Parliament pardoned them, and *Juba de Ferraris*, and other Earls, Barons, Knights, and Esquires, (w) and all other of their fellowship, confederacy, and Bond and all that held

(f) Pat. 30.
E. 1.

(t) Walsingham ypodigma
N. 487.

(u) Claus.
30. E. 1s

(w) part E. 1

twenty pounds Land *Per annum*, whether in chief of the King or other that were appointed at a certain day to pass over with him into Flanders, their rancour and evil will and all other offences committed against him.

(x) Daniels
Hist. 195.

Were not in the Roll of general grievances, which the Arch-Bishops, Bishops, Earls, Barons, and Commons, sent him when he was at the Sea side ready to take shipping into *Gascoigne*, (x) concerning his Taxes, and other impositions. Neither any *vestigia*, or footsteps to be found of any grievance by them, in that grand search, or inquiry by the Commissions of *Traile Baston*, in, or about the 33 of *E.i. 8.* after intruders into other mens Lands, exactions, and oppressions, or in the presentments in the Eyres, when the Justices thereof in several Kings reigns, carefully travailed into the several Counties and places of *England*, and found out, and returned the complaints, and oppressions of every County, and where the Natives themselves, & the witnesses cannot be supposed to be so much their own enemies, as to conceal, the Countries oppressions & the Jurors were solemnly charged to present them upon their Oaths, and if they should omit to do it, had the malice of their Neighbours to watch & accuse their Perjuries, and the severity of the Judges, to punish any failings in their duty.

Or in the Reformation which the *Lords Ordainers*, as they were afterwards called, in

in or about the fifth year of the Raigh of King *E. 2.* pretended to make in that unadvised Commission, which he granted them for the Government of the Kingdome.

No pretence, or so much as a murmur against them by the Reformers in *Wat Tylers* and *Jack Straws* commotion, when they were so willing to overthrow and extirpate all the Nobility and Gentry, which should withstand their rude and unruly designs of making all Bondmen free, and taking away *Villenage*, and of making *Wat Tyler*, and several other of their party, Kings in several Counties, and to devise what Laws they listed.

Or by *Jack Cade*, or Captain *Mend-all* as he falsely stiled himself when many a grievance was picked up to colour his Rebellion in the reign of King *H. 6.* but could find nothing of that for a garnish of his Roguery.

Or *Robert Ket the Tanner*, in the reign of King *E. 6.* sitting in judgment amongst the *Rabble*, under his tree (as they called it) of *Reformation*, where Tenures and Wardships, being so obvious, and every where insisted upon, they would not probably have omitted them out of the Roll, or list of their complaints if there could have been but a supposition, or dream of any grievance in them, which being the more noble beneficial, and better sort of Tenures may better

deserve an approbation of the People, and Parliaments of *England*, than Tenures in *Villanage*, which by an Act of Parliament in 25 E. 3. 18. may be pleaded, and a Villain seized though a *libertate probanda*, be depending. And it was enacted in the Parliament of 9 R. 2. 2. that if *Villaines fled into places infranchised and sued their Lords, their Lords should not be barred thereby*, and by an Act Parliament in 8 H. 6. 11. that *a Villain should not be admitted, or put to be an Apprentice in the City of London*, and by an Act of Parliament in 19. H. 7. 15. *If any Bond-man purchase Lands, and convey away the Lands, the Bond-man being Gestui que use of those Lands, they shall be seised by the Lord.*

Nor did the Act of Parliament of 25 E. 3. (y) 25 E. 3. (y) which provided that none should be constrained to find men of *Armes*, *Hoblers*, nor *Archers*, but by common assent, and grant made in Parliament, mistake when it inserted a *saving*, and exception of *all those that held by such services.*

Neither did the Commons in the Parliament of 5 R. 2. (z) upon the Repeal in Parliament, of the Manumissions of Bond-men, extorted from the King by *Wat Tyler*, and his *Rout*, or men of *Reformation*, think they did themselves, or those they represented, any hurt, when they cryed with one voyce, *that the Repeal was good*, and that at their request the Re-

Repeal was by whole assent confirmed.

Tenures *in Capite*, and by Knights service, were not complained of in the Parliament of 13 R. 2. though the Commons in Parliament had *prayed, and were allowed, that every man might complain of the oppression of what person or Estate soever without incurring the pain of the Statute of* (a) Gloucester (which under great penalties prohibited, false Newes and Lies of the Nobility and great men of the Realm, Chancellor, Treasurer, Justices of both Benches, and other great Officers of the Bench) *made in the second year of the King.*

(a) Rot
Parl. 13 R. 2.
p. 45.

Nor was there so much as an Apprehension of any evil in them in the Parliament of 4 H. 4. where the Commons pray that *The* (b) *Declarat.*
Act of Parliament of the 1 of E. 3. (b) that none Lords and
shall be distrained to go out of their Counties, Commons, in
but only for the Cause of necessity of suddain com- Collect. Par-
*ing of Strange Enemies into the Realm, and the*liament decla-
Statute made in the 18th. year of the Reign of the rations, 386.
said King, That men of Armes, Hoblers and & 390.
Archers chosen to go in the Kings Service out of
England; shall be at the Kings wages from the day
that they do depart out of the Counties where they
were chosen, and also that the Statute made
in the 25th. year of the Raign of the said
King, that none be compelled to find Men
of Arms Hoblers nor Archers, other than
those which hold by such services, unlesse it
be by common assent and grant made in Par-
liament, be firmly holden and kept in all
points;

points, it was upon the granting of their desires, and an Act of Parliament made for that purpose (as the Declaration of the Lords and Commons in Parliament, against the Kings Commission of Array, in an. 1642 mentioneth) especially provided , that by force or colour of the said supplication , nor of any Statute thereupon to be made, the Lords nor any other that have Lands or Possessions in the Counties of Wales, or in the Marches thereof, shall in no wise be excused of their Services and Devoires due of their said Lands and Possessions, nor of any other Devoir, or things whereunto they or any of them be especially bound to the King, though that the same Lords and others, have other Lands and Possessions within the Realm of England; nor that the Lords, or other of what Estate or Condition soever they be , that hold by Escuage or other Services due to the King , any Lands and Possessions within the said Realm . be no way excused to do their Services and Devoirs due of the said Lands and Possessions : nor that the Lords, Knights , Esquires, nor other Persons, of what Estate or Condition they be , which hold and have of the Grant or Confirmation of the King, Lands, Possessions, Fees, Annuities, Pensions, or other yearly profits , be not excused to do their Services to the King , in such manner as they are bound , because of the Lands, Possessions, Fees, Annuities, Pensions, or Profits aforesaid.

And might challenge their *quietus est*, or Proclamation of acquittall , when there were

were no complaints made against them in the former ages when there were so many Taxes laid upon Knights Fees, as 20. shillings then a great sum of money, & as much almost as 20 *markes* is now, upon every Knights Fee, imposed by King *R. 1.* towards his ransome 26 s. 8 d. upon every Knights Fee by King *John*, and another also of the same sum towards his expedition into *wales*, 20 s. upon every Knights Fee towards his Charges in *Normandy*, & an Escuage of 20 s. upon every Knights Fee to be paid the one half at *Easter*, and the other at *Michaelmas* besides the Escuage which he had upon the marriage of his Sister *Isabel* to the Emperor *Frederick*, two Escuages imposed by *H. 3.* and an Escuage upon the marriage of his Daughter the Lady *Margaret* to *Alexander* King of *Scots*. 20 s. of every Knights Fee by *H. 4.* the many services in person done by those which held *in capite*, and Knights Service, *in forinseco servitio*, in all the expeditions and Wars in *France*, from the time of the *Norman* Conquest, to the end of the Raige of *E. 4.* and at home in the Wars betwixt *England* and *wales*, and betwixt *England* and the *Scots*, where very many Inhabitants of the Counties of *Cumberland*, *westmerland*, and *Northumberland*, that held by *Cornage* a kind of Knight Service, to blow a horn upon the invasion or incursion of the *Scots*, and to help to repell them, and had their
Lands

Lands sometimes at the Will of the Lords conferred and given to the younger and more lusty Sons who were able to undergo that service, could before King *James* his accession to the Crown of *England*, the pacification of the *English* and *Scottish* hostilities, & placing them under one obedience, scarce rest in their beds by reason of the *Scotts* sudain or nightly alarmes! and depredations, driving or stealing their Cattell, and spoiling all that they had.

And in all the troubles of *England* before and since the Barons Wars upon any Rebelions and inquietudes of the people, when those that held by *Knight-service* were frequently and hastily summoned to come to the King *cum Equis & Armis*, and the great charges, trouble, hazard, and expences, which the Lords Mesne, were put unto, by Assessements of Escuage and otherwise; And that immediately upon the death of the Kings Tenants *in capite*, & by Knight Service, the Escheators did usually seise not only the Lands of the greatest of the Nobility, Gentry, and meaner men; But the Stock and Cattell upon their grounds, and the Goods in their Houses, insomuch as their Executors were many times constrained to Petition and obtain the Kings Writs and Allowance, to have the Stock and personal Estate delivered unto them.

And yet no complaints made at all against those Tenures or necessary defences of the Kingdome,

dome, nor against Tenures by grand or Petit Serjeanty, in the thirty confirmations of our *Magna Charta*, upon as often Breaches to be supposed of it.

Never complained off in the making of thirty six Acts of Parliament concerning Wardships and Tenures in theseveral times and Ages from 8 H. 3. to this present, nor at the making of the Act of Parliament in 32 H. 8. for the erection of the Court of *Wards*.

Nor in so many thousand Peritions which have been in 186. several Parliaments, for almost *four hundred* years last past, or before 9 H. 3. or ever since this nation could remember any thing either in our Parliaments *Micel-gemots Witten-gemots conventus sapientum*, or *Magna Concilia*, where all the Grievances, and Complaints of the people not to be remedied else where, came as to the Pool of *Bethesda*, for help and relief, and wherein if any in some one or more Parliaments should so much neglect their duty, and the more than ordinary business and concerns of their Kings, themselves, and Countries with which they were intrusted, and to which their Oaths of Allegiance, if nothing else, must needs be their Monitors, it cannot (without a supposition and belief which will never be able to find entertainment in any rational mans understanding) be imagined that the whole Nation for so many Ages, past and in so many Assemblies, of those that should be the Sons of Wisdome, should

be bound up under such a fate of Stupidity or Ignorance, as to represent those that were sick and not know of it, or that all or any of them should *propter imbecillitatem, vel pernegligentiam*, by a to be pitied weakness or negligence, not either seek or find the way to the ears or audience of so many worthy and just Kings and Princes as this Kingdom hath been happy in, who would have been as willing to give a remedy as they could have been to seek it, if there had been any ground or cause for it, that so many Petitions of small concernments, or of no greater consequence than for the paving of Streets, killing of Crows, not taking of young Hens out of their nests without license of the owner of the ground, and the like, should get admittance, and cause Acts of Parliament to be made thereupon, and that of Tenures *in Capite*, if any grievance could at all be found in them, and of so long a continuance (which usually makes light burthens to be heavy) should be so dipped in a *Lethe* or Oblivion, as not at all to be remembered.

(c) 1 H. 8.
cap. 12. Coke
4. part Instit.
tes 197.

Which had nothing at all of grievance in their essence or being understood of them, in the making of the Statute of (c) 1 H. 8. against *Empson* and *Dudley*, by whom the Kings Subjects had been sore hurt, troubled, and greived, in causing untrue Offices to be found, retorning of Offices that never were found, and in changing Offices that were found.

No

No Grievance perceived to be in them, in *Primo Jacobi*, (d) when in the Statute concerning Respite of Homage there was a Proviso, ^{(d) i Jacobi} *that in case it shall be thought fit, for the true knowledge and preservation of the Tenures appertaining to the Crown, and so ordered in the open Court of Exchequer, that proces should issue out of the said Court against any, came not within the Suspicion or Jealousy of a Grievance, when in the Parliament of 7. Jacobi Regis, Sr. Francis Bacon* ^{(e) Sr. Francis Bacons} *then his Majesties Sollicitor, (e) in his speech,* ^{speech in Parliament in 7. Jacobi,} *as one of the House of Commons in Parliament, to the Lords in Parliament, perswading them to joyn with the Commons, to Petition the King to obtain liberty to treat of a Composition with his Majesty for Wards and Tenures, acknowledged in the name of that Parliament, that the Tree of Tenures was planted into the Prerogative by the Antient Common Law of England, fenced in and preserved by many Statutes, and yeildeth to the King the fruit of a great Revenue, and that it was a noble Protection, that the young Birds of the Nobility and good Families, should be gathered and clucked under the Wings of the Crown.* ^{touching a Composition to be made for Tenures in Capite.}

Nor in *Primo Car. primi*, (f) in the Act ^{(f) i Car. primi 3.} of Parliament touching the rating of Officers Fees in the *Exchequer*, upon pleadings of Licences or Pardons for Alienations, when the Lords and Commons in that Parliament assembled, did declare that the

Kings Tenures are a Principal flower of the Crown (which being in *England*, the safety and protection of the people cannot be said or proved to be adorned by their sorrows and miseries) *and ought not to be concealed.*

And that in the *petition of Right*, in 3 *Car. primi.* wherein all the Grievances and Burdens of the Subjects, and breaches of Laws and Liberties, that any way concerned them or their Posterities were enumerated, and remedies for the future establishment of the quiet, and happiness of the people propounded and granted, *Tenures in Capite*, and *Knight service*, with their incidents, were not reckoned or accounted as Grievances, though all that troubled the people, were at that time so largely thought and beleived to be redrest as a publick joy, upon the Kings granting of that *Petition of Right*, was commanded to be celebrated by the Musique and ringing of Bells in every Parish Church of the Cities of *London* and *Westminster*, which vied each with other who should proclaim and tell their joyes the loudest; And the blaze of numberless Bonfires, representing the flame of the peoples affection towards a most gracious Sovereign, seemed to turn the sullen night into a morning or day, which the Sun beams had newly guilded, whilst *Alesto* and her Sister *Furies* despairing in their hopes of kindling a sedition, and
bring-

bringing the miseries of a Civil War upon us, had thrown by their Torches, and employed their Hellish griefs in the tearing of their *Snakes* locks.

Were no *Sirtes* or Rocks to shipwrack or hurt the people, when *Sr. Edward Coke*, who was so willing to have Tenures *in Capite* and Knight service, to be changed into Tenures by Fealty only, as of some of the Kings Honors, and all their Incidents, as Wardships, primer seisin, Licences of Alienation, &c. taken away and recompenced by a greater yearly profit, then was, then had or received by them, and a rent to be inseperably annexed to the Crown, with some necessary Covenants and Privisoes, as he hoped that so good a motion as had been made in the Parliament of 18 *Jacobi*, tending as he thought to the Honor and Profit of the King and his Crown for ever, and the quiet and freedome of his Subjects, and their Posterities would one way or other, by the grace of God, and Authority of Parliament, take effect and be establish-
 ed, could not but acknowledge between *An-*
no 3. Car. Regis primi, (*g*) and the 12th. year
 of his raigñ, that the Objection that Wardship
 was a Badge of servitude (which would be a
 Grievance indeed, and of the greatest Mag-
 nitude) was groundless and without a Founda-
 tion, for that the King by taking money for the
 marriage of the ward, doth it not as for a Ran-
 some, but taketh such moderate sums of money, as in
 respect of the quality, and state of the ward He or
 She,

(*g*) *Coke 4.
 part Institutes
 tit. Court of
 wards 193*

(h) Coke 4.
Institutes &
lib. rub. Scac.

*She, all circumstances considered, is able to pay, and in regard thereof, hath the protection of the Court of Wards during Minority; And giving Tenures by Knight service no worse a Character, than the wisdom of Antiquity, for his Justification therein, citeth a place out of the Red Book (h) in the Exchequer, where it is said that *maius enim princeps domesticos, quam Stipendiarios Bellicis apponere casibus*, the King had rather be served by his own Subjects, than Hirelings or Stipendary Souldiers.*

No *Scylla* or *Charybdis* taken to be in them, in the Parl. of 17. Car. prim. at the making of the Act for the better raising and levying of Souldiers for the present defence of the Kingdomes of England and Ireland, wherein it being said, that by the Laws of this Realm, none of his Majesties Subjects ought to be impressed, or compelled to goe out of his Country, to serve as a Souldier in the Wars, they excepted cases of necessity of the sodain coming in of strange enemies into the Kingdome, or where they be otherwise bound by the Tenure of their Lands or Possessions; In the Remonstrance of the House of Commons 15. December 1641. and that unhappy Amasse, and collection of Complaints against the Government, the Tenures themselves were not so much as complained of, but the exceeding of the Jurisdiction of the Court of Wards, (i) that thereby the estates of many Families were weakened, some ruined by excessive Fines, for Composition for Wardships exacted from them, which if in some

(i) Exact
Collections of
the King and
Parlament
Declarations

some few particulars, where the Estate it self was weak, or incumbered with Debts, or charge of Children, cannot rationally conclude or argue the Fines to be excessive, no more than a common weight or burden which may easily be born or carried by any man in health, doth make it to be of a greater weight or burden, because another man by reason of sicknesse, or other disabilities, is not able to bear or stand under it, or that a reasonable or small rent, which Tenants are to pay to their Landlords, is therefore too much or unreasonable, because a poor or decayed Tenant cannot so well bear or pay it as he was wont, (k) or as one that is thriving, or before hand might doe; *That all Leases of above One hundred years were made to draw Wardships contrary to Law* (when as such or the like Collusions, were by the Statute of *Marlebridge* prohibited) and the Parliament was mis-informed, for long Leases under 500. years were not made by that Court lyable to Wardships, and that undue proceedings were used in the finding of Offices to make *Jurors* find for the King (which was but to adorne or bind them over to the Bar of the Court of Wards, in case that there was any doubt of the Law or Evidence.

(k) *Exact Collections of the King and Parliament Declarations.*

Or when the Lords and Commons in Parliament the second day of June 1642. by the nineteen Propositions (l) which were (as they alleaged) for the establishment of the Kings honour and safety, and the welfare and security

(l) *Exact Collection of the Kings and Parliaments Declarations*
307.

Security of his Subjects and Dominions; and being granted, would be a necessary and effectual means to remove those jealousies and differences which have unhappily fallen betwixt him and his people, and procure both his Majesty and them a constant course of honour, peace, and happiness.

(m) *Exact
Collection of
the Kings and
Parliaments
Declarations
and Messages.*
308.

Did propose, petition, and advise, that the Lord high Constable of England, (m) Lord Chancellor, or Lord Keeper of the great Seal of England, Lord Treasurer, Lord privy Seal, Earl Marshal, Lord Admiral, Warden of the Cinque Ports, cheif Governour of Ireland, Chancellor of the Exchequer, *Master of the wards*, Secretaries of State, two cheif Justices, and cheif Baron, *may alwayes* (which shewed they had no desire for the present or the future to take away the Tenures *in Capite* and by Knight service) *be chosen by approbation of both Houses of Parliament.*

Did not conceive them to be any Disease or *Gangreen* in the Body Politique, at the making of the 2^d. Declaration of the Lords & Commons in Parliament, dated the 12th. of January 1642. Concerning the Commission of Array, occasioned by a book then lately published, Entituled his Majesties answer to the Declaration of both Houses of Parliament, concerning the said Commission of Array, Printed and Published by the care of Mr. *Samuel Brown*, then and now a Member of the House of Commons, wherein many Arguments being used (and if they had been Grievances

grievances, would not have become the Parliament to have urged or pressed them as an argument) against the Kings, having power to raise men by his Commissions of Array, and were then so little denied to be for the necessary defence of the King and his Subjects, as they were rather taken by that Parliament to be as the hands and Arms of the bodie *politique*, worthy a continuance & perpetuity, and very well deserving the good opinion which the Parliament then had of them in the expressions following.

We deny that there is an impossibility of defence, without such power, viz. the Commissions of Array. And affirm that the (n) Kingdom may be defended in time of danger, without issuing such Commissions, or executing such power. For, we say, that the Law hath provided several ways for provision of Arms, and for defence of the Kingdom in time of danger without such Commissions 1. *All the Tenures that are of his Majestie by Barony, Grand Serjeanty, Knight service in Capite, Knight service, and other like Tenures, were all originally instituted for the defence of the Kingdom, in time of war and danger, as appears by the Statute of 7 E. 1. of Mortmain, which saith, *servitia quæ ex hujusmodi feodis debentur ad defensionem Regni ab initio provisæ fuerunt, vide Chart. H. 1. irritat in libro Rubro Scac. Coke Instit. 75. Bracton 36. 37. Britton 162. 35 H. 6. 41. Coke 8. 105. Coke 6. 2. Instit. 1 part 103. These Tenures in the Conquerours time were many, and since they are much increased; and these are all bound to find men and arms, ac-**

(n) Ex & C.
Collect. of
the Kings and
Parliament
Declarations
850. 856. & 57

ording to their Tenures, for the defence of the Kingdom.

2. As those Tenures are for the defence of the Kingdom, so the Law hath given to his Majesty diverse Priviledges and Prerogatives for the same end and purpose; that with the profits of them, he should defend himself and his people in times of danger, of which his Majesty is, and always hath been in actual possession since his access to the Crown.

For the defence of the Kingdom, his Majesty hath the profits of Wardships, Liveries, Primer seissins, Marriages, Reliefs, Fines for Alienation, Customs, Mines, Wrecks, Treasure trove, Escheats, Forfeitures, and diverse others the like casual profits, That by these he may be enabled to defend the Kingdom, and that he enjoying them, his Subjects might enjoy their Estates under his Protection, free from Taxes and Impositions for defence. Therefore it is declared 14 E. 3. chap.

1. That all the profits arising of an aid then granted to the King by his people; And of Wards Marriages, Customs, Escheats, and other profits rising of the Realm of England, should be spent upon the safeguard of the Realm of England, & on the wars in Scotland, France, and Gascoigne, and no places elsewhere, during the wars. And the Lords and Commons in Rich. 2. time, (knowing the Law to be so) did (as appears by the Parliament Rolls 6 Rich. 2. m. 42) passe a Petition, that the King would live of his own Revenues, and that the Wards, Marriages, Reliefs, Forfeitures, and other profits of the Crown, might be kept to be spent in

in the wars for the defence of the Kingdom.

3. *If the said Tenures and casual profits rising by his Prerogative, will not serve for defence, but more help is necessary, by the fundamental Lawes and Constitutions of this Kingdom, his Majestie is intrusted with a power to summon Parliaments as often as he pleases, for defence of himself, and his people, when his ordinary Revenues will not serve the turn; And there is no other legal way (when the others are not sufficient) but this, and this last hath been ever found by experience, the most sure and succesfull way for supply in time of imminent danger, for defence of the Kingdom, and to this the Kings of this Realm have in times of danger frequently had recourse.*

A main end why Parliaments are called, is for defence of the Kingdom, and that other Supplies than those before mentioned, cannot be made without a Parliament.

Nor was there any publique or general damage so much as supposed to be in them the first of February 1642. when in the propositions sent by those Lords & Commons, which remain'd in Parliament, to the King at Oxford, to be treated upon by the Earl of Northumberland, William Pierrepont Esq; Sr. Wil. Armin & Bulstrode Whitlock, Esq; their Commissioners. There was nothing desired or proposed for the taking away of the Court of Wards or changing of Tenures, but did conclude that if, that which then was desired of the King should be granted, the Royalty & greatness of his

(*) Propo-
sitions sent by
the Parliament
to the King at
Oxford 1 of
February
1642.

Throne would be supported by the loyal, and bounty-
full affections of his people, (*) & their Liberties and
Priviledges, maintained by his Majesties prote-
ction and Justice.

They were no part of the Bills, or Acts of
Parliament, sent to the King at Oxford, in
order to a peace in July ~~1642~~. 1643

No part of the Demands, or Bills, or Acts
of Parliament, proposed by the Parliament
in the Treaty at *Vxbridge*, betwixt them and
the King, 23 *Novemb.* 1644.

And there was so little of grievance or
inconvenience, or none at all to be found
in Tenures *in Capite* and by Knight service, by
reason of any accidents, for naturally or ori-
ginally there can be none at all proved to be
in them.

As notwithstanding the Vote of the House
of Commons in Parliament, made the 20th
day of *September* 1645.

Which being less then an *Embrio*, and
no more then an opinion of the Major part
of that House, a *recens assensio*, velleity, de-
sire or intention only, which our Laws take no
notice of, was left to an after more mature de-
liberation, when an Act of Parliament should
be brought in upon it, & have gone through
all its necessary requisites, formalities,
and debates, the Parliament it self were so
little resolved, or beleiving any Grievance to
be in them, as the Lords and Commons by
their Ordinance of the first day of *November*
1645.

1645. did ordain that the *Master and Council* of that Court, should proceed in all things belonging to the jurisdiction of that Court according to Law.

And the House of Commons shortly after, viz. the tenth day of November 1645. being informed that by reason of a Vote passed in that House the 20th. day of September 1645. that the Court of wards should be taken away, diverse Wardships, Liveries, Primer seifins, and Mesne rates, which theretofore fell and happened, were not compounded for as they ought to be; It was declared that all of them which have happened, or shall fall or happen before the Court of wards, shall be put down by the Parliament, shall be answered to the Common-wealth, and the Master and Council of that Court were required to proceed accordingly, so as it extended not to any whose Ancestors being Officers or Souldiers have been slain or died in the service of the Parliament.

But the 24th. of February 1645. upon occasion of a debate concerning the Wardship of the Son of Sir *Christopher Wray*, who dyed as they said, in the service of the Parliament, an Ordinance was brought in and made by the Lords and Commons, for the taking away of Tenures in Capite, and by Knight Service, which saith one of their allowed *Mercuries*, was first given to the Crown for defence of the Kingdom, but the Parliament would take care for other supplies.

But

But that Ordinance notwithstanding was so little liked of, as that without the giving satisfaction which they promised to the Nobility Gentry and Mesne Lords for the losse of their Tenures by Knight service, and satisfaction to the most part of the Officers of the Court of Wards, it was no more or not much thought of, but lay from that time in a slumber, untill the first of *August* 1647. when the mighty *Mechanicques* of the Army driven on by their ignorant, and seditious *Agitators*; who were but the Engines of *Cromwell's* lurking and horrid designs, had by their Remonstrances, like Wolves cloathed in Sheepskins, bleated, and seemed to thirst only after godly and purified Reformatiōs, and *Hewson* the *Cobler*, and *Pride* the *Drayman*, and others of the Colledge of their new *sapientia*, busying themselves in State, as well as Parliament affairs, and thombing the Scriptures, and the English Translations of *Livy* and *Plutarch* at the wrong end, thought every one of themselves to be no less than a *Solon* and *Lycurgus*, admired *Agrarian* Laws, and other old exploded grievances, dreamed they were excellent Politiques, and not knowing our good old Laws, but suspecting them (as well they might) to be averse, and no well-wishers to their ungodly, and worse than *Machiavillian* devices, did all they could to destroy them, root and branch, and at the same time, when (in their *New-England* Phrase,) they held forth a more than ordinary

ordinary Care of the Kings Honour and Dignity, and the freedom, rights and interests of the seduced people, proposed (or commanded rather) that the (*) Ordinance for taking away the Court of Wards and Liveries be confirmed by Act of Parliament, provided his Majesties Revenues be not damaged therein, nor those that held Offices in the same, left without Reparation some other way.

(*) Proposals agreed upon by the Council of the Army to be sendred to the Commissioners of the Parliament rising with the Army 1 August 1647.

Which howsoever it were, to the remaining and small part of that Parliament, who durst not say it, but found themselves under a force which against many of their wills, had undertaken to be their Guard and safekeeping, a motive or spur enough to make them put that Vote and ordinance against the Court of Wards and Liveries into an Act as they would call it, of Parliament, after 10000 *l.* given & paid to the Master of the Court of Wards, for the loss of his place 5000 *l.* to *Sr. Roland Wandesford*, Attorney General of that Court 6000 *l.* to *Sr. Benjamin Rudiard*, Surveyer General, 3500 *l.* to *Charles Fleetwood*, late Governour of the destroying Committee of Safety, for his supposed loss by the Receiver Generals place of that Court, which he pretended he ought to enjoy by a Sequestration from *Sr. Will. Fleetwood* his Brother, who was then attending his Master the King at *Oxford*, and to *Mr. Bacon*, 3000 *l.* for a pretended loss of his Office, for the making and ingrossing of Licences or pardons for alienation, all of them but *Sir Roland Wandesford*, being Members of Parliament;

ment, it did without any mention made or remedy provided for those only supposed *Evils*, in *Tenures in Capite*, and Chivalry in the Billsor-intended Acts of Parliament, which were sent to the King the 3 of *March* 1647. when he was at *Holmby* under a restraint fall asleep for many years after, and left all other to expect their satisfaction upon the Parliaments promises, and further proceedings.

And there was so little cause for putting that Sentence in execution against them, in the judgment & opinion of some of the most knowing sort of the *Arraigners* of antiquity, and the actions of their more understanding fore-fathers, as (p) Mr. *Nathaniel Bacon* in his *Historical discourses of the uniformity of the Government of England under the Brittain, Saxon, Danish, Norman* and other Kings of this Isle until the reign of King *E. 3.* published in *Anno* 1647. and in his 2 part from King *E. 2.* until the end of the reign of Queen *Elizabeth*, printed in *Anno* 1651. in a design to make all, or most of the Actions of those our Kings and Princes and the Nobility and Clergy in their several reigns, for at all of them (like one of the *Ephori* sitting in Censure rather than Judgement upon the *Spartan* Kings and Government) and the Acts of Parliament, made in the several Reigns, of those Kings, he aimed, and flung his Fancies, clad in a sober

(p) *Nat. Bacon*
cons *historical*
Discourses of
the Kings of
England

202.254.296.
in 2 parts
241.

sober Stile and Gravity , rather than any Truth or Reason , by pretending that they were made and contrived only under their influence to be arbitrary and oppressive to the freeborn people of this Nation , for which he got several Preferments under *Oli-ver* the Protector of our burdens & miseries.

Though if the Records and Journals of our Parliaments may be credited (as certainly they ought to be) before him, most if not all of our Acts of Parliament were granted and assented unto by our Kings upon the Petitions of the Commons, representing the people in Parliament as *Balsoms* and great Remedies and redresses of all that they could complain of, deliverances from the oppressions, frauds, and deceits of one another, and prevention of evils which might happen to them and their posterities , wherein our Kings have almost in every Parliament given away many, & diminished very much of their own just & legal Rights and prerogatives by granting and confirming their Liberties and Estates with such an infranchisement and freedom as no Nation or people under Heaven now enjoys.

And when as heretofore in former Parliaments they gave to their Kings & Princes (& many times too unwillingly) any aydes or Subsidies , were sure besides the blessings which accrewed to them by many good Laws and wholesome Acts of Parliament to gain

a great deal more by their Acts of grace and general pardons only, then the aids and Subsidies did amount unto.

Unlesse it were in the Reign of King *H. 8.* when the Abby Lands were granted unto him, & in the reign of King *E 6.* when the Chanterie & remaining peices of those religious Lands (were given to him wherein only the Founders and the religious to whom they properly belonged, were the ~~only~~ loosers) and yet by reason of King *H. 8.* his Endowments and erection of the Bishoppricks of *Oxford*, *Peterborough*, *Chester*, *Gloucester*, and *Bristol*, the Colledge of *Christ-Church* in *Oxford*, and the Deanary of *Westminster*, Deanries and Prebends of *Canterbury*, *Winchester*, *Worcester*, *Chester*, *Peterburgh*, *Oxford*, *Ely*, *Gloucester*, *Bristol*, *Carlile*, *Durham*, *Rocheſter*, and *Norwich*, and his large gifts and grants to divers of the Nobility, who had formerly been the Founders, or great Benefactors to many of the Abbyes and Priories, and also to other of his people, and the grants of *E. 6.* *Queen Eliz.* and King *James* considered, very little of those Lands and Revenues doe at this time continue in the Crown.

And our many Acts of Parliament against *Mortmaines* without the Kings Licence, Provisions by the Pope, or any appeales to be made to him under the most severe penalties of Premunire, the Act of Parliament taking away the Popes Supremacy,

macy, the fineing and putting the Clergy of the Provinces of *Canterbury* and *York*, under Premunires by King *H. 8.* An Oath of Renunciation of all fealty and appeals to the Pope, an Engagement to observe all Lawes made against his Power, (q) the losse of 72 Mannors or Lordships out of the Revenues of the Arch-bishopprick of *York*, and of sundry great Mannors and Possessions taken from the Sees of *Canterbury*, *Ely*, and *London*; The demolishing and dissolution of Religious Houses, 3845. Parochial Churches, (being more than a third part of all the Churches in *England*) impropriated and gotten into the hands of the Laity, many of the Vicarages confined to the small and pittiful maintenance of some 20 *l. per Annum*, others 10, and some but 6 *l. per An.* several Acts of Parliament made in the reigns of several other Kings and Princes, clipping the Clergies Power in making Leases, or chargeing their Benefices with Cure, restraining their taking of Farms, forbidding Pluralities, intermedling as Commissioners in Lay or Temporal Affairs, or to make Constitutions in their Synods or Convocations without the Kings Assent, may declare how little power for some hundreds of years past, the Clergy of *England*, have before or since the Reformation, either encroached-upon, or been able to get or keep.

Finds not in his mistaken Censures and Distortions of most of the Acts of our

(q) Nat. Ba.
cons historical
discourses of
the Kings of
England, 219.

Kings and Parliaments to make way in the deluded peoples minds for the erecting of *O-livers Protean*, and Tyranical Government.

Any fault with the erection of the Court of Wards and Liveries, nor with Tenures or Wardships, but justifying them, sayes, that *therelief paid by the Tenant upon the death of his Ancestor, was in memorial of the first Lords favour in giving him the Land, and was first settled in the Saxons times, that the Law of Wardship may seem more antiently seated in this Kingdom, than the Normans times, that wardship was a fruit of the Service of the Tenant, and for the defence of the Kingdom.*

Which that Parliament, or the following Conventions, or Assemblies, made no hast to overturn or take away, until *Oliver Cromwel* that *Hyena*, or *wolf of the Evening*, having filled the Kingdom with Garrisons, & several Regiments of Horse and Foot, amounting to 30000. men, which were to be constantly maintained at the peoples charge, to keep them quiet in their slavery; had upon the humble petition and advice of that which he called his Parliament, acknowledging with all thankfulness the wonderful mercies of God

(r) Petition of
advice of the
Commons of
England as-
sembled in Par-
liament in An.
1652

in delivering them from that Tyranny and Bondage, both in their Spiritual and Civil Govern-ments, which the late King and his party (which in a Fog or Mist of sin and delusion they were pleased most injuriously to averre and charge upon them) designed by a bloody

War

war to bring them under (when as then they were under none , and all but the gainers by the spoyles of those Wars , have since had more Burdens , Grievances , and Taxes entailed upon them , then ever was in any Nation in Christendome) allowed him in a constant Revenue for support of the Government , and the safety and defence of the Nations of England , Scotland , and Ireland , a yearly Revenue of thirteen hundred thousand pounds , whereof ten hundred thousand pounds for the Navy and Army ; which far exceeded that which accrewed to the Crown or Kings of England by Wardships , Tenures , and Ship-mony , which were but casual , and upon necessity , and but at some times or seldome , and alwayes less by more than eight parts in ten of those justly to be complained of awful and yearly Assessments .

Procured the Assembly or Parliament so called in *Anno 1657.* to awake that sleeping Ordinance , and dresse it into an Act as he called it of Parliament , wherein It was without any Cause or Grievance exprest , or satisfaction given , or promised to those that remained the losers by it , enacted that *the Court of Wards and Liveries , and all Wardships , Primer seisins , and Oustre le maines , and all other charges incident and arising for , or by reason of any such Tenures , wardship , Primer seisin , or Oustre les maines ,*
be

be taken away from the said 24th. day of February 1645. (though notwithstanding this pretended Act, he could for his own profit continue and take the Fines upon Alienations) And that all Homages, Licences, Seisures, Pardons for Alienations, incident or arising for, or by reason of Wardship, Livery, Primer seisin, or Oustre le maines, and all other charges incident thereunto, be likewise (according to the new mode of making retrospective Acts of Parliament) taken away from the said 24th. day of February 1645. And that all Tenures in Capite, and by Knights service, of the late King, or any other person (when as the Parliament that made the Ordinance for taking away Tenures in Capite, and by Knight Service, did as was said, promise that all the mesne Lords, and others which held of the King, and had others held of them, should be recompenced for the loss of their Tenures) and all Tenures by Socage in cheif to be taken away and turned from the said four and twentieth day of February 1645. into free and common Socage.

Whereby in all probability, he did but cause those Tenures in Capite, and Knight service, to be put down, to the end that he might take them up again at his pleasure, when he should have finished his wish and devilish designs of making himself a King over a degenerate (as to the generality of the people) sinful and harassed Nation, or in
stead

stead of them, to rule as he had begun, with ~~his~~ *Janisaries*, and *Bashawes*, or *Major Generals*.

But whatever he or his over awed and flattering Assemblies, would make a long & often deluded Nation to believe concerning *Tenures in Capite* and Chivalry, or that kind of fixed and constant part of the *Militia*, It was not accompted in the holy ^{1 Chron. 12.} Scripture to be any grievance to the people ^{23, 29, 30, 33.} of *Israel*, that *Saul* in the government of them, had in every Tribe, and of every kindred many thousands of men of War of the most valiant in a standing *Militia*, as of the Children of *Ephraim*, *twenty thousand and eight hundred mighty men of valour, famous* (and such were our Nobles & *Tenants in Capite*) *throughout the house of their Fathers*; and of *Zebulun*, *such as went forth to Battle, expert in war, and were not of double heart fifty thousand*; or that of the Children of *Benjamin*, *the greatest part of three thousand kept the Ward of Sauls house*.

Or that *David*, a King after Gods own heart, did appoint the *Chief Fathers and Captains of thousands and hundreds*, and their *Offi-* ^{1 Chron. 27.} *cers that served the King in any matter of the* *Courses which came in and went out Month by Month throughout all the Months of the year, and of every Course twenty and four thousand* (which were as our Knights Fees or *Tenures in Chivalry* out of a select or more refined and fit part of the People, whose Estates, as well as their Persons, made them lyable un-
to

Deut. 17. 12,

to it, for the general Musters or trained Bands did by many hundred thousands exceeding that number) which were only as a Land-guard or ready help and defence upon all emergencies, & although it be not there said that they held their Lands by that , or any military Service , yet a great resemblance and affinity may be discerned betwixt that , and the cause & reason of Tenures *in Capite*, which amongst that people was lesse requisite & necessary, for that they being alwayes Marshald under Captains of Thousands, Hundreds, Fifties, & Tens, were by some not exprest Tye or Obligation, or their grand Obedience to the command of their Kings and Princes, which by a set Law of the Almightyes own enacting, in all matters as well military as civil, had no lesse a punishment than Death affixed to the Transgressors thereof) always ready to go up to battle with their King, against any neighbour Nation or others, that did them injury , and leaves but this only difference betwixt our Tenures *in Capite*, and by Knight Service , and (if they were not then in use amongst them,) their fixed provisions for wars offensive or defensive , that theirs was a continual charge upon so many of the people in every year by turns or courses , and ours upon the Princes , Nobles, and many of the Gentry, and better part of the people for all of the Gentry had not the happiness

to

to have Lands originally given them to hold by such kind of Tenures, or did not afterwards purchase them of the first proprietors of those beneficiary and noble kind of Tenures) when wars should happen, which being not often, or might not perhaps be commonly once in forty or more years, were not then also called out to War themselves but when the King went in person, or sent his Lieutenant, and then were to tarry with him or send one in their stead at their own charges but for forty dayes.

No wrong was done by *Solomon* to the people of *Israel*, when he made the people that were left of the *Hittites*, *Amorites*, *Perezites*, *Hevites*, and the *Jebusites*, and their Children which were not of *Israel*, to pay Taxes and doe publique work. (1) 2 Chronic: 8. 7. 8.

And the Children of Israel, no Servants for his work, but men of war, and chief of his Captains of his Chariots and Horsemen.

Jehoshaphat did not any evil in the sight of the Lord, when as notwithstanding that the Fear of the Lord had fallen upon all the Kingdoms of the Lands that were round about *Judah*, so that they made no war against him and the Philistines (the old Enemies of *Judah* and *Israel*) brought him presents, and Tribute Silver, and he waxed exceedingly great, and built in *Judah* Castles and Cities of Store, placed Forces in all the fenced Cities of *Judah*, and

^{ro}
 2 Palip. *Set Garrisons in the Land of Judah, he under-*
 17. 2. 10, 11, *stood it whilst the Lord was with him, & he walk-*
 12, 13, 14, 15, *ed in the first ways of his Father David, to be a Salus*
 16, 17, 18, 19; *Populi to have the men of War mighty men of valour*
 Lib. 1. 81. *in Jerusalem eleaven hundred and threescore*
thousand men which waited upon the Kings besides
those whom he put in the fenced Cities.

(w) 1 Sam. 14. *It was no Imposition upon the people of*
 52. *Israel, neither is it in holy Writ made to be*
any Error in Government, that Saul (whom
our Kings & Nobility in the Creation of mi-
litary Tenures did but imitate) when he saw any
strong man, or any valiant man took him unto him.

Or that David after he was King, hearing
 of the fame of the *Hebronites*, sought for them,
 and when there were found among them at
 (x) 1 Chronic. *Fazer of Gilcad Jerijah the chief, and two*
 26. 31, 32. *thousand and seven hundred mighty men of*
valour made them Rulers over the Reubenites,
and it seems were also but of some part of
them, for that in the next Chapter the Ruler
whom he appointed over the Reubenites the
Gadites, and the half Tribe of Manasseth was
Eliezer the son of Zichri, & over the half Tribe
of Manasseth in Gilcad, Iddo the Son of Zechari-
ah. Nor did Nehemiah that great and good ex-
ample of Magistracy put any grievance upon
the people, when as in the re-building of Je-
rusalem, and to repell the Enemies and hin-
derers thereof, (there being as much necessary
to defend a City or Commonwealth, after it
is built or established, as it can be in the
building

building, framing or repairing, of it) he ordered the one half of the servants to work, and the other to hold the Spears, the Shields, Bows, and Habergeons, and every one of the builders had his ^(y) *Nehemiah* Sword girded by his side, and the Nobles were appointed when the Trumpeter should sound that stood ^{4: 15, 16, 19, 20, 11. v. 1.} by Nehemiah, because they were separated one from another to resort thither unto him upon occasion of fight or danger, and did after their work finished, cause the Rulers of the people to dwell at Jerusalem, and out of the rest of the people by lot, to bring one of every Tribe to inhabit and dwell in there, such as were valiant, or mighty men of valour, and had for overseers the principal and most eminent men, and Zabdriel the Son of one of the mighty men. David did not turn aside from God, nor bind heavy burdens upon the people, because he had mighty men about him, and that *Joshebbabse* ^(z) *2 Sam: 23. 8.* the Tachmonite sate (like a Constable or Marshal of England) chief amongst the Captains, nor did Solomon bruise the broken Reeds, because he had many Princes and great Officers under him, ^{with} as *Benajah*, the Son of *Jehoiada*, (who served his Father *David*, and was Captain over his Guard) was over the Host, *Azariah* the Son of *Nathan*, over the Officers, (like as in England, a Lord great Chamberlain or Lord Chamberlain of the Kings Household) *Zabud* the Son of *Nathan*, Principal Officer, and *Abishar* (as a Treasurer, or Comptrouler) over the Household, none of which could take it for any injury to

enjoy those great Offices and places during the Kings pleasure, but would have esteemed it to have been a greater favour if they had a grant for life, and most of all, and not to be complained of, to have it to them, and to their Heirs, or after Generations, for that all good things and blessings by a natural propension and custom, amongst the Sons of men, are very desirable to be continued and transmitted to posterity, and the sacred Volumes have told us, that it is a reward of wisdom, and vertue, to stand before Princes.

Nor was it any dishonour to the men of *Judah*, and people of *Israel*, that the Queen of
 (a) 1 Reg. 10. *Sheba* wondring even to astonishment at the
 4. 5. Attendance of *Solomons* Servants, and Ministers, and his Cup bearers, or Butlers, as the Margin reads it, pronounced them happy that stood continually before him.

Or to the Subjects of *Ahasuerus*, who
 (b) Esther 1. reigned from *India*, to *Ethiopia*, over an hundred and seventeen Provinces, that besides his seven *Chamberlains*, or Officers of honour, he had the seven Princes of *Persia*, and *Media*, which saw the Kings face, and sate the first in the Kingdom. Nor any to our heretofore happy Nation, enjoying in a long Series, and tract of time, an envied peace and plenty, under famous and glorious Kings and Princes, that they did give Places, Castles, Mannors, and Lands, of great yearly values, to certain great and well-deserving men, and their

their Heirs, to serve in great Employments, Solemnities, and Managements of State-affairs, to the honour of their Sovereigns, and the good, & safety of the People, in the Offices of great *Chamberlain*, high *Steward*, *Constable*, or *Marshal of England*, chief *Butler of England*, and the like. For when the gift of the Land it self was a great kindness, it must needs be a greater to have an honourable Office & Employment annexed to it, & that an act of bounty done by a Prince, in giving the Land, should oblige the claim or receiving a far greater, in the executing of that Office or Attendance, which belonged to it.

And could have nothing of affinity to a burden, when as besides the original gift of the Lands, which were very considerable, and to be valued, many of those personal services by *grand Serjeanty*, were not unprofitable or without the addition, or accession of other Bounties and Priviledges, as the gift to the Lord great *Chamberlain* of forty yards of *Crimson Velvet*, for his Robes, upon the *Coronation day*, the Bed and furniture that the King lay in the night before, the silver *Bason* and *Ewer*, when he washed his hands, with the *Towels*, and *Linnens*, &c.

The Earl *Marshal* to have the granting of the *Marshals*, and *Ushers*, in the Courts of *Exchequer*, and *Common Pleas*, with many other gifts and Priviledges, and *Dymock* who

who holds some of his Lands by the service of being the Kings Champion, and to come upon the Coronation day into *westminster-Hall*, on Horse-back, compleatly armed, and defie, or bid battel to any that shall deny him to be rightful King of *England*, is to have the Kings best Horse, and were not in the least any charge to the people, or laid upon them as *Crommel* did the stipends of his mock Lords or Officers of his imaginary Magnificence, to be paid out of the publick Purse or Taxes, as were the self created Lords of his Counsell, who had 1000 *l. per an.* for advising him how to fool the people, & build up himself by the wickedness of some, and ruines of all the rest, or as the Lord so called *Pickering*, or Chamberlain of his Household, and the *quondam* would be Lord *Philip Jones*, who was called the Comptroller of his Household, had to buy them white staves to cause the people to make way and gape upon them.

No Prejudice to the Common-wealth that the *Beauchamps Earls of warwick*, did hold Land by right of inheritance to be *Panterer* at the Kings Coronation, and to bear the 3 Sword before him the Duke of *Lancaster*, before that Dutchy came again into the possession of the Kings of *England*, to bear before him the sword called *Curtana*, or the Earls of *Derby* as Kings of the Isle of *Man*, to bear before the King at his Coronation the Sword called *Lancaster*, which *Henry the 4th* did wear when he returned

turned from exile into *England*, or for the Earl of *Arundel* to be chief Butler of *England*, the day of the Coronation.

No disfranchisement to the City of *London* that some Citizens of *London* chosen forth by the City served in the Hall at the Kings Coronation assistants to the Lord chief Butler, whilst the King sits at Dinner the day of his Coronation, and when he enters into his Chamber after Dinner, and calls for Wine, the Lord Mayor of *London* is to bring him a Cup of Gold with Wine, and have the Cup afterwards given to him, together with the Cup that contains water to allay the Wine, and that after the King hath drunck, the said Lord Mayor, and the Aldermen of *London*, are to have their Table to Dine at, on the left hand of the King in the Hall. Or to the Barons of the Cinque Ports, who claim & are allowed to bear at the Kings Coronation a Canopy of cloth of Gold over him, with four Staves, and four Bells at the four corners, every Staff having four of those Barons to bear it. Also to Dine and sit at the Table next to the King on his right hand, in the Hall the day of his Coronation: And for their Fees to have the said Canopy of Gold, with the Bells and Staves.

Or that at the Coronation of *Elianor*, Wife to King *Henry* the third *Marchiones de Marchia wallie videlicet Joannes filius Alani Radulphus de mortuo mari Joannes de Monmouth, et Walterus de Clifford nomine Marchie jus Marchie esse dicebant hastas argenteas invenienti et illas*

(c) Cromptons Jurisdiction of Courts.

(d) Lib. rub.
in Scac. et
Camden Brit.
523.

las deferendi ad sustentandum pannum Sericum quadratum purpureum, in Coronatione Regum et Reginarum Anglie; The Lords Marchers of Wales, videl. *John Fitz Alan, Rafe de Mortimer, John de Monmouth, and Walter de Cliford*, in behalf of the Marches, did claim and alleage it to be their right, to provide silver Spears or Launces, and with them to bear or carry a four square Canopy of Purple Silk over the Kings and Queens of England at their Coronation.

For those Tenures in *grand serjeanty*, were ever (as in all reason they deserved to be) accompted to be so honourable as some have made it their Sir-name, as the noble Earls of *Ormond* in *Ireland*, descended from an antient and worthy English Family have done, who carry in their Coat of Armes, or part of their now marks of honour, or bearing the Symbols, or remembrance of the Office of *chief Butler* in *Ireland*, which with the pri-
sage which is a part of it, hath by King E. the 3^d. been granted to the Ancestors of the now Marquess, & Earl of *Ormond* by Inheritance, and a Knightly and good Family of the *Chamberlaines* in *England*, do account it no dishonour to have been descended from the Earls of *Tankerville*, who were Chamberlains to our King H. I. in *Normandy*.

And some branches of the noble Family of the *Grey's* of *Wilton*, being antient Barons of *England*, holding the Mannor of *Waddon* in *Buckinghamshire* of the King, *per servitium custodiendi unum Gersfalconem Domini Regis*, by the

the service of keeping a *Gerfaulcon* of the Kings, do use or bear as a badge or marque of honour in their *Armes a Gerfaulcon*, & the *Manner of Wymondley*, in the County of *Hertford*, being holden of the King by *Grand serjeanty*, of giving to the King the first Cup of Wine or Beer upon the day of his Coronation; The Family of *Argentons*, being by the marriage of a Daughter and Heir of the *Lord Fitz Tece*, become at the Conquest the possessors of it, have thought it honourable saith *Camden*, to bear in their Shields in memory thereof *three Cups argent in a field Gules*.

No oppression to the people of *England* to be kept safe in their peace and plenty, from the Incurfions of Foreign Enemies, (w) ^{(w) Camden Brit. 353.} when *William the Conquerour* fortified *Dover*, a strong and principal Bulwark betwixt *England* and *France*, with whom we had then continual Wars or Jealousies, and gave to *John Fines*, then a Noble Man of great prowess and fidelity, the Custody of that, and the rest of the *Cinque-Ports*, with 56 Knights (x) ^{Lambard} Fees, willing him (as that Learned Antiquary Mr. *Lambard* tells us) to (x) ^{perambulation of Kent 362,} communicate some parts of that gift to such other valiant and trusty persons as he should best like of, for the more sure conservation of that most noble and precious Fort and Castle;

who thereupon imparting liberally out of those Lands to eight worthy Knights, viz. *William of Albrance*, *Fulbert of Dover*, *William Arfick*,

Geffery Peüerel, William Mainemouth, Robert Porthe, Robert Creuequer, and Adam Fitz-williams, bound them and their Heirs by Tenure of their Lands received of the King to maintain 112 Souldiers amongst them, which were so devided by Months of the years, as five and twenty of them were continually to watch, and ward within the Castle, for their several parts of time, and all the rest ready upon necessity, each of which eight Knights had their several Charges in several Towers and Bulwarks, and were contented (as well they might) at their own dispence to maintain and repair the same.

Of whom diverse of the Towers and Bulwarks do yet, or did but in Queen Elizabeths reign bear their names.

No inconvenience or mischief to the pub-
 (y) Camden
 Brit. 505. lique that the Castle and (y) Barony of *Aberga-venny* in *Monmouthshire*, was holden by *John Hastings per Homagium Wardam & Maritagium cum acciderit & si guerra fuerit inter Regem Angliæ & Principem Walliæ deberet custodire patriam de Over went sumptibus proprijs meliori modo quo poterit pro commodo suo & utilitate Regis & defensione Regni Angliæ*, by Homage, Ward, and Marriage, when it should happen, and if War should be between the King of *England* and the Prince of *wales* was to guard at his own charges the Couuntry called *Over went*, the best way that he could for his profit, and benefit of the King, and defence of the Kingdom of *England*.

No cause of complaint to the Town, or antiently called City of *Leicester*, for that *veteri Instituto* by antient Custom, they were to furnish the King with twelve Burgeses or Townsmen, (r) when he went to War, and if per Mare in Hostes ibat mittebant quatuor Equos usq; *Londinum* ad arma comportanda vel alia quæ opus essent, he went by Sea were to send four Horses as far as *London*, to carry his Arms or other necessities. (r) Camden Brit. 463. in 410.

Nor to the Town of *Warwick* to be enjoyned by Tenure, to send (s) twelve of their Burgeses or Townsmen with their King to War, and *qui monitus non ibat centum solidos Regi emendabat*, he which was summoned and did not go, was to forfeit & pay one hundred shillings to the King, And *cum contra Hostes per Mare ibat Rex, quatuor Botefuenas, vel quatuor libras denariorum mittebant*, when the King should go by Sea against his Enemies, should furnish four Boat-Swains or Marriners, or send four pounds in money. (r) Camden Brit. 505.

No harm done to give Lands at *Seaton*, which Sr. *Richard Rockstye* Knight did hold by Serjeanty to be (t) *vantrarius Regis* the Kings fore-footman when he went into *Gascogne*, *donec per usus fuit pari solutarum precij* 4^d untill he had worn out a pair of Shoes of four pence, then the price of a pair of Shooes for a worthy man not 4 s. 6. or 5 s. as they are now. Or Lands to another to furnish *duos Armigeros*, two Esquires to march in his Vant-Guard, upon occasion of War with the *Welch*. (t) Ro. Fin. 11 E. 2. Cokes 1 part Instit. 70.

Or that the Princes of *wales*, *ab antiquis temporibus* very antiently, did hold that Principality and part of *Brittain* of the Kings of *England*, *in Capite*, by Military or Knight Service, and that, upon that ground only as he was a leige man and subject of *England*, *Leoline* Prince of *wales* was for raising of War against his Superior Lord imprisoned, and hanged or beheaded by King E. 1. and the Principality of *wales* as an Escheat annexed to the Crown of *England*.

(u) Camden
Brit. 530.

And as litle when any held of the King *in Capite* by some other Service and not in Chivalry and by Knight Service, as the Town of *Shrewsbury* to cause 12 Towns-men *apud (u) Angliæ Reges excubare cum in illa urbe agerent*; To watch and ward about the Kings Person (which the affrighted *Cromwel* with his guilty and terrified Conscience would have been well content with) *totidemque comitäre cum Venatum prodirent*, and as many to attend him whilst he rode on hunting, Or when *Richard Pigot* of *Stanford* in the County of *Hereford*, or his Ancestors had two Yard Land given him there by the King to hold *in Capite per servitium conducendi Thesaurum Domini Regis*, (which Sir *Edward Coke* calleth *Firmamentum pacis, et robur Belli*, the Foundation of Peace, and strength of War) *de Hereford usque ad London quotiescunque opus fueris sumptibus Domini Regis et in redeundo sumptibus suis propriis, et etiam summo-*
nendi

tenendi Episcopum Hereford ad portas Manerij dicti Episcopi de Bromyard si contingat Dominum Regem prædictum Episcopum implacitare ;
 By the Service of conducting the Kings Treasure from *Hereford* to *London* as oft as there should be occasion, at the Kings charge in going thither, and at his own, in his return, and to summon the Bishop of *Hereford* at the Gates or door of his Manour of *Bromyard*, when it should happen that the King should implead him.

Never troubled the heart of *Roger* the Kings Taylor, when the King gave him a good quantity of Land in *Halingbury* in the County of *Essex*, *tenendum per Serjeantiam solvendi ad Scaccarium Domini Regis unum Acum argenteum, quolibet anno in crastino Sancti Martini*, To hold the Serjeanty of paying yearly at the Exchequer upon the morrow of *St. Martin* a silver Needle.

Nor did the *Donees*, or those who had those Lands of so free a gift or bounty esteem them to be any burden, ^{nor} could it be heavy or troublesome to their Heirs or those that should succeed them in those Lands, when as our Kings did successively give away so great a part of the Lands of *England* as were holden in *Capite* and by Knight Service, either to follow or serve them in the Wars for their own defence as well as theirs, or for their attendance (wherein they received more honour than their Princes gained.

ed by it) at their Coronations , or other great Solemnities by grand Serjeanty or by petit Serjeanty , to present them at some times of the year with a Rose , or a Hawk , or a pair of Spurs , or an Arrow , to keep them a Hawk or Hounds , provide necessities in their Progresses for their household Expences , Sumpter Horses in their Journey to some particular place , Straw for their Bed , and Rushes for their Chamber , as if they gave away all to receive almost nothing for it , and so willingly as ^{to} be put themselves to some trouble to devise what kind of grateful acknowledgments should be made them in a perpetuity , or as far as they could reach to a supposed or hoped for Eternity , & that many of their Tenures where there were not necessities in war or peace reserved , do seem to be but so far for pleasure and merriment , as they did not care what was reserved , so it was but something , as to hold the Kings head at Sea when he should sail betwixt Dover and Whisland , or hold the Cord by which the Sail was tyed , when the Queen (not to shoot with Guns and Canons , as some of the Covenanters for the late Kings good could find the way to do at his dear Wife the Queen Mother that now is) should pass the Seas into *France* , *cum multis aliis* , with many other sortes and kinds , not here to be enumerated without the trouble of a volume , which those honest times ha-

having a better opinion of gratitude, and not thinking it to be so crazy or mortal as now every one finds it to be, did liberally create and bestow.

No wrong was done to them that had Lands given to them and their Heirs by a *Mefne Lord*, before the Statute of *Quia emptores terrarum*, as our forefathers the *Saxons*, long before the Conquest believed; when as *Byrhtrick* a *Saxon* of great note and eminency in *Kent*, holding Lands of *Aelfrick* a *Mefne Lord*, did by his last will and testament in the first place, give to his *natural Lord* a *Bracelet* of fourscore marks of Gold, one *Hatchet* of half as much, four *Horses*, two of them trapped, two *Swords* trimmed, two *Hawks*, and all his *Hounds*; and to the *Lady* his wife, one *Bracelet* of thirty marks of Gold, and one *Horse* to intreat that his *Testament* (wherein he devised great quantities of land to divers persons, and to charitable uses, and the Lords consent was very necessary) stand may, and prayed his dear leefe Lord that he do not suffer that any man his *Testament* do turn aside.

Nor to the County of *Hertford*, or places adjacent, when *Leofranus* Abbot of *St. Albans*, gave in *Edward* the Confessors reign, unto *Turnot*, *Waldef*, and *Thurman*, three Knights, the Mannor of *Flamsteed* in the County of *Hertford*, to be holden by the service, *ut regionem vicinam contra latrones defenderent*, to the end that they should defend the

the neighbour-hood against Thieves.

(y) Camden
Brit. 361.

And no hurt to the Common-wealth; when as the Nobility and great men of *England*, imitating the bounty and munificence of their Kings and Princes, for the enabling themselves to serve their King & Country, did bountifullly give much of their own Estates, & Demesns to divers of their friends & (y) followers to hold of them by Knight service, or some honourable & seldom services about their Persons or Estates; As the Earls of *Oxford, Arundel, Norfolk, Hereford, & Essex, Hertford, & Gloucester, Leicester, Chester, Lancaster, Northumberland, & other antient Earls*, did when they severally gave to those who had so little wrong done them by their kindness, as they have for many ages, and doe yet continue men of worship and great estates in their Counties, as many as 100 Knights fees, many times more, and seldom less, to be holden of them by Knight service, which at the now value of Lands, reckoning every Knights fee as *Sr. Edward Cooke* doth, if at 100*l. per annum*, which is the lowest value; would be 10000*l. per annum*, & at 200*l. per an.* which is the most probable *medium* rate, will amount unto no less than 20000*l. per annum*.

That *Harden Castle* in *Cheshire*, with the lands thereunto belonging, of a great yearly value in the County of *Chester*, was given by an Earl of *Chester*, to be holden of the Earl and

and his heirs; *per senescalciam comitum Cestrie*, ^{(a) Camden Brit. 604.}
by the service of being Stewards to the
Earls of Chester.

Or that the Castle and Mannor of Tun-
bridge, and the Mannors of *Vickston*, *Hors-* ^{(b) Lambards Perambulation of Kent.}
mund, *Melyton*, and *Pettis* in the County of
Kent, were holden by *Richard de Clare*,
Earl of Gloucester and Hertford, of the Arch-
Bishop of *Canterbury*, by agreement and com-
position made betwixt the said Earl and *Bo-*
niface Arch-Bishop of *Canterbury*, in the reign
of King *H. 3.* by the service of four Knights
Fees, and to be high Stewards, and high
Butlers to the Arch-Bishops of that See at
their Consecration, taking for their service
in the Stewardship, seven competent Robes
of Scarlet, thirty gallons of Wine, thirty
pound of Wax for his light livery, of Hay
and Oates for eighty Horse for two nights,
the Dishes and Salt which should stand be-
fore the Arch-Bishop in that Feast, and at
their departure, the dyet of three dayes at
the cost of the Arch-Bishop, at four of his
then next Mannors wheresoever they would;
So that the said Earls repaired thither but
with fifty Horse, and taking also for the
Office of Butlership, other seven like Robes,
twenty gallons of Wine, fifty pound of Wax
like livery, for sixty Horses for two nights,
the Cup wherewith the Arch-Bishop should
be served, all the empty Hogshheads of
Drink, and for six Tun of Wine, so
S many

many as should be drunk under the Bar ; all which services were accordingly performed by Gilbert de Clare, Earl of Gloucester and Hertford, at the Inthronization of Robert Winchelsey Arch-Bishop of Canterbury; and by the same Earl to Arch-Bishop Reignolds ; by Hugh Audley, afterwards Earl of Gloucester, to John Stratford Arch-Bishop of Canterbury ; by the Earl of Stafford, to whom the Lordship of Tunbridge at length came, to Simon Sudbury Arch-Bishop of that See ; and by Edward Duke of Buckingham, to William Warham Arch-Bishop of Canterbury, and executed the Stewardship in his own person, and the Butlership by his Deputy Sr. Thomas Burgher Knight.

No disparagement to the Knightly family of the *Mordants*, in the County of *Essex*, that they hold the Mannor of *Winslowes* in *Hempsteed*, in the said County, of the Earls of *Oxford*, by the service of a Knights Fee, and to be his Champion, and to come to the Castle of *Hedingham* the day of the Earls marriage, riding in compleat harness to Defie or bid Battel to any that should deny him to be Earl of *Oxford*, and to see what order was kept in the Hall there, which *Robert Mordant* Esq; performed in his own person the 14th. day of *December*, in the 14th. year of the raign of Queen *Eliz.* being the day of *Edward* Earl of *Oxford's* marriage, though it was not there solemnized.

Or

Or to *Sr. Giles Allington*, the Ancestor of the now Lord *Allington*, to hold his Mannors called *Carbannels* and *Lymberies* in *Horsed* in the County of *Cambridge*, by the service of a Knights Fee and a half, and to attend upon the Earl the day of his marriage, and to hold his stirrop when he goeth to horseback, which service he performed in person at *White-Hall* the 14th. day of *December* in the 14th. year of the raign of Queen *Eliz.* being the marriage day of the said *Edward* Earl of *Oxford*, in the presence of the Earls of *Bedford*, *Huntington*, and *Leicester*, the Lord *William Howard*, Lord Chamberlain of the Queens household, and the Lord *Burleigh* &c.

Those Dreams or Fancies of Grievances by *Tenures in Capite and Knight Service*, were never presented in those thousands of Court Leets, or Law daies, which twice in every year now for almost 600 years since the Conquest, and very long before, made it a great part of their businesse to enquire upon oath of Grievances, Extortions, and Oppressions.

Nor in those yearly grand enquests to the like purpose, which have been twice in every year, for many hundreds of years past, by the oath of the most sufficient Knights, Gentlemen and Free-holders, of the County of *Middlesex*.

For neither was, nor is, nor can by any reasonable intendment, be taken to be a grievance, to do, or perform that which by the

Laws of God, Nature, and Nations, the ~~Laws~~ reasonable Customs, and ~~the~~ fundamental Laws of *England*, hath so often, and through all times and ages, and the memory of man and Records, which are *monumenta veritatis*, & *vetustatis*, ever been allowed, repeated, and confirmed in Parliament, without the least of any contradiction, or repeal, and is but upon necessity and occasion to defend the King, themselves, their Country, Friends, and Neighbours, and to do that which every Gentleman, and such as are *emeliori Luto*, of the more refined Clay, and better born, & bred than the *vulgus*, or common sort of people would be willing to do ~~as~~ as that learned French Lawyer *Brissotius* well observeth, *Qu'en la necessite de guerre toutes les gentilz hommes sont tenus de prendre les Armes pour la necessite du Roy*, That in necessity of War, every Gentleman is bound to take Arms, and go to the Wars, for the defence of the King, which by our Laws of *England*, is so to be encouraged, as it is Treason to kill any man that goeth to aid the King in his Wars, and is no more than what the Oaths of Allegiance, and Supremacy doth bind every *Englishman* unto, though they should tarry in the Camp more than forty days, or not have Escuage, or any allowance of their charges from their own Tenants, and is but that duty which *Deborah* and *Baruch* believed that every Subject was bound to perform;

(c) Barn.
Brissot, in Ba-
silic, lib. 6. tit.
13.

(d) 21 E. 3.
23. 45. E. 3.
21.

(e) Judges
5. 23.

form, when they cursed *Meroz* (not as some of our Pulpit Incendiaries did when they traitorously inverted the Text, to encourage the people to fight against their King) in that *they came not forth to battel to help the Lord against the mighty*, and the loyal *Uriah* would not forget, when the King himself could not perswade him to go into his own House, to eat, and to drink, *and he with his wife, when the Ark, and Judah and Israel abide in Tents*, (f) 2 Sam. and his Lord *Joab, and the Servants of his Lord* 11. 11. *were incamped in the open field*, and which the good old *Barzillai*, in the rebellion of *Absalom* against his King and Father *David*, thought was incumbent upon him, when he could not bring his loyal mind to think it to be enough to provide the King of sustenance, while he lay at *Mahanaim*, unlesse when he himself was fourscore years old, and could not taste what he eat or drank; he also should come down from *Rogelim*, and go as he did with his Son *Chimham*, over Jordan, with the King to conduct him, and would not accept of the Kings offer or reward, to live with him at Jerusalem (which those that hold in England their Lands and goodly Revenues by those beneficial Tenures in Capite, of a free gift, and in perpetuity may be said to do and have more also then was offered *Barzillai* for the remainder of an (g) 2 Sam. old and worn-out life, but says why should the 19. 31 32, 33 King recompence it with such a reward. 35. & 36.

And is but the performance of the origi-
1 a1

nal contracts made betwixt the kind Donors, and the thankful Tenants, and the observing of faith and promises, which is the *ingens vinculum*, and next unto the Divine Providence, the grand support of the world, and the quiet repose and peace of all mankind, makes a certainty in all their actions, and leads to the *Mountain* of Holiness, and the *Hill* of eternal rest and blessedness.

No grinding of the face of the poor, which (if it were any as it can never be vinced to be) could not commonly, or ordinarily be in the case of such Tenures, when as those which are any way concerned in it, are men of good Estates and Revenues, and would be loth to be under any other notion to pay a reasonable *Escuage* assessed in Parliament, when they went not themselves, or sent any in their stead, and where their Tenants went not in person to defend their Lords as well as their King, to have as much assessed upon them, and by no other than a Parliament, wherein the Commons of *England* had their Representatives of their own Election.

Neither were the Kings of *England*, or the Mesne Lords in the case of those Tenures any *Egyptian* Task-Masters, when those that held under them, had such benefits and bounties of free gift, and if they have been since transferred, and aliened, that part of it, *viz.*
the

the Tenures, and a gratefull acknowledgement of the favour of the first givers were neither sold or paid for in the purchase, but the Services were by Act and operation of Law, and the Statute of *Quia emptores terrarum*, reserved to the first Donors, by an expresse Covenant in the deeds of purchase to be performed to the Lords of whom they were holden, and it is a maxime in Law, *Quod nemo plus juris in alium transferre potest quam in ipso est*, that no man can grant or transferre a greater right than he hath, or is in him.

And are if a right consideration of things shall not be, as it hath been too much in the times of our late *Frenzies*, and Distractions, adjudged a *premunire*, or committing high Treason. More noble Tenures than that of Soccage, by how much a rustick and Plowmans life, and demeanor, was ever in all ages, and amongst all Nations, which had any civility, and understanding, justly accompted to be so far inferior to the *Equestris ordo*, Gentlemen, or men of more noble employments.

As that those and not the military Tenures were truly accompted to be a kind of Slavery, according as they were in their original Institution, before the favour obtained of the King and Mesne Lords, to reduce their *drudgeries*, to easy and small quit Rents, and to be

be but little better than *Joshuas Gibeonites*, *Hewers of wood*, and *Drawers of water*, or *Solomons Perezites*, and *Jebusites*, to be employed as his *Servants and Work-men*.

And as now they are, or expect to be in that which they would imagine to be their better condition, holding in free and common Soccage, by fealty only for all services, and being not to be excused from Aydes, to make the Kings eldest Son a Knight, or for the marriage of his Daughter, or to pay a years value of their Lands, and sometimes double the rent which is to be paid at the death of every Tenant, ^{which} and may amount to a great deal more than the ordinary, low, and favourable rate of five pounds for a releif for every Knights Fee, 50 shillings for a half, and 25 shillings for a quarter of a Knights Fee, and lesser according to the smaller proportions of the Lands which they hold; would in all likelihood if they might but enjoy the antient, and long agoe discontinued priveledge, which the Tenures by Knight service, *in Capite*, were to enjoy by the Charter or *Mag-*
Charta of King *H. 1.* of not having
 Lands of that kind of Tenure which was in
 their own Demeasne charged with any o-
 ther Assessements or services than what they
 were obliged unto by their Tenures.

And was no more than what was before
 the common Justice and right Reason of this
 nation

(h) *Charta H.*
1. et Regis 10.
bannis et 9. H.
3. cap 10.

nation, be now very well content to exchange their free as they call it Socage Lands, which was antiently understood to be no other than *feudum ignobile et plebeium*, an ignoble and plebeian Fee or Estate, and as Sr. Henry Spelman saith, *nobili opponitur, et ignobilibus, et rusticis competit nullo feudali privilegio ornatum, et feudi nomen sub recenti seculo perperam, et abusu rerum auspicatum est*, is opposed or contra distinguished to the more noble Tenures, and being not entituled to any feudal priviledge, belongs only to Ignoble and Rusticks, and hath of late times improperly and by abuse gained the name of Fee, for Lands holden *in Capite*, and by Knight service; So as they might be free from all assessments and charges of War, under which burden the Owners of Lands holden by any kind of Tenures have for these last Twenty years heavily groaned, and if Mr. Prynne had not publicquely and truly said it did *multis parasangis*, by many and very many degrees outgoe all that was pretended to be a Grievance, by the Court of Wards, and Tenures *in Capite*, and by Knight service, which all things rightly considered, are a more free, beneficial, franck, and noble kind of Tenure, the Mariages of the Heirs in Minority only excepted, which not often happening are notwithstanding abundantly recompenced by the freeness of the gift, seldom Services and other Immunities.

Then Socage, which those many Tenants which hold by a certain rent of Sir Anthony

T

Weldens

~~Weldens~~ Heir for Castle Guard to the ruined Rochester Castle in Kent, to pay 3 s. 4 d. *nomine pene*, by way of Penalty for every Tide, which after the Time limited for payment, shall run under Rochester Bridge, and the Rent and Arrears refused, though tendred the next day, do not find to be the best of Tenures, or so good as that of Knight Service, & *in Capite*.

(k) ~~Lincoln~~ Which is better than that which the Tenants in Cumberland and other Northern Partes do claim by a kind of inheritance and Tenant Right, wherein they can be well contented to pay their Lord a thirty peny fine at every Alienation, and a twenty peny upon the Death of an Ancestor, or the death of their Lord according to the Rate of the small yearly Rent which they pay to their Lords, *(1) Fitz Herbert N. B. 12. b. 14. & 165.*

Better then all or most kind of Estates or Tenures, and better than that at will, which many are well apaid with, and better than those of Copyholders, who if the Lords of Manours put them out of their Estates, have no Remedy but by Petition to them. *(m) Mich. 7 E. 4. 19.*

Can have no Writ of *Right-Close* to command their Lords to do them Right without Delay according to the Custom of the Manour.

No Writ of false Judgement at the Common Law upon Judgments given in the Lords Court, but to sue to the Lord by Petition, nor can sue any Writ of *Monstraverunt* to command their Lords not to require of them other Customs or Services than they ought to do.

Are to pay upon their admission an un-

uncertain Fine at the will of the Lord, who, if they be unreasonable, the most they can be compelled unto by any Court or Rule of Justice, is a reasonable Fine, commonly adjudged or estimated at two years value, and either certain or uncertain, are to be paid at the death or alienation of every Tenant (which doe as in Socage happen more often and constantly than that of Escuage and Knight Service) and have many Payments, Forfeitures, Restraints, and Dependencies attending that kind of Estate and Inheritance, as in some places the Heir to forfeit his Land, if after three Solemn Proclamations in three several Courts he comes not in, payes his Fine and prayes to be admitted, or shall without any reasonable cause of absence wilfully refuse to appear after summons at his Lords Court Baron, or to be sworn of the homage, or denie himself to be a Coppy-holder, payeth not his Fine when't it is assessed, or sues a Replevin against his Lord distraining for Rent-service, payes not his Rent, or permits or commits voluntary wast, by plucking down an ancient built house, and building up a new in the place, or cutting Timber without licence, may be fined or amerced, if he speak unreverently of his Lord, or behave himself contemptuously towards him, is at his Death to pay his best beast, or if he hath none, the best peice of his householdstufte for a herriot, and in some

places for it varies according to several customs, is to give the Lord a certain sum of money every month during Wars, to bear his charges, cannot be sworn of the Homage, or bring a plaint in the nature of an Affize, not till he be admitted Tenant to his Land, the Wife shall not have her Bench or Bed in her Husbonds Copyhold Estate, if she marry without Licence of the Lord, and in some places, if she will redeem it, must come riding into the Court upon a *black Ram*, or as in the manner of *South Peverton* in *Somerstshire*, being (n) an antient Demesne, where a Widdow convicted of Fornication, shall as an Escheat to the Lord of the Mannor, forfeit all her Lands and Goods, and the Tenant is by a peculiar custom in some places before he can inforce his Lord to admit any one to his Coppyhold to make a proffer thereof to the next of the blood, or to his Neighbours *ab oriente sole*, inhabiting Eastward of him, who giving as much as another, is to have it, and many more inconveniencies, and unpleasing customs, not here remembred, which they who in the Raigh of *H. 3.* and *E. 1.* Or when *Bracton* and *Fleta* wrote, were but Tenants at the will of the Lord, and by an accustomed and continued charity, fixed and settled upon them and their Heirs, are now become to be the owners of a profitable and well to be liked inheritance, *secundum consuetudinem manerij*, according to the custom of the Mannor, could never by any

(n) H'il. 7.
E. 1. coram Re-
ge.

man-

manner of Reason or Justice, require a better usage, or find the way to complain of, untill our late horrid and irrational Confusions, when Injustice accused Justice, Oppression complained of Right, and the wickedest of Gains, was called the refined Godlineffe, and when they got so much encouragement, as in the height of a grand and superlative ingratitude, to cry aloud and clamour against their Lords who were nothing else but their, good and great Benefactors, and would make as many as they could, believe that their Coppyhold Estates which were great Acts of Charity in the time of the Saxons, were now nothing lesse than *Norman Slaveries*.

Are better also than Estates for lives or years, which are not (unless in case of a seldome happening minority, which is otherwise recompenced) so happy in their conditions, as Tenures *in Capite*, and by Knight Service, but are more clogged and incumbered with Covenants or operation of Law, then Knight Service, as the Tenant to be punished with treble dammage, and a forfeiture of *Locum vastatum*, the place wasted, for wast committed or permitted to be done, in but cutting down an Apple tree in an Orchard, or a few Willows or other Trees that grow about the House, or plowing up land that was not arrable, cannot Assigne his Term, or make a Lease of part of it, or cut down Timber or Wood without leave of his Lord, is

finted

stinted to his fewel or firewood, and to have so many Loads only to burn, is not to carry any dung of the ground, is to forfeit his Lease, if he pay not his Rent, if demanded at the time appointed, and many times strict *Nomine Penes* for every day after in which it shall be unpaid, must carry so many loads of Wood or Coal, every year for his Land-lord, pay quarters of Wheat, Rent Capons, a Boar, or Brawn, a Mutton or fat Calf, and the like, renewing thereby again the old kind of Socage, by their own Covenants, or for their own conveniency, agreeing to find so many men furnished with Pikes, or Musquets, in the service of their Land-lords, in the time of Wars, which was not long agoe done in *Ireland*, by some Tenants of the late Lord *Conway*, which is no lesse then a Military Tenure, Wardships, and Marriage only excepted.

And whether for lives or years doe live under as many other harsh and uncomfortable Covenants and Conditions, as the warinesse, distrust, or griping of their Land-lords, will put or enforce upon them, which he that hath not the property of the Land which he renteth, and knows it to be none of his own, is to endure the more patiently, because if he will not take it, or hold it, so, another will be glad to do it, and that Covenants and Obligations which were at first but *voluntatis*, at the Tenants will and plea

pleasure, before they were entered into, do afterwards as the Civil Law saith, become to be *necessitatis*, and cannot be avoyded.

So as Tenures *in Capite* and Knight service, being more beneficial, and most commonly less troublesome and incumbred, than either Socage, or Copyhold Tenures, or Estates for lives, or years, which are more than two parts of three of the Lands of the Kingdom, and are yet well enough endured, purchased, and daily sought for, and when all is said that can be truly, and rationally alleadged for any good that is in them, that *in Capite*, and by Knight service, being the most noble and best of Tenures, will weigh heavier in the ballance of any reasonable, impartial, or knowing mans understanding; it cannot be imagined from which of the many points of the compasse, or Card of the vulgar, and unruly apprehensions the Wind, or *Herican* of the complaints can come which are made against them, unless any should be so bruitish as to think the payments of Rent to their Land-Lords, or the performing of their oaths when they make Fealty, or their Covenants, Promises, or Contracts, are a grievance.

And therefore until upon any account of truth, or reason, a just, and more than ordinary care of the King, shall be reckoned to be a Curse, Favour a Fault, Protection a Persecution, Benefits shall be taken for Burdens.

dens, Blessings, for Bondage, performance of promises, a Sin, and compelling of them an injury, and gratitude and due acknowledgment for Subsistence, Lively-hood and Liberty, be made a cause of complaint, & every thing that gives the people not a Liberty to undoe, cheat and ruine one another, be called (though it never deserved it) a grievance, it must and may well remain a wonder never to be satisfied, how Tenures *in Capite*, and by Knight service, which until these distempered times, had no complaint made of them, nor could ever be proved to be any publique, or general mischief or inconveniences, (for seldom, or as to some particulars, there may be in the best of Institutions, or the most eminent, or excellent of sublunary things, or actions, something of trouble or molestation,) should after so long an approbation of so many ages past, without any reason given, other then by a bargain for increase, or making a constant Revenue to lessen the Majesty and just power of our Kings, which the Parliament will certainly endeavour all they can to uphold, be now so unlucky, as to be put and inclosed in the Skin of a *Bear*, baited under the notion of a grievance, and cryed down by a few, and not many of the people, as many other legal and beneficial constitutions have lately been, by the vote and humour only of the common-people, or a ruining Reformation, which as to that particular was first occasioned by.



CHAP. IV.

How the design of altering Tenures in Capite, and Knight Service into Socage Tenures, and dissolving the Court of Wards, and Liveries, and the Incidents and Revenue belonging thereunto, came out of the Forges of some private mens imaginations, to be afterwards agitated in Parliament.



LD Sir *Henry Vane* the Father of young Sir *Henry Vane*, who helped to steal away the *Palladium* of our happineſſe, and under the colour of ſacrificing to *Minerva*, or a needleſſe Reformation, was inſtrumental in bringing the *Trojan* Horſe into our Senate, & like the crafty *Sinon* taught the people, weary of their own happineſſe, how to unlock him, and to murder

one another, and massacre our Religion, Laws, and Liberties. And Sir *John Savil* whose Son the Lord *Savil*, afterwards Earl of *Suffex*, (was too busie and active in the hatching of our late VVars, and troubles) and some other men of design and invention perceiving about the first or second year of the reign of King *James*, that his Revenue and Treasure by his over bounty to his people of *Scotland*, and their necessitous importunities and cravings, which is too much appropriate to that Nation, were greatly exhausted, did to serve themselves into some profitable actions, and employments, upon a pretence of raising the King a constant Revenue, of two hundred thousand pounds *per annum*, propose the Dissolving of the Court of Wards and Liveries, and the changing of Tenures *in Capite*, and by Knight service, into free and common Socage, the only attempt and businesse whereof, bringing some of them out of their Countries, and colder stations, into the warmth of several after Court preferments, which like the opening of *Pandoras* Box, proved afterwards to be very unhappy & fatal to the most of all the kingdom, but themselves, and those that afterwards traded in the miseries and ruine of it.

It was in that Parliament after a large debate, resolved, saith Justice *Jones*, in his argument of the Ship-money, by the whole Parliament, that such an Act

to take away the *Prerogative of Tenures in Capite*, would be void, because it is *inherent in the Crown*, & it being again in the seventh year & the eighteenth year of the reign of that King, earnestly afterwards moved, & desired to be purchased of him, and the King ready to grant it, & recommending it to the Parliament, it was then found upon advice & consultation with all the Judges of England, to be of prejudicial consequence to the Subject, as well as impossible, in regard that all Lands as well as persons in the Kingdom, being to acknowledge a Superiority, if the old Tenures should be put down, a new of a like nature might be again created, and the recompence given for it still continue in the Crown, as may be instanced in the *Dane-gelt*, which continued here in England, till the reign of King *H. 1.* long after this Nation was freed from the *Danes*, and the *Alcavalas* or *Cruzadas* in *Spain*, being a kind of Taxes there used and if new Tenures should not be created, the old perhaps might be again assumed,

And with good reason was then denied when King *James* was heard to tell his Son, the late King *Charles*, That such an yearly Revenue as was offered in lieu of those Tenures, might make him a rich Prince, but never a great, and when so many Troops, and Brigades of evils do march in the Rear or Company of that design, which was so *per se* and *non pareil*, as the necessity of *Robert Duke of Normandies*, raising of money, for want whereof he pawn-

(o) Sam.
Daniel 121.

(p) Rot. claus.
37. H. 3.
Clus. 46.
et 47. H. 3.

ed that Dutchy for ten thousand pounds, sterling, to enable him in his voyage to *Jerusalem*, to recover the holy Land, the imprisonment & troubles of K. *Richard 1.* in his return from thence, and his ransom of one hundred thousand marks, of (o) silver, raised by twenty shillings upon every Knights Fee the fourth part of the Revenues of the Clergy, as well as the Laity, with the tenth of their goods, and the Chalice and Treasure (which may tell us how little money, and more honesty *England* was then able to furnish) of all the Churches, taken as well here as in the Territories beyond the Seas, to make up the sum, & those necessities which King *John* had upon him, & the great want of money which his Son King *H. 3.* endured in the Barons wars when he was forced after sale of Lands and Jewels, to pawn *Gascoigne*, after that, his Imperial Crown and Jewels to supply his wants, & having neither credit to borrow, nor any more things to pawn, (p) could not deny his wants, the gaging of the Jewels and Ornaments of *St. Edwards Shrine*, and in the end as Sir *Robert Cotton*, if he were the Author of the short view of the long life, and reign of that King observeth, not having means to defray the Dyet of his Court, was constrained to break up House, and (as *Mathew Paris* saith) with his Queen and Children *cum Abbatibus, & Prioribus satis humiliter hospitia & prandia querere*, to demand entertainment and Dyet at some Abbies, and Priories, and confessed

fessed to the Abbot of *Peterburgh*, when he came to borrow money of him, *majo rem Elie-mosinam fore sibi juramen pecuniare quam alicui* (q) Mat. Pa-
ostiatim mendicanti (q) that it would be a great-
 118 758.
 er act of Charity to lend or give him money then to one that begs from door to door.

Could never perswade them to any such remedies, worse then their diseases, nor did the unruly *Barons* of King *H. 3.* when they had him or his Father *K. John*, at the most disadvantages ever demand it of them or any *English man*, untill the beginning of the reign of King *James*, & the broaching of this project, ever adventure to ask, or give such demands any room or entertainment in their imaginations, and is more then the *Athenians* and *Romans* ever aimed at, who in all their popular and restless turmoils, seditions, and agitations by the people or their *Tribunes*, concerning the *Agrarian* Laws, and making and changing of many other Laws, and several forms of Government, did never seek to take away or root out those long lasting monuments of benefits, and the acknowledgements and returns of gratitude, which ought to be made of them.

More then the people of *France* in those hard Conditions which they would have put upon the *Daulphine* of *France*, afterwards *Charles* the fifth of *France*, in the troubles and imprisonment of his Father King *John* in *England*, in the Raign of our King *Edward* the third, and the strange and insolent beha-
 viour

viour of the Citizens of *Paris* towards him; when the *Provost* or Mayor, put his own hood half *blew* & half *red* upon his head, & compelling him to wear his Livery, did all that day wear the *Daulphines*, being of a brown black, embrodered with gold in token of his *Dictatorship* did ever demand, nor did in those great afflictions & wants which were upon *Charles* the seventh, when he was reproached by his Subjects, and the English had so much of *France* in their possession in the Raige of our King *H. 5.* and King *H. 6.* who by their numerous Armies, and the gallantry of their nobility and Tenants *in Capite*, and by Knight Service, were Masters of the Field, as well as of that Crown, as he was in disgrace called the King of *Berry*, being a small Province, wherein he made what shift he could to defend himself, & when his Table failed him, so that he eat no more in publick, but sparingly in his Chamber, attended by his domestical Servants, & had pawned the Countrey of *Gyan* for money, ever require to be discharged of their Homages and Tenures, and the duties and incidents which belonged to them.

Neither did the Justices or domineering Officers of State in *Aragon* in their height and extravagancy of power, which (for some time, until by its own weight, their Tyranny, or the subtile & politique patience of their Kings, it came to be dissolved into the Royal & proper Rights of that Crown & Government) they exercised over their Kings, ever

(r) John de Serres *history of France.*

ever make that to be any part of it, nor did the wants of *John* King of *Arragon*, when he had pawned the County of *Roussilion* to *Lewis* the eleventh King of *France*, nor of *Ferdinand* the Second, Emperor, when within these forty years in those devouring and destroying Wars of *Germany*, when the pale horse of death, and the red of destruction, rid up to the bridles in blood, he pawned *Lusatia* and *Silesia* to the Duke of *Saxony*, and the upper Palatinate to the Duke of *Bavaria*, beget any such motion of the people, or Condescension of their Princes.

And that unhappy project and design, had in all probability no more disquieted our old *Albion*, or *Brittain*, sitting upon a *Rock medius tranquilla in undis*, in the midst of all our late Storms and Tempests, which had broken the bag of *Eolus*, & getting loose, vied with the raging waves of a distempered Sea, who should be most destructive, and play the *Bedlam*.

Had not a necessity of the Parliament in *An. 1645*. and their want of mony to maintain their Wars, put them again in mind of that way of raising mony, all other that could be almost thought upon as far as the mony, which should be spared by one meal in every family in a week, having been before put in Execution (so dangerous and of fatal consequence, are sometimes but the attempts or beginning of designs) and then as the vote tells us, the house of Commons having

ving received the report from the grand Committee, which was ordered to consider of raising of monyes for supply of the whole Kingdom, after some debate thereupon, ordered that *the Court of Wards and Liveries, with the Primer Seisins, Oustres les mains, and all other profits arising by the said Court, should be fully taken away, and be made null and voyd.*

And that the Sum of one hundred thousand pounds per Annum, should be raised in this Kingdom, instead of the Revenue thereof, to be disposed for the good of this Kingdom, and that the proceedings of the said Court, should continue Statu quo prius, untill an Ordinance for taking away the said Court, and paying the yearly Sum of 100000 l. be brought in, and past both Houses.

Which might well have been forborn, when no general or extraordinary, and not otherwise to be prevented evils, but only want of money for ought yet appears, did, or could perswade them unto it for a Subversion of so grand a Fundamental of the Government, Regality, and Laws, will never be able to avoid the dangerous consequences which will inevitably follow thereupon, and though it should be done by Act of Parliament, will but produce and usher in many numberlesse mischiefs and inconveniences to the King, Kingdom, Nobility, Gentry, and the most substantial and considerable part of the people.

And will never be recompenced by the benefits

(153)

nefits hoped for, or which may happen by the intended dissolution of that Court, and alteration of those Tenures, which in the prospect or event will appear, if so many to be no more than these.

X

CHAP.



Chap. V.

The Benefits or Advantages which are expected by the people in the putting down of the Court of Wardes and Liveries and changeing the Tenures in Capite and by Knight Service into free and common Socage.

I.



Y taking away the Service of Warre without the Kingdom, when the King or his Lieutenant goeth to warre for forty dayes bearing the

Charge of a man and Horse, and the payment of Escuage to be assessed by Parliament, if he neither go nor send one in his place.

II.

Respite of Homage, ^{Grand} ~~petit~~ Serjeanties, Fines for Alienation, Wardships, and payments of Fines for the marriage of the Heirs in minority, a rent for the Lands in the interim, Reliefs, *primer seisins*, *Oustre les maines*, Mesne Rates, Liveries, and assignment of Widdow Dower.

III. The

The troublesome and powerfull processe of the Exchequer, costly and long pleadings of their Evidences, to avoid seifures for not fueing out Licences of Alienation, thereby enforcing them to procure pardons and to plead them. III.

Costly Attendance upon Escheators, and Feodaries, finding of Offices or Inquisitions *post mortem*, producing and finding (if the party hath a mind to it) of their Evidences, Compositions, chargeable passing, and obtaining grants of the custody of the body, and Lands, of Wards. IV.

Trouble and charge of Writs of *diem clausit extremum quæ plura & melius inquirendum*, Processe of privy Seals, Messengers, Informations, Bills, & Demurrers, (as the Case may happen,) Answers, Traverses, Replications, Rejoynders, Commissions, Examinations, & Depositions of Witneses, Orders, Hearings Decrees, Injunctions, (all which are but to help to recover or defend the Wards rights, and if not in that Court, would be with as much or more cost and trouble as in other Courts) Extents, Seifures, Accompts before Auditors, Surcharges, and Exceptions, Fees to Auditors, and their Clarks. V.

Concealment of Wardships, vexatious & chargeable hunting after them, and the cunning search and Inquisition which is made after them by the Escheators, Feodaries, VI.

or Informers, busie and malicious Adversaries, (which is not often, and but where the parties endeavour to deceive the King, and the Court, and evade the Law) and the extremities put upon them by granting it, and the Mesne rates, to the fierce discoverers, or such as seek profit out of other mens troubles and afflictions.

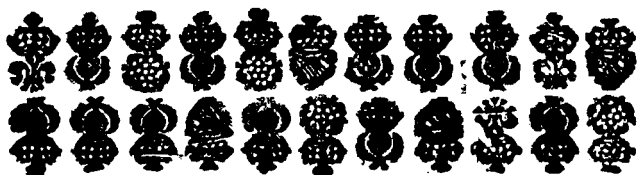
VII.

Restraints from felling of Timber without Licence of the Court, begetting the charges of motions, & the attending upon the Court and their many Officers. -

VIII.

A constant and certain yearly Revenue of eighty thousand pounds *per annum*, or so much more as the Revenue shall fall short of twenty thousand pounds *per annum*, which the alienation office now yields to be added to it, will be duely answered and paid, to his Majesty which will with all charges & expences deducted as is alleaged, be as much as was yearly gained to the Crown by the Court of Wards and Liveries, or any dependances thereof, against which if there shall be opposed, and put into the other end of the ballance, these inconveniences following they will weigh very much the heavier.

CHAP.



CHAP VI.

The great and very many Mischiefs, and Inconveniencies, which will happen to the King and Kingdom, by the taking away of Tenures in Capite, and Knight Service.

FOR that Lands in *Socage* will if the Mothers be alive, during the minority of the heirs, most commonly fall until the age of fourteen years, into their Guardianships, who as all women which have an estate considerable, either real or personal, in their own right or their Childrens, do more then nine in every ten, (unless, which seldome happens, they shall be such good women and loving, as for their love to their Children, and dead Husband, to deny themselves their expected content by a second Husband,) by the temptations and flatteries of younger Brothers, or men of decayed Estates, *transire ad secundas nuptias*, marry again, and too often within the first year, which

I.

which the Civil Law reserved for the time of their mourning, or retirednesse from worldly pleasures, and do too commonly bring the Childrens Estate to be as a *sawce* to the hungry enough appetite of a Father in Law, who being many times as good a Guardian to the Children, as the *woolf* or *Fox* is to the *Lambs*, will be sure if he do not spend both the Mothers and Childrens Estates, and bring them to beggery, to be gnawing and put many a lurch and trick upon them.

(f) Cicero orat. pro Murenar.

(c) Cato apud Livium.

Which might be the Reason that the prudent *Romans* were so little willing that the Mothers of any Children should after their Husbands death be the Guardians of them, as they had a Custome that the Mothers themselves should be *in perpetua Tutela* in a perpetual Wardship or Guardianship, for *Cicero* would have it that *Mulieres propter infirmitatem Consilii*, Women though of full Age should by reason of their unfitnessse to govern or give Counsaile be, *in Tutorum Potestate*, have Tutors assigned them, and the Judicious *Cato* declared it openly, *in publica Concione* in a publique Speech concerning the *Oppian Law* that, *Majores nostri nullam ne privatam quidem rem agere Fæminas sine Auctore voluerunt*, Their Ancestors did not permit Women to meddle nor so much as in private affairs without a Director or Overseer, And *Ulpian* tells us that, *Lege Atilia sancitum*

ut

ut mulieribus et pupillis Tutores non habentibus a (u) Ulpian
Prætor et majore parte Tribunorum darentur, tit. 11. & Si-
 It was enacted by the *Atilian Law*, That the gonius de an-
 Prætor or Lord Chief Justice, and the greater quo Jure
 part of the Tribunes should appoint Civium Rom.
 Guardians to such Women and Children as lib. 1 cap. 13.
 had none.

And if the Mothers should either make II
 themselves, or be allowed by the Magistrate,
 as one way or the other it will be most like-
 ly to be, the Guardians before the Heirs age
 of 14. or if at 14, the Children should be left,
 as they must, to chuse their Guardians them-
 selves the Fear and Awe of the Mothers,
 or their second Husbands Inticements and
 Kindnesse but for that instant, will in all pro-
 bability induce them to chuse no other, &
 so whether before the age of 14 or after, it
 is likely to be no otherwise but that where
 the Mothers are living & married again, the
 self-seeking and purloining Father in Lawes
 of the Kingdom will be the Guardians, and
 where there are a second Brood of Children
 which will not be seldom, the Estates of the
 Children of the first Husband shall be sacri-
 ficed by the Mothers Consent or permission
 to the benefit of the second Children, whose
 Father making much of the Mother or flatter-
 ing her, finds it to be no hard matter to make
 her as willing to it as himself, and if she
 would hinder or doth not like, it can but
 steal her sighs and weep and lament in a
 Corner.

Corner, for that which she may wish were otherwise, but cannot help it when she is, *Sub potestate viri*, Under the Power of a second Husband.

III.

And if not granted to the Mother or her second Husband, but to the Friends of that side which cannot inherit, which where the Mother is not an heir must of necessity be to her kindred, it will not then also escape another common, often, and sadly experimented fault or evil, that the affections and care which doth usually assist and incourage honest and fair Dealings, will not be so much in the kindred on the Mothers side, which is but taken out of their Family and transplanted into that of the Fathers, (where the Mother her self is to forget her Fathers house and kindred,) nor equal that affection, care, and obligation, which is on the part of the Fathers kindred to preserve that Family which weares their Name as well as their Blood.

III.

And whether the Guardian in Socage shall be *Tutor Testamentarius*, ordained by the Fathers last Will and Testament, or a *Pretore datus* appointed by a Judge will not arrive to any better Fate or Condition than that where there be Executors or Administrators in personal Estates or Trustees in Real or Personal, for Children and minors, or for payment of debts, who can many times neglect and forget the dying requests of Parents, on their death Beds, to be

to be careful of their Children, and their own imprecations, that God should do so and so to their own Children, if they should not perform the trusts, and let out their Consciences *Hackney* to the *Devil*, to find ways to deceive and wrong them, of whom and many other such Guardianships and faithlesse performances of trusts, our Courts of Law and Equity do dayly heare more Complaints of fraudes and cosenings, than they can either easily find out or remedy.

Which with that also of Father in Laws do in a woful experience exceed ten to one all that hath been but only surmised of the Court of Wards, which being a standing Court where there are no Interests, but a care only of the Kings and the Peoples just Rights, and their Oaths cannot be so predominant or inchanting, as the Interests, advantages or designs of single Persons; And it is not now to learn that the Mischiefs done to Infants and their Estates are more where they be in *Socage* then in Tenures *in Capite* and by Knight Service, that there is a great difference between accompts that are to be made to a Court and impartial Auditors, and where the Guardians will accompt when or where they list, and give no security for true Accompts, and discharge of their trust, and without it are not to be trusted, for that many times they faile in their Estates and are impoverished, and the Evils that have happened to the heir of

Hele or of *DaVenport*, where some of the Souldiery which were formerly Tradefmen have in the usurpations of authorities made themselves to be more then like the Master of the Wards, and tossed and tumbled their Estates and Marriages at their pleasure, and complaints, are obvious where an Heir by the unconscionablenesse of *Svage*, Guardians have by the spoyl and wast of their Woods and Estates been damnified ten or twenty thousand pounds.

V The Kings Tenants will be enabled to alienate their Lands to such as may be open enemies, or ill affected to his Person, Succession, or Government.

Which will leave him a lesser power over his Subjects, in relation to his Tenants and those that hold of him, then every Gentleman and Lord of a Mannor hath in *England* over his Coppy-holders, or such as hold of them by Leases for lives or years.

Which every Land-Lord finds, aswel as believes, to be so necessary as Citizens and Burgers, and all manner of Land-Lords, doe both in litle and great estates and leases, especially provide against letting, setting, or assigning without their license first had in writing, unless it be sometimes to Wives or Children, which in the Kings case, in matter of free-hold, was in 32 *H. 8.* allowed his Tenants, so as they left a full third part to descend to the Heir.

VI The education of the Heir in minority of Recusants

Recusants, or persons disaffected to the King, or his Government, or to the Orthodox Religion.

Provisions for protections for younger Children, and care of payment of Debts, preservation of the Wards Estate, Woods and Evidences will be neglected.

The finding of Offices or Inquisitions, *post mortem*, of the Auncestor, and the true extent and quantities of the Mannors and Lands, and many times the finding or mentioning of Deeds or Evidences in the Offices, which in antient aswell as latter times, have given a great light and help to titles and descents of Land, and the recovery and making out of Deeds or Evidences lost, will now be laid aside, and all things left in the darkness of ignorance and uncertainty. VII

Genealogies and Pedigrees, which by such Offices have only since the beginning of the reign of King H. 3. been deduced and brought into great certainties, will now be left like those of the *Welch*, to beleive one *Ap* after another, and *Ap John*, *Ap Jenkin*, *Ap David*, and whatsoever the wild traditions and boastings of our New men or upstarts and our *Bards*, or undertaking ignorant *Painters*, to draw money out of their credulous customers purses, shall be pleased to fancy, and shall not be so happy as the *Jews* in their return out of their captivity, who were not to seek for the registers of their *Genealogies*, but be like the dull *Thracians*, who are said to have so short a memory as not

not to count above the number of 4 or 5 ; Or being like a House with the windowes or lights only backward ; or as a people with their eyes only in their backs, ^{shall} and in the time to come, not be able to give an account of our Ancestors further then our Grand-Fathers,

And no other course or way being yet found to preserve the memory or right of Armes, or certainty of descents of our Nobility and Gentry, the people (which the more *Peysant* and *Mechanick* part will be glad of) will be left to fool and make one another believe their own *Rhodomantadoes* and Delusions.

12 Cause increase and multiply contention betwixt the Kindred and near Relations of the *Orphans* and *Minors*, in striving who shall have the Manage and Protection of their Lands and Estate, or as too often happens, most cleanly or hypocritically deceive or ruine them, or make an Interest or Advantage for themselves, friends, or kindred by their *Marriages*, which in these last twenty years, and the practise of Counterfeit Religion and Honesty, calling every successfull knavery a *Providence* of the Almighty, (who not only hates, but will punish it ;) can take 500l. or or more at a time to make *Matches*, where they pretend great friendships, and in an Age of all manner of cheating and cunning devices to maintain *Pride*, is become the beneficial employment of many that would be thought to be Gentlemen, or people of great respect or worship ; and if a *Trades-man*
or

or Citizen, whose riches and influence have of late been too much upon all men or their estates in the Kingdome (more especially those that are prodigal or vitious) should get a Guardian-ship, may doe as the *Dutch* are now complained of, who out of their *Wis Camer*, Chamber, or Court of Orphans, can send their monyes to trade as far as the *East-Indies*, not for the Childrens, but for their own advantage, and in the mean time make delays and pretences enough not to pay them their money, insomuch as a young Girle whose Parents dyed when she was but three years old, was at last for out of patience with Petitioning and attendance, untill she was 17. as shee had almost clawed out the *Grestiers* or *Registers* eyes, and in the chase of such controversies, which upon pretences of nearer of kin, weakness of Estate in some, or bad life and conversation, and unsuitness in other, may aswel be lengthened and made to be very chargeable, as those are concerning *Executors* or *Administrators*, which doe too often make the Infants money and Estates the lamentable paymasters.

Whereas in the Court of *wards*, Controversies or Competitions for Wardships, were by reason of the instructions and rules by which they walked, easily and quietly determined in an hour or litle more time spent, Summarily and upon Petition, only in the Council Chamber of that Court.

There will not be that ready help or care which was used to be, for the preservation
of

of the Wards estate from false or forged Wills, fraudulent or forged Conveyances, unjust Entries, and pretended Titles, and other Incumbrances.

XI Nor for Tenants in Tayl and their Heirs, whose Deeds being found in the Offices, did many times prevent their disherision by Heirs, by second Venters, and forged Conveyances or Wills.

XII Creditors cannot for want of such Offices found, know how the Debtors Lands are settled, or what is in Fee-simple to charge the Heir.

XIII An Heir may now be disinherited by the frowardness of an aged Father, Instigated by the cunning and practise of a Step-mother, whereas a third part could not have before been conveyed or given from him.

In Socage Tenures there will be nothing for the defence and safety of his Majesties Kingdome, Person, and People, when every man shall be holding his Plow, or be supposed to hold by it, but the moyety of the Excise of Ale and Beer, to the value of one hundred thousand pounds *per annum*.

XIV The Kingdom will upon occasion of war or invasion, lose the ready defence, and personal service of the Nobility, who held *per Baroniam*, or as Tenants *in Capite*, and of many worthy and able men, Knights, Esquires, Gentry, and other sufficient Freeholders, and men of good Estate and Reputation, well educated and fitted for war, and compleatly armed on Horse-back, & not like to be Run-
aways

~~ways~~ or treacherous which hold the remain-
 der, and yet to be discovered Knights Fees, or
 any part thereof in an ordinary course of
 defence for forty days service (which in
 those times, and after the manner and way
 of war, and the *Militia* then used, was time e-
 nough to determine all or a great part of the
 unhappy controversies of War) by, and out
 of so many several Estates, than at twenty
 pounds *per annum*, since improved to two or
 three hundred pounds *per annum*, with not a
 few of their Tenants, Friends, Servants, and
 Attendants, going along with them, and
 may call or summon them to go with him
 out of the Kingdom in case of a diversive
 War, or otherwise, which by the Statutes of
 1 E. 3. 8 E. 3. 25 E. 3. & 4 H. 4. & 17 Car.
 he cannot do to Hoblers, Archers, Footmen,
 or the Train Bands, but in case of necessity,
 and suddain comming of Foreign Enemies
 into the Realm, and would have been sure
 of a gallant Army of Horse, which being
 the more active and ready part of an Army,
 fittest for charge or retreat, forage or tra-
 versing a Country, is by the *French* whose
Nobles in War are presently on Horse-back,
 and make it their Joy and subsistence, to ap-
 pear in the defence of their King and Coun-
 try, found to be a great part of the Successe
 in war as well as the *Persians* have done, who
 hath many times overcome the *Turk* by the
 strength of Horse, as the *Hungarians* and
Poles have often done; And the *Germans* and
Italians, did heretofore make great use of
 their

(w) Nolden de
statu nobilium,
 62.

(x) Water-
 house discourse
 of Arms and
 Armouries.

their Nobility in Wars, and made their Armies to consist most of Horse, for that they presumed *quod in Equestri militia praevalerent nobiles*, that the Nobility would do best, and prevail when they served on Horseback, for as the great Estates of England; were held by Knight Service, so it was most performed on horseback, and such as found or furnished out Horses in war, were to be men of Gentility and value and did in person go with their Prince or their Lieutenant) and until H. 5. Time, Gentlemen which every high Constable and Mechanique, now thinks it to be too little to usurp the Title of) were not distinguished by any Title of addition, but by their *forinsecum servitium*, which was Knight Service, and in Kent where they claimed Gavelkind, were never put under that kind of partition.

It must needs be very prejudicial to the King who is to protect his people, and to his people, who are to be protected by him, when as the King hath none or very few Inland, Castles, Citadels, or places of strength, as *Holland, Flanders, France, Italy, Germany*, & most Nations have to retard the March of an Enemy landed, untill he can summon or call together his Subjects and Forces, and cannot at once, or upon a suddain, be able to raise so many men as may be able to incounter, or vanquish him in the Field.

Shall have no *Legions*, or standing parts of
 an

an Army; as *Oliver* and his Son *Richard* had paid at the charge of the publike to rally and unite at pleasure, ^{suppress} ~~repress~~ the Rebellions, Repel and Oppose an Enemy, and if need be, visit him at home, and make his Country rather than his own, *Sedem Belli*, the Stage of War, to indure the Spoyles, Plundrings, Insolencies, and free quartering of Souldiers.

But ~~shall~~ when the *Floods* shall rore and lift up their voice, his Enemies compass him in on every side, and there be none to help him, ^{shall} ~~be~~ as a Prince disarmed, and left to intreat and expect the good will of his people, or the care which they will be pleased to take for themselves in the first place, & for him at leaseure & hoping that they will not divide into parties or factions call or summon a Parliament, which will take up forty days or six weeks, and give the Enemy all that while the mastery of the field, and time enough to make up all his advantages, and in the mean time must not so much as require aid of them who have had their lands freely given them, or of those who hold Offices or Annuities under him, for the performance of their Homages, Oaths, Fealties, Contracts, Promises, and grateful acknowledgments, and when the Parliament are met, must tarry until the majority of opinions shall agree how and in what manner he shall be helped, which will not if it should be agreed upon the second or

third day, but useth not to be in so many weeks, be speedily furnished when the money must be first raised (which in the late necessity of disbanding and paying of Souldiers, could not be finished in two or three months) and the men after leaved, armed, and cloathed, which where the Enemy, shall in the mean time have gained some Forts, Passages, or Counties, will not be to ready a way, or help at hand, as the use of Tenures, *in Capite* which like so many Garrisons invisibly dispersed, but no way oppressing their severall Neighbourhoods are upon the score of gratitude as well as loyalty quickly called out and imbodyed, which made the Kingdom have the lesse use of Forts & Castles, & to be able in the Raigh of King *Stephen* by agreement betwixt him and *Henry* the second to demolish at once 1150 Castles.

XVI.

Will loose also his Homage of his Tenants *in Capite*, and by Knight service, being the *Seminary* and root of the Oath of Allegiance, and the *Genus* or original of Fealty,

(y) *Coke* 1. which saith *Sir Edward Coke* is a part of Homage, and is so much saith *Sir Henry Spelman*

(z) *Spelmans man*, a part of Homage, as a release
Glossar. in verbo Homagij
 356,

of Fealty is a discharge of Homage, which (the Oaths of Allegiance and Fealty, & the duty of them being now by the delusions of Satan too much disused, and strangely *metamorphosed* into factions) will though the Oaths of Allegiance and Fealty should faile, remain fixed and radicated in the Tenures of Lands.

Lands *in Capite* and by Knight Service, and when they concur, do altogether if rightly observed, make a threefold Cord which will not easily be broken, and were therefore by as careful as wise Antiquity invented to fasten Subjects to their Duty, any one of which cannot now with any safety to the King or his Kingdom and people, be separated or disjointed, more especially that of Homage, for that former ages understood the Obligation of self Preservation and Interest to be more binding than Oaths as *Salmuthius* in his learned and accurate (a) *Salmuthius in Pancirollum* Comment upon *Pancirollus* well noteth ^{280.} *ut & more humani ingenii pro illis habeant maximam Curam, in quibus suam vident esse positam Substantiam*, That men most commonly take most care of that, wherein their Lands and Estates are concerned, which that *antient Committee-man* and old *Sequestrator* the *Devil* well understood when he got an Order or Permission to ruine the Righteous, *Job* in his Estate, and our last twenty years can inform us how impotent and unable Oaths of *Allegiance and Supremacy, Protestations, National Covenants, with hands lifted up to heaven, calling God to witnesse Loyalties, hot and fiery Zeals, and pretences of Religion, setting up of Christ, and his Interest, and walking with God in the more (as it was wrongfully called) refined way of his worship, to resist or stand in the way of Interest, Dangers, Hazards, Self-seeking, and Self-having, in this world, but nothing at all in the better.*

Which the reserving of *Fealty*, or its being always to be taken upon Tenures in Socage, and as well upon Leases for years, as Estates of freehold and inheritance will not remedy, when as *Sir Henry Spelman* hath well observed, *Fealty*, though it be taken upon Oath is not so obligatory as Homage though it be not taken upon Oath, for that the Words of Homage are *devenio homo vester ab hac die in posterum, de vita, de membro, & de terreno honore verus, & fidelis vobis ero, & fidem vobis portabo ob terras quas a vobis teneo*, I become from this day forward, your man of life, member and earthly honour, and shall be faithful and bear faith unto you, for the Lands which I hold of you. And is not so awful & binding as that which was used in the *British* or *Saxon* times, or shortly after the Conquest, *viz. ad defendendum Regnum contra alienigenas, & contra inimicos, una cum Domino suo Rege, & terras, & honores, cum omni fidelitate, cum eo servare, & quod illi intra & extra Regnum fidelis esse voluit, & intra & extra Regnum defendere*. that is, to defend the Kingdom against Foreigners, and Enemies, within and without the Kingdom, and with the King to defend his Lands and Honours, with all fidelity, and would be faithful to the King within and without the Kingdom, & that that which is prescribed by the Statute of 17 E. 2. (in which also the form and words of the Homage is declared and expressed) ever since used, *viz. Quod vobis*

Vobis ero fidelis et legalis, et fidem vobis feram de tenementis quæ de vobis teneo, et legaliter vobis faciam, Consuetudines et servitus quæ vobis facere debeo, ad terminos assignatos ut deus me adjuvet, that I shall be faithful and loyal, and faith bear to you for the Tenements which I hold of you, and shall lawfully doe and perform to you all Customes and Services which I ought to doe at the Tearms assigned. So God me help, is far lesse obliging and comprehensive, and so litle in the opinion of the (b) Spelmans Tenants or Fealty makers, as *sufficit plerun-*^{glossar 268. et 269.}
que; As Sr. Henry Spelman saith, *si pacos redditus, exolverit se&amque Curie Domini, ex more præstiterit Domino autem non militat nec armis cingitur;* they most commonly think it extendeth but to pay the rents agreed upon, and doe the accustomed suite and service to their Lords Court.

Which in the Civil Law, form of an Oath of Fealty, used in the parts beyond the Seas in this manner, *viz. Ego juro ad sancta dei Evangelia quod a modo in antea ero fidelis ei ut vassallus domino nec id quod mihi sub nomine fidelitatis commiserit pandam alii ad ejus detrimentum me sciente,* I swear upon the holy Evangelists, that from henceforth I shall be faithfull to him (*id est* the Lord) as a vassal to his Lord, nor shall willingly discover to another any secret which under the name of Fealty he shall commit unto me, was taken and found to be so slender a tie or obligation, as *Alia de novo super fidelitatis juramento inventa forma*

et utentium consuetudine quæ hodie.

When Obertus de Orto wrote his books *de feudis in omni curia videtur obtinere*, a new form of the Oath of fidelity was found and invented, and is used saith he almost in every Court, and approved by those that used it, *Scilicet ego Titius juro super hæc sancta dei Evangelia quod ab hac hora in antea usque ad ultimum diem vitæ meæ ero fidelis tibi Caio domino meo contra omnem hominem* (& where it is to a mesne Lord) *excepto Imperatore vel Rege*, I Titius doe swear that from this hour to the last day of my life I shall be faithful to thee Caius my Lord against all men, except the Emperour or the King, which saith the great Cujacius by reason that the genuine sence or meaning of the words would not be so well understood by ignorant men, *hæc adijci solet*, other clauses & words were used to be added (which amounted to as much as the duty of one that doth homage for Lands holden by Knights service) which Cujacius thought to be necessary enough; *quod plerique fidem sibi promittisatis non habent nisi et fidei partes muniaque specialiter enumerentur* Veleo maxime si quid contra ea fecerint ut non possint negare se commississe in *Jusjurandum et feudum amisisse*, for that they did not think it to be enough to have fealty & promises made unto them, unless the duties and parts thereof should be especially enumerated, to the end more especially that if they should doe any thing contrary therunto, they should not be able to deny that they had

(C) Obertus
de Orto, lib. 2.
de feudis, &
Cujacius A.
not. in eundem
lib. 5, 6, 7.

had broken their Oath , and forfeited their Fee and Lands , so litle were they satisfied with the slight, or general words formerly used in the Oathes of fealty, though in more just and honest times , about the reign of *Charles* the great Emperour , the word *fidelis*, or a fealty, did contain in it (howsoever not expressed) a promise , *de tuenda vita et honore domini et si quid aliud specialiter jurejurando exprimi solet* , to defend the life and honour of the Lord and every thing else , which was specially expressed in the Oath ; so great a care was taken to make the first intentions and promises of those that had those Fees given them to come up and be answerable to the good will and expectations of those that gave them.

And therefore it may prove to be of evil consequence , if any of our new Socage men should like the Snakes thinking themselves the younger by casting off their Skins , fancy in their old or the next factious humour they shall meet with , that they are only to pay their rent and doe the services belonging to their Lands , but are not bound to pay that principal part of their natural, as well as sworn Allegiance , to take Armes to defend the King and the Kingdome, more especially when they shall hold their Lands , *in libero et communi Socagio, et pro omnibus servitiis per fidelitatem tantum*, in free and common Socage by fealty for all services , which may be more than a litle prejudicial

dicial to the Kingdome and the *salus populi*,
 safety of the people so much fought for, as
 was pretended to exchange the men of Armes
 and such as are fit for war, as the Tenures
in Capite doe truly and not feignedly import,
 for those that shall claim exemption from
 wars, and are by all nations understood to
 be the unfittest for it; when those that
 by Tenure of their Lands and by reason of
 their Homage and Fealty, were alwayes
 ready and bound to doe it, and those
 that by a fealty not actually or but seldome
 taken, will suppose themselves not to be
 bound at all unto it, but being most disloyal,
 will as some thousands of *Phanatiques* have
 lately done, imagine themselves to be most
 faithful, and where the *Knight Service men*
 were to forfeit their Lands so holden, if
 they did not doe their service within two
 years, or pay Escuage assessed by Parlia-
 ment, if they went not when they were sum-
 moned, or sent another in their stead, the
 new or old *Socage* men shall be under no
 manner of penalty of forfeiture at all.

Which may seem to be the cause that
England, and all other Civilized and well
 constituted Nations & Kingdoms, did put that
 value upon Homage (of which there is some
 likeness & of Fealty also in that of the Princes
 & mighty men of *Israel*, and all the Sons like-
 wise of King *David* submitting themselves at
 his command unto *Solomon*, & giving the hand
 under

under *Solomon* as the margent renders, (like (d) *Chronicle*; that Oath of *Abrahams Steward*) as they understood it to be of the Essence of Sovereignty, the great Assistant and preserver of it, and the Bond of Obedience fixed and radicated in the interest of mens Estates, kept in and guarded by their fear of loosing them.

And made our Kings so highly prize the Homages of their Subjects, and conceive them to be the *Liaisons*, or fastenings that kept their Crowns fast upon their heads, as King *H. 2.* when he had unadvisedly made his Son *Henry* King in his life time, caused the English Nobility to do Homage unto him, and *R. 1.* returning out of Captivity, had found that his Brother *John* had almost stollen into his Throne, caused himself to be Crowned the second time, and took the Homages of his Nobility; and our Kings have been heretofore so careful, as alwayes at their Coronation, to take the Homages of their Nobility, and after a vacancy of a Bishoprick, not to restore the Temporalties, until the succeeding Bishop shall have done his Homage.

And appears to be no lesse valued by Foreign Princes, when as *Phillip* King of *France* would, and did to his cost, refuse to receive the Homage of our King *E. 3.* by proxie, but compelled him to do it in his own person, for the Dutchy of *Aquitain*, and an Arch-Duke of *Austria*, was constrained in person to do his Homage to the King of *France*, between the hand of his Chancellor, for *Flan-*

Flanders, and the now Emperor of *Germany* hath lately and most industriously travailed through many of his Dominions and Kingdoms, to receive the personal Homages of the Princes and Nobility thereof, and not omitted to go to *Gratz*, and *Carinthia*, to have it as formally, as really done unto him.

And was such a Jewel in their Crowns, as they could sometimes to pacifie the greatest of their troubles by the Seditions and Rebellions of their Subjects, find no greater or fitter a pawn or security to assure the performance of their promises and agreements, than an absolving their Subjects from their Homage and Obedience (which were as Synonimes, or of one and the same signification) in case of Breach of promises, as our King *Henry* the 3^d. did in his necessities to *Richard Marshal* Earl of *Pembroke*, that he should be freed from his Homage *Si rex pactum suum violaret*, if the King should break his agreement, and as the Antient Earls of *Brabant*, are said to have done in their *Reversals*, or Grants to their Subjects, if they should infringe their Liberties or Privileges.

(c) Mat. Paris, 1232.

Which the seditious party that deposed King *Richard* the 2^d. knew so well to be a grand Obligation or Tye, which Kings had upon their Subjects, as they put themselves to the trouble of inventing a new trick of *Treason* solemnly in the name of the three Estates of the Kingdom, viz. Lords Spiritual

al and Temporal, and the Commons, to renounce their Homages, Fealties, and Allegiance, and all Bonds, Charges, and Services belonging thereunto, which would have been to as little purpose, as it was contradictory to all the Rules of Right, Reason, and Justice, if they had not forced the distressed & imprisoned King by a publick instrument upon Oath to absolve all his Subjects a *Juramento fidelitatis & homagii omnique vinculo ligantia*, from their Oaths of Fealty and Homage, and all Bonds of Allegiances, and to swear and promise never to revoke it, and is so precious. inestimable, of so high a nature, so useful, and of so great a value, as nothing but the Kingdom it self can be equivalent unto it.

And our Nobility did so esteem of the Homage and Service of their Tenants, and build as is were their Grandeur and Power upon it, as they did antiently grant one to another *Homagium & Servitium* of such and such Tenants. *Maud* the Empreffe gave to *Earl Alberick de Vere* *servitium decem militum*, the Service of ten Knights. An *Earl of Leicester* gave to *Bygod Earl of Norfolk*, ten Knights Fees, which after the manner of those times, may with reason enough be conceived to be only the Homage and Service of so many, for the purchase of the Office of Lord high Steward of *England*, and *John Earl of Oxford* in the Reign of *H. 7.* did at his Castle of *Hedingham* in *Essex*, actually re-

ceive the Homages of many worthy Knights and Gentlemen that held of him.

XVII.

May very much prejudice in their Dignities and Honors, as well as Estates, the antient Earls and Barons of this Kingdom, by taking away Tenures *in capite* & converting them, and Knight service Tenures into Socage, when as the Earls of *Arundel*, do hold the Castle and Rape of *Arundel*, which is the Honor and Earldom it self by the Service of 84 Knights Fees, the Earldom of *Oxford* is holden by the Service of 30 Knights Fees, and that by a *modus tenendi Parliamentum*, so beleived to be true, that King *John* caused it when he sent our English Laws into *Ireland* to be exemplified, and sent thither under the Great Seal of *England*, it is said that every Earldom consisteth of 21 Knights Fees, and every Barony of 13 Knights Fees, and a third part of a Knights Fee, and were of such a value and esteem, as they were wont heretofore to bring Actions and Assizes for them, and their Homage and Services.

And so little lesse in *France*, as the wealth of that great and populous Kingdom, is nor as may be rationally supposed enough to purchase of the Nobility and Gentry of that Kingdom, the transmutation of their *Fiefs nobles* into the *Roturier* or *Feifs ignobles*, nor are the Princes or Nobility of *Germany* likely to be perswaded out of their antient Rights and Tenures into that of the *Boors* or common sort of People.

The

The Nobility and Gentry of *England*, when their Military Tenures and Dependencies shall be taken from them, will not upon necessities of War and Danger, according to the Tenures of their Lands, their Homages, and Oaths of Allegiance, and their natural and legal Allegiance, be able to succour or help their Prince and Father of their Country, their Defender and Common Parent, as they have heretofore done, when as they stoutly and valiantly helped to guard their *Standard*, and *Lions* but for want of those which held Lands of them, and the Tenures by Knight service, will be forced to abide with *Gilead* beyond *Jordan*, and not be able to imitate their noble Ancestors, nor each or any of them bring to his Service three *Bannerets*, sixty one Knights, and one hundred fifty four Archers on Horseback, as *Thomas de Bello campo* Earl of *Warwick*, did to *E. 3.* in anno 21. of his Reign at the Seige of *Caleis*, or as the Earl of *Kildare* did to King *E. 3.* in the 25th. year of his Reign, when he besieged *Calice*, when he brought one Banneret, six Knights, thirty Esquires, nineteen Hoblers, twenty four Archers on Horseback, and thirty two Archers on foot.

(g) Dugdale
Illustration of
Warwickshire,
116.

(h) Dugdale
Illustration of
Warwickshire
316.

(i) Spelmans
Glossar in ver-
bo Hobellarij.

It will take away the subjection of the Bishop of the Isle of *Man*, who holdeth of the Earl of *Derby* as King of the Isle of *Man*, and not of the King of *England*, and therefore cometh not to Parliament.

Take away from the King, Nobility, and Gentry, who have Lands holden by

XVIII.

XIX

XX.

by Knight service, all Escheats of such as die without Heirs, or forfeit or be convicted of Felony, and the Kings *Annum diem & vastum*, year, day, and wast, where the Lands are holden of *Mesne* Lords, the Escheats of those that held of Kings, immediately being so considerable as the Castle of *Barnard* in *Cumberland*, and the Counties of *Northumberland*, and *Huntington*, which the Kings of *Scotland* sometimes held of *England*, came again to the Crown by them, and the power which King *Edward 1.* had to make *Baliol* King of Scots, and to determine the competition for that Kingdom, was by reason it was held of him, the Earldoms of *Flanders*, and *Artois* were seized by *Francis* the 1. as forfeited, being *Fiefs* of the Crown of *France*, & *Flanders*, and many other Provinces, forced to submit themselves upon some controversies, to the Umpirage of *France*, of whom they held.

XXI. Enervate at least, if not spoil our original & first *Magna Charta*, which was grante by *H. 3. tenendum de se & heredibus suis*, and all our Liberties, and the many after confirmations of that *Magna Charta*, will be to seek for a support, if it shall be turned into Socage, & the Liberties also of the City of *London*, & all other antient Cities, and Boroughs, and such as antiently and before *9 H. 3.* did use to send Burgeses unto Parliament.

XXII. Alter if not destroy the Charter of *K. R. 1.* granted to the City of *London* for their *Hustings Court*, to be free of Toll & Lastage through all

all *England*, and all Sea-Ports, with many other Priviledges, which were granted to be held of the King and his Heirs, and the same with many other immunities granted & confirmed by King *John*, with a Tenure reserved to him and his Heirs, for where no Tenure is reserved nor expressed, though it should be said, *absq; aliquo inde reddendo*, it shall be intended for the King and the Law will create a new Tenure by Knight service in *Capite*.

(k) Coke 9.

Report,

~~Edward Love~~~~Lucas Case.~~

Lover

A Socage Tenure for Cities and Boroughs, XXIII.

which have no Ploughs, or intermedle not with Husbandry, will be improper when as there is not any *fiſtio juris*, or supposition in Law, which doth not *ſequi rationem*, so follow reason, or allude unto it, as to preserve the reason or cause which it either doth, or would signify, but doth not suppose things improper, or which are either *Heterogeneous*, or quite contrary.

Put into fresh disputes the question of precedence, betwixt *Spain* & *England*, which being much insisted upon by the *Spaniard*, at the treaty of peace betwixt the two Kingdoms, in anno 42. of Q. *Eliz.* at *Calice* occasioned by the contests of the Embassadour of *Spain*, and Sir *Henry Nevil*, Embassadour for *England*; it was argued or adjudged that *England* besides the arguments urged on its behalf, viz. Antiquity of Christian Religion, more authority Ecclesiastical, more absolute authority Political, eminency of royal dignity, and

XXIV.

and Nobility of blood, ought to have pre-
cedency, in regard that it was Superiour to
the Kingdoms of *Scotland* and *Ireland*, and the
Isle of *Man*, which held of it, that *Spain* had
no Kingdom held in Fee of it, but was it self
Feudatory to *France*, and inthral'd by oath of
Subjection to *Charles* the fifth King of *France*,
in anno 1369. holds a great part of the Ne-
therlands of *France*, *Arragon*, both the *Indies*,
Sicily, *Granado*, and *Navarre*, *Sardinia*, *Corfi-*
ca, and the *Canary* Islands of the *Pope*, *Portugal*
payeth an annual Tribute to him; and *Naples*
yearly presents him with a white Spanish
Gennet, and a certain Tribure.

XXV. Lessen, and take away the honour of the
King, ~~in~~ having the principality of *wales*,
Kingdom of *Ireland*, Isle of *Man*, Isles of
wight, *Gernesey*, and *Jersey*, holding of *Eng-*
land as their Superiour *in Capite*.

XXVI. Enervate or ruine the Counties Palatine
of *Chester*, *Lancaster*, *Durham*, and Isle of *Ely*,
if the Tenures should be Levelled into
Socage.

XXVII. Very much damnifie all the Nobility
and Gentry of *England*, who hold as they
have antiently divers Mannors and Lands,
or Offices by grand Serjeanty, as for the
Earls of *Chester*, which belongeth to the
Princes of *wales*, and the eldest Son of
the King, to carry before the King at his
Coro-

Coronation the Sword called *Curtana*, to be Earl Marshal of *England*, and to lead the Kings Host to be Lord great Chamberlain of *England*, which is claimed by the Earl of *Oxford*, to carry the Sword called *Lancaster* before the King at his Coronation due to the Earl of *Derby* as Kings of the Isle of *Man*, to be grand *Faulconner* or Master of the Hawks claimed by the Earl of *Carnarvon*, and the Kings Champion at his Coronation claimed by the Family of the *Dymocks* in *Lincolnshire*, and very many others holding by divers other grand Serjeanties.

Prejudice the Families of *Cornwal*, *Hilton*, and *Venables*, who though not priviledged and allowed to sit as Peers in Parliament, are by an antient custome and prescription allowed to use the Title of Baron of *Burford*, Baron *Hilton*, and Baron of *Kinderton*, because they hold their Lands *per Baroniam*. XXVIII.

Disparage the Esquires and Gentry of *England*, the first sort of which being as antiently as the dayes of the Emperour *Julian*, called *Scutarii*, of their bearing of shields in the Wars, and the other as our excellently learned Mr. *Selden* teacheth us, called Gentlemen, a *gente*, or the stock out of which they were derived, or because they were *ex origine gentis* of noble kind distinguished from them whom *Horace* termeth *sine gente*, or that they had servile Ancestors, had by their

(1) Selden tit. Honor. 875.

B b

(m) Pasquier
de Recherches
de France li-
second 202.

their feats and prowess in War not only gained great reputation, but Lands given to them and their Heirs for their reward, support, and maintenance, from which custome and usage amongst the *Romans*, saith *Pasquier*, the *French* in imitation of the *Gauls* did call those Esquires & Gentlemen, *Quilz virent estre pourueuz de tels benefices*, whom they did see so provided with those benefices or rewards, *Et pour autant quilz veirent ceux cy n'estre chargez d'aucune redevance pecuniare à raison de leurs terres beneficiales envers le Prince. et outre plus qu'à l'occasion d'icelles ils devoient prendre les armes pour la protection et deffense de Royaume le peuple commença de fonder le seul et unique degré de noblesse sur telle maniere de gens*, for that they did see that they were not charged with any Assessement in money to the Prince by reason of the Tenures of their Lands, and that therefore they were upon all occasions to take Armes for the protection and defence of the Realm, the people took them to be a degree of Nobility, as appeareth by the statute of 1 E. 2. touching such as ought to be Knights and came not to receive that order.

XXX.

Take away a great part of the root and foundation of the *Equestris ordo*, and antient and honourable degree of Knighthood in *England*, which was derived and took its beginning from the service of their Lands which were military, for the cheif Gentle-
men

men or Free-holdes of every County, in regard they usually held by Knights service, saith the learned *Selden*, were called *Chivalers*, in the statute of *W. I.* touching Coroners, and was so honourable a Title as the name of *Chivaler* was antiently given to every temporal Baron, whether he were dubbed a Knight or no.

(n) Selden tit. Honor cap. 769, et 770.

Blast and enerbate that also of our not long agoe instituted order of Baronetts, which are, though there be no Tenure expressed in their Patents, held by service in War, and a more noble Tenure then *Socage*.

XXXI.

Take away the cause and original of that antiently very eminent degree of *Banneret*, when as such as hold Lands *in Capite*, and by Knight service, and had many Tenants also holding of them by Knight service, were able in a more then ordinary manner to do their King and Country service, by bringing their own *Banner* in the Field, which was to be displayed by the King or his Leivtenant.

XXXII.

Make our heretofore famous *English* Nation in matters of Armes and feats of Chivalry, to be as a *Past ritum*, or *agreste genus hominum*, to be Rusticks and Plowmen, which the followers of *Romulus*, which were many of them but *Bubulci et opifiones*, Sheppheards and Hearthen, did not take to be a degree worthy the Founders of that great Empire

of Rome, nor could be content with any less than that of their *Patricij* or *Equites*, Senators or Knights; And was therefore called *Feudum nobile et cognoscitur multis privilegiis inphærentibus*, viz. *Gardia, Fidelitas, Homagium, Curia, Consuetudines, Jurisdictio in Vassallos, Banni, et retrobanni privilegium, jus Columbarij jus molendini, &c.* A noble Fee which hath many priviledges belonging to it, viz. Wardship, Fealty, Homage, a Court, Customes, Jurisdiction over Tenants, priviledge of *Ban*, and *Arriere Ban*, calling them to War in defence of their Prince, a right to have a Dove-house and a Mill, the two latter of which others could not heretofore build or enjoy without the Kings licence,

(o) Spelman's
glossar 261.

Equibus liquet ingentem maneriorum nostrorum multitudinem Normannis, enim abunde auctam videmus ex privilegiis ad feuda militaria olim spectantibus originem sumpsisse, by which it is manifest that our great number of Mannors came to be abundantly increased by the *Normans*, and took their begining from the priviledges belonging to Knights Fees; Take away all the Mannors and Court *Barons* of the Kingdome, which being before the statute of *Quia emptores terrarum*, created by the Lords, who parcelled out the Lands, which the King had before given them to several Friends or Tenants to be held of them and their Heirs by Knight service, and some other part in *Socage*, to plow their Lands and

(p) Spelman's
glossar in verbo
feudum nobile.

and carry their Hay, &c. and to do suit to the Courts (of which the Free-holders are said to be the Homage) holden for their Mannor in whose Jurisdiction the Lands do lye, and are no small part of the legal and necessary priviledges and power of the Gentry or Lords of Mannors over their Tenants, which were as *Sr. Edward Coke* saith given ^{(q) Coke 1. l. part Institutes 58i} them for the defence of the Kingdome, and doe not only very much conduce to the well ordering of their Tenants, but to the universal peace and welfare of the Nation, in their inferior Orbes and Motions subordinate to the higher.

Were all at the first derived out of Knight service, as evidently appears by *Edward the Confessors Laws*, wherein it was ordained that *Barones qui suam habent Curiam de suis hominibus*, which have their Court consisting ^{(r) Spelmans glossar} of their men and Tenants, *Et qui Sacham et Socam habent id est Curiam et Jurisdictionem super Vassallis suis*, have a Court and Jurisdiction ^{(s) LL Edwardi R. 1. 9. 21.} over their Tenants, are to doe right to their Tenants, and by the fall of those many thousand Mannors, & Court Barons in the Kingdoms, which will at the same time dye and perish with the Tenures *in Capite*, and by Knight service.

Extinguish the Copyhold Estates, which XXXIV. belong unto them, which by the destruction of the Mannors, and Court Barons, will also fall, for as there can be no Court Baron without

without Freeholders, so no customary Court without Copiholders.

And once lost, or but altered, cannot be created again, for that now a Subject cannot make a Mannor, which must be part in demefnes, and part in services, to hold of him by services and Suit of Court, which is to be by a long continuance of time *a tempore cujus contrarij memoria hominum non existit*, and if there be no Court the Customary Tenants, or Copiholders cannot enter their Plaints, make Surrenders, and be admitted.

XXXV. Turn the Tenures *in Capite*, which are only so called from the duty of Homage, and the acknowledgement of Sovereignty, and Headship in the King, into a Tenure in Socage, which is so far from acknowledging the King to be chief, or to ingage, as the other doth their Lands, to do him service as it is but a Tenure, as it were a *latere*, & is no more then what one Neighbour may acknowledge to hold or doe to another, for his Rent, or money by a Lease for a Life, or one or more years, or as Tenant at will, and levels and makes rather an equality, then any respect of persons, which if ever or at all reasonable, or fit to be done, is in a democratical or popular way of Government, but will be unexampled, and is not at all to be in Monarchy, & may make many of the people which are not yet recovered out of gain

gainful Lunacy, to beleive they were in the right when they supposed themselves to be the Sovereigns.

Ireland, which in the subverting *Olivers* XXXVI. time, was to have their Swords by the like Tenure, turned into Plow-shares, though their warres and taxes were never intended to leave them, was to pay but 12000*l. per annum*, to turn their better Tenures & Conditions into worse, will if they be not come again to their wits expect the like prejudicial bergain.

Bring many inconveniences and mischiefs to the Nobility and Gentry of *Scotland*, if their Tenures in *Capite*, and Knight service, and those which are holden of them as Mesne Lords, shall as ours, be taken away with their services and dependencies, Licences of Alienation, benefits of Investitures, infeodations, and the like, it being amongst others as a reason given for Wardships in that Kingdom, in the Laws of *Scotland*, in the reign of their *Malcombe* the 2. (which was before the Conquerours entring into *England*, *Ne non suppeterent Regie Majestatis facultates*, to the end that the King should have where-withall to defend the Kingdom. XXXVII.

And a letting loose of a fierce and unruly people, who are best of all kept in awe & order by a natural & long & well enough liked subjection to their Mesne Lords and
Su-

Superiours, into a liberty which cannot be done without a disjointing and over-turning all the Estates of the Nobility and Gentry of that Kingdom, and may like our late *English* Levellers, either endeavour to do it, or bring themselves and the whole Nation, to ruine by a renversing of the fundamental Laws, and that antient order and constitution of that Kingdom, wherein the estates and livelihood of all the Nobility and Gentry, and better part of the people are hugely concerned.

And besides a great damage to the King in his Revenues, and profits arising out of such Tenures, ~~if not recompensed by some annual payment.~~

XXXVIII. Will howsoever take away that antient Homage and acknowledgement of Superiority, which from that Kingdom to this of *England*, cannot be denied to be due, and to have been actually and antiently done, and presided, and not in one, but several ages, *fidem & obsequium ut vassallos Angliæ Regibus, & superioribus dominis jurejurando promississe*, to have done their Homage and Fealty as vassals to our English Kings, and bound themselves by oath thereunto, as namely, to *Alfred, Edgar, Athelstane, William the Conqueror, William Rufus, Maud the Empreſse, Henry the second, and Edward the first*, the later of whom with all the *Baronage of England*, in a Letter to the Pope, did upon the search of many Evidences and Records stoutly assert it.

Will

Will be no small damage and disturbance XXXIX. to the Kings other Regalities, and Prerogatives, and in the Tenures of the Cinque Ports, who are to provide fifty ships for the guarding of the Seas, and the Town of *Maldon* in *Essex* one, the Town of *Lewis* in *Suffex*, ^{near} as the Book of *Doomsday* informeth; where King *Edward* the Confessor had 127 Burgeses in *dominio* & eorum consuetudo erat, si Rex ad Mare custodiendum sine se suos mittere voluisset, de omnibus hominibus cujuscunque terræ fuissent colligebant 20 solidos & hos habebant qui in manibus arma custodiebant, had 127 Burgeses in his demesne of the King, and when he sent any of his men to guard the Seas, they were to gather 20 s. a man, which was to be given to those that manned the Ships, & in *Colchester* where the custom then was, that upon any expedition of the Kings by Sea or Land, every house was to pay six pence ad *vißum* soldariorum Regis, towards the quarter or livelyhood of the Kings Souldiers, and likewise prejudice him in his grand and Petit Serjeanties, and many thousand other reservations of honour and profit, by and upon Tenures *in Capite*, and Knight service, which revived and called out of their Cells, wherein those that are to do and pay them, are content they should sleep, and take their rest for ever, would go near to make and maintain an Army with men and provisions.

XL.

The King when the Tenures in *Capite* shall be taken away, shall never be able to correct his *Standard* and to call thereunto all that hold Lands, Fees, Annuities, and Offices of him, to come to his assistance, according to the duty of their Tenures, and the Acts of Parliament of 11 *H. 7. chap. 18.* And 19. *H. 7. chap. 1.* ^{under the penalties} Of forfeiting the Lands and Offices holden of him ~~under the penalties~~, which was the only means which the late King his Father had to protect as much as he could himself, and his Subjects or to manifest the justice of his Cause, in that War which was forced upon him, and was very useful and necessary heretofore for the defence of the Kings of *England*, and their People, and proved to be no otherwise in the *Bellum* (t) *Standardi*, so called in the reign of King *Stephen*, where some of the Barons of *England*, and some of the English Gentry, gathered themselves to the Royal Standard, and repelled and beat the King of *Scotland*, and in several Kings reigns afterwards repulsed the *Scotch*, and *Welch* Hostilities, and Invasions, and at *Floodon* Field in King *H. 8^{ths}*. time, when the Duke of *Norfolk* and his Son the Earl of *Surrey*, and diverse of the Nobility and Gentry which accompanied them vanquished, and slew the King of *Scots*.

(t) Ethelredus
Abbas Rie-
lanfis.

The benefit whereof the Commons of *England* had so often experimented as in (u) *Rot. Parl.* 2. m. 33. diverse Parliaments they Petitioned (u) the King and Lords to cause the Lord *Marchers*, and other great men, to repair into their Counties,

9. H. 4. m. 24.

Counties, and defend the borders, and was so necessary in *France*, to assemble together the *Bans*, and *Arrierebans* which were but as our Tenants *in Capite*, as it helped King *Charles* the 7th. of *France*, to recover that Kingdom again out of the hands and possession of our two *Henries*, the 5. and 6. Kings of *England*.

And if any Rebellion or Conspiracy shall hereafter happen. When

XLI.

————— *Cum (w) saepe coorta*
Seditio saevitque animis ignobile vulgus.

(w) Virgill
i. *Encid.*

Fury, and Rage of War shall burn ;
And the Ignoble to the worst side turn.

Must be left to hire his Souldiers or Assistance, out of the Rascallity, Debauched, and Ruder sort of People, and such as know neither how to fight, or be faithful, if his Treasory or yearly Income, upon such an increased Revenue, can do it, when as without the necessity of his Subjects, preserving their own Lands and Estates by performing the duties and service of their Tenures, the money which the late King could have procured, could never have brought any considerable number of men to his *Standard*, of whose fidelity, being Hirelings, and such of the Vulgar and ignoble part of the people, as had neither courage virtue or Estate, or such as

for a litle more pay, would either have deserted or betrayed him, nor could he be so certain, and assured as he was in the aid and assistance of that of the Nobility and Gentry, and better part of the people, virtuously educated, and descended from worthy Ancestors, furnished out, and ready to attend him, with the hazard of all their Estates and Fortunes, and whose great Souls act'd by a nobler principle, made them scorn to stoop to any unworthy Actions, baseness or villany, which caused our brave King *H. 5.* after the Battel at *Agencourt*, in a Muster, or Leavy, which he was to make of Souldiers to passe with him into *France*, publicly to Proclaim, that none should presume to go with him (for then they needed no other impressing but the obligation of their *Tenures* and glory and honour of serving their Prince, and Country) but such as were Gentlemen, and had *Tunicas armorum*, did bear Arms, except such as had served him at the Battel of *Agencourt*, though they had none.

XLII.

For if a War, which will be sure to loose no opportunities, but pick & cull its advantages, should break out before the rent day, or the monyes can be gathered, he cannot likely want distresses or misfortunes either for himself or his people, when they shall not have wherewith to hire an Army; And failing of a necessary defence and assistance at Land, for want of his *Tenures in Capite*,
and

and Knight service, shall also loose the help of his Ships and Navy at Sea.

XLIII.

And if the King or any of his Successors should be so happy as to have money in their Treasury, which as the course and charge of War is now, must be no small sums to hire, provide, and continue an Army, it may be seized on as his Revenues, and all the money in the Exchequer, and much of his Plate and Householdstuffs were in the late Wars, and if he could be so well before hand as to have any Magazines, may have that as easily taken from him as his Magazines at *Hull*, and the Tower of *London* were, when his Tenures *per Baroniam*, and *in Capite*, and by Knight service were not.

XLIV.

Can have no manner of assurance, that when any sedition or commotion of the people shall be bred or increased by the practise of some great men, or inticements of any of the Clergy, and a *Bellum flagrans*, or a War as suddain and unexpected as it shall be dangerous, shall breake out not only in one, but severall parts of the Nation, that the people or most vulgar and common sort of Hirelings will especially in a frenzy or humour of sedition be hired or drawn to fight for him by a small and inconsiderable pay, and the support of an Hospital when their wounds shall bring them into it, or a small allowance which the statute allows wounded Souldiers until they be

be cured, or maimed Souldiers which are incurable, shall be so very disproportionate to their danger and hazards.

When the hiring also of common Souldiers upon a suddain and in case of necessity, will (if he could get them) be more chargeable and difficult then when he was to be served and defended in his Wars by men of worth and quality, under the ingagement of their Lands and Tenures , which made our former Kings, besides those aids and safeguards by Tenures of Lands, to stipend and pension certain of their Nobility and Gentry whom they found most proper and fit to serve them by Indenture , with so many men at Armes or Souldiers, as for instance, *Thomas Beauchamp* Earl of *Warwick*, retained in 46 E. 3. by Indenture to serve the King in his Wars beyond Seas for one whole year with 100 men at Arms, of which number himself to be one, 160 Archers, 2 Banneters, 30 Knights, and 77 Esquires, a tryal or proof whereof would easily have manifested the difference betwixt the one way & the other, if when the late King in his march or expedition against the *Covenanting Scots* in An. 1639. had such a gallant Army as he had of his *English* Nobility & Gentry, had disbanded them & taken as well as he could in their rooms only *milites Gregarij*, or *Tirones*, common and mercenary Souldiers; And may expose him in any distresse, when his mony
or

(x) Dugdale
Illustration of
Warickshire
321.

or hirelings shall fail him, to that disloyal and rebellious late opinion too much entertained and taken in by *Neutrals* double dealing or time serving people, that where the King cannot protect them, their Oaths and Consciences gives them a liberty to make the best bargain they can for themselves,

Take away also the foundation of the House of Peers in Parliament, whom the Laws and Records of the Kingdom, do prove to sit there only as Tenants *in Capite*, and *per Baroniam*, which well might be the grand foundation of so noble a Senate, when as amongst the *Romans*, their Senators were *Leſti in ſenatum ex equeſtri ordine*, chosen into the Senate out of the degree of Knighthood, and even by *Brutus* in his Consulship, and great endeavours to restore that people to their Liberty, was so approved, as that many ages after, *Perſeus Macedoniae Rex apud Livium lib. 42. Equites Romanos appellat principes juventutis* & *Seminarium Senatus*, calleth in *Livy* the Roman Knights, the Princes or Flower of the youth, and the Nursery of the Senate, and saith that *inde leſtos in patrum numerum*, they were thence chosen to be Senators, and *ex veteri instituto*, the Custom was as *Iſidore* saith, that when the Senators Sons came to be of Age, they were not to be admitted into the Senate, until they were Knighted. And *Alexander Severus* the Emperor, would not *ſumere libertos in equeſtrem ordinem*, ordain or make

XLV.

(y) Sigonius
de antiquo jure
Rom.

(z) Livy lib.
42.

(a) Sigonius
de antiquo jure
Rom. 76.

(b) Petronius
de Senatu Rom.
lib. 25.

(c) Lampridius
in vita Severi.

make Yeomen, or such as were newly manumised to be Knights, or give them (as he did) Lands to hold by Knight Service, *dicens quod seminarium senatorum Equestrem esse locum*, that it was the seminary for the Senate, amongst the Germans, who were as jealous to keep their Honor, as they

(d) Nolden de
statu nobilitatis
60. & 62.

were their Liberties *Nobiles vocati Ritter id est Servator*, Noblemen were termed *Ritters*, which signifieth a Saviour or Defender, *quod virtute & fortitudine servem patriam*, because by their vertue and manhood, they defended their Country, amongst whom the degree of Knighthood is worthily reckoned to be *honoris species exercitium nobile & proprium nobilium*, a degree or part of honor, a noble exercise, and proper breeding for Nobility, *hinc militum nomen in Jure feudali pro nobili usurpatur*, and thence a Knight was in the feudal Laws taken and used for a Nobleman, and though *Hector Boethius* calleth

(e) Hector
Boethius, Hist.
Scot. lib. I.

equites Barons, speaking of those that paid for Wardship and releifs to *Malcolme* the King of Scots, yet *Sir Henry Spelman* is cleer-

(f) Spelman
Glossar. 85.

ly of opinion, that *Miles quem ea tempestate Baronem vocabant non a militari cingulo quo equites creabantur sed a militari feudo quo alias possessor & libere tenens nuncupatus est nomen sumpsit* that a Knight, which in those times they called a Baron, was not so called from the Military *Belt* or Girdle by which they were created

created, but took his title or denomination from the Knights Fee, of which he was otherwise called Possessor, or free Tenant, had *jus Annulorum* amongst the Romans a right to wear Rings, and was *gradus ad Senatoriam*, a step or means to be a Senator.

For *Nobilium Ordo pro seminario munerum praeipuorum habetur, quia liberaliter educati sapientiores esse censentur* saith *Besoldus* the degree of Nobilitie hath been accompted to be the foundation or original of the greatest Offices or places, for that being liberally and more then ordinarily educated, they were judged to be the wisest, and therefore *Comites* or Earls being antiently in the reign of the Emperour *Charlemain*, (which was in anno Christi, 806.) if not long before, *praefecti Provinciarum, & qui Provincias, Administrabant*, the Governours of Countries, and Provinces under their Emperours and Kings, were with Dukes also and Barons not only in *Francia*, in those times, but in *Germany* also, afterwards inserted or put into the *Matricula*, or Roll of the States of the Empire, & in *Comitijs* *jus suffragij habuerunt*, and had voice or judicature in their *Dyets*, or greatest Assemblies, which corresponds with that more antient Custom amongst the *Hebrewes*, in Gods once peculiar Commonwealth, where the Princes of the twelve Tribes, *summo Magistratui in consilijs affidebant*, did assist the chief Magistrate in their great Counsels and *Arum* as well as many other, is of opinion that

(g) *Besoldus de Comitibus &*

Baronibus Imperij.

Germani 117.

(h) *Num. 11.*

Joshua 23.

Jeremiah 26.

(i) Arumæus
de Comitibus 7.

it was *libertatis pars*, a great part of the peoples Liberties, & for their good, that *de liberatio ordinum consilio & authoritate quorum periculo, res agitur suscipitur & qui apud Principem in magna gratia sunt*, in those great Counsels Resolves should be made by those who should be interested, or partakers in any dangers or misfortunes, which should happen thereupon () & *jure Comitiorum una & perpetua privativa est mediata subjeccio qua qui inferius est nec Comitiorum particeps esse potest.*

(k) Arumæus
de Comitibus
223.

That it is a Rule or Law in such Assemblies, that those that sit there, or have voice and suffrage in it, are to hold immediately of the Empire, and the Reason of the first Institution of the Parliament of *France*, composed of the Nobility by the ancient Kings of *France*, and King *Pepin* was as *Pasquier*, that learned Advocate of *France*, observeth *in partem sollicitudinis*, to assist their Kings, for the better management of the Affairs of Government, who did thereby communicate *les Affaires publiques a leurs premiers et grandes seigneurs come si avec la monarchie ils eussent voulu entre messer l'ordre d'une Aristocratie et Gouvernement de plusieurs personages d'honneur*, the publick affairs to their chief and greatest Lords, to the end, to intermingle, and blend with *Monarchy*, the order and manner of an *Aristocratie*, and Government, by many personages of Honour, *et ne se mettre en hain des grands Seigneurs & Potentats*, and not

(l) Pasquier
des Recherches
de la France
livre 2. 72. &
76.

to draw upon them the envy of their great and mighty men, *Et estans les grands Seigneurs ainsi lors unis se composa un* ^{(m) Pasquier} *corps general de toutes les Princes et Gouverneurs de la France* ^{es Recherches} *par l'advis desquels se viuderoient non seulement* ^{livre 2. 72. 74.} *les differents qui se presenteroient entre le Roy et eux mais entre le Roy et ses Subjects,* And the great Lords being so united, composed, and made one general body of all the princes and Governours of Provinces, by whose advice and council, not only the differences which should happen betwixt the King and them, but between the King and his Subjects, might be determined, *Et estoit l'usage de nos anciens Roys telle qu' es lieux ou la necessite les summoioit se viudoient ordinairement les affaires par assemblees generales des Barons,* and it was the usage of the antient French Kings in all cases of necessity, most commonly to consult of their affairs in the general Assemblies of their Barons, and accordingly by the directions of reason, or of that and the more antient Governments amongst the *Greekes*, in their great Council of *Amphition*, or of the Romans in their Senate, our *Saxon* Kings did in *Anno 712.* which was almost one hundred years before the reign of the Emperour *Charlemain*, call to their Assemblies, and great Councils for the en- ^{(n) Lambard} *acting of Laws, and redressing of Grievances, their regni Scientissimos et Al'ermannas* ^{de Priscis Anglorum legibus,} Aldermen, Earls, or Governours of Pro-

vinces, & the wisest & most knowing of the Kingdome, & therefore after the Conquest, King John did at the request of the Barons, not to call to his Parliaments the *Barones minores*, the men of lesser estates, which hold also in *Capite*, promise under his great Seal, *ut Archiepiscopus, Abbates, Comites et majores Barones Angliæ sigillatim per literas summoniri faceret*, that he would severally summon to Parliaments the Arch-Bishops, Abbots, Earls, and greater Barons of England, and that the lesser Barons were summoned or sat in Parliament, *falsum esse ipsa ratio suadet*, saith the no less Judicious than Learned Sr. Henry Spelman, reason it self will not allow for a Truth, when as there was as he observeth *ingens multitudo*, a great number, et plus minus 30000 quos nullo recto convocari poterat, and no less then 30000 which no one house was able to contain, *Quemadmodum itaque* saith he *neque Barones ipsi consilia vnde majores neque minores quempiam in Curis suis ad Judicia ferenda de rebus sui Dominij admittant nisi Vassallos suos qui de ipsis immediate tenent hoc est milites suos et tenentes libere ita in summa Curia totius Regni nulli olim ad Judicia, et Consilia administranda personaliter accersendi erant nisi qui proximi essent a Rege ipsique arctioris fidei & homagii vinculo conjuncti hoc est immediate vassalli sui*; As therefore neither the greater nor lesser Barons do admit any in their Courts to advise them, or meddle with mat-

(o) Sr. Henry
Spelmans gloss
far in diatriba
de Baronibus 79,
et 80.

ters of Judicature concerning things belonging to their Estate or Jurisdiction, but their Tenants, and such as hold immediately of them, that is, Freeholders, and such as hold by Knight Service; So in the great Court of all the Kingdome, none were antiently personally called to give Judgement and advise therein, but such as were near to the King, and bound and obliged to him by a greater Bond and Tye of Faith and Homage, that is to say, his immediate vassals, *Barones nempe cujuscunque generis qui de ipsi tenere in Capite ut videndum est in breve de summatione* (wherein they are summoned *in fi-de & homagio quibus tenentur*, in the Faith and Homage by which they held) *& partim in charta libertatum Regis Johannis*, and Barons of any kind whatsoever which held of him *in Capite*, as may appear by the Writs of Summons to Parliament, & the Charter of King *John*. Hence the Barons of *England* are in our laws said to be *Nati Consiliarij*, born Counsellors of State, and *Baro* signifying *Capitalem Vassallum majorem qui tenetur Principi Homagij vinculo seu potius Baronagij hoc est de agendo vel essendo Baronem suum quod hominem seu clientem præstantiorem significat*, A Baron who is a chief or Capital Vassal, is bound to his Prince by the Bond of Homage, or rather Baronage, which is to be his Baron or man, or more considerable Client, and makes a threefold division of Barons, who by *Bracton* are called *Potentes sub Rege*, great or mighty men under the

the King, & *Barones hoc est robur belli*, and Barons, which is as much to say, as the strength of War, into feudal or by prescription, & *Qui a priscis feodalibus Baronibus oriundi suam prescriptione tuentur dignitatem*, which being descended from Antient feudal Barons, do continue their dignity by prescription, 2. *Rescriptitios qui brevi Regio evocantur ad Parliamentum*, which are called to Parliament by the Kings Writs, & 3. *Diplomaticos*, which are by Letters Patents and Creation, and that *Barones isti Feodales nomen & dignitatem suam ratione fundi obtinuerunt*, those Feudal Barons doe hold their dignity by reason of their Lands and Tenures, and that *Episcopi suas sortiuntur Baronias sola fundorum investitura*, Bishops are Barons, only by investiture of their Baronies Lands and Temporalties; And the most excellently Learned Mr. *Selden*, who was well known to be no stranger to the old and most choice Records and Antiquities of the Kingdome, doth not doubt but that the Bishops and Abbots did sit in Parliament and were summoned thither only as Barons by their Tenures *per Baroniam*, and in his Epistle to (r) Mr. *Augustine Vincent* concerning his *Corrections of Yorkes Catalogue of Nobility* doth most learnedly prove it by many Instances besides that in the Case of *Thomas Becket* Archbishop of *Canterbury* in 11 H. 2. and the claime made and allowed in Parliament in 11 R. 2. by

(p) Spelmans
glossar 80.

(q) Seldens
Epistle to Mr.
Vincent con-
cerning his
book against
York.

(r) 47. H. 3. in
dorso m. 7 &
Pat. 48. H. 3.
Selden tit. bo-
nor 716.

by all the Bishops, Abbots, and Priors, of the Province of *Canterbury* which used to sit in Parliament, that *de Jure et consuetudine Regni Angliæ*, all Bishops, Abbots, Priors, and other Prelates whatsoever *per Baroniam* (f) Stamford *Domini Regis tenentes*, holding of the King by lib. 3. cap. 62. Barony were Peers of the Parliament which agreeeth with the opinion of *Stamford* that the Bishops, *ne ont lieu en Parlement einsi en respect de leur possessions annexes a leur*, dignities (r) Camden Brit. 120. 122. have no place in Parliament but in respect of their Possessions annexed to their Dignities, and that Mr. *Camden* saith that divers Abbots and other spiritual men, formerly summoned by writ to Parliament, were afterwards omitted because they held not by Barony, and that it was mentioned and allowed to be good Law in a Parliament of King E. 3. *que toutes les religieuses que teignent per Baronie soient tenus de Vener au Parlement*, that all the religious which hold by Barony are to be summoned to Parliament.

And as to the temporal Barons, doth besides what he alleageth of the *Thanes* or Barons of *England* in the *Saxon* times, that they held by personal service of the King, and that their honorary possessions were called *Taine-Lands*, and in the *Norman* times after denoted by Baronies, and the eminent and noted Case of the Earls of *Arundel* claiming, and allowed to be Earls of *Arundel* by reason of their holding, or Tenure of

(u) Seldens
et. honor.

of *Arundel Castle*, and *Sir John Talbors* being Lord *Lisle* *ratione Dominiij et Manerij de Kingston Lisle* doth by 22 E. 3, fo. 18. 48. E. 3, fo. 30. & other good Authorities conclude, that the Tenure of a Barony is the main & principal Cause of the Dignity that 130 temporal Barons by Tenure were called by several writs to assist the King *cum equis & Armis*, with horse and Armes, and the spiritual being about 50 were called, *ad habendum servicium suum*, and that the greatest number of Barons during all that time were by Tenure, that the most part of the Barons by Tenure and Writ untill the middle of the Raigh of King R. 2. and those that were called by Writ, were such as had Baronies in Possession, that the honorary possessions of Earls were called Honors, and reckoned as part of their Earldoms which were holden *in Capite*, the chief Castle or seat of the Earls or Barons were called *Caput Comitatus seu Baronia*; the head or chief of the Earldom or Barony, and that in this sence *Comitatus integer* is used for a whole Earldom in the grand Charter, and *Braſſon* and *Servicium quarte partis Comitatus* for the fourth part of an Earldom, that *Hugh de Vere* Earl of *Oxford*, *Magnavile* Earl of *Essex* and divers other ancient Earles were *Cingulo Comitatus & Gladio Comitatus* cinct girt with the Girdle or sword of their Earldoms, which he conceiveth to be an Investiture.

All

All which may by the Records of this Kingdom be plentyfully illustrated by very many instances, and by the Rolls of the Constables and Marshals of England in which upon the March of the Army of King E. 1. towards Scotland in the 28 year of that King, *Humfridus de Bohun, Comes Hereford & Essex Constabularius Anglie* recognovit per os *Nicholai de Segrave Baneretti sui & locum suum tenentis se acquietari per servitium suum per Corpus suum in Exercitu pre-* (w) In Rotulis
senti Scotia pro Constabularia in Comitatu Here- Humfridi de
ford, Humfry de Bohun Earl of Hereford and Es- Bohun Comitis
sex Constable of England, declared by Sir Ni- Hereford &
cholas Segrave his Baneret and Lieutenant, that Essex de re-
he was to be acquitted for the Constabulary in cognitione ser-
in the County of Hereford (where it seems vitiaryum Domi-
some Manors or Lands in that County were ni Regis Angli-
annexed to the said Office or held by grand a pro guerra
Serjeanty) by the Service of himself in the sua Scacie An.
Army for Scotland, I tem idem Comes recog- 28. E. 1.
novit per eundem Nicholaum Servitium trium
feodorum Militum faciendum in dicto Exercitu
pro Comitatu Essex per Dominos Iohannem de Fer-
rariis Henricum de Bohun et Gilbertum de Lind-
sey milites, Also the said Earl acknowledgeth
by the said Sir Nicholas Segrave the Service of
three Knights Fees to be performed in the
said Army for the Earldom of Essex (which
shews also that then those Ancient Earldoms
of England were no other then by Tenure
and Feudal) by John de Ferrers, Henry de Bo-
hun

hun, and *Gilbert de Lindsey* Knights; And in the same *Constables Roll* and at the same time *Walter de Langton* Bishop of *Coventry* and *Litchfield*, *recognovit et offert servitium duorum Feudorum militum pro Baronia sua faciendum per dominos Robertum Peverel, et Robertum de Waterville, milites*, acknowledged and offered the service of two Knights Fees, to be performed for his Barony, by Sir *Robert Peverel*, and Sir *Robert Waterville* Knights, & Mr. *Selden* is also of opinion that to hold of the King *in Capite*, & to have Possessions as a Barony, & to be a Baron and sit with the rest of the Barons in Parliament, are according to the Laws of those Times *Synonymies*.

And upon this and no other ground or foundation is built that as noble and illustrious as it is antient Pairage of the 12 pairs of *France*, all of whom even the Earldom of *Flanders* now in the hands of the King of *Spain* do hold *in Capite* or Sovereignty of the *French* King, and that great and eminent Electoral Colledge in *Germany* and the mighty Princes thereof are no other than Tenants *in Capite* and holding their vast Territories of the Empire by grand Serjeantry, and have *feuda antiqua concessa & acquisita generis & familie connexam habentes Principatibus et Territoriis suis dignitatem Electoralem*, and have an antient Fee (or Territory) granted and acquired to their Issue and Family, and a dignity Electoral annexed to their Principalities and Territories.

(a) *Rusdoff*.
vindictæ causæ
Palatine, 34.

And

And it cannot with any reason or Authority be said or beleived that the late *Charles* King of *Sweden* could by the Treaty or Pacification at *Munster* have been made a Prince of the Empire, or have had place or voice in their *Diet*s, if he had not had the Bishoprick of *Breme* and other Lands and Provinces as Fiefs of the Empire in his Possession, to have made him a member thereof, and that the Prince Elector *Palatine* who by reason of that Territory justly claimeth the Vicariat of the Empire, had never been made the eighth Elector if he had not had part of the *Palatinate* which he now enjoys.

For certainly if the care and wisdom of our Progenitors or Ancestors, could not think it fitting to compose that high Court of Judicature of Strangers, or grant them an Inheritance in it, which had no Lands or Possessions (to make them a concernment, and to be more careful of the good of the Kingdom) as *Oliver* or *Dick* of the *Addresses* would have done their Mungrel *Scotch*, that had no Lands at all in *England*, but a stock of *Knavery*, but would rather bring in such as had the best Estates, and holden by the most noble and serviceable Tenures, in order to the defence of their King, and Country, and were the most honourable, wise, and understanding, then such as had been Servants, or of a low

extraction & race of mankind, & by their folly and whimsies had not long ago tumbled and tumbled about poor *England* like a *Foot-Ball*, which may call to our remembrance that opinion or adage of the Antients, that *Jupiter subduxit servis dimidium mentis*, that God would not allow Servants or men idle better, or rudely and ignorantly educated, any more then to be half witted, some of our late Levellers at the same time making a difference betwixt the antient great Estates, of the Peers and Barons of *England*, and that lesser which they now enjoy to be an objection against the House of Peers, in Parliament, for that now as they mistakenly surmised they could not as formerly be a banck or ballance betwixt the King and the people.

And howsoever that the temporal Barons as well those which were since the middle of the reign of R. 2. created by Patent to be *unum Baronum Anglie*, as in Sir *John Beauchamps* Patent to be Baron of ~~Holt~~, or as many later to have *locum, vocem, et sedem, in Parlamento*, to have voice and place in the Parliament, as those that hold *per Baroniam*, and that those that hold *per Baroniam*, and were Barons by Tenure, do not come to Parliament but when they are summoned by the Kings Writ, (as the Bishops also do not) and as in the Earl of *Bristol* Case was adjudged in the late Kings time, are to have their Writs of Summons.

Summons *ex debito iustitiæ* , as of right due unto them , yet a first, second, or third Summons , which is only and properly to give notice when and where the Parliament beginneth cannot as Mr. *William Prynne* hath learnedly proved, any way make or intitle any man which shall be so summoned to be a Peer or Baron, that is not a Baron by prescription , or was not created, nor doth that Clause in the Patents of Creation , doe or operate any more then that such new created Barons , who are also Tenants *in Capite*, and as all the other Barons doe ought to do their Homage, shall be one of the Barons in Parliament, & have voyce and place there , deny that they that sit there by Tenure and *per Baroniam*, doe not sit there and enjoy their Honors and Dignities as Tenants *in Capite* , and *per Baroniam* , or that those that come in by patent amongst them, doe enjoy their places as incorporated and admitted amongst them, and not as Tenants *in Capite*, and being added to them, do help to continue the Society or Court, though they be not of one and the same Original or Constitution, as *Prebends* added to a Cathedral Church, may make them to be of the old Constitution, but takes it not away, and as the grant of King *H. 8.* to the Abbot of *Tavestock*, *quod sit unus de Spiritualibus et Religiosis dominis Parliamenti*, could not have altered his former and better condition if he had

(y) Mr. Prynne
Plea for the
House of Peers.

had held any Lands *per Baroniam*; And though the Creations by Patents, may well enough sustain the priviledges of those that sit and were introduced by it, yet the greater number, or as many of the Earls and Barons as hold *per Baroniam*, such as the Earls of *Arundel* and *Oxford*, Lords *Berkley*, *Mowbray*, *Abergavenny*, *Fitzwalter*, *Audley*, *De la ware*, and that great number which were before R. 2. and were not created by letters Patents, and had not the Clause of *locum vocem et sedem in Parlamento*, will lose their Peerage, and right of sitting in Parliament, if the other doe not when as their Patents giving them, *sedem vocem et locum in Parlamento*, doe but entitle them to be of that House whereof the other Earls and Barons were, and to be but as the former Barons were which hold *per Baroniam*, and *in Capite*; As if a Lord of a Mannor could create a man to be one of his Coppy-holders, he should be no otherwise then as a Coppy-holder of that Mannor, and those Patent Lords doe by their Patents hold their Honor and Dignities *in Capite*, though it be not expressed in their Patents, and should pay as great a Releif as the other Earls and Barons doe by Tenure, for no man can sit there but as a Tenant *in Capite*, and acknowledging his Sovereign, unless a *Coordination* should be supposed and that dangerous Doctrine again encouraged, nor can these by Creation sit if the House should be dissolved.

solved, by the change of the others Tenures, for that they were but Adjuncts and Associates of them.

Which was so well understood by Sir *Edm. Coke* to be a shaking, if not an over-turning of the foundation of that high and most honourable Court, or Judicatorie, as in the Parliament of the 18.th year of King *James*, in the proposition which was then on foot to change the Tenures *in Capite* and by Knight service, into free and common Socage, he ^{(2.) Coke 4th Part Institutes tit Court of} and some of the old Parliament men advised a *Proviso* to be inserted in that intended Act of Parliament, that the *Bishops* notwithstanding that their *Baronies* should be holden in Socage, should continue *Lords of Parliament*, and in our late times in that great inundation of mistaken Liberty, when the outrage of the vulgar and common people, greedily pursued the dictates of their ignorance and fancie, and that after the House of *Lords* had been shut up, and voted to be uselesse and dangerous, the persons of the *Barons of England*, which the Law, and the reasonable and antient, as well as modern Customes of *England*, did never allow to be arrested, were arrested and haled to Prison. In the seeking a remedy wherof some of the Baronage pleading their Priviledge, it was in *Easter Term*, 1650. in the Kings or upper Bench, in the argument of the Countess of *Rivers* Case, argued, and urged that all Tenures as well as the House of *Lords* were taken away, so that the Court holding that the Priviledge was not allow-

(2.) *Cremier*
versus Burnet
in Banco Regis
Pas. 1650.

allowable, for that she never had reference to the Parliament, or to do any publique service the Cause was adjourned.

Wherefore seeing that the custom of a Court is the Law of a Court, and the interruption of a Custom, Prescription, or Franchise, very dangerous, and *Cessante causa tollitur effectus*, the cause or foundation taken away, the effect or building faileth, that a Lord of a Mannor is not able to create a Mannor, or make a Lease-holder, or Tenant of one Mannor, to enjoy the same priviledges which he did formerly, & be incorporate & a Tenant in another Mannor, a House with a Common Appendent, or which was before belonging unto it, once pulled down, though built up again, looseth its Common and Prescription, or if a Coppyhold estate come to the Lord by Forfeiture, Escheat, or otherwise, if he make a Lease, or otherwise, it is no more grantable by Coppy of Court Roll, or make a Feoffment upon condition, and after enter for the Condition broken, it shall not be regranted by Coppy.

And if a man hath libertyes by Prescription, & take letters Patents of them, the matter of the Record drowns or takes away the prescription as was held in 33 H. 8. tit. prescription Br. 102. &c.

Or if as in the Acts of Parliament for the dissolution of the Monasteries, the King shall be

(b) Coke 9.
report Abbot de
Marcellas
case.

(c) Coke 4.
Rep. 31.

(d) Coke 6.
Reports Hig-
gens Case.

be before the Tenures be ordained to be in free and common Soccage, made or ~~derived~~ *deemed* to be in the actual Seisin and Possession of all the Lands.

There will because and reason enough to make a stand or a pause, and inquire further into it.

For if the subversion of Tenures *in Capite*, and by Knight Service, will not totally, or at once, ruine and dissolve the House of *Peers* in Parliament, or put upon it a new constitution, it will not be good certainly to leave that House, and most high and Honourable Court, and all its just Rights and Privileges, which hath already so much suffered by the Assaults and Batteries of *Faction* and vulgar *Frenzies*, to an after question or *moote* point, whether or no it be not dissolved or put upon a new Foundation.

And must needs be very dangerous, when as one of the three *Estates* under the King (which is Supream and not Coordinate) *viz.* the *Bishops*, and Lords Spiritual being lopt off, the second which is the Lords Temporal, shall be but either suspected, or doubted to have a being, and the third which is the *House of Commons*, shall upon the next advantage, or distemper of that party which lately gained so much by it supposing it to be the Sovereign, be fancied to be above both it and the King, who as the head is above them both, and too much gratifie that late illegal and unwarrantable opinion, and

practice of the *Sovereignty* of the House of Commons in Parliament, or that they alone are the Parliament of *England*.

XLVI. Destroy the hopes and rights of the *Bishops*, being the third Estate in Parliament, of ever being restored or admitted again into it, from which after a force and a protestation solemnly made against it, & twelve of them imprisoned for making of it, they were by an Act of Parliament in *an. 17. Car. Regis primi*, prohibiting them as well as all other Clergy men to intermeddle in any temporal affairs or proceedings, excluded the House, had all their Estates afterwards by an Ordinance of the Lords and Commons without being cited or heard, and without the Kings consent, and after his going from the Parliament, and in the midst of a War, and Hostilities betwixt them, confiscated and taken from them, & by the taking away of Tenures *per Baroniam*, being the only cause and reason of their sitting there, and constituting them a third Estate, will now after his Majesties happy restoration, when the waves and rage of the people are so calmed and ceased, as the *Halcyon* is preparing to build her nest, be more then ever made to be altogether impossible.

XLVII. Hinder and restrain our Princes from recovery of Foreign Rights, a necessary enlarging their Dominions, making an offensive War, or pursuing a flying or like to be recruited Enemy, which in keeping a Kingdom in peace and plenty, or maintaining the
Commerce

Commerce thereof, will be according to the rules of policy and good Government, as necessary as that of *Dauids* revenging upon the *Ammonites*, the affronts done to his Embassadors, the Wars of our *Edward* the third, or *H.* 5. in *France*, of the great *Gustavus* King of *Sweden* in *Germany*, or the now King of *Denmarks*, and Marquess of *Brandenburghes*, Wars upon *Charles* late King of *Sweden*.

And when any of those occasions or necessities shall offer themselves, or inforce a *forinsecum servitium*, or service in foreign wars, shall have none but Auxiliaries & Hirelings to go along with them, when as several Acts of Parliament do prohibit the enforcing *Hoblers*, which were a kind of light horsemen, Archers, Trained Bands, and common Soldiers, to go out of their Countries, unlesse it be in cases of necessity, which the common people know not how to judge of, and the little Parliament so called in the beginning of the year 1640. upon the invasion of an Army of factious *Scots*, and a letter produced by the King that they had written for aid to the French King, did not rightly apprehend, for it is not to be doubted, but that the cheerful and ready aids upon all occasions given to the Kings of *England* by the Tenants in *Capite*, and Knight Service, and the Nobility and Gentry, and their Tenants Friends, and Followers, taking Arms, and following the Royal *Standard*, was a great cause of their

Conquests in *France*, and Warlike atchievement in that and other parts of the World, often beating back the incursions of the *Scotch* and *Welch*, and defending the borders.

XLVIII.

(c) Ruffdorff
vindicte Cause
Palatine
185

The taking away of the Knights Fees or Tenures by Knight Service from the Nobility and Gentry without any Recompence, if they would be content to part with them or to accept it. Will be an Act of great Injustice, *Regula quippe feudalit et firma est quod Dominus nec in totum nec pro parte minuere adimere ve Jus Vassallo questum possit sine culpa eoque non convicto*, for it is a fixed and constant Rule in the Feudal Law, That the Lord cannot neither in the whole nor in part without a forfeiture or conviction of his Tenant, diminish or take away the Vassals Right, and it would be against Right, Reason, and Equity not to give a Recompence in Case of pulling down or firing a House in a Necessity of War to prevent an Enemy, but much more against it and our *Magna Charta* in Case of no Necessity to Sacrifice without a just Recompence given for it, the Estates and Rights of some to pacifie the Fears of others, and disturb and incumber the Estates of all or a great many to free the Estates of a few, which would be as unjust, as for the Lords of Mannors to make By-laws, forbidding the Services of their Tenants, and without any forfeitures or convictions, grant

or.

or sell away their Lands or Copy-hold Inheritances to Strangers, or dedicate the Profits thereof to the publick wherein the owners or Proprietors shall get none or very little share in it, or such as will be impreceptible, and appeared to be so much against Law and Reason, as when in the dissolution of the Abbeys and Monasteries, the Nobility and great men who had been Founders of many of them, or given a great part of the Lands thereof; were to be the losers of that which should have reverted or come unto them if they could not consist with the first Intentions; King *H. 8.* did take a care to gratifie many of them with great quantities and Portions thereof, and to some granted intire Priories and Nunneries of their Ancestors founding, as to *John* Earl of *Oxford* the Priory of *Colne*, and Nunery of *Hedingham* in *Essex* and the like to many others which might be here remembered

The Publique Faith (which was wont to have so much care taken of it when she borrowed money to make our unhappy warres and Contentions) of so much of the Nation as hold by the Tenures *in Capite* and Knight Service, and of all the other parts of the people who by Oaths of Supremacy, Protestations and Covenant were not to prejudice the King, nor by their Covenant,

any.

XLIX.

any other in their Rights and Liberties will now be broken, which when *Livy* a Heathen Writer and one that very well understood affairs of State, upon the making of a Law at *Rome* to pacify a mutiny, that the Prisoners for Debt should not be bound or fettered as the manner then was, could say that *Ingens vinculum fidei*, a great Obligation or Bond of Faith amongst men was that day broken, he would have without doubt said more were he now alive as to our breach of Faith amongst men, but a great deal more (if he had been Christian) as to God Almighty.

(f) *Lindimannus in dedicatione Exercitus, feudi & Rothensal in Synops: ad L. Eorem. §. 1.*

Take away not only the Honor, but the publick Benefits of those Tenures and feudal Rights which are so highly and justly esteemed in all other Kingdoms and Principalities which are so happy as to live under Monarchy the best of Governments, as they can give them no other Character then that, *Jura Regnorum Ducatum Marchionatum adeoque totius Imperij Leges Fundamentales ac nervi quibus Monarchiæ Romanæ cum ipso senescente mundo languescentis lutei pedes colligantur in iis continentur*, Therein are contained the Laws and Rights of Kingdoms, Dukedoms, Marquisates, the Fundamental Laws of the Empire, and the Nerves and Sinews by which the Empire, languishing in the old age of the world hath been sustained, And that *Feuda Feudorumque Jura fidelitatem & fidem publicam pacem & incolumitatem Communis*

(g) *Calvin in Epist. Dedicat. Juris prudent. feudal.*

nis Patriæ firmant firmissimum Militiæ contra Communes Reipublicæ hostes nervum ac præsidium subministrat adeoque fulcra Germanico Romani Imperij nuncupari desiderant, Feuds and the Rights thereof do fix and consolidate the Fidelity, publique Faith, Peace and wellfare of the Common-wealth, and administreth the greatest help and strength in war against the Common Enemy, and is worthy to be called the Prop of the *German* and *Roman* Empire.

Make our Nobility and Gentry, who have by their Chivalry and high Attempts by Sea and Land, rendred them second to none, and published the Fame and Glory of their Actions, as far, and farther than ever the *Roman* Eagles flew, to be like the *Roturiers* or Paysants of *France*, and a reproach or hissing to all Nations, or like *Dauids* Embassadors, when the Children of *Ammon* had misused them, *and shaved the one half of their Beards, and cut off their Garments in the middle, even to their* ^{(h) 2 Sam. 10. 4, 5.} Buttocks, and to be put behind all but the *Dutch* and *Switzers*, the former of which, do Trade under Taxes, & *Excise* & the latter are but the Mercenaries and Hirelings of the *French* and *Spanish* Kings in their Wars and Hostilities, and ranking us with them, and those little and despicable Commonwealths of *Luca*, and *Geneva*, cast us into the Giddy, and at last woeful Presidents and Consequences of the unquiet headed *Argentini-*

ans, Lindorians, Citizens of *Siena*, *Genoa*, and *Florence*, who by ruining and rooting up the Nobility and Gentry, and making three rancks and degrees of their Citizens, some great, some mean, and the rest of the vulgar, the two last putting out the first, cast themselves into a Circle of blood and misery, out of which nothing but their former Government was able to rescue them.

LII.

Occasion the losse and ruine of purchasers, and *Money-lenders* & enlarge their complaints of double & treble Feeffments & Mortgages which (by the disuse of the Court of Wards, and finding of Offices after the death of Tenants *in Capite*, and by Knight Service, have been more than formerly and wherein some of our late *Reformers* were known more to have exercised their wits than their Consciences) conceal'd, & Dormant, and fraudulent Assurances carried in the *Pockets* of some to pick the *Pockets* of others, which by reason of the Tenures *in Capite*, and finding of Offices wherein the Evidences being produced, and many Times found, did not only find but declare what Estate the deceased was seised of, and if the truth did not then appear, which could hardly be hid, when as the Jury were commanded by the Writ of *Diem clausit extremum*, to inquire upon their Oaths of what Estate the last Ancestor dyed seised of, and that the vigilancy and cares of the Feodaries and Escheators who
were

were also to be present to attend them, would cause them to be the more careful and if the fraud of the Heir should be able to make its way, or escape thorough them, the Estate found in the Office would after prove to be an Evidence against them, and either overthrow or perplex the Knavery of such wicked designs.

The Recompence of 100000 *l. per Annum* LIII.
if it could be raised without Injustice, or the breach of the Laws of God, Nature, and Nations, and our oftentimes confirmed *Magna Charta*, and the inforcing of 19 men in every 20 to bear burdens which nothing at all appertains to them, will not be adequate to the losse of a great part of the Kings Revenue which did serve for the maintenance of his Crown and Dignity, and to exempt and ease the Subjects of extraordinary Taxes and Assessments, which the Necessity of Princes for the good and Defence of the Kingdom must otherwise bring upon them; Nor to the want of Tenures *in Capite* and by Knight Service, & the Services & Incidents belonging unto them (being a certain and never failing Defence of himself and the Kingdom) Castle-guard Licence of Alienations giving him notice and continuing him safe in the Change of his Tenants (being so necessary to Government as some have been grievously fined for alienating their Lands *in Capite* without it) Mariage & Dependancy of the Heirs which hold of him, Livery and Reliefs,

Grand Serjeantyes , and a great part of the Honour and Priviledges which all other neighbour Kings ond Princes are neither desired to part with , nor can he perswaded so much to lessen themselves and their Regalities.

For gold and Silver and precious Stones or any thing lesse than the whole Kingdom of *England* it self is not of value or to be compared to the Honour of a King , and the homage and duty of his Subjects , the Gratitude , Faith and Promises of their Ancestors which should descend to them with the Lands holden by those Tenures, whenas *Omnēs habent Causam a primo et ex tunc , non ut ex nunc*, are bounden to the Cause which obliged their first Ancestor and Progenitor , and are to consider that it is now, as it was then, a most ready means and help which did and doth naturally and kindly arise for the Defence of themselves and the Kingdom , for as it is not the weight of an inestimable *Diamond* or *Ruby* that makes either of them to be better than a *Flint* or any other Stone, but the lustre , vertue , and scarceness of them; and that a greater poise or weight of a man makes not a *Solomon* an *Alexander* Sir-named the great, or an *Aristotle*, but that all men and things are to be esteemed according to the vertues and Excellencies which are in them, so it will not be the yearly Profit in money which was made of the Wardships

() Per Collog.
Bononiens. inter
Consil. Fran-
cisci Carti
Consilium 50.
et Rusdorff. in
vindicis cau-
se Palatina.

primer

primer Seilins , Liveries , and Incidents which belong to those Tenures, but the Homage Dutie gratitude and necessary Attendance in War, not only of those that held immediately of the King , but those that were the mediate Tenants, and came also with the immediate, the grand and mutual Tye betwixt the King and his people and the Regality , Prerogative, intrinsical, and true worth and value of them, when there should be any use of those necessary Defences of the King and his Kingdom, in making a diversive War, or succouring his Friends and Allies, which are not seldom or were in more heroick times justly accounted to be as Outworks, *Ante Murales*, or Bulwarks of the Kingdom, & that the Rate which is now offered for those Tenures, are but like a Tender , or Offer to give the weight in Gold for an incomparable, not to be got again and unvaluable *Meddal*, or for *Aarons* Breast-Plate, *Moses* rod, or the Scepters of Princes, if they could have been purchased at all, and by weight.

It will be as unsafe as unusual to take money or Turn into a Rent that which in its first Institution, and a happy, long and right use which was made of it, was only intended for a defence of the Kingdom, when the King is not likely to be any saver by it, and shall not gain 90000*l. per Annum* (his own Income by Licences of *Alienation* deducted) for the clear Profit of the Court of Wards which the Lord *Cottington* when he was Master of that Court, did but a year before the

LIIII.

Troubles make as much by it ; besides the many great and royal *Prerogatives* which he shall lose to gain more mischiefs and Inconveniencies to himself & his People, then at the present can be instanced or numbred.

LV. The giving the King a Recompence by an yearly Rate amounting to one hundred thousand pounds *per Annum* to be charged upon all mens Lands, Tenements and Hereditaments holden *in Capite*, or Socage by Copyhold, Leases for Lives, or Tenants at Will, or for yeares will be against right, Reason, Justice and Equity, as well as unwarranted by any hitherto Law or Custom of *England* to make 19 parts of 20 (for so much if not more will probably be the odds) that were not liable to Wardships, or any imagined Inconveniencies which might happen thereby, not only to bear their proportionable part of the general Assessments for War but a share also in the burden of others where it could never be laid upon them and wherein they, or the major part of them by more than two in three have no Lands in Fee simple, Fee taile, or by Leases for 100 years or any longer Term nor are never like to be purchasers of any Lands at all and if they had money to do it are not likely to buy Inheritances, & if inheritances, not *Capite* or Knight Service Lands, when there is by more than 9 parts in 10 of Socage or Copyhold Lands to be purchased, were not, nor are like to be

in any danger of Wardships, or under any fear or Apprehensions, of it and render the *Capite* Land three or four years purchase dearer than it was wont to be, and the Socage Lands three or four years purchase the cheaper, only to free the Nobility, Gentry and men of greatest Riches and Estates in the Kingdom, which are subject to these small Burdens which are only said to be in Tenures *in Capite* and by Knight Service.

Or if laid upon the Moyety of the Excise upon Ale, Beer, Syder and Coffee &c. or any other native or Inland Commodity will fall upon those that have no Land as well as those which have, as upon Citizens Mechanicks, Children, Servants, and the like, and heaviest upon the poorer sort of people, and be a burden which the lowly *Cobler* and reverend *Applemoens*, the Botcher and Stockingmenders, in their pittyful subterraneous Tenements, and the poor Women which in the Streets do cry Fruits and Fish by a double retail, and pay twelve pence a week for the loan of twenty shillings, and pawn a Petticoat for security, the Chimney Sweepers, Brooom-men and Beggars cannot escape.

LVI.

Will be no good way of raising money, nor an Honourable Revenue, and though it might become the *Dutch* in their grand necessities of War where they have but few Gentlemen, will not be for the honor of *England*, and the Nobility and Gentry of
Eng-

LVII.

England, to have their provisions of War and Defence arise out of so low a businessse as *Ale* and *Beer*, and make the Brewers and Ale-house-keepers, to be as it were the Tenants *in Capite*, and to supply the Knight Service in the exchange, of that which is but pretended to be a *Greivance* for a most certain and undeniable greivance, and for one *Greivance* if it could be proved to be one for a *Seminary* and complication of *Greivances* and to take away wardships from the estates of 1 in every 20. of the people when they should happen and make 19 in every 20 to be every day in every yeare in wardship to an Excise upon a considerable part of their daily Dyer and Sustenance.

LVIII.

That small Sum of 100000 *l. per an.* may upon any discontent of the people, by reason of the payment of that Excise, be Petitioned against or taken away by Parliament, or by some insurrection or mutiny of the common people, which *Naples*, and *France*, & this Kingdom, can tell us, do sometimes happen, and the wisdom of Kings and Princes do use to suspect and provide against, or if some other unlucky difference (which God avert) should happen betwixt the King and his people, may fall into the Case or Example of the *Customs*, and *Poundage*, and *Tonnage*, in the beginning of the Raig of his late Majesty, which being stopped by the Parliament, and declared against, did put him into unfit necessities, and made those unhappy controversies and misunderstandings betwixt him and

and many of the shorter Parliaments, which disabled him from aiding his Friends and *Allies*, and was the beginning of our never enough to be lamented national Calamities and Reproaches; and proved to be the ruine and disturbance also of a great part of Christendome.

Such an imposed or continued excise, will by the Arts and Deceits of the *Brewers* and *Ale men*, and those that gather and pay it in the first place, be as all excises commonly are, double charged upon the people, who instead of 100000 *l. per an.* laid upon their Beer & Ale, will by the abuse which will be committed therein, as to quantity and quality, lay and charge another 100000 *l. per an.* upon the people, and the Brewer in every 6 *d.* or 12 *d.* Excise to be laid upon every Barrel of six shillings Beer, will be sure to make his Beer so, as he shall get double, if not more than that Excise amounts unto.

And as it could never have been at first settled without the awe and help of *Garrisons*, *Troops of Horse*, and *Companies of Foot*, in every *County and City*, and the *Souldiers* assistance to enforce and gather it from those that would not pay it, or were not able, so in all probability, it will be now again never be brought into a constant yearly *Revenne*, without a constant & formerly used way of keeping a standing Army at the charge of
sixty

LIX.

LX.

fixty or ninety thousand pounds *per mensem*; or the month, which will be more troublesome and chargeable than 52 *Escheators*, and as many *Feodaries*, who may be men of wisdom Integrity, & good Estates in their Countries; for there will be a great difference between the charge or yearly Revenue of the Court of Wards, which is made up of many small parts, and favourable and easy Rents, Fines and compositions, quietly gathered and paid in by the Justice and Order of a Court of Wards, & honest and responsible Officers, and 90000 *l. per annum* being to be Collected by this Excise at the charge of as much for every month in the year, from the ruder and most ignorant part of the people, who will (not *Tributorum causam querere sed queri*) sooner murmur and complain of Taxes or Tributes, than rationally enquire into the causes of them, and by a weeping & woful *Aithmetique* of the poor, and inferior sort of people in every County be reckoned to be no great part or peice of Husbandry to purchase off 90000 *l. per annum*, yearly charges to free those that held *in Capite*, at the rate of 100000 *l.* (or rather 200000 *l. per annum*,) which is to be paid out of the Excise, and pay 90000 *l. per mensem*, or 60. or 30000 *l. per mensem* besides for collecting of it, besides the free quarterings, and other insolencies of the common Souldiers.

And

And by making that part of the **Excise** perpetual give the people to understand that the next occasion given or made, may introduce a perpetuity of **Excise** upon all other things, which to have been introduced; but upon a temporary and not like to be long lasting necessity, would before *Oliviers* Sadle had been put upon the peoples backs, have put them into multitudes of **Complaints**; And in the Raig of **King James**, and that of our late blessed *Martir* **King Charles**, before he was driven from his Throne, would have been but only in the advising of it more Capital and offensive, than that which was charged upon the late Earl of *Strafford*, and made more in one single fault or crime, than all the accumulations of **Crimes** against him could arrive unto, and was so dreadful to this Nation, and before hand hated, as they were afraid of every thing that tended that way; So as in a Parliament in the Raig of **King James**, some of the **House of Commons** having been informed that the King had imployed a Gentleman into *Holland* to inquire concerning the manner & manage of their **Excise** (which as afterwards appeared upon examination, was but for curiosity and learning sake) were so troubled at it, as the Gentleman hardly escaped a vote, whether he should not be most severely punished.

And whether **Excise** or not **Ex-ise**, will if those Tenures *in Capite*, and by Knight Ser-

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vice

LXI.

LXII.

vice, which have hitherto been as the *Life* and *Land-guards* of the King and his people should be taken away, some other wayes of means are to be found out to supply it, for the people being sworn by their Oaths of Allegiance and Supremacy, to assist and defend the King and all his Rights and Jurisdictions, if they would not defend him, and take a care of those Oaths, will likely be willing enough to defend themselves in defending him; Or if they should not, their Representatives in Parliament, would as they have for this twenty years last past, not only asseſſe them, but make them find Men, Horses and Arms, for the defence of the Kingdom, which hath hitherto been a costly Knight Service, and so far exceeding forty days Service at their own charges, as they have besides the outrages, free quarterings, and plunder of Souldiers, and losse of their debts by the ruine and death of their Debtors, born the trouble of forty *Six moneths* continual Assessements far exceeding the Escuage and all the Taxes in 600 years before laid upon our Fore-Fathers, and the question will then be of no great difficulty, whether will be the better, the old way or the new?

And when the King shall be as he ought to be the Judge of *dangers* or *necessities*, and want the Assistance of his Subjects, and it cannot when the Tenures *in Capite* and by Knight Service shall be taken away, be pre-
tend

tended, as it was in the Case of the *Ship-money* that his *Tenures and Wardships*, were to defend him and the Kingdom in cases of danger and invasion, untill a Parliaments could be Assembled.

Or shall as his late Royal Father was in the later end of the year 1642. when the long shut up *Janus Temple* had by the *Salij* or Priests of *Mars* been against his will broken open, and the miseries or troubles of War overwhelmed him and his loyal people, and the *Plowers* made *Furrowes* upon his back, being hindred from putting his *Commissions of Array* in Execution, be told by the Parliaments Declaration, that his *Tenures in Capite*, and their incidents, (and not his Commission of Array,) were the allowed and ordinary means for his defence, until more could be obtained from the Parliament, and shall have no military *Tenures* but only 100000 *l. per annum*, or if that should fail him.

Or he shall need to transport an Army into an Enemies Country, to keep off, or hinder an Invasion, succour or back his Allies, whilst they imbroil or weaken his common enemies, shall be told that he may not impresse any men or Souldiers, to go out of their Countries, unlesse he can do it by order of Parliament, or perswade them that there is a great necessity.

Whether he will not when the people shall

(i) 29. E. 3.
Coram Rege.

cry unto him as the woman that had in the siege of *Samaria*, boyled her Child & eat of it, *Help my Lord O King*, shall not be able to doe any more, then answer, as he did, *whence shall I help thee*, 2 Reg, 6. 26, 27. And finds himself as his noble Progenitor King *Ed.* the 3. publicly declared in a VVrit of Error, wherein *Blanch*, the Wif of *Thomas Wake*, of *Lidal*, was Complainant that he was *Ratione dignitatis in exhibitione justitiæ quibuscunque de regno debitor & ad statuta Progenitorum facta, observanda vinculo juramenti astrictus*, by reason of his Kingly dignity, a Debtor to every one of his Kingdom, in the doing of Justice, and bound by his oath to observe the Laws of his Progenitors, in the care of himself and his people, whom he is by his *Coronation* Oath bound to defend and protect, and of the *Salus Populi, ne quid detrimenti Respublica capiat*, for the safety of his People, and to the end that the Commonwealth may receive no damage, be enforced as it were to raise and keep a standing Army always, in readinesse with Garrisons, to protect both himself and his people.

And then it may be easily experimented whether is the better, to have some that ought to bear the charges and burdens of their Tenures, if they will enjoy their Lands, or to have the whole Nation groan and lament under the burden of maintaining a standing Army and Garrisons, by publique Assessments, or to have the Nobility and Gentry

Gentry of *England*, and five or ten thousand men, and all those that hold of them, to attend them, and be always in readinesse by the obligation of their Tenures, without any charge to the publique, or thirty thousand unruly Souldiers to be yearly or for ever maintained at the charge of the People.

An instance whereof we need not go further to look for, then in *Holland* and *Zeland*, whenas the Emperour *Charles* the fifth, living out of the Country and Governing them by Regents or Deputies, & fearing least that Nation *in remilitari longo usu bellorum exercita*, being by long experience become Warlike, and holding their Lands by Knight service, *simul ingenio soli quod natura depressum ac uliginosum tum incilibus passim Fossis lacubusq; ac paludibus intercissum haud sane faciles invasuro aditus confisa ad turbas ac seditio- num præmia converteret*, together with the nature of the soyl, which was flat and moorish, and cut into many Ditches, Lakes, and little Islands, would not easily give him entrance if he should be put to invade them, or send Forces to suppress any rebellion, or that they confiding in such their strengths, might prove seditious, and abuse the benefits and intention of their Tenures, did in a policy perhaps, such as *Cyrus* is said to make use against the *Lydians*, by giving way to their Vices and Luxury; release (if *Cornelius Neostadius* be not mistaken) to them some of their

(h) Justin. lib

their military services (for to this day the
 Emperors of *Germany* , as their Countryman
 the learned *Grotius* confesseth, doe claim the
 benefit of those antient feudal rights) *ea ta-*
men lege ut fundi Clientelares publicis functionibus
quibus haecenus immunes fuissent in posterum
non secus atque patrimoniales obnoxij existerent,
 upon condition that those Lands so holden
 should not as hitherto be free from publique
 charges and taxes, but hereafter should doe
 as others did.

(1) Cornelius
 Neostadius de
 feud success.
 pnd Hollandie

Which hath done both sides no good , for
 those *Dutch* afterwards falling into discon-
 tents with some of their seirce and over ri-
 gid Governours , did by necessity and for
 want of their Tenures and antient domestick
 military Aydes betake themselves to foreign
 Forces as they could hire them , and have
 by force and continual warrs in that Coun-
 try , which hath for more then sixty years
 been a *Cockpit* for all Christendome, and the
 hireling Souldiers of it not only brought
 great miseries and neighbour warrs upon
 themselves and all Christendome, but so
 tired the Kings of *Spain* his Successors, and
 wasted the wealth and profit of his *west-*
Indies , as he hath been enforced to make a
 peace with them , and allow them to be a
 free State as they call it , and a Republique.

Are themselves become of a very Active
 and Warlike Nation, so *Lourdisb* and un-
 warlike, as they are only found to be men of
 Trade ,

Trade, Fishing, and Navigation, filling their Country with many strong fortified walled Cities, Towns, Citadels, and Garrisons, and living under the shelter of a constant, well paid, and disciplined Army, doe by the cunning of an universal Trade and Commerce with almost all the World, and out doing all Nations herein, carry the Excise on their backs, and make the States & Richer part (but not the multitude or poorer) the better for it, and yet sometimes doe find the want of their former Tenures, and the readines of their aydes as in the late warrs of *Denmark*, where they were concerned to adventure through many dangers to ayde the *Danes* against the *Swedes*, found their design more out of order then it would otherwise have been, for that the Seamen where they doe not use to impresse, would not be perswaded to goe at all without a greater pay then ordinary, And whether that discharge of the Emperor *Charles the 5th.* did absolve them from their *Clientelage* or holding of the Empire or no; it is well known that they keep all or most of the incidents belonging to Tenures *in Capite*, as their *Laudemia's* or Reliefs, Investitures, Fines for Alienation, and the like, and living under those great burthens, and otherwise intollerable Taxes, Contributions, and Excises, which are made only tollerable by their hostilities and deprædations exercised
upon.

upon *Spain* and its Dominions, do notwithstanding almost in every Frontier Town in the winter time, make their Inhabitants hold by a kind of Service as to their own defence, in the allotment of every house or street, to break dayly a proportion of Ice in times of Frost in their Town Ditches.

LXIII.

The Assessments for horse and foot Arms, and charge and pay of Armies, and so much as for Ribbons and Trophies as they are now called (which in the time of our Military Tenures, the people were not at all or so much troubled with, will swell and be the greater, when so many as were to be contributory in a more especial manner, shall be exempted from that, and put under the general Assessment, which will make the burthen to be the heavier, and will be as little for the ease of the people, as if all the many Hospitals and Almes-Houses in *England*, which were built and endowed at the great charge of the Founders, with large and perpetual Annual Revenues in many Parishes and places in *England*, and the great number of Charities and charitable uses, which since the Protestant Religion established in *England*, have by wills and Testaments been given to the poor, should be taken away and put to other uses, as those loving and tender hearted Statesmen, the late committee of *slavery* rather than *Safety*, or the *Rump* Assembly, were about

to

to do and put into some Godly Treasury, and they that must pay a great deal more in their Rates and Assessements for the poor, left to make Affidavits, that the remedy was taken away, and a Disease put in the place of it.

The King who is *Pater Patriæ*, the great and careful Parent and Father of his people, and who by God Almighty is trusted with the Welfare, Protection, and Defence, of them, shall only have that part of the Court of Wards, and kind of Prerogative left unto him to provide and take care for *Lunatiques* and *Ideots* LXIV

Shall not now enjoy that antient and well performed trust of protecting the Fatherless, nor have that power in looking to Orphanes, and their Estates in their Minorities, as the *Dutch* and States of *Holland* have, who (though the people under the Jurisdiction of that Republique, do hold neither by Knight Service of it, nor can be well said to hold in Soccage, or as *Fieff Roturier*, where they have so little Land, but by Navigation rather and Commerce) have their *Wees Kamer*, or Court of Orphanes, do not think it fitting to trust them and their Estates to the Mothers, (although they have thereby a Custom and *Pacta antenuptialia*, a Joyntenancy and power of dispose to their own kindred) nor the kindred on either side to make their profit by them, and *sub amici fallere nomen*, under a colour of love and kindnesse, ei-

(m) Peckius
de pactis an-
tenuptialibus,

ther ruine them, or leave them to ruine themselves, by selling them and others good bargains.

LXV

(n) Customs
and usages in
London in an
old Manuscript
in French in
Guild-hall.

And shall not have so much privilege as the City of London hath, who by ancient Custome have an absolute Court of Wards in the City, though it passe under the name of the Court of Orphans, as may appear by their ancient Customs, viz. *The Mayor and Aldermen that are for the time, by custom of the City shall have the Wardships and Mariages of all the Orphans of the said City after the death of their Ancestors, although the same Ancestors do hold in the City of any other Lord by what Service soever.*

Ought to inquire of all the Lands and Tenements, Goods and Chattels, within the said City, appertaining to such Orphans, and safely keep them to the use and profit of such Orphans, or otherwise commit the same Orphans, together with their Lands and Tenements, Goods and Chattels, to others their Friends by sufficient Surety found of Record in the Chamber of Guild-hall, to maintain conveniently the said Orphans during their nonage, and their Lands and Tenements to repair, and their said Goods and Chattels safely to keep, and thereof to render a good and loyal accompt before the said Mayor and Aldermen, to the profit of the same Infants when they shall come to their age, or when they shall be put to a mystery, or shall marry by the advice of the said Mayor and Aldermen.

And that in all Cases except that it be otherwise ordained

ordained and disposed for the same Orphans, or for their Lands and Tenements, Goods and Chattels, by the expresse words contained in the Testaments of their Ancestors.

And no such Orphans ought to be married without the assent of the said Mayor and Aldermen, and also where Lands or tenements, Goods and Chattels, within the City, are devised to an Infant within Age living with his Father, and that such an Infant is no Orphan, yet by usage of the said City, the said Lands and Tenements, Goods and Chattels, shall be in custody of the Mayor and Aldermen, as well as of Orphans to maintain and keep them to the use and profit of the same Infant, except that the Father of the Infant, or some other of his Friends, will find sufficient surety of Record to maintain and keep the said Lands and Tenements, Goods and Chattels, to the use and profit of the said Infant, and thereof to render a good and loyal accompt as is aforesaid.

And may if the Kings Court of Wards shall be dissolved, and the Tenures *in Capite* taken away, be indangered or petitioned against, which within these last twenty years, hath been a notable *Engine* and peice of Artillery of the factious, who made great use of Petitions, & many a causeless complaint to overturn any antient useful constitution of the Kingdom, & well approved Rights and Liberties of the people in general or of some men in particular.

LXVI.

LXVII. Will renverse and overturn many of the Fundamental Laws and Constitutions of the Kingdom, & throw them with their heels upwards into a Ditch of all manner of evils and confusion, which will so increase and fall upon them and us, as no after endeavours by any new Bills or Acts of Parliament will be able to rescue them, and being once dead or destroyed, will not meet with any that either can or will be able to call them like *Lazarus* out of the grave, or their winding Sheets.

LXVIII. It will be against the Peoples Oaths of Supremacy to desire, to purchase of, or diminish the Kings Rights and Jurisdictions.

And against their own safety to weaken the hands and power of their Prince, that should protect and defend them, and commit the trust of protecting and defending the oppressed poor to the oppressing Rich, the Chickens to the Kites, & the harmless Lambs to the cunning Foxes, or greedy Wolves; the weak and the Innocent to such as shall endeavour to hurt them, and charge and burden themselves and their Posterities, with a Rent and excise for mischiefs and inconveniences enough in perpetuity.

LXIX. Take away that power and ready means of protecting and defending them, and that which should enable him to procure according to his Coronation Oath to *the Church of God and the Clergy, and people, firm peace and unity in God according to his power and to administer indifferent and upright Justice*, by forsaking a certain

certain & willing way of defence, for a constrained or incertain, & by taking away the best, for so much of it, of all defences, for that which in the very birth of it, is justly feared to be the worst.

Draw a Curse rather than any expected blessing or happiness upon all such Tenures *in Capite* and by Knight service, as by seeking to purchase their Homages, and obedience to their Prince, and a better and long experimented, and prosperous way of defence of themselves & posterity, shall seek or endeavour to break the reiterated oaths and contracts of all their Ancestors, to be but a part & for a short time of the general defence, of the Kingdom like a Life-guard, at hand to skirmish and make head against an Enemy, untill a Parliament can be called, and have time to consult of the means, or the whole Nation summoned for help and embodied, & will be a perjury more sinful, then that of the Children of *Israel*, to the deceitful and *turn-coat Gibeonites*, and may be more severely punished by God Almighty, upon the hereafter withering Estates of those men, and their generations, who shall not only break their own oaths, and faith, but the oaths and faith also of their more grateful Ancestors who would never have done it.

LXX.

Will make our common people, which were wont like the lesser Wheels, in a well ordered watch to be governed by the greater or superior, to run themselves into as many

LXXI.

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ny blessings as they did in these last twenty years, when they wrested the Sword out of their Kings hands (and by the power of those two great Devils *Interest & Reformation* in the abuse, and not right use of the words, which may well wear the name of those Devils which were called *Legion*) to cut murder, pillage and rob the honest and loyal part of the the people, & *lasciviendo in querelas & quæstiones*, playing the wantons in their complaints, and evil practices, which they found to be so beaten a track or rode of prosperity, to the journeys end of their wickedness, complain of every thing that likes not their fancies, or ignorance, and from Wardships and Tenures, return again in their ingratitude to God and man, to their late design of taking away *Tithes*, & *Coppyholds*, by enforcing the Lords to take a year or two years purchase for the rights of their Mannors, & Copyhold Estares, & from thence to the Act of Parliament, intended in our *Reformers* late deformations, to abate Rents where the Landlords were not so well affected as the Tenants, to make or maintain War against their Sovereign.

LXXII And if there had nothing been said or written, as we hope there is sufficient to justify the Innocency or right use of Tenures *in Capite* and by Knight service, it had been enough (as it was to the vertuous *Seneca*, to be persecuted and put to death by *Nero*, who loved all *Ill* and hated all *Good*) that *Cromwel*, that *Minotaure*, to whom in his *Laberinth*
of

of Subtilties, Hypocrisy, and *abused Scripture*, our Lawes and Liberties were daily sacrificed by the *Flattering Addresses* of a company of *Knaves* or *Fools*, very well knowing after he had cut down the *Royal Oak*, and blasted all the lofty *Pines* and *Firres* in *Druina's* Forrest, procured an Act for renouncing and disannulling the Title of our now most gracious *Sovereign*, and his Brothers to the Crown of *England*, and their Fathers Dominions, and all other which should pretend any Title or Claim, from, by, or under them, or any of them, how much it concerned his most wicked purposes of establishing that which should be called a *Common-wealth*, under His and his posterities *Prote&orship*, and most Arbitrary and Tyrannical Government, by a perpetual standing Army of 30000. Horse and Foot, an intollerable Excise, and monthly Assessements to pay them & set up the other, or tother House instead of a House of Peers, made up for the most part of *Mechanicks* transformed into Colonels and Major Generalls, and some other who might have been better Englishmen then to have been caught in the Trap of Ambition, or Titles made the wrong way; By which he might check the growing Factions in the House of Commons, and destroy their pretended *Sovereignty*, Tax and Rack the estates of all men, and more then a

Grand

Grand Seignior or *Turk* ever durst adventure upon; Command as he should please the Bodies and Souls of the people, take away every *Surculus* or little Sprigs that might grow out of the remaining Sap of that mighty Tree, and every thing that might either contribute to it, or remain but as Reliques of the Regal Estate and peoples happiness; did by an Ordinance as he called it of himself and his Council the 12th. of April 1654. not only ordain an *Union* betwixt the two Kingdoms, but that all the Nation of *Scotland* should be discharged of all Fealty, Homage, and Allegiance which is or should be pretended to be due to his Majesty that now is, and that neither he nor any of his Royal Brothers, or any deriving from the late King should hold Name, Title, and Dignity of King of *Scotland*, and that all Herritors, Proprietors, and Possessors of Lands in *Scotland*, should hold their Lands of their respective Lords by and under their accustomed yearly Boones and Annual services, without rendring any Duty or Vassallage, and discharged them of all military services, and well knowing that their old Customes being taken away, the Court-Barons would also fail, did by another Ordinance erect new Court-Barons for them.

And having made store of *Slaves* in that Kingdome, made all the hast he could to compleat his wickednesse in this, and did the

17th. day of September 1656. procure his houses of Parliament or good will and pleasure, rather to doe as much for *England*, and take away all Tenures *in Capite* & by Knight service, and all Homages, and Reliefs, & not only do all he could to destroy the heirs thereof, but cut the Nerves & let out the blood of a most noble & antient Monarchy.

But if there could be any hopes in the Exchange of those innocent as useful Tenures *in Capite*, and Knight service, of bettering the condition of the Commonwealth and people, increasing their Liberties and content, and to maintain and keep them in a most happy peace and plenty, (which will never be done if the Sword and Scepter of the King shall only be like the Ensignes and Ornaments of Regality , and made only to represent a Majestie) there will another difficulty stand in the way and meet the design of doing it by Act of Parliament) and offer this question to consideration ; Whether an Act of Parliament, and the consent of the House of Peers, & the desire of all the Commons and People of *England*, which must be understood to be signified by their Representatives, and the *Roy le Veult*, the King giving life and breath, and being to it can in the great power and respect which ever hath been by the Law, and justly ought to be always attributed unto it. Take away Tenures *in Capite*, and by Knight service, grand and

Petit Sejeanties, Homage, and all other incidents belonging unto them, or the right which the Nobility, and Gentry, and mesne Lords have to enjoy their Tenures by Knight service, & the incidents thereunto belonging. Which howsoever that in many other things it hath been said, that *Consensus tollit errorem, & Conventio vincit Legem*; Consents and Agreements are more binding then Law, will by the Laws of God, and Nature, and Nations, and the Laws of this Kingdom, and the opinion of some eminent and learned Sages and Lawyers thereof, be resolved in the Negative, viz.

CHAP.



CHAP. VII.

That Tenures in Capite, and by Knight service, holden of the King, and the Homage and Incidents thereunto appertaining, and the Right of the Mesne Lords cannot be dissolved or taken away by any Act of Parliament.



EOR that Gods Law, and the Law of Nature, and Nations, have taken care not only to preserve the Rights of Sovereignty, and the means and order of Government, but the Rights & property of every particular Subject, & do prohibit all injustice, & it is a *Maxime*, or *Aphorism* undeniable that Laws made against the Word of God, & the Laws of Nature or which are impossible, or *contra bonos mores*, right Reason, or natural Equity,

quity, will be void in themselves, be the Seal or Stamp of Authority never so eminent.

And therefore, if as the Law hath often determined, that the Kings Charters are void, and not pleadable by Law, when they are repugnant to the Laws, Acts of Parliament, Maxims, and reasonable Customs of the Realm, that it is not in the Kings power by his Charter or last Will and Testament, to grant away the Crown of *England*, to another Prince, or Potentate, as it was resolved in the Case of the supposed grant of King *Edward the Confessor*, to *William Duke of Normandy*, and that grant of King *John* to the Pope, to hold *England*, and *Ireland* of him, and that notwithstanding the grant made by *William* the Conquerour, to *Hugh Lupus*, of the Earldom of *Chester*, *tenendum per gladium, and ita libere*, as the King himself did hold *England*, the Earldom of *Chester*, was holden of the King, that the grant of King *H. 2.* to the Monks of *St. Bartholomews* in *London*, that the Prior & the Monks should be as free in their Church, as the King was in his Crown, was adjudged to be void, for that the Prior, and the Monks were but Subjects, and that by the Law, the King may no more denude himself of his Royal Superiority over his Subjects, then his Subjects can renounce or avoid their subjection to their King, and the reason why such or the like grants of the King by his Charter are void, is not in regard it was granted.

granted without the consent of the people in Parliament, but that it was in disherison of his Crown, and disabling himself to govern; or if he should by his grant exempt a man from paying his Debts, or maintenance of his Wife and Children, the joyning of the Lords and Commons with him in an Act of Parliament would not make such a Law to be binding or obligatory.

And therefore the King cannot saith *Dier* release or grant a Tenure *in Capite* to any Subject, *Dier* 44. when King *Edward* the 3^d. granted to the *Black Prince* his Son the grant of the Duchy of *Cornwal*, all Wards, Marriages, and Reliefs, *non obstante*, the Kings Prerogative, it was adjudged that the Prince could not seise a Ward which held of the Kings Ward, because it belonged to the King by his Prerogative. (p) 43. 4-
seise plit. 1.

And in ¹² R. 2. *Robert de Hauley* Esquire, being arrested and pursued upon an Action of Debt, in *Westminster Abby*, where he took Sanctuary, was in the tumult slain at the high Altar when the Priest was singing high Masse; And the offence and breach of privilege (as it was then pretended to be) complained of in Parliament by the Archbishop of *Canterbury*, and the rest of the Prelates and Clergy, and prayed that due satisfaction and amends might be made of so horrible a fact; It was opposed by the Lords. (q) Rot Parl
2 R. 2 m. 72,
73, & 74.

Lords and Commons, and they vouched Records, and called to witness the Justices and others that were learned in the Lawes of the Land, that in the Church of *England*, it hath not been accustomed, nor ought to have Immunity for Debt or Trespass or other Cause whatsoever, except for Crime only; And certain Doctors of *Divinity*, Canon and Civil Lawes being thereupon sworn and examined before the King himself to speak the plain truth, said upon mature and sound deliberation, that in case of Debt, Accompt, or Trespass, where a man is not to lose life or member, no man ought to have Immunity in holy Church, and said further (in the highest expressions those times could afford) that *God saving his Perfection, the Pope saving his Holiness, nor any King or Prince can grant such a priviledge, and that if the King should grant such a priviledge, the Church is and ought to be favoured and nourished ought not to except of it, whereof offence or occasion of offence may arise, for it is a sin and occasion of offence (saith the Record) to delay a man willingly from his Debt, or the just recovery of the same; And if an Act of the Commons alone, or of the Lords alone, or of both together, cannot amount to an Act of Parliament, the King himself cannot grant away his Regality, or Power, or means of governing by his Charter, or any Act which he can singly doe, his concurrence with both the Lords and Commons*
can

can no more make an Act to confirme that which should not be done or granted , then his own grant or Charter could have done, or than if he and the House of Commons only had made an Act ; As it appeareth by the Ordinance which the Lords *Ordainers*, so from thence called, did obtain from *Edward 2.* whereby he delegated much of his Regal Authority unto them, which was afterwards complained of in Parliament, made void, and the Authors or Lords *Ordainers* punished; for it hath been clearly asserted by eminent and learned Judges and Sages of the Law, as the Lord cheif Justice *Hobart*, *Sr. Francis Bacon*, and *Sr. John Davis*, Attorney General to King *James* in *Ireland*, that the Superlative power of Parliaments above all but the King, is in some things so restrained, as it cannot enact things against Right Reason, or common Right, or against the Lawes of God or Nature, ^{or} that a man shall be Judge in his own Case, ^{or} that the King shall have no Subsidies whereby to defend himself and his people, that Children shall not obey their Parents, and the like.

And that Tenures *in Capite*, and by Knight service, are of so transcendent a nature, and so radically iu the Crown and Fundamental Lawes, as no Act of Parliament can take it away or alter it, and are so inseperable as *Sr. John Davis* saith that in a Parliament holden in *England* in the latter end
of

(r) Case of
Impositions;

of the reign of King James, it was resolved by the House of Commons, that *the wit of man could not frame an Act of Parliament whereby all Tenures of the Crown might be extinguished.*

And Judge Hutton, who in the Case of the Ship-money, would allow the King no more Prerogative then what could not be denied him, did publicquely deliver it for Law which in that great and learned Assembly of Judges and Lawyers was not contradicted, that *Tenures in Capite, are so inseparable in the Crown, as the Parliament will not nor cannot sever them, and the King cannot release them.*

And such is the care for the defence of the Kingdome which belongeth inseparably to the King as Head or Supreme Protector, so as if any Act of Parliament should enact that he should not defend the Kingdome, or that he should have no aides from his Subjects to defend the Realm, such Acts would not bind, but would be void, because they would be against all natural Reason.

And Judge Crooke also doth in his Argument against the Ship-money, wherein he concurred with Justice Hutton, alleage that if a statute were made that a King should not defend the Kingdome, it were void being against Law and Reason.

And when a Parliament is called by the Kings Writ to preserve his Kingdom, and *Magna Charta* so little intends that any future Parliament should alter or take away any
Liberties

Liberties granted or confirmed thereby, or any fundamental Laws, which are incorporate with the essence of Government, as it hath been by several confirmations of it enacted, that all Laws hereafter to be made to the contrary, shall be Null and void, and with good reason as to the King and Mesne Lords, in the changing of their Tenures into Socage, when as *ex contractu obligatio*, and *ex obligatione Actio*, should as well holdin those beneficial pactions, which were in the Creation of those Tenures betwixt the King, Lords, and Tenants, as in Bonds Bills, and Assumpsits, or any other contracts whatsoever.

And is so great a part of right Reason, in the opinion of Forreigners, and according to the Law of Nature and Nations, as in the German Empire, (though it hath heretofore lost much of its power and authority, by the greatnesse of some of the Princes, and the many Liberties and Priviledges granted to Cities & Towns) its remaining Prerogatives notwithstanding are said to be *Jura Majestatis & instar puncti divisionem non recipientia adeoque Imperatoris personæ coherent ut nec volens ijs se abdicare aut alium in consortium vocare possit*, so inseperable as they are capable of no division, and do so, adhere unto the Emperors person, as he cannot if he would renounce or transference them over to any other.

And Bodin that understood France very well,

(1) *Conringius de Germanici Imperii Republica*

(1) *Arumæus de Comitibus Romani Germanici Imperij* ca. 3. §. 2. &

(u) Bodin de *well, saith, that Si Princeps publica pradia, cum*
Repubblica lib. imperio aut jurisdictione & eo modo fruenda con-
 273. *cesserit quo ipse fruetur, etiam si Tabulis jura Ma-*
jestatis excepta non fuerunt ipso jure tamen excepta
judicantur, if the King shall grant any of
 his Lands, to hold as freely, and with as
 much power and jurisdiction as he himself
 enjoyed it, the *jura Majestatis*, or Regalities
 are always adjudged and taken to be except-
 ed though there be no reservation or excep-
 tion in the Letters Patents.

(w) Bodin *ibm* And the Parliament of *Paris* were so care-
 259. ful of the Kings Rights, in Governing as
 when *Francis* the first, had granted to the
 Queen his Mother, a Commission to pardon
 and restore condemned persons, it declared
 that such a grant *quum sine Majestatis diminu-*
tione communicari non possit, seeing it could
 not be granted without diminution of his
 Royal Authority, was void, & thereupon the
 Queen Mother ~~inter~~ *called* no more therein.

The Conclusion.

WHen all therefore which can be but
 pretended against Tenures *in Capite*, and
 by Knight service, shall be put together, and
 said, and done they will come to no more
 then this.

The general Assessments for men and
 Horses, and necessities for War, whether
 men will or no, are a service incumbent upon
 every

every mans estate, though they bought and purchased their Lands, & the Knight service which is now complained of, is but where their Lands were given them for that purpose, and *ex pacto & voluntate*, by Agreement.

For it hath allwayes been accompted to be no less than reason, that *qui sentit commodum sentire debet et onus*, the Rose and the Prickle must goe together, and he that hath the profit may be well contented to doe something for it, especially when it is no more then what he did agree to doe, and beleived it to be a favour.

And if they now take those Lands to be a burden, may if they please give themselves an ease by retorning of them to those that gave ~~it, then~~.

And should not be murmured at, or complained of, when as those that live near the Sea, doe live under a Charge or Imposition which is annual, and sometimes very great ~~upon all~~. And in *Holland* are commanded and ordered yearly by the *Dijck Graven*, or Magistrates appointed for that purpose, to repair and amend their *Sea* wallies; Or as it is also in *England*, by Direction of Law and Commissions of Sewers, and doe but in that though their Lands were dearly paid for, and not freely given, as those doe which hold their Lands by Knight service, and defend themselves by defending others.

And it will ever be a Rule and Maxime in *Loyalty*, as well as in Law and right Reason, that by the Lawes of God, Nature, and Nations, as well as of *England*, there is and ought to be a natural Allegiance to the King, that Oaths of Allegiance and Supremacy doe enjoyn every Subject to defend his Prince, and his just Rights and Jurisdictions; And that the safety of every man in particular, and his own discretion should advise him to it, unless they will think it to be wisdom in the Citizens of *Constantinople*, who in the Seige thereof would rather keep their money and riches for the *Turks* to plunder, then help themselves or their Emperour with it, & make thereby themselves & their posterity Slaves to the enemy of Christendome then put it to the right use of defending their Prince, themselves, and Posterities.

And will all resolve in this, a defence of the King & his people will be eternally necessary, an ordinary, a speedy, a ready, a willing, and the most ingageing & obliging way, will be better then that which shall be extraordinary a far off, and to seek, or be enforced.

And the most ready means for a defence and at hand, must needs be the most proper and beneficial, for upon that ground Kings have their Treasuries, Armories, and Arsenals, which Republicques are content to imitate; Our Constables and Justices of Peace in *England*, being as standing Officers and

and Guardians of the Peace, are more for the safety of the people, when they are made before hand, to be ready upon any breach of peace, then if they were to seek, or to be made afterwards, and it would be no diminution of the strength or defence of the Kingdom to have the Nobility and Gentry of *England* by the Tenure of their Lands as it were listed, and undertaking upon all occasions to serve their Prince and defend their Country, for the smallest understandings can find the way to determine that it will be better and more easie for the Subject to have the King and their Country served by a Knight service, in acknowledgment of great Estates only given them for that purpose, than to have 10 or 12000 men provided by the Subjects by a constant Pole money and Assessement upon them and their Heirs, for a ready Guard and Assistance for the defence and safeguard of the Country as well as of the King, which the *Danes* after their late so great misfortunes and miseries by the incursions & furious attempts of the *Swedes*, have learnt to be wisdom, & have therefore lately bound themselves and their posterities to maintain a guard of 10 or 12000 men to be paid by a Pole or Assessement.

And unless the divine light of reason, and that which hitherto hath been called wisdom, have altered their courses and resolved that which is retrograde and quite contrary

trary to be the better, the most safe and natural way will be as it ever hath been to have our men at Arms to be Natives rather than Forreigners , such as are of the better sort , and bred and educared in Feats of armes , rather then such as have neither skill nor courage, and such as have Lands and Estates of their own to make a concernment, rather than such as have none.

Better to have the Nobility and Gentry who are bred and trained up in War, and understand the necessity and causes of a War to be ingaged in the defence of the Kingdom, than the *vulgus* who are often called, and too often experimented, and best know how they came to deserve it *mobile & imperitum vulgus*, a Beast of many heads, and without a Superiour or Governours, are fit only to attempt again the building of *Babel*, wherein if they were all of one language, they would for want of agreement or wit, either totally miscarry in the building, or make it to be an unimitable peice of deformity.

(1) Genes
14. v. 14.

For it was certainly no fault in *Abraham* that he had 318 Servants born in his own house to Arm in a case of necessity to rescue his Brother *Lot*; Nor in *David* that he had Servants to passe before him to War.

Or when he well understood that the
(2) 1 Reg. 15. Children of *Israel* when they had no King,
v. 18 & 19. and every one followed his own Imaginations,

ons, were often delivered into the hands of the *Midianites*, *Philistims*, & many of the Nations round about them, and that *Deborah* & *Baruch*, having undertaken to releive them were enforced to pronounce a Curse against those that came not to help the Lord against the mighty, when *Reuben* had great divisions, & did abide amongst the Sheep-folds, *Dan* remained in Ships, and *Ashur* continued by the Sea-Shore.

And that he had tasted of the fickleness & infidelity of the men of *Judah* & *Israel* in the Rebellion of *Absalom*, did though they were afterwards so kind unto him, as to wrangle with the men of *Judah* for bringing him home to his Kingdom, and not giving them a share in the honor of it, not think it to be repugnant to the good and safety of the people to settle a strong & well formed *Militia*, and to have a Life-guard of 24000 valiant men to attend by months, and courses the safety of his person, and his peaceable Government, which must needs be better than to be left to the humor of the people to go or not to goe with their Prince to war, as the wind of their Interest, or faction shall blow them, which may make such kind of aids in the greatest of necessities to be hardly compassed.

And the *Delectus* of the *Roman* Soldiers in their growing greatnesse, and most virtuous condition of that State or Commonwealth before their course and custom of Patronage, & Clyentelage had taken root
and

and gained approbation, and their often Mutinies and refuseing *nomina dare* to list or Inroll themselves, unless usury might be lessened, and Lawes cut out to their Fancies, hath told us how like *Egyptian* Reeds such a way of raising men to defend the King, themselves and the Kingdome will be to those that shall most trust or leane upon it.

So that then the *Gorgons* head and the *Bugg-beare* of the Tenures in Capite and Knight Service being only the marriages and putting the Wards Estates under a rent, whilst they shall be in minority if rationally considered with allowance of the seldome happening of it or but once in three or four descents, and two yeares value being allowed upon the death of ^{some} every Tenant in ~~Socage~~ or Coppy-hold Estates, at the admission of every one of their Heirs, will with their reliefs and herriots, possibly make the accompt of the mony and charge of the wardship to be something equal, if not a great deal lesse.

Which howsoever may be removed or made to be more familiar and better understood or born, if the Tenants in *Capite* and by Knight Service, shall be exempted from all other Taxes or Assessements for VVar, but what belongs to their Service, as by Law they antiently were and ought to be; the Wards nor their Estate during that time, being never heretofore charged with any such Assessements, as our late Tax-Master

Masters have laid upon the People, when as the fifth, and many times the third part of the *Wards* yearly Rents, besides a fifth part of the value of their real estate, and a twentieth of the personal, and renew enforced & taken from them to maintain *Iniquity*, would have saved more money than the Wardships cost.

Or if that will not still the causeless outcry, that the Licence of Alienation (which as well as *in Capite* & by Knight Service, are by the Custom of many Manors to be paid in Socage) and the Homages , Grand and ~~Petit~~ Serjeanties , Reliefs , Primer Seisins, and Liveries, and all other incidents belonging to the Tenures *in Capite* and by Knight Service, be reserved and continued to the King and Mesne Lords, and the Marriages of the Wards be put to a just apportionment and rate (not to *boxing* or bidding with every pretender , or such as shall be procured on purpose, and was thought by the Sons of *Rapine* to be a parcel of godliness) according to two years present value of the Estate, and a moderate Rate or Rent for the Lands.

And if that they do not like to sue or be sued in that Court , may do it either in the *Exchequer* or *Chancery*, and try which of those Courts they shall like the better.

There being no Reason to be shown why Wardships Rents, and Marriage Money should not be paid as quietly , or without the Noise or Clamour of Oppression by

some orderly Course to be taken in the collecting of it, as the first Fruits of Arch-Bishoppricks, Bishoppricks, and all the Clergyes Benefices, which was at first derived from the Popes Usurpations, and afterwards settled in the Crown, or as the Tenths of all the Monasteryes and Religious Lands which by Act of Parliament were settled in the Crown for the Support and Maintenance thereof.

And now all the *Lines* are come in, and meet in one *Center*, we may aske the *Days* that are past, and demand of the *Sons of Novelty* how it should happen, or where the *Invisible Cause* or Reason lurketh, that a People, at least too many of them, not long agoe covenanting, whether his late Majesty would or no, to preserve his Honor, Rights and Iurisd. Ctions, and calling God to witness that they had no Intention to diminish them, should presse or perswade the King to part with the vitals of his Regalitie, or let out the blood thereof to take in water instead of it, which that learned *John* Earl of *Bristol*, who in his many Travails and Embassies to forrein Princes, had observed the several Strengths, Policyes, and defects of Governments of all the Kings and Princes of *Christendome*, could think no otherwise of that high and just Prerogative of Kings then that, to discharge the *Tenures* in Capite would be consequently to discharge them of their Service to the Crown.

(x) *Motives*
of the Earl of
Bristol for ad-
hering to his
late Majesty
§ 8.

¶ Whenas

When as their can be neither Cause nor Reason to make any such Demands , and that all the Lords of Mannors in *England* who may already find the Inconveniencies of making too many small sized Freeholders , and I wish the Kingdom may not feel it in the Elections of Parliament men , and Knights of the Shire , as well as it doth already by the Faction and Ignorance of such as choose Burgeses in Towns and Corporations who many times choose without eyes , ears, or understanding , would not be well content to have the many perplexed and tedious Suits at Law betwixt them and their troublesome Tenants about Customs and Fines incertain , which in every year do vex and trouble the Courts in *Westminster Hall* , or that which the late feavorish Fancies of some would call *Norman Slaveries* should be either a Cause that they must be forced or over intreated to part with their Copyhold Estates, Herryots , Fines for Alienations , and all other Incidents thereunto belonging , or that it would be a good Bargain to have no Compensation or Recompence at all for them , or no more than after the Rate of what might *Communibus Annis* one year with another be made of them.

1. When as to have the intended Recompence for the Court of Wards paid as is now proposed by a part of the Excise or

Curses of the People, or to have the poor bear the burden of the rich or those to bear the Burden of it which are not at all concerned in any such purchase or Alteration, and will be an Act which can have no more Justice or Equity in it, then that the payment of *First-Fruits* which is merely *Ecclesiastical* should be distributed and charged for ever upon the Layety, and the other part of the People as well as the Clergy.

That the *Tenths* which the Layety and some of the Clergy do now contentedly pay should be communicated and laid upon all the Kingdom in general in a perpetuity.

That the draining or maintaining the Banks and Sluces and Misfortunes many times of the Fens in *Lincolnshire* and other particular Places should be charged upon the Estates of all the men in *England* that could not be concerned either in profit, losse, or Danger.

Or that in the enclosing of *Commons* or in *Deafforestation*, the Commoners should have their Compensation paid by all men in City, Town, and Country, for that which was not at present nor was ever like to be any Gain or Advantage to them.

Or that the losses of Merchants by Shipwracks, Pirates, or letters of Reprisal, should be repaired and born by all the rest of the people that went no partnership or gain with them; ^{any way} Or which way the people of *England*

England should think it to be for their good or safety, that as it was in the dayes of *Saul*, there should not be a Sword or Spear in *Israel*, that the Lords of *England*, whose great Auncestors helped to maintain all our Liberties, being in Parliament in the 20th. year of King *H. 3.* pressed by the Bishops to Enact that Children born before Matrimony, when their Parents after married should be legitimate, answered *Nolumus mutare Leges Angliæ*, we will not change the Lawes of *England*, should not take the overturning so many of the Fundamental Lawes and Liberties of the Kingdome, to be the ruine or destruction of it, to be of a greater concernment.

And that the King will not think it to be a most Christian as well as an Heroick answer of *John* King of *France*, when he was a (y) *John de* Prisoner in *England*, to our King *E. 3.* and *Seires History* was denied his Liberty unless he would *of France*, amongst other things doe Homage for the Realm of *France*, and acknowledge to hold it of *England*, That he must not speak to him of that which he neither ought nor would doe to Alienate a Right Inalienable, that he was resolved at what price soever, to leave it to his Children as he had received it from his Auncestors, that affliction might well ingage his person, but not the inviolable right of the Crown, where he had the honour to be born, over which neither Prison nor Death had any power, and especially in him who should hold

hold his life well employed sacrificing it for the Immortal preservation of France.

(z.) 1 Reg.
20. 8.

And that the people of *England* should not rather imitate the wisdom as well as goodness of the Elders of *Israel*, ^{when} as *Benhadad* not content with *Ahabs* Homage, had demanded unreasonable things of him, *Say unto the King, hearken not unto him nor consent.*

But remember that it was their fore-Fathers, which in a Parliament of King E. 3. holden in the 42th. year of his reign, declared that they could not assent to any thing in Parliament, that tended to the disherison of the King, and his Crown, to which they were sworn, that in a Parliament holden in the 14th. year of the reign of King Richard the 2d. the Lords and Commons did pray the King that the Prerogative of Him and his Crown may be kept, and that all things done, or attempted to the contrary, may be redressed; and that the King might be as free, as any of his Progenitors were, which the King granting, gave to it the force and power of an Act of Parliament.

And consider that the innovation of Laws, or change of Customs are dangerous, and as *St Augustine* saith; *non tam utilitate* (if there were any profit in them) *profunt quam Novitate perturbant*, do more hurt than good by their Novelty, that it will be unsafe to take away or dig up foundations, that where the inconveniences in the old Laws are not apparant, and

and the conveniences to come by the new not infallible or not likely to deceive our expectation of them, it will be perilous to change our Laws, more perilous when they be many; and most of all, when they be fundamental.

That the more Power and Might is in the King, to defend us, the better will be the Ends which by the Means is intended, and that therefore in the Parliament of 7 E. 1. the *Prelates, Earls, Barons, and the Commonalties* of the Realm, did acknowledge that to the King it belonged of his Royal Signory, *streightly to defend force of Armour, and all other force against the Peace, and to punish them which shall do contrary, according to the Laws and usages of the Realm; and thereunto were bound to ayd their Sovereign Lord at all Seasons when need shall be, that to make a Captain of a Cripple, or a Constable, which should keep the Peace in a Parish, and be ready to repell any violence which should be offered to the Inhabitants, to be blind or Bed-rid, would not answer the End, or be for the Safety of those that expect it from him.*

- And that his Majesties opinion expressed in his Message or Declaration from *Breda*, before his return into *England*, is and ever will be a maxime composed of very great reason and truth that *his Majesties just rights are the best preserver of the peoples Liberties.*

And may believe before it be too late that

that to take away Tenures *in Capite*, and introduce the inconveniences before mentioned, will be but as a *Prologue*, or usher to *Levelling*, and the gate or entrance, to the *Aggravian* Devices, and the supposed *Saints* taking possession of the *Estates* of those which they call the wicked.

And that the laying by of Tenures *in Capite*, and their services, and making use of Mercenary and Mechanick Souldiers, may help us to as many miseries and follies, as we have pertaked of in our late troubles, from our Servants, make them to become our Masters, and by inuring them to insolencies against others, teach them how to domineer over the people, which shall be their pay-Masters, after that over *Parliaments* garbling and purging the House, pulling out, and putting in whom they please, turn *Legislators*, and *Remonstrance-makers* from their head quarters, make themselves not the Repairers of *Breaches*, but the makers and causers of them, ingrosse, all the places and employments of the Kingdom, throw down Laws and Government, create out of themselves and their own Party, *Mayors*, *Generals*, to tyrannize awe the people, and abuse their Laws, and Liberties, and play the fools at Coffee-Houses, with disputing and discoursing of *Rotas*, and *Balloting Boxes*, and which of their *whimsies*, and ignorant contrivances would best make a Government Committ Perjuries in

in abundance, and make their oaths more changeable, and leſſe to be truſted then the Wind or Weather, or a *Lillies Almanack* and make it their only buſineſſe to enſlave and inſult over the people, and *Metamorphoſe* them into as many ſhapes of baſeneſſe, perjuries, Hipocriſies, diſſembling and wickedneſſe, as poverty hope of gain, or to get or preſerve eſtates, (though it be but to have *Poliſphemus* his curteſie to be laſt of all ruined) fear or flattery, or an accuſed ambition to raiſe an eſtate out of other mens miſeries , could perſwade or draw them unto.

That the taking away of Tenures *in Capite* & by Knight ſervice, is not deſired by any univerſal or general Petition at all of the People , that not one in every 20 of thoſe that are concerned, & hold by thoſe Tenures, nor one in every 100 of thoſe that hold by other Tenures, and are not concerned, do deſire it. That the injudicial and inconfiderate deſires of a very few of the common people, who doe ſometimes (as they have many times done in our late troubles , and too late repented it) out-do Children in asking *Stones* inſtead of *Bread*, and *Serpents* for *Fishes*, are not to be hearkened unto , that the Surſets upon Liberty, are many times very dangerous, & may prove as fatal & unhappy, though granted or asked with the beſt of intentions , as that of giving great Sums of money to the Scots, in the begining of our unhappy Wars, & calling their invaſion a

N. n

brother-

brotherly assistance , or that of giving Liberty to the long Parliament, not to dissolve without their consent.

That if *Augustus Caesar*, when by his great Prudence he had put the broken peices of the *Roman Republick*, which was *Civilibus Discordiis lacerata*, woefully torn with civil Discords into a well composed *Monarchy*, and blest the Empire & a great part of the World with an universal Peace, could find no better a way to fix and make it lasting, then to put many of the Souldiers under a Gratitude and Concernment to love and cherish it by giving them Lands for Life or Inheritance to engage them to their former Duties when occasion should happen, which saved the Charge and Trouble on all sides, as well to the conquered as the conquering in maintaining *Roman* Legions made up of a *Medley* or *Gallimaufry* of all manner of Nations.

It cannot now be good when the long lasting Monarchy of *England* hath been lately and lamentably torn into peeces to make up a Common-wealth, could never be agreed upon to alter or take away a Course of constant and ordinary defence which hath been for so many Ages past the happy Support of this Antient Monarchy.

And that it could not have been any bad or likely to be unsuccessfull Policy, but a means of an Establishment of our late Souldiers

diers and *Controullers* had in the Allowance of their cheap purchases been tyed to Tenures by Knight Service for the Defence of the Kingdom, as the late King of *Sweden* was to hold of the Empire by the Treaty of *Munster*.

And if that *Bracton* who was a Lord Chief Justice in the Reign of King *H. 3.* was of opinion that by a partition of Earldoms and Baronies, *deficeret Regnum quod ex Comitatibus & Baronis dicitur esse constitutum*, would ruine the Kingdom which is constituted of Earldoms and Baronies, ^{inquit & c. ruius} he would now certainly foresee greater Mischiefs and Inconveniencies in the taking away of Tenures *in Capite* and by Knight Service, or changing them into Tenures in Socage.

(a) *Bracton*
lib. 2. cap. 34.

That by the Civil Law, that universal and great Rule of Reason, *Imperatoriam Majestatem non solum armis decoratam sed etiam legibus oportet esse Armatam ut utrumque Tempus et Bellerum et pacis recte possit gubernari*, The Imperial Majesty or Power ought not only to be adorned & strengthened with Armes & the power thereof, but with Lawes, to the end that as well in time of War as Peace, he may rightly govern.

(b) *Institut.*
Justiniani in
proximo.

And that therefore we may well tremble and shake at the name of Innovations, and desiring to find the way again into the old Paths of Peace, Plenty, and Security.

Have cause enough to say as the learned

Grotius did concerning *Holland*, (only changing the word *Respublica*, into a better of a Kingdom) that *multum debemus majoribus nostris qui acceptam a primis conditoribus Rempub-
licam per se egregiam nostro vero ingenio nostrisque
studiis aptissimam pace servatam bello recuperatam
nobis reliquere*, we owe much to our Ancestors, who having received the Commonwealth, which is excellent in it self, and fitted to our Customs and manners from those which first founded it, and left us to enjoy in peace, what they had recovered in War, & *nostrum est si nec ingrati nec imprudentes esse volumus Rempublicam constanter tueri quam ratio
suadet probant experimenta & commendat Antiquitas*. And if we would not be ingratefull or unjust wee ought to defend that Kingdome and Government which Reason perswadeth us unto, Experiments approve, & Antiquity commendeth.

Collapsa ruunt. subductis tecta columnis.

F I N I S.